



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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June 8, 2022

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Subject: Notice of Preparation of a Draft Environmental Impact Report for Civic Center Master Plan Project, SCH No. 2022050175; City of Moorpark, Ventura County

Dear Ms. Farley:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Moorpark (City) for the Civic Center Master Plan (Project). 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's Role

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust for the people of the state [Fish & Game Code, §§ 711.7, subdivision (a) & 1802; Pub. Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, [§ 15386, subdivision (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). CDFW is also directed to provide biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 *et seq.*). To the extent implementation of the Project as proposed may result in "take" of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

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Project Description and Summary

Objective: The Project proposes the phased development of a new City Civic Center within the Project site. Development would include the construction of a new 18,000 square foot library with outdoor plaza, a 13,000 square foot commercial area with the development of a public park, a residential area with 75 units, and a new 22,000 square foot city hall. Demolition of the existing library, community center, and city hall will be executed as part of the Project plans.

Location: The Project site encompasses approximately 12.5 acres in City of Moorpark in Ventura County, California. The Project site currently contains a mix of land uses associated with the existing structures, parking areas, and vacant undeveloped areas within the Project site. A storm drain runs through a subterranean culvert along the west side of land parcels 511050305 and 5110050265. This drainage also runs between land parcels 5110020275 and 5110050175, eventually discharging into Arroyo Las Posas via Walnut Creek. The Project site is in close proximity to the Santa Monica-Sierra Madre wildlife corridor and Essential Connectivity Areas to the east of the development.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. The DEIR should provide adequate and complete disclosure of the Project's potential impacts on biological resources. [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

COMMENTS AND RECOMMENDATIONS

Specific Comments

- 1) Sensitive Bird Species. A review of the California Natural Diversity Database (CNDDDB) indicates nearby occurrences of special status bird species such as coastal California gnatcatcher (*Poliioptila californica californica*; Endangered Species Act (ESA) listed threatened; California Species of Special Concern (SSC)), least Bell's vireo (*Vireo bellii pusillus*; ESA and ESA-listed endangered), yellow warbler (*Setophaga petechia*; SSC), willow flycatcher (*Empidonax traillii*; ESA-listed endangered), white-tailed kite (*Elanus leucurus*; ESA-listed), and yellow-breasted chat (*Icteria virens*; SSC). Project activities occurring during the breeding season of nesting birds could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees and shrubs directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species.
 - a. CDFW recommends that measures be taken, primarily, 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 MBTA).

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- b. 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 (February 15 through August 31 and as early as January 1 for some raptors) to avoid take of birds or their eggs. 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 300 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.
- 2) Loss of Bird and Raptor Nesting Habitat. The biggest threat to birds is habitat loss and conversion of natural vegetation into another land use such as development (e.g., commercial, residential, industrial). Urban forests and street trees, both native and some non-native species, provide habitat for a high diversity of birds (Wood and Esaian 2020). Several recent Projects are already in progress which will result in the removal of native, protected, and non-native trees. These projects include but are not limited to; Hitch Ranch, Beltramo Ranch, and Everette Street Terrace. Some species of raptors have adapted to and exploited urban areas for breeding and nesting (Cooper et al. 2020). For example, raptors (Accipitridae, Falconidae) such as red-tailed hawks (*Buteo jamaicensis*) and Cooper's hawks (*Accipiter cooperii*) can nest successfully in urban sites. Red-tailed hawks commonly nest in ornamental vegetation such as eucalyptus (Cooper et al. 2020). According to eBird, there are multiple observations of red-tailed hawks and Cooper's hawks throughout the City.
 - a. CDFW recommends the DEIR provide measures where future development facilitated by the Project avoids removal of any native trees, large and dense-canopied native and non-native trees, and trees occurring in high density (Wood and Esaian 2020). CDFW also recommends avoiding impacts to understory vegetation (e.g., ground cover, subshrubs, shrubs, and trees).
 - b. If impacts to trees cannot be avoided, trees should be replaced to compensate for the temporal or permanent loss habitat within a project site (See General Comment 4-C). Depending on the status of the bird or raptor species impacted, replacement habitat acres should increase with the occurrence of a California Species of Special Concern. Replacement habitat acres should further increase with the occurrence of a CESA-listed threatened or endangered species.
 - c. CDFW recommends planting native tree species preferred by birds. This includes coast live oak (*Quercus agrifolia*) and California sycamore (*Platanus racemosa*) (Wood and Esaian 2020). CDFW recommends Audubon Society's Plants for Birds for more information on selecting native plants and trees beneficial to birds (Audubon Society 2022).
- 3) Tree Disease Management Plan. Project activities may include tree removal and new trees as a part of landscaping activities. This may have the potential to spread tree pests and diseases throughout the Project site and into adjacent habitat not currently exposed to these

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stressors. Pests and diseases include (but not limited to): sudden oak death (*Phytophthora ramorum*), thousand canker fungus (*Geosmithia morbida*), Polyphagous shot hole borer (*Euwallacea* spp.), and goldspotted oak borer (*Agrilus auroguttatus*) (Phytosphere Research 2012; TCD 2020; UCANR 2020; UCIPM 2013). This could result in expediting the loss of native trees and woodlands. CDFW recommends the DEIR include an infectious tree disease management plan or a list of preventative measures, developed in consultation with an arborist, to describe how it will be implemented to avoid or reduce the spread of tree insect pests and diseases.

- 4) 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 should 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/>.

General Comments

- 1) Disclosure. A DEIR should provide an adequate, complete, and detailed disclosure about the effect which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, §15151). Adequate disclosure is necessary so CDFW may provide comments on the appropriateness of proposed avoidance, minimization, or mitigation measures, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).
- 2) Biological Baseline Assessment. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally, and locally unique species and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those 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.
<https://www.wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>;
 - 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 following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW 2018);

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- c. Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. The Manual of California Vegetation (MCV), second edition, should also be used to inform this mapping and assessment (Sawyer, 2008). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;

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 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>;

- d. The DEIR should provide columns for each element and approximate acres potentially impacted by critical habitat type. CDFW recommends using "None" or the number zero to indicate no impacts and, provide a brief discussion why there would be no impacts to demonstrate that impacts were evaluated;
 - e. A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species onsite and within the area of potential effect, including California SSC and California Fully Protected Species (Fish & Game Code, §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the United States Fish and Wildlife Service (USFWS);
 - f. 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 two 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; and
 - g. Presence/absence determinations of wildlife and rare plants in the Project area, specifically areas that would be impacted due to Project implementation (e.g., existing facilities), should be determined based on recent surveys. CDFW recommends the DEIR provide any recent survey data.
- 3) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures [CEQA Guidelines, §§ 15002(a)(3), 15021]. Pursuant to CEQA Guidelines section 15126.4, an environmental impact report shall describe feasible measures which could mitigate for impacts below a significant level under

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CEQA.

- a. **Level of Detail.** Mitigation measures must be feasible, effective, implemented, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, §§ 15126.4, 15041). A public agency shall provide the measures that are fully enforceable through permit conditions, agreements, or other measures (Pub. Resources Code, § 21081.6). CDFW recommends that the City prepare mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). Adequate disclosure is necessary so CDFW may provide comments on the adequacy and feasibility of proposed mitigation measures.
 - b. **Disclosure of Impacts.** If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the Project as proposed, the environmental document should include a discussion of the effects of proposed mitigation measures [CEQA Guidelines, § 15126.4(a)(1)]. In that regard, the environmental document should provide an adequate, complete, and detailed disclosure about a project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.
- 4) **Biological Direct, Indirect, and Cumulative Impacts.** To provide 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. The latter subject should address Project-related changes on drainage patterns 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. Mitigation measures proposed to alleviate such Project impacts should be included;
 - b. A discussion 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 Natural Community Conservation Plan (NCCP, Fish & Game Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
 - c. A discussion regarding impacts to loss of bird nesting habitat. Several proposed projects in the area (Hitch Ranch, Beltramo Ranch, and Everette St. Terrace) will include removal of both native and non-native trees which could be utilized by passerine birds and raptors. The Project should analyze the cumulative impact, if any, in regard to

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loss of potential nesting habitat;

- 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, 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.
- 5) CESA. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or CESA-listed plant species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subs. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.
- 6) Moving out of Harm's Way. The proposed Project may result in impacting habitats on and/or adjacent to the Project site that may support wildlife. To avoid direct mortality, CDFW recommends that a qualified biological monitor approved by CDFW be on-site prior to and during ground and habitat disturbing activities to move out of harm's way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.
- 7) Jurisdictional Waters. CDFW is concerned that project activities may result in direct and indirect impacts to the unnamed drainage which traverses the Project site and/or downstream waters. The drainage is within close proximity to the Walnut Canyon channel, a concrete-lined channel that drains into Arroyo Las Posas Creek. The proposed Project may diminish on-site and downstream water quality, alter the hydrologic and geomorphic processes, and/or impact specially listed fish present downstream. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the

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natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 *et seq.* CDFW's issuance of a Lake and Streambed Alteration Agreement (LSAA) for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the Environmental Impact Report of the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA. Please visit CDFW's Lake and Streambed Alteration Program webpage at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA> for information about LSA notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (<https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>). In the event the Project area may support aquatic, riparian, and wetland habitats; a preliminary delineation of the streams and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the USFWS wetland definition adopted by CDFW (Cowardin et al. 1970). Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and Regional Water Quality Control Board Section 401 Certification.

- a. In Project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.
 - b. Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.
- 8) 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, we recommend 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; 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.

Conclusion

We appreciate the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources. If you have any questions or comments

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regarding this letter, please contact Angela Castanon, Environmental Scientist, at Angela.Castanon@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Environmental Program Manager I
South Coast Region

ec: CDFW

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References:

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