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December 9, 2022

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Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Brookside Project, Los Angeles County, SCH #2022110184

Dear Ms. Guerra:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Walnut (City) for the Brookside Project (Project). 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's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 State fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" (see Fish & Game Code, § 2050) of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Objective: The proposed Project requests approval of a Tentative Tract Map to allow for the development of a 28-unit single-family detached housing Project. The Project proposes a total of 11.4 acres of open space with recorded deed restrictions to preserve and maintain natural open space and Lemon Creek. Of the 11.4 acres, 9.5 acres of the open space will be owned by

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individual lot owners, but deed restricted for public trail and passive open space purposes. The existing trail that traverses the site would be located primarily within these 9.5 acres of open space, which would be improved to City trail standards. The portions of open space within the private lots will be subject to the public trail easement and recorded deed restriction that would prohibit lot owners from planting vegetation, installing fencing, or otherwise developing or using the restricted open spaces areas lying within these privately-owned lots.

The Project site is on land previously occupied by the Brookside Equestrian Center, which is no longer operating. Presently on site, there are unused facilities remaining from discontinued equestrian activities. These facilities consist of two stables, one of which has a second story residential additional that is unoccupied, covered stalls, two fenced corrals, maintenance storage shed, three feed sheds within fenced areas, one outdoor arena, one covered open-air arena, and one gazebo. Implementation of the Project would remove all existing facilities.

Location: The Project site consists of 25.84 acres of developed land and is located within the City of Walnut at 800 Meadow Pass Road. The Project is comprised of Assessor's Parcel Numbers 8709-093-001, 002, and 003. On site topography consists of gradual slopes and flat areas elevated above Lemon Creek, which runs northeast to southwest.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations 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.

Specific Comments

- 1) Coastal California Gnatcatcher (*Polioptila californica californica*). According to the California Natural Diversity Database (CNDDDB), there are multiple occurrences of coastal California gnatcatcher (gnatcatcher) north of the Project site. In addition, the Project site is approximately one mile from critical habitat for the gnatcatcher (USFWS 2010).
 - a) Protection Status. Gnatcatcher is a California Species of Special Concern (SSC) and a species listed as threatened under the Endangered Species Act (ESA). CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Take of SSC could require a mandatory finding of significance (CEQA Guidelines, § 15065). As an ESA-listed species, gnatcatcher is considered an endangered, rare, or threatened species under CEQA (CEQA Guidelines, § 15380). Take under the ESA is more broadly defined than CESA. Take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting.
 - b) Surveys. In preparation of the DEIR, CDFW recommends the City require the Project Applicant to retain a qualified biologist perform protocol-level surveys for gnatcatcher in order to determine if gnatcatcher is present. The qualified biologist should conduct surveys according to the [Coastal California Gnatcatcher \(*Polioptila californica californica*\) Presence/Absence Survey Guidelines](#) (USFWS 1997). The protocol

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should be followed for all surveys unless otherwise authorized by the USFWS in writing (USFWS 1997).

- c) Disclosure and Mitigation. The DEIR should provide full disclosure of the presence of gnatcatcher and the Project's potential impact on gnatcatcher, and not deferred until a later time (i.e., preconstruction surveys). The DEIR should discuss noise impacts from the Project (e.g., duration, maximum noise level, hourly average noise level). The DEIR should be conditioned to provide measures to avoid or mitigate impacts if avoidance is not feasible. If avoidance is not feasible, mitigation may include obtaining take authorization from USFWS. In addition, the Project Applicant should provide replacement habitat to ensure no net loss. The DEIR should discuss why mitigation measures proposed would be adequate to avoid or offset impacts to gnatcatcher and habitat.
- 2) Crotch bumble bee (*Bombus crotchii*). CNDDDB has indicated a historical occurrence of Crotch bumble bee within the Project vicinity. The Project site may, therefore, support habitat for Crotch bumble bee, which includes grasslands and scrub. If Crotch bumble bee is present in the Project site, the Project could grade and/or develop habitat supporting Crotch bumble bee. The Project may result in temporal or permanent loss of suitable nesting and foraging habitat. In addition, Project ground-disturbing activities and vegetation removal during construction and fuel modification activities may cause death or injury of adults, eggs, and larva, burrow collapse, nest abandonment, and reduced nest success.
- a) Protection Status. The California Fish and Game Commission accepted a petition to list the Crotch bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Crotch bumble bee is granted full protection of a threatened species under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. Consequently, if the Project or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP. In addition, Crotch bumble bee has a State ranking of S1/S2. This means that the Crotch bumble bee is considered critically imperiled or imperiled and is extremely rare (often five or fewer populations). Crotch bumble bee is also listed as an

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invertebrate of conservation priority under the [Terrestrial and Vernal Pool Invertebrates of Conservation Priority](#) (CDFW 2017).

- b) Surveys and Disclosure. CDFW recommends the City require the Project Applicant to retain a qualified biologist familiar with the species to survey the Project site for Crotch bumble bee and habitat. Surveys for Crotch bumble bee should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). The DEIR should provide full disclosure of the presence of Crotch bumble bee and the Project's potential impact on Crotch bumble bee, and not deferred until a later time (i.e., preconstruction surveys).
 - c) Mitigation. The DEIR should include measures to first avoid impacts on Crotch's bumble bee. If Crotch bumble bee is present, a qualified biologist should identify the location of all nests in or adjacent to the Project site. If nests are identified, 15-meter no-disturbance buffer zones should be established around nests to reduce the risk of disturbance or accidental take. If the Project cannot avoid impacts, the City should require the Project Applicant to consult CDFW to determine if a CESA Incidental Take Permit (ITP) is required. In addition, the City should require the Project Applicant to provide compensatory mitigation for removal or damage to any floral resource associated with Crotch bumble bee. Floral resources should be replaced as close to their original location as is feasible.
 - d) CESA ITP. Appropriate take authorization from CDFW under CESA may include an ITP or a Consistency Determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to the project and mitigation measures may be required to obtain an ITP. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP for the Project unless the Project's CEQA document addresses all the Project's impact on CESA endangered, threatened, and/or candidate species. The Project's CEQA document should also specify a mitigation monitoring and reporting program that will meet the requirements of an ITP. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the Project's CEQA document. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an ITP. However, it is worth noting that mitigation for the Project's impact on a CESA endangered, threatened, and/or candidate species proposed in the Project's CEQA document may not necessarily satisfy mitigation required to obtain an ITP.
- 3) Lake and Streambed Alteration. [USGS National Map](#) has indicated a stream (Lemon Creek) flowing south in the western portion of the site. Development of the site may impact the natural flow and/or biological resources associated with or downstream of the Project site.

As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 *et seq.*

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- a) CDFW's issuance of a Lake and Streambed Alteration (LSA) Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the environmental document of the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the environmental document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement. Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage for information about LSA Notification (CDFWa 2022).
 - b) In the event the Project site may support aquatic, riparian, and wetland habitats; a preliminary delineation of the streams and their associated riparian habitats should be provided in the environmental document. The delineation should be conducted pursuant to the U.S. Fish and Wildlife Service (USFWS) wetland definition adopted by CDFW (Cowardin et al. 1979). Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and Regional Water Quality Control Board Section 401 Certification.
 - c) In Project sites that may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes. Therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages. The DEIR should provide a justification for the effectiveness of the chosen distance for the setback.
 - d) Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be provided and evaluated in the DEIR.
 - e) As part of the LSA Notification process, CDFW requests a hydrological modelling of the 100, 50, 25, 10, 5, and 2-year frequency storm events for existing and proposed Project conditions to provide information on how water and sediment is conveyed through the Project site. The LSA Notification should address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts on streams and associated natural communities.
- 4) Sensitive Natural Communities. A qualified biologist should map all natural communities within the Project site as well as areas subject to off-site impacts such as edge effects in accordance with established protocol (see General Comment #3b and 3c). The qualified biologist should identify and map natural communities including, but not limited to California walnut groves (*Juglans californica* Alliance) and oak forest and woodland (*Quercus* genus Alliance). CDFW considers impacts to oak woodlands and Sensitive Natural Communities to be significant (see General Comment #3a). The DEIR should fully disclose where impacts would occur, how impacts would occur, and how many acres of natural communities would be impacted. The DEIR should be conditioned to provide compensatory mitigation for impacts on Sensitive Natural Communities. Due to local/regional rarity and significance, compensatory mitigation should be higher for impacts on [Sensitive Natural Communities](#) with a State Rarity Ranking of S1 or S2 and/or a Sensitive Natural Community with an additional ranking of 0.1 or 0.2. The DEIR should discuss how compensatory mitigation

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would be adequate to reduce the Project's impact on Sensitive Natural Communities to below a level of significance.

- 5) Nesting Birds. Review of aerial photography indicates potential nesting habitat within trees on site for avian species. The Project would require ground disturbing activities such as grading and grubbing, which may result in removal or disturbance of habitat for birds, as well as cause injury or mortality of adults, juveniles, eggs, or hatchlings. The Project proposes to develop within or adjacent to open space and natural areas that likely supports a variety of nesting avian species. Accordingly, the Project may impact nesting birds and raptors. Project activities occurring during the bird and raptor nesting season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment.
 - a) Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). It is unlawful to take, possess, or needlessly destroy the nest or eggs of any raptor.
 - b) CDFW recommends the DEIR discuss the Project's impact on nesting habitat. The DEIR should disclose the acreage of nesting habitat that could be impacted and lost as a result of the proposed Project.
 - c) CDFW recommends that measures be taken to avoid impacts on nesting birds and raptors. CDFW recommends the DEIR provide a measure whereby the Project avoids ground-disturbing activities (e.g., mobilizing, staging, drilling, and excavating) and vegetation removal during the avian breeding season which generally runs from February 15 through September 15 (as early as January 1 for some raptors) to avoid take of birds, raptors, or their eggs.
- 6) Landscaping. Figure 3, Illustrative Site Plan indicates landscaping will be a part of the residential development. CDFW recommends the DEIR provide the Project's landscaping plant palette and tree species list. CDFW also recommends using native, locally appropriate plant species for landscaping on the Project site. CDFW recommends invasive/exotic plants, including pepper trees (*Schinus* genus) and fountain grasses (*Pennisetum* genus), be restricted from use in landscape plans for this Project. A list of invasive/exotic plants that should be avoided as well as suggestions for better landscape plants can be found at [California Invasive Plant Species Council](#) website (Cal-IPC, 2022).
- 7) Tree Disease Management Plan. Project activities may include tree encroachment, tree removal, and/or new trees as a part of landscaping activities. This may have the potential to spread tree pests and diseases throughout the Project site and into adjacent natural habitat not currently exposed to these stressors. Pests and diseases include (but not limited to): [sudden oak death](#) (*Phytophthora ramorum*), [thousand canker fungus](#) (*Geosmithia morbida*), [Polyphagous shot hole borer](#) (*Euwallacea* spp.), and [goldspotted oak borer](#) (*Agilus auroguttatus*) (Phytosphere Research 2012; TCD 2020; UCANR 2020; UCIPM 2013). This could result in expediting the loss of native trees and woodlands. CDFW recommends the DEIR include an infectious tree disease management plan or a list of preventative measures, developed in consultation with an arborist, and describe how it will be implemented to avoid or reduce the spread of tree insect pests and diseases.

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General Comments

- 1) Disclosure. A DEIR should provide an adequate, complete, and detailed disclosure about the effect which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, §15151). Adequate disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).
- 2) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures [CEQA Guidelines, §§ 15002(a)(3), 15021]. Pursuant to CEQA Guidelines section 15126.4, an environmental impact report shall describe feasible measures which could mitigate for impacts below a significant level under CEQA.
 - a) Level of Detail. Mitigation measures must be feasible, effective, implemented, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, §§ 15126.4, 15041). A public agency shall provide the measures that are fully enforceable through permit conditions, agreements, or other measures (Pub. Resources Code, § 21081.6). CDFW recommends that the City prepare mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). Adequate disclosure is necessary so CDFW may provide comments on the adequacy and feasibility of proposed mitigation measures.
 - b) Disclosure of Impacts. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the Project as proposed, the environmental document should include a discussion of the effects of proposed mitigation measures [CEQA Guidelines, § 15126.4(a)(1)]. In that regard, the environmental document should provide an adequate, complete, and detailed disclosure about a project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.
- 3) Biological Baseline Assessment and Impact Analysis. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally, and locally unique species, and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts, as referred in General Comment 5. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. CDFW also considers impacts to Species of Special Concern a significant direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures. The DEIR should include the following information:

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- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a [state-wide ranking](#) of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level (CDFWb 2022);
 - b) A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities](#) (CDFW 2018);
 - c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment (MCV). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts off-site. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
 - d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the Project. CDFW's California Natural Diversity Data Base (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that [CNDDDB Field Survey Forms](#) be completed and submitted to CNDDDB to document survey results (CDFWc 2022);
 - e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California Species of Special Concern and California Fully Protected Species (Fish & Game Code, §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the USFWS; and,
 - f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.
- 4) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:

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- a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
 - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.
- 5) Biological Direct, Indirect, and Cumulative Impacts. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:
- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the Project site. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
 - b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & Game Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
 - c) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,
 - d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 6) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands

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should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

- 7) Moving out of Harm's Way. The proposed Project may result in impacting habitats on and/or adjacent to the Project site that may support wildlife. To avoid direct mortality, CDFW recommends that a qualified biological monitor approved by CDFW be on site prior to and during ground and habitat disturbing activities to move out of harm's way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Felicia Silva, Environmental Scientist, by email at Felicia.Silva@wildlife.ca.gov or (562) 292-8105.

Sincerely,
DocuSigned by:



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