



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 26, 2022

Nate Farnsworth  
Planning Manager  
City of Yorba Linda  
4845 Casa Loma Avenue  
Yorba Linda, CA 92885  
[NFarnsworth@yorbalinga.ca.gov](mailto:NFarnsworth@yorbalinga.ca.gov)



**Subject: City of Yorba Linda 2021-2029 Housing Element Implementation Programs Project (PROJECT), Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR), SCH #2022040574**

Dear Mr. Farnsworth:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) for the City of Yorba Linda 2021-2029 Housing Element Implementation Programs (Project) Draft Environmental Impact Report (DEIR).

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW may need to exercise regulatory authority as provided by the Fish and Game Code for either CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) or in the event the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.).

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## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Yorba Linda (City)

**Objective:** The objective of the Project is to develop local housing programs to meet the City's goal for existing and future housing needs for all income groups per the Southern California Association of Governments' (SCAG) Regional Housing Needs Assessment (SCAG 2022). Primary Project activities include a General Plan Amendment and Amendments to the Zoning Code and Zoning Map, revision of the Land Use Element to update maps consistent with proposed zoning, and revision of the Safety Element to incorporate fire hazard planning. Amendments to the Zoning Code include modification to the text and maps to rezone 27 opportunity sites, including applicable planned development zones, and adoption of housing overlay zones (Affordable Housing Overlay, a Mixed-Use Housing Overlay, and a Congregational Land Overlay). Housing opportunity sites are identified as potential sites for future housing development. These sites are recommended based on several factors: existing land use and feasibility for redevelopment within the planning period; property owner interest; neighborhood compatibility and community context; and an overriding goal to disperse affordable housing opportunities throughout the community. Through rezoning, the City would provide a total of 2,410 additional housing units.

**Location:** The Project encompasses the entire City of Yorba Linda, which is located in northeast portion of Orange County, California. The City is located approximately 38 miles southeast of City of Los Angeles and 12 miles north of City of Santa Ana. It is bounded by the cities of Corona to the east, Brea to the north, Placentia to the west and southwest, and Anaheim to the south. Chino Hills State Park is located to the north.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW looks forward to commenting on the DEIR when it is released. CDFW may have additional comments to the DEIR not addressed in this letter.

### Specific Comments

#### 1) Biological Baseline Assessment

CDFW recommends providing a complete assessment and impact analysis of the native/naturalized vegetation communities, flora, and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures (including provision for buffers between impacts and locations of sensitive species) necessary to avoid, minimize, or mitigate for significant impacts. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. The DEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity;

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- b) A complete floristic assessment within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a thorough, recent, floristic-based assessment of special status plants and natural communities;
- c) A complete, recent, assessment of the biological resources associated with each habitat type onsite and within adjacent areas that could also be affected by the Project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>; and,
- d) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years as long as there was not a prevailing drought during the time of the botanical survey. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.

## 2) Analyses of the Potential Project-Related Biological Direct, Indirect, and Cumulative Impacts

Due to the aim of providing maximum capacity for the City's housing needs, rezoning will occur and thus have the potential to impact biological resources. Project activities may cause direct impacts if parcels are rezoned from open space to residential, resulting in direct take of habitat and the species therein. Project activities may also have indirect impacts resulting from increased noise, lighting, traffic, and human activity adjacent to open space or sensitive areas. Specific mitigation or avoidance measures may be necessary to offset such impacts. CDFW recommends providing a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. The following should be addressed in the DEIR:

- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address Project-related changes on drainage patterns on and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included;
- b) Discussions regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR. Specifically potential impacts to biological resources located in Chino Hills State Park should be discussed;

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- c) The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document;
- d) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,
- e) A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

### 3) Impacts to Bird Species

The Project plans identify 27 opportunity sites including some areas zoned as open space and/or adjacent to open space with existing shrubs and trees. These open spaces include, but are not limited to: Chino Hills State Park, Vista Del Verde Park, and Black Gold Golfclub. Project activities occurring during the avian breeding season could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. Some sites identified for the Project could also lead to the loss of foraging habitat for sensitive bird species. CNDDDB indicates the occurrence of several special status species within the Project vicinity, specifically least Bell's vireo (vireo; *Vireo bellii pusillus*; CESA- and ESA-listed endangered) and coastal California gnatcatcher (gnatcatcher; *Polioptila californica californica*, ESA-listed threatened and California Species of Special Concern). CNDDDB also indicates the occurrence of two additional bird species listed as a CDFW Species of Special Concern (SSC): yellow-breasted chat (*Icteria virens*) and coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*). The following should be addressed in the DEIR:

- a) CDFW recommends that measures be taken to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs; and,
- b) If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 100-feet of the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working onsite, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

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#### 4) Fire Hazard Planning and Fuel Modification

The NOP discusses fire hazard planning, which implies that Project activities may include fuel modification within and around the Project boundaries. The DEIR should include information as to how the Project or adjacent land may be affected by fuel modification requirements. Fuel modification should not adversely impact resources in the adjacent areas or mitigation lands. A discussion of any fuel modification requirements for this Project should be included in the DEIR to allow CDFW to assess potential impacts to biological resources. CDFW recommends all fuel modification requirements be met on the Project, and not in mitigation lands or habitat adjacent to the Project. Habitat being subjected to fuel modification (e.g., thinning, trimming, removal of mulch layer) should be considered an impact to these vegetation communities and mitigated accordingly. CDFW also recommends any irrigation proposed in fuel modification zones drain back into the development and away from natural habitat areas because perennial sources of water may have negative impacts such as the introduction of invasive Argentine ants.

### **General Comments**

#### 5) Project Description and Alternatives

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, CDFW recommends the following information be included in the DEIR:

- a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas (if applicable); and,
- b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.

#### 6) Compensatory Mitigation

The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration or enhancement should be discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore would not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity. Under Government Code section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or non-profit organization to effectively manage and steward land, water, or natural resources on mitigation lands that it approves.

#### 7) Wetland Permitting Obligations

CDFW has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification CDFW pursuant to

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section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency.

Figure 3 of the NOP identifies opportunity sites adjacent to the Santa Ana River. The DEIR should include an analysis of the project's direct, indirect, and cumulative impacts on hydrologic features, including a discussion of impacts as they pertain to Fish and Game Code section 1600 *et seq.* If impacts to the bed, bank, or channel of a stream may occur, we encourage the City to consult further with CDFW regarding the possible submittal of a LSA Notification package. A Notification package for a LSA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

#### 8) Landscaping

Habitat loss and invasive plants are a leading cause of native biodiversity loss. CDFW recommends that the DEIR stipulate that no invasive plant material shall be used. Furthermore, we recommend using native, locally appropriate plant species for landscaping on the Project site. A list of invasive/exotic plants that should be avoided as well as suggestions for suitable landscape plants can be found at <https://www.cal-ipc.org/solutions/prevention/landscaping/>.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.

### **CONCLUSION**

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Alex Troeller, Environmental Scientist, at [Alexandra.Troeller@wildlife.ca.gov](mailto:Alexandra.Troeller@wildlife.ca.gov).

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Sincerely,

DocuSigned by:

  
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David Mayer  
Environmental Program Manager  
South Coast Region

cc: CDFW

Karen Drewe, San Diego – [Karen.Drewe@wildlife.ca.gov](mailto:Karen.Drewe@wildlife.ca.gov)

Melanie Burlaza, San Diego – [Melanie.Burlaza@wildlife.ca.gov](mailto:Melanie.Burlaza@wildlife.ca.gov)

Cindy Hailey, San Diego – [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)

Jennifer Ludovissy, San Diego – [Jennifer.Ludovissy@wildlife.ca.gov](mailto:Jennifer.Ludovissy@wildlife.ca.gov)

State Clearinghouse, Office of Planning and Research – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

## REFERENCES

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