



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

August 29, 2022
Sent via email

Aug 29 2022

STATE CLEARINGHOUSE

Ms. Jocelyn Torres
City of Redlands Development Services Department
35 Cajon Street, Suite 20
Redlands, CA 92373 3.
jtorres@cityofredlands.org

Subject: Initial Study Mitigated Negative Declaration for the Citrus Estates (Tentative Tract Map #20473, Condition Use Permit #1163) – SCH #2022070509

Dear Ms. Torres:

The California Department of Fish and Wildlife (CDFW) received the Initial Study Mitigated Negative Declaration (MND) from the City of Redlands (City) for the Citrus Estates Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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.

¹ 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.

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. As proposed, for example, the Project may be subject 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project includes the development of 37.9 acres into 98 single family residential lots, 20 lettered lots, a detention basin, a paseo providing pedestrian access from internal streets to Capri Avenue, and a park at the center. The Project is in the northeastern portion of the city of Redlands, San Bernardino County and is bounded by Wabash Avenue to the east, San Bernardino Avenue to the north, Capri Avenue to the south, and to the west by an existing residence and vacant land east of the intersection of Capri Avenue and Granite Street.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned about the adequacy of the impact analysis and the mitigation measures proposed in the MND, and the ability of the Project to mitigate the significant, or potentially significant, direct and indirect impacts to native habitats and species that rely on these habitats. CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project’s significant, or potentially significant, impacts on state special-status fish and wildlife (biological) resources.

San Bernardino Kangaroo Rat

CDFW reviewed the Biological Technical Report (Helix Environmental Planning, Inc., October 2021) that was included (Appendix B) and summarized within the MND (IV. Biological Resources). From the technical report (Section 2.2.2 San Bernardino Kangaroo Rat Habitat Assessment), it was concluded that: *“U.S. Fish and Wildlife Service (USFWS) critical habitat for the San Bernardino kangaroo rat occurs along the Santa Ana River approximately 0.25 mile north of the Project Site, the site lacks the species’ critical habitat Primary Constituent Elements (PCE) and any suitable habitat for the species. No suitable habitat or areas supporting the species’ critical habitat PCE’s occur immediately adjacent to the Project Site. Existing barriers occur between the Project Site and suitable habitat associated with the Santa Ana River corridor that preclude the species from readily moving onto the Project Site. In conclusion, San Bernardino kangaroo rat is not expected to occur and the Proposed Project would have no impacts on the species”*. According to the report (Section 2.2.2 San Bernardino Kangaroo Rat Habitat Assessment), *“A HELIX*

biologist conducted a habitat assessment for San Bernardino kangaroo rat in August 2021. A pre-survey investigation was conducted, including a review of relevant maps, databases, and literature pertaining to the target species within the project vicinity was completed. Recent and historical aerial imagery, soils data, U.S. Geological Survey (USGS) topography, and other maps (Google 2021) of the study area and vicinity were reviewed. The previous May 2017 SBKR habitat assessment was also reviewed (MBI 2017)”.

Although a habitat assessment is a reasonable first step in the evaluation process, and while it can assist in determining whether focused presence/absence surveys are warranted, a Lead Agency and their qualified biologist(s) should assess **all** relevant available scientific literature, known credible information, data records and survey results, and the ecology of the species. CDFW believes the Biological Technical Report and associated discussion in the MND do not accurately or adequately identify potential impacts to San Bernardino kangaroo rat (SBKR), and provides the below information to assist the City in reevaluating the potential impacts to SBKR.

CDFW acknowledges that recent development and road building has isolated the Project area so that it has not received flood disturbance from the Santa Ana River in decades. Nonetheless, these historical terraces to the south of the Santa Ana River provide suitable sandy substrates for San Bernardino kangaroo rat (SBKR). In addition, other locations with similar land use history (e.g., history of agriculture, weed management (discing), and/or degradation of alluvial sage scrub habitat) that are outside the 100-year floodplain have/had SBKR present. Specifically, the Diversified Pacific Residential Development, located just northwest of the Project, had 367 individuals captured and relocated to the Cajon Wash. Likewise, the parcel located immediately north of the Project supports a temporary conservation area with a SBKR habitat corridor along the northern edge, currently being managed specifically for impacts to SBKR associated with the Redlands Sports Park; recent surveys have confirmed SBKR occupancy at the conservation area and areas adjacent and north (see Attachment). It should also be noted that although focused surveys can provide a more definite method for determining the potential local and cumulative effects of proposed projects and activities, as well as to avoid take in accordance with FGC sections 86, 3503, and 3503.5, CDFW cautions that even this conservative approach may underestimate and/or inaccurately determine the occupancy of a site given the time of year, individuals' density and distribution, habitat utilization (e.g., foraging, breeding, dispersing, etc.), and survey methodology.

General Information on SBKR

On February 17, 2022, the California Fish and Game Commission voted unanimously to list SBKR as “endangered” under CESA. “Endangered species” pursuant to Fish and Game Code section 2062 means a native species or subspecies of a bird, mammal, fish,

amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. As an endangered species, SBKR has full protection under CESA and any take of the species needs authorization under CESA. Take authorized under the federal Endangered Species Act (ESA), such as through a Habitat Conservation Plan (HCP) or a Biological Opinion, is separate and distinct from authorization provided by California Department of Fish and Wildlife (CDFW) for species listed under the CESA. The state and federal laws are separate and have different issuance criteria. Therefore, project proponents coordinate directly with CDFW for CESA authorization.

CESA allows CDFW to authorize project proponents to take state-listed threatened, endangered, or candidate species if certain conditions are met. Take must be incidental to an otherwise lawful activity. The issuance of a permit cannot jeopardize the continued existence of the species. The impacts must be minimized and fully mitigated. Full mitigation often involves the permanent conservation, through a conservation easement, of quality habitat benefitting the species, enhancement of the habitat, and permanent management with funding. All measures must be capable of successful implementation. Adequate funding must be provided to implement the measures and monitor compliance with and effectiveness of those measures.

Identification of Mitigation

CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the Project MND should include mitigation measures for adverse Project-related impacts to these resources. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777). Moreover, mitigation measures should emphasize avoidance and reduction of Project impacts and be roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). For unavoidable impacts, onsite mitigation, including habitat restoration and/or enhancement, and preservation, should be effective, specific, enforceable, and feasible actions that will improve environmental conditions. Where habitat preservation is not available onsite, offsite land acquisition, monitoring and management, and preservation should be evaluated and discussed in detail.

Given the proposed project site contains suitable, sandy soils and that adjacent lands in a similar condition have been occupied by SBKR, CDFW believes focused trapping surveys should be completed. Ideally, the City would complete the additional analysis for SBKR, create appropriate mitigation measures, as necessary, and update and recirculate the MND to disclose the survey findings and proposed mitigation, prior to adoption of the MND. However, if additional analysis is not completed prior to the adoption of the MND, CDFW recommends the below mitigation measure be adopted.

MM BIO-X (Added) The Project Proponent shall conduct trapping surveys for San Bernardino kangaroo rats within the Project area to determine their presence or absence. If San Bernardino kangaroo rat(s) is/are identified, the Project Proponent shall avoid all occupied habitat onsite. If onsite avoidance is infeasible, the Project Proponent shall apply for an incidental take permit (ITP) with CDFW and shall mitigate for the loss of all habitat through the acquisition, conservation, and management of in-kind habitat.

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). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 for the Citrus Estates Project (SCH No. 2022070509) and recommends that the City address the CDFW's comments prior to certification. If you should have any questions pertaining to the comments

Jocelyn Torres, Assistant Planner
City of Redlands
August 29, 2022
Page 6 of 7

provided in this letter, please contact Kim Romich, Senior Environmental Scientist, at Kimberly.Romich@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn
Acting Environmental Program Manager

Ec: Eric Chan, Senior Environmental Scientist, Acting Supervisor
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Attachments

Attachment

