



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 14, 2024

Governor's Office of Planning & Research

Brenda Magana
Planning Manager
City of Palmdale
38250 Sierra Highway
Palmdale, CA 93550
bmagana@cityofpalmdale.org

Mar 14 2024

STATE CLEARINGHOUSE

SUBJECT: TENTATIVE TRACT MAP 83359 AND DENSITY BONUS AGREEMENT 24-0002 (PROJECT); MITIGATED NEGATIVE DECLARATION (MND); SCH #2024020680; LOS ANGELES COUNTY, CA

Dear Brenda Magana:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced MND 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, CDFW appreciates 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.

Brenda Magana, Planning Manager
City of Palmdale
March 14, 2024
Page 2 of 8

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

Proponent: City of Palmdale (City)

Objective: The objective of the Project is to construct up to 191 single-story, single-family homes. The Project includes construction of roads, sidewalks, a recreation center, and community amenities including office spaces, a pool, and a community trail network to link the neighborhood. The entire residential development will be enclosed by a six-foot-tall block wall, except where existing and newly constructed streets are located. Prior to construction activities, clearing, brushing, and grubbing of vegetation will occur throughout the Project site. Following vegetation removal, the entire Project site will be graded.

Location: The 20-acre Project site is immediately adjacent to, and south of, East Palmdale Boulevard between 55th Street and 50th Street East in the City. The site is undeveloped but is directly adjacent to single-family residential homes to the south and west. Land to the east is undeveloped, and land to the north, past East Palmdale Boulevard, is also undeveloped.

Biological Setting: According to the Biological Resources Assessment, the entire 20-acre Project site consists of Joshua tree woodland (*Yucca brevifolia* woodland alliance). A total of 181 western Joshua tree (*Yucca brevifolia*, CESA candidate species) individuals occur on site, and all will be permanently removed during construction activities. The MND states that a Western Joshua Tree Conservation Act Permit shall be obtained prior to the removal of any Joshua trees, and that prior to receiving take authorization, the Project proponent shall pay mitigation fees for deposit into the Western Joshua Tree Conservation Fund.

Sensitive wildlife species may occur on site, including western burrowing owl (*Athene cunicularia*; California Species of Special Concern (SSC)), California glossy snake (*Arizona elegans occidentalis*; SSC), Blainville's horned lizard (*Phrynosoma blainvillii*; SSC), loggerhead shrike (*Lanius ludovicianus*; SSC), le Conte's thrasher (*Toxostoma lecontei*; SSC), and desert kit fox (*Vulpes macrotis arsipus*; protected by California Code of Regulations Tit. 14, § 460).

Timing: Project construction is anticipated to begin in the summer of 2024 and continue for approximately 14 to 15 months.

Brenda Magana, Planning Manager
City of Palmdale
March 14, 2024
Page 3 of 8

COMMENTS AND RECOMMENDATIONS

CDFW offers 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: Sensitive Wildlife Avoidance

Issue: The MND does not provide avoidance or mitigation measures for California glossy snake or Blainville's horned lizard, which are designated as SSC.

Specific impact: Direct impacts to Blainville's horned lizard and California glossy snake could occur as a result of Project activities, including grading, ground disturbance, vegetation clearing, permanent loss of habitat, and trampling or crushing from construction equipment and vehicle or foot traffic.

Why impact would occur: According to the Biological Resources Assessment, Blainville's horned lizard and California glossy snake have a moderate to high potential to occur on site. The MND does not provide any avoidance, minimization, or mitigation measures for potential impacts to these species. Without measures to avoid, minimize, or mitigate for potential impacts to the SSC, individuals on site may be crushed, trapped, trampled, or killed.

Evidence impacts would be significant: A California SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

1. is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
2. is experiencing, or formerly experienced, serious (nonscyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or,
3. has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status.

SSCs meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). Impacts to any sensitive or special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. The MND does not provide mitigation for potential loss of habitat supporting sensitive reptile species. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either

Brenda Magana, Planning Manager
City of Palmdale
March 14, 2024
Page 4 of 8

directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Recommendation #1:

To minimize significant impacts: CDFW recommends that the Project's environmental document assume presence of Blainville's horned lizard and California glossy snake and include a mitigation measure or measures which provide compensatory mitigation for impacts of the Project to these species.

Mitigation Measure #1:

To minimize significant impacts: The City should retain a qualified biologist with survey experience with native reptile species, specifically Blainville's horned lizard and California glossy snake. Within 14 days prior to commencing any Project-related ground-disturbing activities, the qualified biologist should conduct focused surveys for SSC and suitable habitat. In addition, the qualified biologist should conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of SSC and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of SSC surveys to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal.

Wildlife should be allowed to move away on their own (non-invasive, passive relocation) to adjacent appropriate habitat. Special status wildlife should be captured only by a qualified biologist with proper handling permits.

If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area should stop immediately, the qualified biologist should be notified, and dead or injured wildlife should be documented. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

Additional Comments

COMMENT #2: Joshua Tree

To address the permanent loss of 181 western Joshua trees, MM BIO-2 states that the Project proponent shall seek take authorization through the Western Joshua Tree Conservation Act Permit process and shall pay mitigation fees for deposit into the

Brenda Magana, Planning Manager
City of Palmdale
March 14, 2024
Page 5 of 8

Western Joshua Tree Conservation Fund. However, MM BIO-2 does not address avoiding or mitigating impacts to nearby trees. According to the Biological Resources Assessment, impacts to nearby western Joshua trees could occur due to construction dust and other disturbances that may prevent photosynthesis or degrade habitat. The western Joshua tree is a species designated as a candidate for listing as threatened pursuant to CESA (Fish & G. Code, § 2050 et seq.). Candidate species are granted full protection under CESA. CDFW recommends that the MND include a discussion of how the Project will directly and/or indirectly impact nearby western Joshua tree individuals, and how these impacts will be addressed.

COMMENT #3: Burrowing Owl

The Project site contains suitable habitat for burrowing owls. CDFW acknowledges that MM BIO-3 states that burrowing owl surveys, avoidance, minimization, and mitigation plans will be consistent with the CDFW Staff Report on Burrowing Owl Mitigation (2012). Urban development in Antelope Valley contributes to the ongoing loss of suitable habitat for burrowing owls and rapid decline of the burrowing owl population size on a regional scale. We would like to note that due to various factors including habitat loss and population decline, burrowing owls were recently petitioned to be listed as an endangered or threatened species under CESA by the Center of Biological Diversity (CBD 2024).

COMMENT #4: Desert Kit Fox

The Project site is within the known geographic range of desert kit fox. This species is known to inhabit sparsely vegetated scrub habitats within the California desert that support small mammal populations (McGrew 1979). Based on aerial imagery, the Project site potentially contains suitable habitat for desert kit fox denning and foraging. CDFW recommends that the survey timeline in MM BIO-5 be modified to no more than 14 days prior to initiation of construction activities. Additionally, CDFW strongly recommends that desert kit foxes be allowed to move on from any dens on their own. Previously occupied dens should only be excavated or collapsed if a qualified biologist can confirm absence of desert kit foxes inside. This could be accomplished through the methods already described in MM BIO-5 (e.g. infrared camera monitoring).

COMMENT #5: Lake and Streambed Alteration

CDFW has regulatory authority over activities in streams that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is

Brenda Magana, Planning Manager
City of Palmdale
March 14, 2024
Page 6 of 8

subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. According to the MND, a drainage feature occurs on site that may fall under CDFW jurisdiction. We acknowledge that the City plans to consult with CDFW regarding this drainage feature. A Notification package for a LSAA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

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

Questions regarding this letter or further coordination should be directed to Brigid Moran at Brigid.Moran@wildlife.ca.gov or (858) 354-3527.

Sincerely,

DocuSigned by:



5991E19EF8094C3...

Victoria Tang
Environmental Program Manager
South Coast Region

Brenda Magana, Planning Manager
City of Palmdale
March 14, 2024
Page 7 of 8

EC: California Department of Fish and Wildlife
Jennifer Turner
Cindy Hailey

Office of Planning and Research
State Clearinghouse – State.Clearinghouse@opr.ca.gov

United States Fish and Wildlife Service
Jonathan Snyder – 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).
- California Department of Fish and Wildlife. 2022. Threatened and Endangered Species. Available at: <https://wildlife.ca.gov/Conservation/CESA>
- California Department of Fish and Wildlife. 2022. Trimming of western Joshua trees and removal of dead western Joshua trees. What is “Take”? Available at: <https://wildlife.ca.gov/Conservation/CESA/WJT>
- California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>
- Center for Biological Diversity. 2024. Petition Before the California Fish and Game Commission to List California Populations of the Western Burrowing Owl (*Athene cunicularia hypugaea*) as Endangered or Threatened Under the California Endangered Species Act. Available at: https://s3-us-west-2.amazonaws.com/s3-wagtail.biologicaldiversity.org/documents/California-Burrowing-Owl-Petition_3-5-24.pdf
- McGrew, John C. 1979. *Vulpes Macrotis*. *Mammalian Species*, Issue 123 (1-6). Available at: <https://doi.org/10.2307/3504038>

Brenda Magana, Planning Manager
 City of Palmdale
 March 14, 2024
 Page 8 of 8

ATTACHMENT A: 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>REC-1: Sensitive Wildlife Avoidance: CDFW recommends that the Project's environmental document assume presence of Blainville's horned lizard and California glossy snake and include a mitigation measure or measures which provide compensatory mitigation for impacts of the Project to these species.</p>		
<p>MM-1: Sensitive Wildlife Avoidance: The City shall retain a qualified biologist with survey experience with native reptile species, specifically Blainville's horned lizard and California glossy snake. Within 14 days prior to commencing any Project-related ground-disturbing activities, the qualified biologist should conduct focused surveys for SSC and suitable habitat. In addition, the qualified biologist shall conduct daily biological monitoring during any activities involving vegetation clearing or modification of natural habitat. Positive detections of SSC and suitable habitat at the detection location should be mapped and photographed. The qualified biologist should provide a summary report of SSC surveys to the City prior to implementing any Project-related ground-disturbing activities and vegetation removal.</p> <p>Wildlife shall be allowed to move away on their own (non-invasive, passive relocation) to adjacent appropriate habitat. Special status wildlife shall be captured only by a qualified biologist with proper handling permits.</p> <p>If any SSC are harmed during relocation or a dead or injured animal is found, work in the immediate area shall stop immediately, the qualified biologist should be notified, and dead or injured wildlife should be documented. A formal report should be sent to CDFW and the City within three calendar days of the incident or finding. Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>	<p>Prior to and during Project activities</p>	<p>City of Palmdale</p>