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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 24, 2020

Governor's Office of Planning & Research

MAR 24 2020

STATE CLEARINGHOUSE

Chris Vasquez
City of Walnut
Planning Department
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Subject: The Brookside Project Final Environmental Impact Report (FEIR) Volume IA and IIA, SCH #2016051030, Los Angeles County

Dear Mr. Vasquez:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Brookside Project (Project) FEIR. The supporting documentation in Volume IA includes Comments and Responses. In particular, response H includes the response to comments from CDFW sent July 26, 2018. 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 & G. 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 & 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.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

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Project Description and Summary

Objective: The proposed Project is located on a former equestrian center, which closed in 2014. The Project proposes to retain two of the existing structures and demolish all other existing structures to build 28 single-family detached home lots. Additional features of the Project include a central street system with access to Meadow Pass Road, a 26-foot wide emergency vehicle access road from La Puente Road into the Project site, water quality flush basins, and landscaping.

Areas of natural open space will be left within privately owned open space lots, which includes Lot A (0.01 acre), Lot B (0.55 acre), Lot C (0.09 acre), and Lot F (1.12 acres). The FEIR states these lots will be placed within an open space easement maintained by the Homeowners Association (HOA) and delineated to 1) limit the homeowner from disturbing the creek edge and 2) provide for maintenance. Existing vegetation and trees within Lots A, B, C, and F will be preserved and maintained by the HOA. Any non-native trees that die or require removal will be replaced at a 1:1 ratio, while native trees will be replaced at a 3:1 ratio. Lemon Creek is located within Lots D and H. The Project proposes to install an unspecified type of vehicle crossing within Lemon Creek as well as a new bridge for trail crossing and replace several existing culverts.

Location: The Project site is approximately 26 acres of partially developed land in the City of Walnut. The Project area is located north of La Puente Road, south of Meadow Pass Road, east of North Lemon Avenue, and west of Broken Lance Road.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City of Walnut (City) in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

Comment #1: Impacts to Bat Species, including California Species of Special Concern

The Project includes activities that will result in the removal of trees and/or structures that may provide habitat for bats. In addition, the FEIR identifies six bat species, all of which are California Species of Special Concern (including hoary bat (*Lasiurus cinereus*), western yellow bat (*Lasiurus xanthinus*), pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis* ssp. *californicus*), pocket free-tailed bat (*Nyctinomops macrotis*), big free-tailed bat (*Nyctinomops macrotis*), as possible likelihood to occur on site. The site reconnaissance survey, conducted on September 28, 2018, was conducted when very few bats have the potential to be roosting, the recognized maternity season occurring March 1 to September 30. Given that only one site reconnaissance was conducted during a time of year when bats have a very low potential to be roosting, there may have been a possibility to miss this activity.

Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Bat species, such as

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the western yellow bat, can be found year-round in urban areas throughout the south coast region (Miner & Stokes, 2005). Several bat species are considered California Species of Special Concern and meet the CEQA definition of rare, threatened or endangered species (CEQA Guidelines, § 15065). Take of California Species of Special Concern could require a mandatory finding of significance by the Lead Agency (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure(s) to be Included in the Mitigation, Monitoring, and Reporting Program:

Mitigation Measure #1: To the extent feasible, tree removal or relocation should be scheduled between October 1 and February 28, outside of the maternity roosting season. Maternity season lasts from March 1 to September 30. Trees and/or structures determined to be maternity roosts should be left in place until the end of the maternity season.

Mitigation Measure #2: If trees and/or structures must be removed during the maternity season (March 1 to September 30), a qualified bat specialist should conduct a pre-construction survey to identify those trees and/or structures proposed for disturbance that could provide hibernacula or nursery colony roosting habitat for bats. CDFW strongly recommends the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. Each tree and/or structure identified as potentially supporting an active maternity roost should be closely inspected by the bat specialist no greater than 7 days prior to tree disturbance to more precisely determine the presence or absence of roosting bats.

Mitigation Measure #3: If bats are not detected, but the bat specialist determines that roosting bats may be present at any time of year, it is preferable to push any tree down using heavy machinery rather than felling it with a chainsaw. In order to ensure the optimum warning for any roosting bats that may still be present, the tree should be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. The tree should then be pushed to the ground slowly and should remain in place until it is inspected by a bat specialist. Trees that are known to be bat roosts should not be sawn up or mulched immediately. A period of at least 24 hours, and preferably 48 hours, should elapse prior to such operations to allow bats to escape. Bats should be allowed to escape prior to demolition of buildings. This may be accomplished by placing one-way exclusionary devices into areas where bats are entering a building that allow bats to exit but not enter the building.

The bat specialist should document all demolition monitoring activities and prepare a summary report to the City upon completion of tree disturbance and/or building demolition activities.

Comment #2: Impacts to Southern Western Pond Turtle

Opportunistic surveys were conducted during the survey for arroyo chub on November 27, 2018. The Rincon Report states “the biologists walked the western bank of the creek and conducted an opportunistic visual survey for southern western pond turtle. The biologists focused on areas within the creek with undercut banks where aquatic cover, basking sites, and deeper pools were present.” The Rincon Report (Appendix D1 in FEIR) concluded that habitat for southern western pond turtle is only marginally suitable. The survey methods were brief and not specific to southern western pond turtle. The result that a site is marginally suitable does not mean the turtle species could not inhabit the site.

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Recommended Potentially Feasible Mitigation Measure(s) to be Included in the Mitigation, Monitoring, and Reporting Program:

Mitigation Measure #1: Due to potentially suitable habitat within the Project site, prior construction activities, a qualified biologist familiar with the turtle species behavior and life history should conduct specialized surveys (utilizing the protocol from United States Geological Survey (USGS)

https://sdmmp.com/upload/SDMMP_Repository/0/4fnpv18xm0sqtw29j7d3rz56bkychg.pdf) to determine the presence/absence of Species of Special Concern. Survey results, including negative findings, should be submitted to CDFW prior to initiation of Project activities.

Mitigation Measure #2: To further avoid direct mortality, CDFW recommends that a qualified biological monitor approved by CDFW be on-site during ground and habitat disturbing activities to move out of harm's way special status species that would be injured or killed by Project-related 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 Project clearly identify that the designated entity should obtain all appropriate state and federal permits.

Comment #3: Impacts to Streams

The FEIR states an unspecified type and size of vehicle stream crossing and several horse trail crossing culverts are part of the Project, but does not provide any specific information on direct, indirect, and cumulative habitat impacts expected to adversely affect biological resources. In addition, the FEIR states "impacts to Lemon Creek shall be mitigated at a ratio of 3:1 through the enhancement and restoration of portions of Lemon Creek within the project site or as otherwise required by CDFW pursuant to a Stream Alteration Agreement (SAA)." CEQA Guidelines sections 15070 and 15071 require the environmental impact report to analyze if the Project may have a significant effect on the environment as well as review if the Project will "avoid the effect or mitigate to a point where clearly no significant effects would occur." Relying on one-time enhancement plans, without subsequent monitoring or approval by CDFW could result in unsuccessful restoration and enhancement.

Recommended Potentially Feasible Mitigation Measure(s) to be Included in the Mitigation, Monitoring, and Reporting Program:

Mitigation Measure #1: The FEIR should identify Project-related changes on drainage patterns and downstream of the Project site. Changes to 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 should all be considered. This information is necessary to allow CDFW and the public to comment on alternatives to avoid impacts, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

Mitigation Measure #2: Impacts from unspecified type and size of vehicle stream crossings and several horse trail crossing culverts could alter stream flow patterns in the Project area. CDFW recommends a hydrogeomorphology study be conducted to evaluate the impacts of potential changes in flows of water and sediment through drainages within the Project boundary.

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Changes to the hydrology of streams and surrounding area need to be disclosed during the public comment period.

Mitigation Measure #3: The Project may result in the alteration of streams. For any such activities or maintenance, 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 (LSA) with the applicant is required prior to conducting the proposed activities. A notification package for a LSA may be obtained by accessing CDFW’s web site at www.wildlife.ca.gov/habcon/1600.

CDFW’s issuance of an LSA 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 CEQA document of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the CEQA 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.

Mitigation Measure #4: Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project. The LSA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA may include the following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection and management of mitigation lands in perpetuity.

Mitigation Measure #5: CDFW recommends the Project proponent actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into ephemeral stream beds during Project activities. BMPs should be monitored and repaired, if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent should prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site should be free of nonnative plant materials. Fiber rolls or erosion control mesh should be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other projects without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

Mitigation Measure #6: All revegetation/restoration areas that will serve as mitigation should include preparation of a separate restoration plan, to be approved by USFWS and CDFW prior to any ground disturbance. The restoration plan should include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and, a funding mechanism to assure for in perpetuity management and reporting. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (AB 1094; Government Code, §§ 65965-65968).

Filing Fees

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The Project, as proposed, could 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

We appreciate the opportunity to comment on the Project to assist the City in adequately analyzing and minimizing/mitigating impacts to biological resources. Questions regarding this letter and further coordination on these issues should be directed to Felicia Silva, Environmental Scientist, at Felicia.Silva@wildlife.ca.gov or (562) 430-0098.

Sincerely,

DocuSigned by:



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Signing for:

Erinn Wilson
Environmental Program Manager I

ec: CDFW

Victoria Tang – Los Alamitos
Felicia Silva – Los Alamitos
Andrew Valand – Los Alamitos
Audrey Kelly – Los Alamitos
Malinda Santonil – Los Alamitos
CEQA Program Coordinator - Sacramento

Scott Morgan (State Clearinghouse)

References:

Miner, Karen L. & Stokes, Drew C. 2005. Bats in the South Coast Ecoregion: Status, Conservation Issues, and Research Needs. USDA Forest Service General Technical Report PSW-GTR-195.
https://www.fs.fed.us/psw/publications/documents/psw_gtr195/psw_gtr195_2_13_Minier.pdf



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CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources			
	Mitigation Measure	Timing	Responsible Party
MM-BIO-1-Impacts to Bats	Tree removal or relocation shall be scheduled between October 1 and February 28, outside of the maternity roosting season. Trees and/or structures determined to be maternity roosts shall be left in place until the end of the maternity season.	Prior to Construction	City of Walnut
MM-BIO-2- Impacts to Bats	If trees and/or structures must be removed during the maternity season (March 1 to September 30), a qualified bat specialist shall conduct a pre-construction survey to identify those trees and/or structures proposed for disturbance that could provide hibernacula or nursery colony roosting habitat for bats. Specialist shall utilize acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species.	Prior to Construction	City of Walnut Project Proponent
MM-BIO-3- Impacts to Bats	If bats are not detected, but the bat specialist determines that roosting bats may be present at any time of year, it is preferable to push any tree down using heavy machinery rather than felling it with a chainsaw.	During Construction	City of Walnut
MM-BIO-4-Southern Western Pond Turtle Survey	A qualified biologist familiar with the turtle species behavior and life history shall conduct specialized surveys (utilizing the protocol from USGS https://sdmmp.com/upload/SDMMP_Repository/0/4fnpv18xm0sgtw29j7d3rz56bkychg.pdf) to determine the presence/absence of Species of Special Concern.	Prior to Construction	City of Walnut
MM-BIO-5-Out of Harm's Way	A qualified biological monitor shall be on-site during ground and habitat disturbing activities to move out of harm's way special status species that would be injured or killed by Project-related activities.	During Construction	City of Walnut
MM-BIO-6-Hydrology analysis	The FEIR shall identify Project-related changes on drainage patterns and downstream of the Project site. Changes to the volume, velocity,	Prior to Construction	City of Walnut

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	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 shall all be considered.		
MM-BIO-7-Hydrogeomorphology study	The City shall conduct a hydrogeomorphology study to evaluate the impacts of elevated flows of water and sediment through ephemeral drainages within a recently burned watershed.	Prior to Construction	City of Malibu
MM-BIO-8- LSA Notification	For any such activities or maintenance that would alter stream bed, bank, or channel, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 <i>et seq.</i> of the Fish and Game Code.	Prior to Construction	City of Malibu Project Proponent
MM-BIO-9-Additional LSA measures	The City shall develop and include any additional measures protective of streambeds on and downstream of the Project. These protective measures may be included in any LSA Agreement issued for the Project by CDFW.	Prior to Construction	City of Malibu
MM-BIO-10-Best Management Practices	Project proponent shall actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into ephemeral stream beds during Project activities.	During Construction	City of Malibu Project Proponent
MM-BIO-11-Revegetation/Restoration Areas	All revegetation/restoration areas that will serve as mitigation shall include preparation of a restoration plan, to be approved by USFWS and CDFW prior to any ground disturbance. The restoration plan shall include restoration and monitoring methods; annual success criteria; contingency actions shall success criteria not be met; long-term management and maintenance goals; and, a funding mechanism to assure for in perpetuity management and reporting.	Prior to Construction	City of Malibu