



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 18, 2024
Sent via e-mail

Kim Stater, City Planner
City of Highland
27215 Base Line
Highland, CA 92346
kstater@cityofhighland.org

Subject: Draft Mitigated Negative Declaration, Southeast Corner 5th and Victoria Warehouse Project, State Clearinghouse No. 2024100850, City of Highland, San Bernardino County

Dear Kim Stater:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Highland (City) for the Southeast Corner 5th and Victoria Warehouse Project (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.

PROJECT DESCRIPTION SUMMARY

Proponent: Patriot Development Partners

Description: The Project proposes construction of a one-story industrial warehouse facility, approximately 173,976 square feet on a 7.23-acre property. Primary Project activities include construction of proposed warehouse, on- and off-site improvements, site access and parking, and utility improvements.

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.

Location: The Project site is located in the southeastern corner of 5th Street and Victoria Avenue, north of 3rd Street, and west of City Creek bypass flood control channel, in the City of Highland, County of San Bernardino. Assessor's Parcel Numbers [APN] 1192-551-02-07 and 12-15.

Timeframe: Anticipated time frame for constructing the Project would be approximately 8 months. Site preparation would take 5 weeks, followed by grading which would take a month. Building construction would take 4 months, and paving and architectural coating would each take a month.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the City of Highland in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: Burrowing Owl (*Athene cunicularia*)

IS/MND pages 41-42, Biological Technical Report pages 1-8

Issue: The project may impact burrowing owl (BUOW), a candidate species under the California Endangered Species Act (CESA) and Project activities may result in take as defined in Fish and Game Code section 86.

Specific impact: The IS/MND acknowledges the potential for burrowing owl to occur given historical occurrence within the general area and suitable habitat. No burrowing owls or signs were observed during the field site visit. CDFW notes that only one reconnaissance survey was performed on October 19, 2022 between 11:30 am – 12:30 pm. A focused survey for the species following a CDFW approved guideline, or similar approach, was not conducted and the site supports suitable habitat. Therefore, CDFW is concerned that the City may not have adequately identified potentially significant impacts. Project implementation, including grading, vegetation clearing and construction, may result in direct mortality, population declines, or local extirpation of burrowing owl not previously identified. Additionally, the California Wildlife Habitat Relationships (CWHHR) dataset, Burrowing Owl Predicted Habitat (CDFW 2016), displays a high potential for burrowing owl presence within the Project area, and one known BUOW occurrence was observed less than a mile away from the Project site.

Why impact would occur: According to the Biological Constraints Analysis, focused burrowing owl surveys were not conducted on the Project site. Burrowing owls have been known to use highly degraded and marginal habitat where existing burrows are available. Burrowing owls are well-adapted to open, relatively flat expanses and vacant lots and prefer habitats with generally short sparse vegetation with few shrubs such as those occurring on the Project site. If BUOW burrows are not properly detected, prior to ground disturbance, site preparation and grading could destroy habitat and result in take of burrowing owl. Occupied site or occupancy means a site that is assumed

occupied if at least one burrowing owl has been observed occupying a burrow within the last three years. Occupancy of suitable burrowing owl habitat may also be indicated by owl sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site.

Evidence impact would be significant: On October 10, 2024, the California Fish and Game Commission accepted a petition to list Western Burrowing Owl as endangered under CESA, determining the listing “may be warranted” and advancing the species to the candidacy stage of the CESA listing process. As a candidate species, Western Burrowing Owl is granted full protection of a threatened species under CESA. If Project activities could result in take, appropriate CESA authorization (i.e., Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities. Take of any endangered, threatened, or 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). Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. 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 directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: CDFW recommends that prior to commencing Project activities for all phases of Project construction, focused and preconstruction surveys for burrowing owl be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). Because appropriate surveys were not conducted prior to circulation of the MND, the MND may not adequately identify potentially significant impacts. CDFW recommends the IS/MND be revised and recirculated following completion of survey so that results and appropriate specific avoidance and minimization measures can be included, to ensure that impacts to burrowing owls are reduced to less than significant. However, if the City chooses not to follow this path, CDFW recommends the following revisions to MM-BIO-1 (edits are in strikethrough and bold) to ensure an adequate assessment is completed and CESA authorization obtained, if needed.

MM BIO-1: Focused and Pre-Construction Surveys for Burrowing Owl

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted by a qualified biologist in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to vegetation removal or ground-disturbing activities for all phases of Project construction. The Designated Biologist shall provide to CDFW a GIS or KMZ map of BUOW burrow complex(es) and atypical burrows (e.g. culverts, buckled concrete, etc.) The map shall be at a scale of 1:24,000 or finer to show details and shall show locations of all BUOW sightings and labeled if sightings were potential burrows, occupied burrows, satellite burrows, areas of concentrated burrows, and BUOW sign. Locations documented by use of GPS coordinates must be collected in NAD83 datum. The map shall include an outline of the Project Area. The map shall include a title, north arrow, scale bar, and legend.

If burrowing owl occupancy is confirmed, and if Project activities may impact burrowing owl, including burrow exclusion and closure, the Project Proponent shall begin early coordination with CDFW for appropriate CESA authorization (i.e., Incidental Take Permit (ITP) under Fish and Game Code section 2081) prior to commencement of Project activities. The ITP application shall describe, at a minimum, project activities and equipment, proposed avoidance/buffers, temporary and permanent impacts, monitoring, relocation and/or translocation, and minimization and compensatory mitigation actions. ITP compensatory mitigation will be fulfilled by one or more of following options: 1) Permittee-

responsible mitigation land acquisition or 2) Conservation or Mitigation Bank credits (if available).

~~Focused Burrowing Owl Surveys: The project site contains potentially suitable habitat for burrowing owl and therefore a presence/absence survey should be conducted in accordance with the California Department of Fish and Wildlife's 2012 Staff Report on Burrowing Owl Mitigation. The burrowing owl presence/absence survey requires four crepuscular surveys, with a 500-foot buffer as legally able, using 7-20 meter transects. Four survey passes must be conducted with at least one site visit between February 15 and April 15, and a minimum of three survey visits, spaced at least 3 weeks apart, between April 15 and July 15, with at least one visit after June 15. A pre-construction survey of the project site for the burrowing owl is also recommended within 30 days of ground disturbing activities if suitable habitat exists, regardless of the results of the focused surveys. Surveys should be conducted in all portions of the project site and 500-foot buffer that contain suitable habitat for the species, where legally accessible. Alternatively, instead of conducting focused surveys, the project may also choose to assume presence of the species and prepare a burrowing owl translocation plan that would be implemented if burrowing owl are detected on the project site during the pre-construction survey.~~

COMMENT 2: Artificial Nighttime Light

Issue: The MND does not mention in the Project description, or analyze impacts to biological resources from, artificial nighttime lighting, and includes no mitigation measures to avoid or reduce impacts to biological resources.

Specific impact: The proposed Project will result in new sources of artificial nighttime lighting. Impacts to biological resources resulting from the use of artificial nighttime lighting during construction and during operation of the Project are not analyzed, and no mitigation measures are proposed. Designs for lighting to be used during operation of the Project should be included in a revised MND, along with details of artificial nighttime lighting to be used during construction. The direct and indirect impacts of artificial nighttime lighting on biological resources including migratory birds that fly at night, bats, and other nocturnal and crepuscular wildlife should be analyzed, and appropriate avoidance and minimization measures to reduce impacts to less than significant should be included in a revised MND.

Evidence impact would be significant: Artificial nighttime lighting often results in light pollution, which has the potential to significantly and adversely affect fish and wildlife. Artificial lighting alters ecological processes including, but not limited to, the temporal niches of species; the repair and recovery of physiological function; the measurement of time through interference with the detection of circadian and lunar and seasonal cycles; the detection of resources and natural enemies; and navigation (Gatson et al. 2013). Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Recommended Potentially Feasible Mitigation Measure: Because of the potential for artificial nighttime light to negatively impact wildlife, CDFW recommends the MND be revised to include details of the use of artificial nighttime lighting proposed for construction and operation of the Project and an analysis of impacts to biological resources, as well as specific avoidance and minimization measures to ensure that impacts to wildlife are reduced to less than significant. Absent an analysis, CDFW recommends the City include the following mitigation measure in a revised MND:

MM BIO-[3]: Artificial Nighttime Light

During Project construction and the lifetime operations of the Project, the City and Project proponent shall eliminate all nonessential lighting throughout the Project area and avoid or limit the use of artificial light at night during the hours of dawn and dusk when many wildlife species are most active. The County and Project proponent shall ensure that lighting for Project activities is shielded, cast downward and directed away from surrounding open-space and agricultural areas, reduced in intensity to the greatest extent possible, and does not result in lighting trespass including glare into surrounding areas or upward into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>). The City and Project proponent shall ensure use of LED lighting with a correlated color temperature of 3,000 Kelvins or less, proper disposal of hazardous waste, and recycling of lighting that contains toxic compounds with a qualified recycler.

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>.

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

Questions regarding this letter or further coordination should be directed to Amelia Viera, Environmental Scientist, at 909-544-2528 or Amelia.Viera@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

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