



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



January 22, 2020
Sent via email

Governor's Office of Planning & Research

JAN 27 2020

STATE CLEARINGHOUSE

Mr. Manny Baeza
Senior Planner
29844 Haun Road
City of Menifee
Menifee, CA 92586
mbaeza@cityofmenifee.us

Subject: Draft Environmental Impact Report
Menifee North Specific Plan 260, Amendment No. 3 (2010-090),
Palomar Crossings Project
State Clearinghouse No. 2019029123

Dear Mr. Baeza:

The California Department of Fish and Wildlife (CDFW) received the Draft Environmental Impact Report (DEIR) on December 2, 2019 from the City of Menifee (City) for the Menifee North Specific Plan 260, Amendment Number 3 (2010-090), Palomar Crossings Project (Project) pursuant 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

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.

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

The Project proposes modifications to existing Specific Plan 260 Land Use Plan Planning Areas 11, 12, 13, and 14. These modifications include:

1. Planning Area 11: realignment along its southern boundary and land use re-designation from Business Park to Very High Density Residential. This Planning Area will also be split into two subareas: 11A and 11B.
2. Planning Area 12: realignment to a newly created area between Planning Areas 11 and 13, and land use re-designation from Business Park and Commercial Business Park to Commercial/Very High Density Residential. The Planning Area will also be split into two sub-areas: 12A and 12B.
3. Planning Area 13: realignment along its northern border and land use re-designation from Commercial Business Park to Commercial. Planning Area 13 will also be split into two sub-areas: 13A and 13B.
4. Planning Area 14: reduction in acreage from 11.7 to 9.27 acres by redistributing area into Planning Areas 12B and 13B.

COMMENTS AND RECOMMENDATIONS

CDFW is concerned that not all the mitigation and monitoring measures for biological resources were clearly identified in the DEIR. For example, the Initial Study included a Standard Condition that the Project demonstrate compliance with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and three mitigation measures and to reduce impacts to Biological Resources to Less Than Significant with Mitigation Incorporated; these measures were not included in the DEIR. The DEIR includes Table 1-2 which "...summarizes all of the environmental impacts and proposed mitigation and

monitoring measures identified in the DEIR and will be provided to decision makers prior to finalizing the EIR." CDFW is concerned that because the mitigation measures identified for Biological Resources are discussed in the Initial Study but not in the DEIR, this may cause confusion and potentially lead to the mitigation measures not being implemented. To ensure that the Standard Condition and Mitigation Measures for Biological Resources are implemented, CDFW recommends that they are incorporated into Table 1-2 prior to circulating the Final EIR (FEIR).

To improve the adequacy and enforceability of the mitigation measures proposed by the City, and to ensure consistency with the MSHCP, CDFW also offers the following comments and recommendations specific to the City's proposed mitigation measures:

Mitigation Measure (MM) BIO-1 provides mitigation measures for impacts to Waters of the United States, Waters of the State, and for project activities subject to Fish and Game Code section 1602. To ensure that the project complies with section 1602 of the Fish and Game Code, CDFW recommends that the City revise MM BIO-1 and condition the measure to include the following (edits are in **bold** and ~~strikethrough~~):

MM BIO-1: Prior to **issuance of any grading/construction permits by the City** ~~any disturbance of Features A, A1, A2, or B~~, the applicant shall **consult with the California Department of Fish and Wildlife regarding a Fish and Game Code section 1602 Streambed Alteration Agreement, the United States Army Corps of Engineers regarding a Clean Water Act Section 404 Permit, and the Regional Water Quality Control Board regarding a Clean Water Act Section 401 Certification.** The ~~Project applicant shall be required to obtain~~ ~~acquire the~~ necessary permits, **or provide written documentation that such permits are not needed.** The Project shall **mitigate impacts to waters of the United States and waters of the State, wetlands, and riparian habitats, by preserving on-site habitat, restoring similar habitat, or purchasing off-site credits from an approved mitigation bank.** **Mitigation shall be subject to pre-approval by the** ~~which will include the appropriate mitigation, from the~~ appropriate regulatory agencies, which may include the Regional Water Quality Control Board (RQWCB), U.S Army Corps of Engineers (ACOE) and the California Department of Fish and Wildlife (CDFW).

Mitigation Measure BIO-2 provides mitigation measures for impacts to nesting birds. To ensure compliance with Fish and Game Code sections 3503 and 3503.5, CDFW recommends that the City revise MM BIO-2 and condition the

measure to require pre-construction surveys prior to any site disturbing activities (including staging and site preparation). CDFW also recommends that pre-construction surveys be required no more than three (3) days prior to ground disturbing activities, as instances of nesting would be missed if surveys are conducted sooner. CDFW recommends that the City revise MM BIO-2 and condition the measure to include the following (edits are in **bold** and ~~strikethrough~~):

MM-BIO-2: **Ground-disturbing activities (including staging and site preparation) shall occur outside of the generally recognized bird breeding season (February 15 – August 15), unless a qualified biologist demonstrates to the satisfaction of the City that Project activities will comply with Fish and Game Code sections 3503 and 3503.5. If ground-disturbing activities are proposed grading is to occur during the nesting season (February 15 – August 31), a nesting bird pre-construction survey shall be conducted within ~~ten (10)~~ **three (3)** days prior to ~~site disturbing activities grading permit issuance~~. This survey shall be conducted by a qualified biologist holding a Memorandum of Understanding (MOU) with Riverside County. The findings shall be submitted to the City of Menifee Community Development Department for review and approval.**

The Project identifies impacts to Riparian/Riverine resources subject to Section 6.1.2 of the MSHCP. CDFW is unaware that a Determination of Biologically Equivalent or Superior Preservation (DBESP) has been prepared for this Project. Please note that the MSHCP consistency review process will not be complete until CDFW and the United States Fish and Wildlife Service approve a DBESP for impacts to MSHCP Section 6.1.2 resources. Because this process is not complete, CDFW recommends that City include a new mitigation measure in the FEIR conditioning the Project applicant to demonstrate compliance with Section 6.1.2 of the MSHCP. CDFW recommends the inclusion of the following new measure in the FEIR:

MM BIO-4: Prior to issuance of any grading permit the Project Applicant shall provide to the City written correspondence from the United States Fish and Wildlife Service and California Department of Fish and Wildlife confirming that the Determination of Biologically Equivalent or Superior Preservation has been approved.

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). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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.).

CDFW CONCLUSIONS AND FURTHER COORDINATION

CDFW appreciates the opportunity to comment on the DEIR for the City of Menifee's Palomar Crossing's Project (SCH No. 2019029123) and recommends that the City address CDFW's comments and concerns prior to circulation of the FEIR.

If you should have any questions pertaining to the comments provided in this letter, and to schedule a meeting, please contact Joanna Gibson at (909) 987-7449 or at Joanna.Gibson@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

ec: State Clearinghouse

Karin Cleary-Rose
US Fish and Wildlife Service