



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 15, 2022
Sent via email

Alyssa Berlino
Associate Planner
City of Riverside
3900 Main Street, 3rd Floor
Riverside, CA 92522



Subject: Mitigated Negative Declaration
Marlborough Northgate Light Industrial/Warehouse Buildings Project
State Clearinghouse No. 2022080606

Dear Ms. Berlino:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) on August 26, 2022, from the City of Riverside (City) for the Marlborough Warehouse Project (Project) for Magnon Companies (Project Applicant/Proponent) pursuant to 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.

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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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Project Location

The Marlborough Northgate Light Industrial/Warehouse Buildings Project covers approximately 6 acres, located at 900 Marlborough Avenue on the southwest corner of Northgate Street and Marlborough Avenue in the City of Riverside. The proposed Project includes three parcels: Assessor's Parcel Numbers 249-130-023, 240-130-024, and 240-130-026.

Project Description

The proposed Project includes: 1) an industrial non-refrigerated warehouse A with 38,000 square feet of warehouse/industrial area, 1,000 square feet of office space, four truck loading docks and passenger vehicle parking spaces; 2) an industrial non-refrigerated warehouse B with 56,950 square feet of warehouse, 3,000 square feet of manufacturing area, 1,000 square feet for office space, six truck-loading docks and 71 passenger vehicle parking spaces; and 3) additional improvements of 71,404 square feet of parking, drive aisles, associated hardscape, and sidewalks and 73,789 square feet of landscaping. The Box Springs Mountain Reserve is located to the southeast of the Project site.

COMMENTS AND RECOMMENDATIONS

To assist the City of Riverside in adequately mitigating the Project's potentially significant impacts to biological resources, CDFW offers the comments and recommendations presented below, and in Attachment 1 "Mitigation Monitoring and Reporting Program" for consideration by the City of Riverside prior to adoption of the MND for the Project.

Nesting Birds and Migratory Bird Treaty Act

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it

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unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act.

Birds have been documented nesting outside of the nesting bird period identified (February 15 to August 31) in the draft MND. For example, owls nesting in January and September, hummingbirds nesting in January and February, and red-tailed hawks nesting in January and February. Given documented excursions from the proposed nesting bird season, we recommend the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting birds and birds of prey. Nesting bird surveys should not be limited to work during a specific time frame (February 15 to August 31) due to recent changes in timing of avian breeding activity.

CDFW recommends inclusion of the following mitigation measure for nesting birds (added text shown in **bold** and deleted text shown in ~~strikethrough~~):

MM BIO-1: Prior to the issuance of any grading permit that would impact potentially suitable nesting habitat for avian species, the project applicant shall **ensure that impacts to nesting bird species at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures** ~~retain a qualified biologist;~~ and adhere to the following:

1. **As a condition of a grading permit and regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist within three (3) days prior to vegetation clearing or ground-disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. Surveys shall be conducted by the qualified avian biologist at the appropriate time of day/night, and during appropriate weather conditions. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every**

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effort to avoid potential nest predation as a result of survey and monitoring efforts.

- 2. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist and submitted to City of Riverside for review and approval. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. The nests and buffer zones shall be field checked daily by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist and City of Riverside verify that the nests are no longer occupied, and the juvenile birds can survive independently from the nests. The results of the nesting bird survey shall be reviewed and approved by City of Riverside prior to initiating vegetation removal or ground-disturbance activities. Fencing shall be evaluated on a weekly basis by the qualified biologist and shall be subject to field inspections by City staff while the nests are active, if warranted. ~~Vegetation removal activities shall be scheduled outside the nesting season (September 1 to February 14 for songbirds; September 1 to January 14 for raptors) to the extent feasible to avoid potential impacts to nesting birds and/or ground nesters. Any construction activities that occur during typical nesting season (February 15 to August 31 for songbirds; January 15 to August 31 for raptors) will require that all suitable habitat, on-site and within 300-foot surrounding the site (as feasible), be thoroughly surveyed for the presence of nesting birds by a qualified biologist before commencement ground disturbances. If active nests are identified, the biologist would establish buffers around the vegetation (500 feet for raptors and sensitive species, 200 feet for nonraptors/non-sensitive species). All work within these buffers would be halted until the nesting effort is finished (i.e. the juveniles are surviving independent from the nest). The onsite biologist would review and verify compliance with these nesting boundaries and would verify the nesting effort has finished. Work can resume within these areas when no other active nests are found. Alternatively, a qualified biologist may determine that construction can be permitted within the buffer areas and would develop a monitoring plan to prevent any impacts while the nest continues to be active (eggs, chicks, etc.). Upon completion of the survey and any follow-up construction avoidance~~**

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management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.

Drought-tolerant Landscaping

California is experiencing one of the most severe droughts on record. To ameliorate the water demands of this Project, CDFW recommends incorporation of water-wise concepts in project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water-efficient and targeted irrigation systems (such as drip irrigation). Native plants support butterflies, birds, reptiles, amphibians, small mammals, bees, and other pollinators that evolved with those plants, more information on native plants suitable for the Project location and nearby nurseries is available at CALSCAPE: <https://calscape.org/>. Local water agencies/districts and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on California's Save our Water website: <https://saveourwater.com/>.

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 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

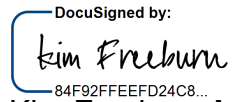
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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.).

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CONCLUSION

CDFW appreciates the opportunity to comment on the MND for the Marlborough Northgate Light Industrial/ Warehouse Buildings Project in the City of Riverside (SCH No. 2022080606) and recommends that the City of Riverside address CDFW's comments and concerns prior to adoption of the MND to avoid, minimize, or mitigate Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to John Dempsey, Environmental Scientist, at john.dempsey@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn-Marquez
Acting Environmental Program Manager

9/15/2022

ec: **California Department of Fish and Wildlife:**

Heather Pert, Senior Environmental Scientist Supervisory
John Dempsey, Environmental Scientist
HCPB CEQA Program, Habitat Conservation Planning Branch

State Clearinghouse:

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Attachment 1: Mitigation and Monitoring Report for CDFW-Proposed Mitigation Measures

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ATTACHMENT 1

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during Project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party for implementing the mitigation measure. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p>MM BIO-1: Prior to the issuance of any grading permit that would impact potentially suitable nesting habitat for avian species, the project applicant shall ensure that impacts to nesting bird species at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization; and adhere to the following:</p> <ol style="list-style-type: none"> 1. As a condition of a grading permit and regardless of the time of year, nesting bird surveys shall be conducted by a qualified avian biologist within three (3) days prior to vegetation clearing or ground-disturbance activities. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. Surveys shall be conducted by the qualified avian biologist at the appropriate time of day/night, and during appropriate weather conditions. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density, 	<p>Prior to issuance of any grading or construction permits by the County</p>	<p>Project Applicant</p>

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<p>and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts.</p> <p>2. If active nests are found during the pre-construction nesting bird surveys, a Nesting Bird Plan (NBP) shall be prepared and implemented by the qualified avian biologist and submitted to City of Riverside for review and approval. At a minimum, the NBP shall include guidelines for addressing active nests, establishing buffers, ongoing monitoring, establishment of avoidance and minimization measures, and reporting. The size and location of all buffer zones, if required, shall be based on the nesting species, individual/pair's behavior, nesting stage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. The nests and buffer zones shall be field checked daily by a qualified biological monitor. The approved buffer zone shall be marked in the field with construction fencing, within which no vegetation clearing or ground disturbance shall commence until the qualified biologist and City of Riverside verify that the nests are no longer occupied, and the juvenile birds can survive independently from the nests. The results of the nesting bird survey shall be reviewed and approved by City of Riverside prior to initiating vegetation removal or ground-disturbance activities. Fencing shall be evaluated on a weekly basis by the qualified biologist and shall be subject to field inspections by City staff while the nests are active, if warranted. Upon completion of the survey and any follow-up construction avoidance management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.</p>		
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