



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 South Coast Region  
 3883 Ruffin Rd.  
 San Diego, CA 92123  
 www.wildlife.ca.gov

**EDMUND G. BROWN JR., Governor**  
**CHARLTON H. BONHAM, Director**



July 28, 2022

Governor's Office of Planning & Research

**JUL 28 2022**

Vidal F. Marquez  
 Assistant Planner  
 City of Orange  
 300 E Chapman Ave  
 Orange, CA 92866

## STATE CLEARINGHOUSE

[vmarquez@cityoforange.org](mailto:vmarquez@cityoforange.org)

Palmyra Cemetery Development (PROJECT)  
 Mitigated Negative Declaration (MND)  
 SCH# 2022060730

Dear Mr. Marquez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Orange (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed 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.), related authorization as provided by the Fish and Game Code will be required.

### PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Orange (City)

**Objective:** The objective of the Project is to construct a gravesite cemetery and accompanying parking lot, and to reconstruct an existing building. Primary Project activities include demolition of existing structures, construction of a new building and parking lot, and establishment of a gravesite area on the parcel.

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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**Location:** The Project Site is located on 5.99-gross acres of land located at 290 South Yorba Street and 2205 East Palmyra Avenue, directly south of East Chapman Avenue, directly west of South Yorba Street, north of East La Veta Avenue, and east of State Route (SR) 55 and the Santiago Creek in the City of Orange. Currently the site contains a closed landfill, Young Men's Christian Association facility, and a bicycle motocross track. The site is surrounded by SR 55 to the west, a dog park to the north, and residential housing to the east and south.

**Biological Setting:** Three dominant land cover types fall within the Project site: eucalyptus woodland, nonnative grassland and developed/disturbed vegetation. Greater than 99% percent of the Project site consists of developed, disturbed, and nonnative land cover types. The biological study area also includes substantial anthropogenic disturbances (i.e., highways, paved roads, buildings, playground equipment, parking areas, sports fields, bleachers, disked lands, dog park, bike tracks, school, trash/debris piles and concrete pads). There are 1.31 acres of coastal sage scrub (CSS) bordering the northwestern edge of the Project site, within the study area. January 2021 field surveys detected no special-status wildlife species within the study area. The Project's biological technical report (Sagecrest 2021) lists coastal California gnatcatcher (gnatcatcher; *Polioptila californica californica*; Endangered Species Act-listed threatened and CDFW Species of Special Concern) as absent, and its species distribution restricted, due to the limited CSS habitat. The nearest location of critical habitat for gnatcatcher is approximately two miles east of the Project site. The MND does not discuss potential presence for gnatcatcher within the limited CSS located in the study area and does not include any mitigation for potential impacts to gnatcatcher.

## 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment A, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

While CDFW recognizes that the Project is in a relatively developed area and that impacts to biological resources are nominally minor, CDFW offers the following comments:

### I. Project Description and Related Impact Shortcoming

#### COMMENT #1: General Biological Survey Timing

##### Appendix B – Biological Technical Report, Page 4-1

**Issue:** Appendix B of the MND states a general biological survey timeframe of January 2021.

**Specific impact:** This survey timeframe falls outside of nesting bird season and peak blooming season.

**Why impact would occur:** Due to the survey timeframe falling outside of nesting bird and blooming season, survey results are not representative of potential occurrences of sensitive bird and plant species. A reconnaissance-level survey conducted in January 2021 cannot fully assess potential impacts to these species and therefore impacts to them have not been fully analyzed in the MND.

**Evidence impact would be significant:** The MND states that no special status wildlife or plants were observed during the January 2021 surveys. CDFW is concerned that additional biological resources impacts may occur which are not captured by this analysis. Specifically, Figure 3 Vegetation Communities and Land Cover Types in the MND depicts 1.31 acres of CSS, primarily California sagebrush (*Artemisia californica*) and California buckwheat (*Eriogonum fasciculatum*) located directly outside the Project boundary. CSS is the primary habitat for the coastal California gnatcatcher and there is

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potential presence of gnatcatcher within the Project biological study area. If gnatcatcher is present within the CSS located directly outside the Project boundary, Project activities have the potential to impact gnatcatcher. Absent focused surveys utilizing all applicable protocols and temporal considerations, concluding the presence or absence of species within the proposed Project is not substantiated by the evidence in the MND. CDFW recommends protocol-level surveys for sensitive species with the potential to occur within the Project's biological study area. The U.S. Fish and Wildlife Service's Coastal California Gnatcatcher Survey Guidelines recommend a typical survey period of March 15 to June 30 (USFWS, 2019).

Additionally, various plants, including sensitive species, are most reliably identified during each species' respective blooming period. It is atypical that a reconnaissance-level biological survey is specific enough to detect sensitive plant species. Surveys conducted outside the focal sensitive plant species' typical blooming period may not detect sensitive plant species presence.

### **Recommended Potentially Feasible Mitigation Measure**

#### **Mitigation Measure #1: Special-Status Species Surveys**

**To reduce impacts to less than significant:** Prior to Project commencement, a qualified biologist (e.g., expert opinion) shall complete surveys of habitat and analyze potential impacts to biological resources before impacts, including impacts to CSS/coastal California gnatcatcher. These surveys shall be completed during the appropriate season for special-status plants and wildlife and should incorporate the following elements:

- a) A figure illustrating the survey area overlaid on the Project footprint during surveys conducted at an appropriate time of year (e.g., spring or early summer);
- b) a description of the survey methodology or protocol used for general plant and animal species, as well as sensitive or listed species. If there were variances from standard survey methodologies or protocols, please provide the background and rationale for the variance;
- c) a list of observed plant and animal species, including sensitive and listed species; and,
- d) a list of appropriate mitigation measures to avoid, minimize, or mitigate for impacts to plant and animal species and their habitats.

## **II. Mitigation Measure Shortcoming**

### **COMMENT #2: Nesting Bird Avoidance**

#### **Section #4.4, Page 82**

**Issue:** MM BIO-1 does not adequately avoid or minimize impacts to nesting migratory birds.

**Specific impact:** MM BIO-1 indicates that pre-activity clearance surveys for nesting passerines and raptors will be conducted prior to the onset of Project activities if work needs to take place during a nesting season defined as March 15 through September 1. The MND also states that an activity exclusion buffer zone around occupied nests will be maintained during physical ground disturbing activities. However, typical avian nesting season may start as early as February 1 in the Project's region. Additionally, MM BIO-1 does not specify the timeframe for pre-construction surveys, the size of buffer zones, or by whom the pre-construction surveys will be conducted.

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**Why impact would occur:** Direct impacts to nesting birds may occur from vegetation removal; indirect impacts may occur from vibration, noise, dust, and increased human activity related to construction.

**Evidence impact would be significant:** California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq.*).

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

**To reduce impacts to less than significant:**

CDFW recommends the following changes (**in bold** and ~~strikethrough~~) to MM BIO-1:

**Mitigation Measure #2: Nesting Bird Avoidance**

Prior to issuance of a grading permit, in order to comply with Section 10 of the Migratory Bird Treaty Act and relevant sections of the California Fish and Game Code, any vegetation clearing shall take place outside of the typical avian nesting season (e.g., ~~March 15th~~ **February 1** until September 1).

- a) If work needs to take place between ~~March 15th~~ **February 1** and September 1st, a pre – activity clearance survey for nesting passerines and raptors shall be completed prior to the onset of Project activities. **The pre-construction survey will be conducted by a qualified biologist for nesting bird presence in the Project area no more than three (3) days prior to ground disturbance, vegetation removal, or construction activities. The results of the pre-construction survey shall be valid for three (3) days; if vegetation removal activities do not commence within 7 days following the survey or if activities cease for more than three (3) consecutive days, a new pre-construction nesting bird survey shall be conducted before construction resumes.**
- b) An activity exclusion buffer zone around occupied nests established by the activity clearance survey shall be maintained during ~~physical ground-disturbing undertakings~~ **ground disturbance, vegetation removal, or construction activities. Should active nests be identified during surveys, a buffer of 300 feet for passerines and 500 feet for raptors shall be delineated, flagged, and avoided until the nesting cycle is complete. Once a qualified biologist has confirmed that nesting has ended and the young have fledged, the buffer may be removed.**

**COMMENT #3: Noise and Vibration Impacts**

**Section #4.13, Page #154**

**Issue:** MM NOI-1 does not adequately address noise and vibration impacts to sensitive wildlife within and surrounding the Project area.

**Specific impact:** MM NOI-1 does not define “sensitive receptors” to include biological resources.

**Why impact would occur:** Indirect impacts to sensitive wildlife, including nesting birds, may occur from vibration, noise, dust, and increased human activity related to construction.

**Evidence impact would be significant:** California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq.*).

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**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

**To reduce impacts to less than significant:**

CDFW recommends the following changes (**in bold**) to MM NOI-1:

**Mitigation Measure #3: Noise and Vibration Impacts**

**Sensitive receptors, in the context of the Project and related mitigation measure, shall include biological resources such as wildlife species that may occur within proximity to disruptive Project activities.** The Property Owner/Developer and Contract shall ensure the following measures are implemented as part of the Proposed Project's during all Project site excavation, ground disturbance, and construction.

- a) During all Project site excavation and grading on-site, construction contractors shall equip all construction equipment, fixed or mobile with properly operating and maintained mufflers consistent with manufacturer standards.
- b) The contractor shall place all stationary construction equipment so that emitted noise is directed away from the noise sensitive receptors nearest the Project Site.
- c) Equipment shall be shut off and not left to idle when not in use.
- d) The contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise/vibration sources and sensitive receptors nearest the Project Site during all Project construction.
- e) Jackhammers, pneumatic equipment and all other portable stationary noise sources shall be shielded, and noise shall be directed away from sensitive receptors.
- f) The Project proponent shall mandate that the construction contractor prohibit the use of music or sound amplification on the Project Site during construction.
- g) The construction contractor shall limit haul truck deliveries to the same hours specified for construction equipment.
- h) Specific noise thresholds shall be implemented to minimize potential impacts to sensitive wildlife. A threshold average level of 60 decibels will be maintained throughout the duration of construction, ground disturbance, and site excavation.**
- i) Noise reduction techniques will be used to reduce potential impacts to sensitive wildlife, including nesting birds if activities occur during avian nesting season of Feb 1 to September 1. These techniques may include:**
  - temporary noise barriers or sound walls;
  - using noise pads or dampers;
  - replacing and updating noisy equipment;
  - using moveable task noise barriers;
  - locating vehicle access points and loading and shipping facilities away from the nest site;
  - reducing the number of noisy activities that occur simultaneously; and,
  - relocating noisy stationary equipment away from the nest sites.

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### III. General Comments

#### COMMENT #4: Equipment Staging and Possible Wetland Permitting Obligations

Section 4.6 (Energy) and 4.13 (Noise) state that, "...construction vehicles and equipment would occur on site" and that, "contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise/vibration sources and sensitive receptors nearest the Project Site during all Project construction", respectively (Sagecrest, 90; Sagecrest, 155). The Project boundary is in close proximity to the bed, bank, and channel of Santiago Creek. If any staging of equipment or Project activities will fall outside of the Project boundary as identified in Figure 2 Site Vicinity, the Project applicant must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. CDFW has regulatory authority over activities in streams 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. 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. If any construction equipment or activities may impact the bed, bank, or channel of Santiago Creek, we encourage you to consult further with CDFW regarding the possible submittal of a LSAA Notification package. A Notification package for a LSAA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

#### 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 found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Training-Survey>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB>.

#### FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 MND to assist the City of Orange 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:  
*Jennifer Turner*  
C3D449ECB7C14DE...

Jennifer Turner, acting for  
David Mayer  
Environmental Program Manager I

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Attachments:

- A) CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

ec: State Clearinghouse, Sacramento, [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)  
Jennifer Ludovissy, CDFW, [Jennifer.Ludovissy@wildlife.ca.gov](mailto:Jennifer.Ludovissy@wildlife.ca.gov)  
Jennifer Turner, CDFW, [Jennifer.Turner@wildlife.ca.gov](mailto:Jennifer.Turner@wildlife.ca.gov)  
Cindy Hailey, CDFW, [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)

## REFERENCES

California Department of Fish and Wildlife. 2021. California Natural Diversity Database (CNDDDB) – Plants and Animals. Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

California Department of Fish and Wildlife. 2021. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.

United States Fish and Wildlife Service (USFWS). 2019. Coastal California Gnatcatcher (*Polioptila californica californica*) Presence/Absence Survey Protocol. Available from: <https://www.fws.gov/sites/default/files/documents/survey-protocol-for-coastal-california-gnatcatcher.pdf>

Sagecrest Planning and Environmental (Sagecrest). 2021. Palmyra Cemetery Development Initial Study/Mitigated Negative Declaration. Available from: <https://files.ceganet.opr.ca.gov/279838-1/attachment/AGpW0LcyHDYDujrl7y5wltDJPzHNQTg-DmpWYPvzahQ9UyDEwg9fzEwCBd1VAr7Sr4YkC58dwr8yF8FN0>.



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**Attachment A:**

**CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations**

	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Responsible Party</b>
Mitigation Measure #1	<p>Prior to Project commencement, a qualified biologist (e.g., expert opinion) shall complete surveys of habitat and analyze potential impacts to biological resources before impacts, including impacts to CSS/coastal California gnatcatcher. These surveys shall be completed during the appropriate season for special-status plants and wildlife and should incorporate the following elements:</p> <ul style="list-style-type: none"> <li>a) A figure illustrating the survey area overlaid on the Project footprint during surveys conducted at an appropriate time of year (e.g., spring or early summer);</li> <li>a) a description of the survey methodology or protocol used for general plant and animal species, as well as sensitive or listed species. If there were variances from standard survey methodologies or protocols, please provide the background and rationale for the variance;</li> <li>b) a list of observed plant and animal species, including sensitive and listed species; and,</li> <li>c) a list of appropriate mitigation measures to avoid, minimize, or mitigate for impacts to plant and animal species and their habitats.</li> </ul>	Prior to construction activities	City of Orange, Biological Monitor
Mitigation Measure #2	<p>Prior to issuance of a grading permit, in order to comply with Section 10 of the Migratory Bird Treaty Act and relevant sections of the California Fish and Game Code, any vegetation clearing shall take place outside of the typical avian nesting season (e.g., <del>March 15<sup>th</sup></del> <b>February 1</b> until September 1).</p>	Prior to and during construction activities	County of San Diego, Biological Monitor



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	<p>a) If work needs to take place between <del>March 15th</del> <b>February 1</b> and September 1st, a pre – activity clearance survey for nesting passerines and raptors shall be completed prior to the onset of Project activities. <b>The pre-construction survey will be conducted by a qualified biologist for nesting bird presence in the Project area no more than three (3) days prior to ground disturbance, vegetation removal, or construction activities. The results of the pre-construction survey shall be valid for three (3) days; if vegetation removal activities do not commence within 7 days following the survey or if activities cease for more than three (3) consecutive days, a new pre-construction nesting bird survey shall be conducted before construction resumes.</b></p> <p>An activity exclusion buffer zone around occupied nests established by the activity clearance survey shall be maintained during <del>physical ground disturbing undertakings</del> <b>ground disturbance, vegetation removal, or construction activities. Should active nests be identified during surveys, a buffer of 300 feet for passerines and 500 feet for raptors shall be delineated, flagged, and avoided until the nesting cycle is complete. Once a qualified biologist has confirmed that</b> nesting has ended <b>and the young have fledged,</b> the buffer may be removed.</p>		
<p>Mitigation Measure #3</p>	<p><b>Sensitive receptors, in the context of the Project and related mitigation measure, shall include biological resources such as wildlife species that may occur within proximity to disruptive Project activities.</b> The Property Owner/Developer and Contract shall ensure the following measures are implemented as part of the Proposed Project's during all Project site excavation, ground disturbance, and construction.</p>	<p>Prior to and during construction activities</p>	<p>City of Orange</p>

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	<p>a) During all Project site excavation and grading on-site, construction contractors shall equip all construction equipment, fixed or mobile with properly operating and maintained mufflers consistent with manufacturer standards.</p> <p>b) The contractor shall place all stationary construction equipment so that emitted noise is directed away from the noise sensitive receptors nearest the Project Site.</p> <p>c) Equipment shall be shut off and not left to idle when not in use.</p> <p>d) The contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise/vibration sources and sensitive receptors nearest the Project Site during all Project construction.</p> <p>e) Jackhammers, pneumatic equipment and all other portable stationary noise sources shall be shielded, and noise shall be directed away from sensitive receptors.</p> <p>f) The Project proponent shall mandate that the construction contractor prohibit the use of music or sound amplification on the Project Site during construction.</p> <p>g) The construction contractor shall limit haul truck deliveries to the same hours specified for construction equipment.</p> <p><b>h) Specific noise thresholds shall be implemented to minimize potential impacts to sensitive wildlife. A threshold average level of 60 decibels will be maintained throughout the duration of construction, ground disturbance, and site excavation.</b></p> <p><b>i) Noise reduction techniques will be used to reduce potential impacts to sensitive wildlife, including nesting birds if activities occur during avian nesting season of Feb 1 to</b></p>		
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	<p><b>September 1. These techniques may include:</b></p> <ul style="list-style-type: none"><li>• temporary noise barriers or sound walls;</li><li>• using noise pads or dampers;</li><li>• replacing and updating noisy equipment;</li><li>• using moveable task noise barriers;</li><li>• locating vehicle access points and loading and shipping facilities away from the nest site;</li><li>• reducing the number of noisy activities that occur simultaneously; and,</li><li>• relocating noisy stationary equipment away from the nest sites.</li></ul>		
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