



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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October 7, 2022

Damaris Abraham, Planning Manager
City of Lake Elsinore
130 South Main Street
Lake Elsinore, CA 92530
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Subject: Mitigated Negative Declaration
Evergreen Commercial Development Project
State Clearinghouse No. 2022090133

Dear Damaris Abraham:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Lake Elsinore (City) for the Evergreen Commercial Development Project (Project) for Evergreen Devco, Inc. (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 (Fish & G. Code, § 1802.). Similarly, for purposes of CEQA, CDFW provides, 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

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.

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.

CDFW issued Natural Community Conservation Plan approval and take authorization in 2004 for the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP), as per Section 2800, et seq., of the California Fish and Game Code. The MSHCP established a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit. The City of Lake Elsinore is a permittee to the MSHCP and is responsible for implementation of the MSHCP and its associated Implementation Agreement. CDFW is providing the following comments as they relate to the Project's consistency with the MSHCP and CEQA.

PROJECT DESCRIPTION SUMMARY

Project Location

The Project site comprises approximately 8.86 acres in the City of Lake Elsinore within Riverside County, California, in Section 31, Township 5 South, Range 4 West, of the U.S. Geological Survey (USGS) 7.5" Lake Elsinore, California topographic quadrangle map. The Project is located northeast of Cambern Avenue, southeast of Central Avenue, northwest of 3rd Street, and southwest of Conard Avenue. The Project is located within Assessor's Parcel Numbers (APN) 377-020-014, 377-020-016, 377-020-017, 377-020-018, and 377-020-019.

Project Description

The proposed Project would consist of the construction of 57,254 square foot (1.31 acres) commercial center, composed of a grocery store, several restaurants, gas station and attached convenience store, and a drive through car wash on approximately 8.863 acres. In addition, 1.29 acres of landscaping would be installed, and 5.69 acres would be designated as paved areas for parking and circulation within the Project Site. Other Project activities would include on-site stormwater management improvements, lighting, walls and fencing, and a security gate for the emergency vehicle access at Allan Street.

The Project also would require the approval of Tentative Parcel Map (TPM) No. 38195 and TPM No. 38281 to subdivide the existing five lots into five lots with different sizes as well as approval for several conditional use permits.

COMMENTS AND RECOMMENDATIONS

To assist the City of Lake Elsinore 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 Lake Elsinore prior to adoption of the MND for the Project.

Western Riverside County Multiple Species Habitat Conservation Plan

Western Riverside MSHCP Implementation:

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. To be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP, the Permits, and the Implementing Agreement. The City of Lake Elsinore the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. To demonstrate consistency with the MSHCP, as part of the CEQA review, per City Resolution Number 3162 Sections 3-5, the City shall ensure the Project implements the following:

1. Pays Local Development Mitigation Fees and other relevant fees as set forth in Section 8.5 of the MSHCP.
2. Demonstrates compliance with: 1) the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools, set forth in Section 6.1.2 of the MSHCP; 2) the Urban/Wildlands Interface Guidelines as set forth in Section 6.1.4 of the MSHCP; 3) the policies set forth in Section 6.3.2 and associated vegetation survey requirements identified in Section 6.3.1; and 4) the Best Management Practices and the siting, construction, design, operation and maintenance guidelines as set forth in Section 7.0 and Appendix C of the MSHCP.

The MSHCP identifies that the California Department of Fish and Wildlife and the U. S. Fish and Wildlife Service (collectively known as the Wildlife Agencies) shall be notified in advance of approval of public and private projects for the identified MSHCP activities which includes the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (Section 6.11 of the MSHCP). Additionally, the City's MSHCP Implementation Resolution Number 3162 Sections 3-5 states that the City "shall be required to comply with the procedures set forth in the MSHCP Implementation Policy"

and “no project requiring a discretionary, or certain ministerial permits or approvals that could have adverse impacts to species covered under the MSHCP shall be approved by the City, unless the project is consistent with the MSHCP”. CDFW requests that to demonstrate compliance with the MSHCP, the City complete MSHCP implementation prior to adoption of the MND for the Project.

Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools

The MSHCP Protection of Species Associated with Riparian/Riverine and Vernal Pool Resources, Section 6.1.2, indicates that if avoidance of onsite impacts to Section 6.1.2 resources is not feasible, then the impacts should be identified and mitigated for through a Determination of Biologically Equivalent or Superior Preservation (DBESP) process prior to or in parallel to CEQA. The assessment of Riparian/Riverine and Vernal Pool Resources should include mapping of riparian/riverine areas and vernal pools, species composition, topography/hydrology, and soil analysis which may be completed during the CEQA process (Section 6.1.2 of the MSHCP). If the mapping noted above identifies suitable Habitat for the species listed in the MSHCP and the proposed project design does not incorporate avoidance of the identified Habitat, focused surveys for those species shall be conducted, and avoidance and minimization measures implemented in accordance with the species-specific objectives for those species. The MSHCP identifies that the Wildlife Agencies **shall** be notified in advance of approval of public or private projects of draft determinations for the biologically equivalent or superior determination findings associated with the Protection of Wetland Habitats and Species policies presented in Section 6.1.2 of the MSHCP (MSHCP Section 6.11). As required by MSHCP, completion of the DBESP process prior to adoption of the environmental document ensures that the project is consistent with the MSHCP and provides public disclosure and transparency during the CEQA process by identifying the project impacts and mitigation for wetland habitat, a requirement of CEQA Guidelines, §§ 15071, subds. (a)-(e).

The MND and accompanying General Biological Resource Assessment (located in Appendix C) indicate that 0.26 acres of riparian/riverine or vernal pool resources are located with the proposed Project area. CDFW appreciates the analysis of impacts provided within the MND and General Biological Resource Assessment. However, the MSHCP implementation process is not complete because a DBESP has not been prepared, and has not been submitted to the Wildlife Agencies for review and response, to determine if the mitigation proposed for the impacts to riparian/riverine resources is biologically equivalent or superior preservation to avoidance. It is not appropriate for the City to adopt the MND until the DBESP is complete because the City is required to notify the Wildlife Agencies in advance of approval of public and private projects for identified MSHCP activities, such as completion of the DBESP for the riparian/riverine policy. CDFW requests that to demonstrate implementation of the MSHCP, the City of Lake Elsinore complete the DBESP process and once the DBESP is complete, revise the Biological Mitigation Measure 1 (MM BIO 1) and update with the mitigation measures identified in the DBESP. In addition, the proposed mitigation should identify

mitigation options within the Western Riverside County MSHCP to ensure riparian/riverine resources are replaced within the plan area. CDFW recommends revising MM BIO 1 in the MND per the edits below (edits are in ~~strike through~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program".:

MM Bio 1: ~~Mitigation for the permanent removal of 0.10 acre (469 linear feet) of potential other waters of the U.S. and State subject to Sections 404 and 401 of the CWA, and 0.26 acre (469 linear feet) of potential CDFW streams and associated vegetation subject to CFGC Code Section 1600, and MSHCP riparian/riverine areas (inclusive of the 0.09 acre of scale broom scrub [a CDFW sensitive natural community]) will be addressed through the purchase of credits from the Sequel Canyon Mitigation Bank, or other agency-approved mitigation bank or inlieu fee program, at a minimum of 1:1 impact-to-replacement ratio. BIO-1 applies only to Phase 2 of the proposed project as the sensitive natural community and MSHCP riparian/riverine habitat only occurs in the southern portion of the project site. As identified in the DBESP report, as described in Section 6.1.2 of the MSHCP, the proposed impacts are [update with numbers] of acres, and the proposed mitigation sufficient to offset impacts on scale broom scrub and MSHCP riparian/riverine areas is [Update with DBESP results and findings]~~

Lake and Streambed Alteration Program

Based on review of material submitted with the MND and review of aerial photography the Project has the potential to impact of fish and wildlife resources subject to Fish and Game Code section 1600 et seq. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. To ensure compliance with Fish and Game Code section 1602 CDFW recommends that the County condition the MND to include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 et seq. resources may occur within the proposed Project alignment. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources.

CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code, § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

CDFW recommends the inclusion of the following measure in the MND per the edits below (edits are in **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program".:

MM Bio XX: Prior to the City's issuance of a grading permit for the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streambed Alteration Agreement is not needed.

Nesting Birds

It is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it 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 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). 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. These regulations apply anytime nests or eggs exist on the Project site.

The timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). CDFW staff have observed that changing climate conditions may result in the nesting bird season occurring earlier and later in the year than historical nesting season dates. CDFW recommends the completion of nesting bird survey regardless of time of year to ensure compliance with all applicable laws pertaining to nesting.

The duration of a pair to build a nest and incubate eggs varies considerably, therefore, CDFW recommends surveying for nesting behavior and/or nests and construction within three days prior to start of Project construction.

CDFW strongly suggests the City evaluate the direct, indirect, and cumulative impacts to nesting birds, before approval and certification of the MND. Appropriate analysis would include conducting focused nesting bird surveys throughout the project site. To address the above issues and help the Project applicant avoid unlawfully taking of nests and eggs, CDFW requests the City revise the following mitigation measures included from the MND, as per below (edits are in ~~strikethrough~~ and **bold**), and also included in Attachment 1 "Mitigation Monitoring and Reporting Program".

MM BIO-2: Nesting Bird Survey. ~~If construction~~ **Prior to start of site preparation activities (ground disturbance, construction activities, and/or removal of trees and vegetation)** is scheduled to commence during the avian nesting season (February 1–August 31), a qualified biologist ~~should~~ **shall** conduct a nesting bird survey within 3 days of the anticipated initial construction (clearing and grubbing of potential nesting vegetation) start date to identify any active nests within 500 feet of the project site. **The Project Applicant shall adhere to the following prior to the issuance of grading permits:**

- 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.**
- 2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. 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.**

If an active nest is detected, a suitable avoidance buffer will be established by the **Designated Biologist biologist** in the field **based on their best professional judgement and experience**. Construction activities will remain

outside of the buffer until a ~~qualified biologist~~ **Designated Biologist** determines that the nest is no longer active (~~e.g., chicks have fledged~~) **(i.e., the juveniles are surviving independent from the nest)**. Appropriate buffers distances generally include up to 300 feet for passerine species and up to 500 feet for raptors; however, these may be reduced at the discretion of the biologist, depending on the site-specific factors, such as the location of the nest, species tolerance to human presence, and the types of construction-related noises, vibrations, and human activities that would occur. **The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. The onsite qualified biologist will review and verify compliance with these nesting avoidance buffers and will verify the nesting effort has finished.**

If initial construction (clearing and grubbing) temporarily ceases for a period greater than 7 days, and activities expect to recommence during the avian nesting season, the project site (including surrounding 500 feet) will be resurveyed. ~~Following the initial construction (clearing and grubbing), if there is no longer suitable habitat for nesting birds within the project area, a nesting bird survey shall no longer be required.~~ **Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.**

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>.

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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 MND for the Evergreen Commercial Development Project, State Clearinghouse No. 2022090133 to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. CDFW recommends that the City of Lake Elsinore addresses CDFW's comments and concerns, which includes completion of the DBESP, prior to adoption of the MND for the Project.

Questions regarding this letter or further coordination should be directed to Katrina Rehrer, Environmental Scientist, at katrina.rehrer@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kim Freeburn,
Environmental Program Manager

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ATTACHMENTS

Attachment 1: MMRP for CDFW-Proposed Mitigation Measures

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.

Biological (BIO) Mitigation Measures (MM)	Implementation Schedule	Responsible Party
MM Bio 1: As identified in the DBESP report, as described in Section 6.1.2 of the MSHCP, the proposed impacts are [update with numbers] of acres, and the proposed mitigation sufficient to offset impacts on scale broom scrub and MSHCP riparian/riverine areas is [Update with DBESP results and findings]	Prior to start of Project activities	City of Lake Elsinore
MM BIO-2: Nesting Bird Survey. Prior to start of site preparation activities (ground disturbance, construction activities, and/or removal of trees and vegetation), a qualified biologist shall conduct a nesting bird survey within 3 days of the anticipated initial construction (clearing and grubbing of potential nesting vegetation) start date to identify any active nests within 500 feet of the project site. The Project Applicant shall adhere to the following prior to the issuance of grading permits: 1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.	Prior to commencing ground- or vegetation disturbing activities	Project Proponent

<p>2. Pre-activity field surveys shall be conducted at the appropriate time of day/night, during appropriate weather conditions, no more than 3 days prior to the initiation of Project activities. 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.</p> <p>If an active nest is detected, a suitable avoidance buffer will be established by the Designated Biologist in the field based on their best professional judgement and experience. Construction activities will remain outside of the buffer until a Designated Biologist determines that the nest is no longer active (i.e., the juveniles are surviving independent from the nest). Appropriate buffers distances generally include up to 300 feet for passerine species and up to 500 feet for raptors; however, these may be reduced at the discretion of the biologist, depending on the site-specific factors, such as the location of the nest, species tolerance to human presence, and the types of construction-related noises, vibrations, and human activities that would occur. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. The onsite qualified biologist will review and verify compliance with these nesting avoidance buffers and will verify the nesting effort has finished.</p> <p>If initial construction (clearing and grubbing) temporarily ceases for a period greater than 7 days, and activities expect to recommence during the avian nesting season, the project site</p>		
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<p>(including surrounding 500 feet) will be resurveyed. Work can resume within these avoidance areas when no other active nests are found. Upon completion of the survey and nesting bird monitoring, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.</p>		
<p>MM Bio XX: Prior to the City's issuance of a grading permit for the Project site and prior to the start of Project activities, the Applicant shall notify the California Department of Fish and Wildlife (CDFW) for impacts to Fish and Game Code section 1602 resources. The applicant shall either receive a Streambed Alteration Agreement or written documentation from CDFW that a Streamed Alteration Agreement is not needed.</p>	<p>Prior to start of Project activities</p>	<p>Project Proponent</p>