



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 23, 2022

Governor's Office of Planning & Research

NOV 23 2022

STATE CLEARING HOUSE

Greg Mattson
Contract Planner
City of Escondido
201 North Broadway
Escondido, CA, 92025
GMattson@escondido.org

Subject: Conway Residential Subdivision (Project), Mitigated Negative Declaration (MND), SCH #2022100635

Dear Mr. Mattson:

The California Department of Fish and Wildlife (CDFW) received a MND from the City of Escondido (City) for the Project 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.

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.

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.

Greg Mattson
City of Escondido
November 23, 2022
Page 2 of 11

CDFW also administers the Natural Community Conservation Planning (NCCP) program. The City has participated in the NCCP program by preparing a draft Escondido Subarea Plan (Draft SAP) under the subregional Multiple Habitat Conservation Plan (MHCP), which addressed eight incorporated cities in northern San Diego County. However, the City's SAP has not been finalized, has not been adopted by the City, nor has the City received permits from the Wildlife Agencies (collectively CDFW and the U.S. Fish and Wildlife Service (USFWS)).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Escondido

Objective: The objective of the Project is the construction of 44 new single-family detached residences, 10 new affordable attached duplex residences, two biofiltration basins, and common open space areas. The Project would involve the demolition of 13 existing single-family residences on approximately 14 acres, and the retention of two existing single-family residences. The Project would involve removal of vegetation and extensive grading.

Location: The Project is located at 943 Stanley Avenue, near the intersection of Conway Drive and Stanley Avenue. The Project site is located within the boundaries of the City of Escondido, with the exception of one 2.01-acre parcel in the northern portion, which is within unincorporated San Diego County. This parcel is planned to be annexed into the City as part of the Project. The Project site is located in a suburban area, which includes single family residential parcels, open spaces, higher density residential subdivisions, and undeveloped parcels.

Biological Setting: The Project site is not within the MHCP Focused Planning Area (FPA) of the Draft SAP but is located approximately 1,000 feet southeast of the FPA, immediately north of Rincon Avenue. The Biological Technical Report (BTR) describes the plant communities observed on the Proposed Project site as follows: coast live oak woodland (0.39 acre), willow stand (0.03 acre), non-native grasslands (6.79 acres), eucalyptus woodland (1.77 acres), disturbed habitat (1.17 acres), and urban/developed (3.64 acres). The disturbed habitat area is associated with historical orchard uses and consists of fruit trees and ornamental species. The urban/developed areas consist of existing structures, parking lots, roads, and sidewalks. Approximately 0.14 acre of non-native grassland, 0.69 acre of eucalyptus woodland, and 0.25 acre of urban/developed land would be avoided, but all other remaining land would be impacted by the Project, for a total of 12.72 acres.

The City of Escondido's Municipal Code provides definitions for which trees are considered mature (diameter at breast height (DBH): 4 inches to 9.99 for native species and 8 inches or greater for non-native species) and protected (oak species with DBH of 10 inches or greater) (Sections 33-1052 and 33-1068). Project activities will impact 186 trees that meet the City's definition of mature and/or protected, including 11 protected coast live oak (*Quercus agrifolia*) and 34 mature native trees (31 coast live oak, one black walnut (*Juglans nigra*), and two arroyo willow (*Salix lasiolepis*)). In total, 42 coast live oaks will be impacted.

According to the BTR, no sensitive plant species have any potential to occur on the Project site. However, no information is provided on survey timing or methodology.

Several raptor species, including the Cooper's hawk (*Accipiter cooperii*, CDFW Watch List) have potential to nest and/or forage on the site. The BTR states that an active red-tailed hawk (*Buteo jamaicensis*) nest was observed on site, in a tree that is proposed to be removed (BTR Appendix D, page 4).

Greg Mattson
City of Escondido
November 23, 2022
Page 3 of 11

COMMENTS AND RECOMMENDATIONS

We offer 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.

COMMENT #1: Mature and Protected Trees

Issue: Mitigation MM BIO-3 and MM BIO-4 describe mitigation for impacts to a large number of mature, native trees, including coast live oak and coast live oak woodland; however, mitigation as described may not be adequate. Additionally, alternatives to impacting these trees and their habitats are not provided.

Specific impact: As currently proposed, 186 City-designated mature and/or protected trees will be lost as a result of the Project. MM BIO-4 describes replanting at a minimum 1:1 ratio for mature trees and 2:1 for protected trees. While it appears as though these mitigation ratios were the minimum prescribed by the Draft SAP and the City's Municipal Code, additional mitigation may be necessary to reduce impacts to mature and protected trees, especially for coast live oak, to below a level of significance.

Additionally, CDFW generally recommends that mature, coast live oak trees be avoided whenever possible, and measures to avoid impacts are not discussed in the MND.

Why impact would occur: The California Public Resources Code (PRC) requires that significant effects of oak woodland conversion be mitigated (PRC § section 21083.4(b)). Mature trees provide important nesting and foraging habitat, as well as shade for wildlife; a loss of so many trees would remove available perching and nesting habitat for raptors. Newly planted trees would not fill the same ecological role as mature trees for several years or more, thus the temporal loss of habitat may render the proposed replanting ratios insufficient.

Furthermore, oak woodland is considered a sensitive habitat type under the Draft SAP and MHCP, and avoidance of impacts to oak woodland and mature/protected trees is not discussed in the MND.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #1:

To minimize significant impacts: Analysis of oak impacts and applicable ordinances in the Biological Resources section of the MND should be updated to include PRC section 21083.4(b). The MND should include a discussion of alternatives to impacting mature, native trees, including whether modification of building and grading plans to avoid trees is feasible. If avoidance of trees will not occur, the MND should include rationale as to why this is not feasible.

CDFW recommends MM BIO-4 be amended to include the following language:

Individual coast live oaks shall be mitigated at the following ratios:

1. trees less than 5 inches diameter at breast height (DBH) shall be replaced at 3:1;
2. trees between 5 and 12 inches DBH shall be replaced at 5:1;
3. trees between 12 and 36 inches DBH shall be replaced at 10:1; and

Greg Mattson
City of Escondido
November 23, 2022
Page 4 of 11

4. trees greater than 36 inches DBH shall be replaced at 20:1.

COMMENT #2: Mitigation for loss of mature and protected trees

Issue: Details of compensatory mitigation plans for impacts to trees are not included in the MND.

Specific impact: Without sufficient details on mitigation plans, CDFW cannot determine whether planned compensatory mitigation brings impacts of the Project on mature and protected trees to below significant. MM BIO-4 describes replacement ratios, but does not include details on the location, species, origin, or size of replanted trees, or any monitoring and management plans.

Why impact would occur: CEQA Guidelines section 15126.4 states that mitigation cannot be deferred and must have a nexus to and be roughly proportional to the impacts. Without a comprehensive plan for compensatory mitigation available during the MND's public review period, CDFW cannot ascertain as to whether this mitigation is roughly proportional to the biological impacts it is intended to reduce. Mature, native trees are biologically valuable, and the loss of native species such as coast live oak without sufficient mitigation could be significant. Newly planted trees may struggle to become established in the absence of support such as watering. Biologically appropriate species need to be selected in order to mitigate for impacts to trees.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Recommendation #2:

To minimize significant impacts: The MND should include a detailed compensatory mitigation plan or plans for impacts to 186 mature and/or protected trees, especially coast live oak. The plan(s) for the compensatory mitigation should include location, species, origin, and size of trees to be planted. Regionally and biologically appropriate species should be selected, and details should be provided in the MND. Coast live oak trees should be replaced in-kind (i.e., coast live oak tree(s) should be planted as compensatory mitigation). Oak woodland restoration should use locally collected acorns or saplings grown from collected acorns. Appropriate understory species should also be included to enhance structural diversity of the mitigation site. Oak trees should be monitored and managed for a minimum of 10 years to ensure success of the restoration effort.

The MND also does not identify the location in which tree planting would occur; location is extremely important to know whether or not the restoration will have long-term biological value for wildlife. As an alternative, the City could determine an appropriate acreage of oak woodland that would mitigate for the impacts to the described loss of individual trees, and authorize deduction of credits from the Daley Ranch conservation bank. The mitigation ratio for impacts to oak woodland habitat should be at least a 2:1 ratio.

If detailed plans for compensatory mitigation cannot be included in the MND, a mitigation measure should be added to the environmental document which states that CDFW and the USFWS will have the opportunity to review and approve the plans prior to their implementation.

Greg Mattson
City of Escondido
November 23, 2022
Page 5 of 11

COMMENT #3: Wildlife pre-construction surveys

Issue: Potential impacts to wildlife species may not be adequately minimized.

Specific impact: Due to an absence of wildlife pre-construction surveys, direct impacts to wildlife species such as small mammals and reptiles could result from vegetation clearing, grading, and construction.

Why impact would occur: Wildlife species may be trapped in trenches, holes, or pipes on the project site, or may be crushed by construction equipment.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #3:

To minimize significant impacts: A wildlife pre-construction survey shall be conducted on the day that construction activities, including vegetation removal, occur within the Project site where suitable habitat is present. Construction personnel shall conduct daily inspections of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspections of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day. If sensitive wildlife species are observed during the pre-construction survey, a qualified biologist shall require additional measures to reduce potential impacts, such as establishing an appropriate buffer. Speed limits shall also be established for vehicles on site to lessen the chance of crushing wildlife.

The qualified biologist shall be required to obtain, as applicable, a Scientific Collecting Permit (SCP). A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the Project site, unless they are a Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.

COMMENT #4: Nesting birds

Issue: The Project may not adequately mitigate for impacts to nesting birds.

Specific impact: The Project site contains suitable nesting habitat for a variety of bird species, including sensitive raptors. Mitigation Measure (MM) BIO-1 indicates that if construction activities occur during nesting season, a qualified biologist will survey for nesting birds. However, no timeline is provided.

Why impact would occur: If surveys are not completed at an appropriate time, direct impacts to nesting birds may occur from vegetation removal and grading. Indirect impacts may occur from increased human activity or vibration and noise from equipment.

Greg Mattson
City of Escondido
November 23, 2022
Page 6 of 11

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #4:

To minimize significant impacts: To adequately identify nesting bird presence in the Project area, surveys should be conducted by a qualified biologist within three days of vegetation removal, ground disturbance, or construction.

We recommend that MM BIO-1 be amended with the following language (changes in **bold**):

*2. 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-feet surrounding the site (as feasible), be thoroughly surveyed for the presence of nesting birds by a qualified biologist **within three days** before commencement **of** 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 non-raptors/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 management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.*

COMMENT #5: Fire

Issue: Details on fire management and fuel modification zones are not provided.

Specific impact: The MND states that the Project site is not located in or adjacent to land classified as very high fire hazard severity zones, and that no fuel modification is required of the Project. However, the City's General Plan does show that the site is in a high fire hazard severity zone. The MND does not include a discussion of fire management or fuel modification as they relate to biological resources.

Why impact would occur: If fuel modification does occur, this could impact biological resources on site.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Recommendation #5:

To minimize significant impacts: The MND should include a discussion of fire risk, and decisions surrounding fuel modification zones, as they relate to biological resources. This should include an analysis of how fire risk will change due to vegetation removal and planting on site. If fuel modification zones are implemented at any point, they should not include areas where trees have been planted as compensatory mitigation.

Greg Mattson
City of Escondido
November 23, 2022
Page 7 of 11

COMMENT #6: Landscaping

Issue: The MND does not provide details regarding plant species to be used in landscaping.

Specific impact: CDFW acknowledges that the City plans to include landscaping compatible for wildland fire restrictions (page 52). However, a discussion of using native, locally appropriate species is not included. Landscaping may introduce invasive species to the Project area.

Why impact would occur: Habitat loss and invasive plants are a leading cause of native biodiversity loss. Many ornamental plants often selected for landscaping are invasive species.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Recommendation #6:

To minimize significant impacts: CDFW recommends that no invasive plant material be used for landscaping. Furthermore, CDFW recommends 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 the California Invasive Plant Council Responsible Landscaping website (<https://www.cal-ipc.org/solutions/prevention/landscaping/>).

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:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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:

http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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 NOP to assist the City of Escondido in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Brigid Moran, Environmental Scientist, at Brigid.Moran@wildlife.ca.gov.

Greg Mattson
City of Escondido
November 23, 2022
Page 8 of 11

Sincerely,

DocuSigned by:

D700B4520375406...

David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov
Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov
OPR
State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov
USFWS
Jonathan Snyder, Carlsbad – Jonathan_D_Snyder@fws.gov

REFERENCES

California Environmental Quality Act (CEQA). 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.
California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, § 15097, §15126.4(2).
City of Escondido, California Municipal Code, 2017 <https://www.escondido.org/escondido-municipal-code>

Greg Mattson
 City of Escondido
 November 23, 2022
 Page 9 of 11

ATTACHMENT A: Draft Mitigation Monitoring and Reporting Program and Draft Recommendations

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) or Recommendation (REC) Description	Implementation Schedule	Responsible Party
<p>MM-1: Mature and protected trees: Individual coast live oaks shall be mitigated at the following ratios:</p> <p>trees less than 5 inches diameter at breast height (DBH) shall be replaced at 3:1; trees between 5 and 12 inches DBH shall be replaced at 5:1; trees between 12 and 36 inches DBH shall be replaced at 10:1; and trees greater than 36 inches DBH shall be replaced at 20:1.</p>	Prior to Project activities	City of Escondido
<p>REC-2: Mitigation for loss of mature and protected trees: The MND should include a detailed compensatory mitigation plan or plans for impacts to 186 mature and/or protected trees, especially coast live oak. The plan(s) for the compensatory mitigation should include location, species, origin, and size of trees to be planted. Regionally and biologically appropriate species should be selected, and details should be provided in the MND. Coast live oak trees should be replaced in-kind (i.e., coast live oak tree(s) should be planted as compensatory mitigation). Oak woodland restoration should use locally collected acorns or saplings grown from collected acorns. Appropriate understory species should also be included to enhance structural diversity of the mitigation site. Oak trees should be monitored and managed for a minimum of 10 years to ensure success of the restoration effort.</p> <p>As an alternative, the City could determine an appropriate acreage of oak woodland that would mitigate for the impacts to the described loss of individual trees, and authorize deduction of credits from the Daley Ranch conservation bank. The mitigation ratio for impacts to oak woodland habitat should be at least a 2:1 ratio.</p> <p>If detailed plans for compensatory mitigation cannot be included in the MND, a mitigation measure should be added to the environmental document which states that CDFW and the USFWS will have the opportunity to review and approve the plans prior to their implementation.</p>	Prior to Project activities	City of Escondido
<p>MM-3: Wildlife pre-construction surveys: A wildlife pre-construction survey shall be conducted on the day that</p>	During Project activities	City of Escondido

Greg Mattson
 City of Escondido
 November 23, 2022
 Page 10 of 11

<p>construction activities, including vegetation removal, occur within the Project site where suitable habitat is present. Construction personnel shall conduct daily inspections of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspections of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day. If sensitive wildlife species are observed during the pre-construction survey, a qualified biologist shall require additional measures to reduce potential impacts, such as establishing an appropriate buffer. Speed limits shall also be established for vehicles on site to lessen the chance of crushing wildlife.</p> <p>The qualified biologist shall be required to obtain, as applicable, Scientific Collecting Permits (SCP). A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the Project site, unless they are a Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.</p>		
<p>MM-4: Nesting birds: 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-feet surrounding the site (as feasible), be thoroughly surveyed for the presence of nesting birds by a qualified biologist within three days before commencement of 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 non-raptors/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 management, a report shall be prepared and submitted to City for mitigation monitoring compliance record keeping.</p>	<p>During Project activities</p>	<p>City of Escondido</p>
<p>REC-5: Fire: The MND shall include a discussion of fire risk, and decisions surrounding fuel modification zones, as they relate to biological resources. This shall include an analysis of how fire risk will change due to vegetation removal and planting on site. If fuel modification zones are implemented at any point, they shall not include areas where trees have been planted as compensatory mitigation.</p>	<p>Prior to Project activities</p>	<p>City of Escondido</p>

Greg Mattson
City of Escondido
November 23, 2022
Page 11 of 11

<p>REC-6: Landscaping: CDFW recommends that no invasive plant material be used for landscaping. Furthermore, CDFW recommends 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 the California Invasive Plant Council Responsible Landscaping website (https://www.cal-ipc.org/solutions/prevention/landscaping/).</p>	<p>During Project activities</p>	<p>City of Escondido</p>
--	----------------------------------	--------------------------