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March 27, 2020
Sent via email

Governor's Office of Planning & Research

MAR 27 2020

STATE CLEARINGHOUSE

Richard Ayala
Senior Planner
City of Ontario
303 East B Street
Ontario, CA, 91761

Subject: Draft Environmental Impact Report (DEIR)
Ontario Ranch Business Park Specific Plan Project
State Clearinghouse No. 2019050018

Dear Mr. Ayala:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from City of Ontario (City; Lead Agency) for the Ontario Ranch Business Park Specific Plan 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

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.

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 site is in the southwestern portion of the City of Ontario, San Bernardino County, California within the City's' Ontario Ranch area. The Project site is east of Euclid Avenue, north of Merrill Avenue, west of the right-of-way of Sultana Avenue, and south of Eucalyptus Avenue. The Project site encompasses 85.6 acres and consists of a dairy farm and agricultural fields. The Project proposes the development of an industrial and business park on eleven parcels. The Project will remove 46 acres of agriculture fields and 5.22 acres of stock/retention ponds. Project activities include the building of: eight warehouses ranging from 46,900 square feet (sf) to 618,353 sf, parking, access roads, off-site roadway and utility infrastructure improvements, landscaping, and utilities. Total development is 1,905,027 sf of warehouse and office use.

COMMENTS AND RECOMMENDATIONS

The DEIR recognizes the potential for several special status species, including threatened and endangered species, to occur within and surrounding the Project area. CDFW is concerned that the analysis completed may have been inadequate to form a complete inventory of special-status species within and surrounding the Project area and to identify the level of impacts on those species identified as potentially present.

Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, and mitigated. CDFW offers the comments and recommendations below and in Attachment A to assist the City.

Special-status Wildlife

The DEIR identifies 27 special-status wildlife species having the potential to occur and the potential for habitat for species to be present; however, surveys, habitat assessment, or other analysis were not conducted to determine if species with the potential to occur onsite are present and at what level the species would be impacted by

the Project. As such, CDFW will provide comments and recommendations on the impact analysis and proposed mitigation measures based on the information provided in the DEIR, aerial imagery, and best available scientific data.

Tricolored Blackbird (*Agelaius tricolor*)

Tricolored blackbird is a state-listed threatened species. The DEIR recognizes the potential for tricolored blackbird to occur on the Project site and states, “project implementation has the potential to impact these species, and impacts would be significant” (DEIR, p. 5.3-17). Based on this statement, it appears the DEIR assumes presence of the species, and assumes impacts would be significant absent mitigation, but the DEIR does not specify the level of occupancy or the level of impacts the Project may have on tricolored blackbird. Although the DEIR proposes to offset impacts to tricolored blackbird through Mitigation Measure (MM) BIO-1, which would limit construction during nesting season, the measure would not offset the loss of occupied breeding and foraging habitat. If the DEIR will assume the site is occupied, CDFW believes that the current mitigation measure would not reduce Project impacts to less than significant and suggests the City adopt the following mitigation measure to reduce the level of impacts to tricolored blackbirds. Tricolored blackbirds forage within 5 km of water (Orians 1961a). The Project site border is 0.72 km from ponds. Thus, this measure assumes the entirety of the Project site (85.6 acres) is utilized by the species for foraging based on a 1-kilometer foraging area surrounding the potentially suitable breeding areas (stock ponds) and incorporates permanent conservation of habitat at a 3:1 mitigation ratio:

Tricolored blackbird-1: The Applicant shall mitigate impacts to tricolored blackbird by creating 256.8 acres of suitable, breeding, foraging habitat at a CDFW-approved location within southwest San Bernardino County. Habitat shall be conserved in perpetuity via conveyance of a conservation easement to a CDFW-approved conservation entity and a management fund (endowment) shall be established by the Applicant consisting of an interest-bearing account with the amount of capital necessary to generate sufficient interest and/or income to fund all monitoring, management, and protection of the conservation area(s), including but not limited to, reasonable administrative overhead, biological monitoring, invasive species and trash removal, fencing and signage replacement and repair, law enforcement measures, long-term management reporting (as described below), and other actions designed to maintain and improve the habitat of the conserved land(s), in perpetuity. A Property Analysis Record, or substantially equivalent analysis, shall be conducted to determine the management needs and costs described above, which then will be used to calculate the

capital needed for the management of the fund. Except for uses appropriate to a habitat conservation area, the public shall not have access to the mitigation area(s), and no activities shall be permitted within the site, except maintenance of habitat, including the removal of nonnative plant species, trash, and debris, and the installation of native plant materials.

Alternately, if the DEIR does not wish to assume presence on the Project site, the DEIR should provide the results of appropriate analysis (protocol-level surveys) in order to more accurately disclose the level of impacts that could occur to tricolored blackbird, and inform a more refined mitigation measure based on actual occupancy and use data. If the City chooses this approach, CDFW strongly recommends the DEIR be recirculated to disclose the survey data, impact analysis, and proposed mitigation measures.

Western Pond Turtle

The DEIR recognizes the potential for western pond turtle to occur on the Project site and states, “project implementation has the potential to impact these species, and impacts would be significant” (DEIR, p. 5.3-17). Based on this statement, it appears the DEIR assumes presence of the species, and assumes impacts would be significant absent mitigation, but the DEIR does not specify the level of occupancy or the level of impacts the Project may have on western pond turtle. Although the DEIR proposes to offset impacts to western pond turtle through MM BIO-5, which would require relocation of any turtles found, this measure would not offset the losses of occupied breeding and foraging habitat. If the DEIR will assume the site is occupied, CDFW believes that the current mitigation measure would not reduce Project impacts to less than significant and suggests the City adopt the following mitigation measure to reduce the level of impacts to western pond turtle. According to Pilliod et al. (2013), western pond turtles may move up to 500 m from water, thus this measure assumes approximately 61 acres (500 m) of the Project site could be utilized by western pond turtle for breeding and foraging based on a 500-meter buffer surrounding the potentially suitable habitat (stock ponds) and incorporates permanent conservation of habitat at a 3:1 mitigation ratio:

Western Pond Turtle-1: The Applicant shall mitigate impacts to western pond turtle by creating 183 acres of suitable, breeding, foraging habitat at a CDFW-approved location within southwest San Bernardino County. Habitat shall be conserved in perpetuity via conveyance of a conservation easement to a CDFW-approved conservation entity and a management fund (endowment) shall be established by the Applicant consisting of an interest-bearing account with the amount of capital necessary to generate sufficient interest and/or income to fund all monitoring, management, and protection of the conservation area(s), including but not limited to,

reasonable administrative overhead, biological monitoring, invasive species and trash removal, fencing and signage replacement and repair, law enforcement measures, long-term management reporting (as described below), and other actions designed to maintain and improve the habitat of the conserved land(s), in perpetuity. A Property Analysis Record, or substantially equivalent analysis, shall be conducted to determine the management needs and costs described above, which then will be used to calculate the capital needed for the management of the fund. Except for uses appropriate to a habitat conservation area, the public shall not have access to the mitigation area(s), and no activities shall be permitted within the site, except maintenance of habitat, including the removal of nonnative plant species, trash, and debris, and the installation of native plant materials.

BIO-5 -

Within ~~14 days~~ **the breeding season (May-July)** prior to the onset of construction activities, a **CDFW-approved** qualified biologist shall conduct pre-construction **trapping** surveys, **following U.S. Geological Survey trapping protocol**, for western pond turtle within all areas ~~that fall within 100 feet~~ of any suitable aquatic and upland nesting habitat for this species (retention ponds). If Western pond turtles are observed **or trapped** during the pre-construction survey, the **Applicant shall prepare for CDFW review and approval, a translocation plan identifying proposed protocol for trapping and relocating turtles, including identifying potential, appropriate receiver sites** ~~shall be contacted~~ to relocate western pond turtles to ~~ensure that no western pond turtles are harmed~~. If no western pond turtles are observed during the pre-construction survey, then construction activities may begin. If construction is delayed or halted for more than 30 days, another pre-construction survey for western pond turtle shall be conducted. Within seven days of the pre-construction survey, a report of findings from the survey shall be submitted to the CDFW. During construction, a qualified biological monitor who has been approved by the CDFW to relocate western pond turtles shall be onsite to ensure that no western pond turtles are harmed. If western pond turtles are observed in the construction area at any time during construction, the onsite biological monitor shall be notified and construction in the vicinity of the sighting shall be halted until such a time as a turtle has been removed from the construction zone, and relocated by an

approved biologist. If a sighting occurs during construction, the biologist shall prepare a report of the event and submit it to CDFW.

Alternately, if the DEIR does not wish to assume presence on the Project site, the DEIR should provide the results of appropriate analysis (protocol-level surveys) in order to more accurately disclose the level of impacts that could occur to western pond turtle, and inform a more refined mitigation measure based on actual occupancy and use data. If the City chooses this approach, CDFW strongly recommends the DEIR be recirculated to disclose the survey data, impact analysis, and proposed mitigation measures.

Burrowing Owl (*Athene cunicularia*)

The DEIR recognizes the occurrence of a single burrowing owl within the Project's offsite improvement areas, and that burrowing owl have the potential to be onsite. The DEIR also recognizes the Project has the potential to significantly impact the species absent mitigation. The DEIR states, "Impact to one individual or a pair of burrowing owls is judged to be a cumulatively considerable contribution to the regional decline of this species" (DEIR, p. 5.3-21). CDFW recognizes the known occurrence of burrowing owl in the vicinity of the Project and agrees that any impacts to burrowing owl could be significant without mitigation.

The DEIR offers two approaches to offset the potential impacts to burrowing owl dependent on the location of the owls as either within or outside of the Preserve, Chino Sphere of Influence- Subarea 2, Environmental Impact Area Resources Management Plan (RMP). CDFW finds the portion of MM BIO-3 for the Areas Outside of the Chino RMP Boundary generally acceptable with the inclusion of minor revisions. CDFW does not agree with the remaining portion of MM BIO-3 (for the Areas within the City of Chino RMP Boundary) and recommends it be removed. CDFW offers the following recommended revisions to MM BIO-3:

BIO-3 Prior to issuance of a demolition or grading permit for any ground disturbing activity, a qualified biologist shall conduct a pre-construction presence/absence survey for burrowing owls within 14 days prior to site disturbance. Surveys shall be conducted consistent with the procedures in outlined in the "California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation." If the species is absent, no additional mitigation will be required.

~~Areas Outside of the Chino RMP Boundary.~~ If burrowing owl(s) are observed onsite during the pre-construction clearance survey;

- Prior to disturbance of the occupied burrows, suitable and unoccupied replacement burrows shall be provided at a ratio

of 2:1 within designated off-site conserved lands to be identified through coordination with CDFW and the City in which the burrowing owl(s) is(are) detected (either the City of Ontario or the City of Chino). A qualified biologist shall confirm that the artificial burrows are currently unoccupied and suitable for use by owls.

- Until suitable replacement burrows have been provided/confirmed within the off-site conserved lands to be identified through coordination with CDFW and the City of Ontario or the City of Chino, no disturbance shall occur within ~~50~~ **a minimum of 200** meters (approximately 160 feet) of occupied burrows during the nonbreeding season (September 1 through January 31) or within ~~75~~ **500** meters (approximately 250 feet) during the breeding season (February 1 through August 31). **If reduced setbacks are implemented, a broad-scale, long-term, scientifically-rigorous monitoring program shall be implemented by the City to ensure that burrowing owls are not detrimentally affected by the project.**
- Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) **breeding behavior has not been observed and** the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.
- If burrowing owls are present at the time that the occupied burrows are to be disturbed, then the owls shall be excluded from the site following the 2012 CDFG Staff Report.

~~City of Chino, RMP Boundary. If burrowing owl(s) is(are) detected within the Project's disturbance footprint in the City of Chino RMP boundary, the owl(s) are required to be handled as indicated by the RMP: The RMP addresses mitigation requirements for impacts to burrowing owls. The RMP states that the 1995 CDFG Staff Report on Burrowing Owl Mitigation (as supplemented by the RMP) shall be followed when burrowing owls are detected on properties. If avoidance of occupied habitat is infeasible, provisions shall be made to passively relocate owls from sites in accordance with the current 2012 CDFG Staff Report (supersedes 1995~~

~~CDFG Staff Report). According to the Preserve EIR and RMP, Burrowing Owls to be relocated from properties within the City's Subarea 2 are intended to be accommodated within a "300-acre conservation area" and/or additional Candidate Relocation Areas as described on Page 4-16 and 4-21 of the RMP. One such contingency conservation area is identified in the RMP as "Drainage Area B". Drainage Area B consists of a series of Natural Treatment System (NTS) facilities that were constructed south of Kimball Avenue and west of Mill Creek Road. When the NTS facilities were constructed, approximately 50 artificial owl burrows were installed within the basins to accommodate relocated owls and additional owls dispersing to the site. This location was given top priority as an owl relocation site by the RMP due to its proximity to areas that have been and will be converted to urban development. If Burrowing Owls are present at the Project site at time of site disturbance, the Burrowing Owls would be more likely to initially relocate to the immediately surrounding properties, including additional locations within the Chino Airport. However, the NTS basins represent the nearest conservation area providing regional mitigation for the loss of burrowing owl habitat. Consistent with the RMP, the following measures shall apply to the portion of the Project site within the RMP boundary regarding burrowing owl mitigation:~~

- ~~• Prior to disturbance of the occupied burrows, suitable and unoccupied replacement burrows shall be provided at a ratio of 2:1 within the City of Chino designated relocation area (e.g. the NTS basins). A qualified biologist through coordination with the City shall confirm that the artificial burrows are currently unoccupied and suitable for use by owls.~~
- ~~• Until suitable replacement burrows have been provided/confirmed within the designated relocation area (e.g. the NTS basins), no disturbance shall occur within 50 meters (approximately 160 feet) of occupied burrows during the nonbreeding season (September 1 through January 31) or within 75 meters (approximately 250 feet) during the breeding season (February 1 through August 31).~~
- ~~• Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFW verifies through non-invasive~~

~~methods that either: 1) the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.~~

- ~~• If Burrowing Owls are present at the time that the occupied burrows are to be disturbed, then the owls shall be excluded from the site following the 2012 CDFG Staff Report and Table 4-6 of the RMP.~~
- ~~• Pursuant to mitigation measure B-3(8) of The Preserve EIR, and as noted on Page 4-39 of the RMP, the Project shall pay the required mitigation fee prior to initiation of ground disturbing activities. One priority for funding supported by the mitigation fees is the establishment and long-term management of burrowing owl habitat within the Drainage Area B conservation area.~~

CDFW has several concerns within the portion of MM BIO-3 for the areas within the City of Chino RMP boundary and thus requested that portion MM BIO-3 be removed. MM BIO-3 states that, "Burrowing Owls to be relocated from properties within the City's Subarea 2 are intended to be accommodated within a "300-acre conservation area" and/or additional Candidate Relocation Areas as described on Page 4-16 and 4-21 of the RMP. One such contingency conservation area is identified in the RMP as "Drainage Area B". Drainage Area B consists of a series of Natural Treatment System (NTS) facilities that were constructed south of Kimball Avenue and west of Mill Creek Road" (DEIR, p. 5.3-24).

CDFW is not familiar with the 300-acre conservation area, or the Candidate Relocation Areas described in the RMP, and whether those areas would be suitable for burrowing owl. CDFW is familiar with the NTS facilities and does not believe those areas are appropriate to use as mitigation to offset Project impacts. It is CDFW's understanding that the NTS facilities have been identified as passive relocation sites for several adjacent projects, but currently do not support the number of owls that have been passively relocated in the past, and perhaps do not support any owls at all.

MM BIO-3 also states, "the Project shall pay the required mitigation fee prior to initiation of ground disturbing activities. One priority for funding supported by the mitigation fees is the establishment and long-term management of burrowing owl habitat within the Drainage Area B conservation area" (DEIR, p. 5.3-25). The payment of a mitigation fee to offset the loss of burrowing habitat is inappropriate and inadequate, and defers the identification of a specific and enforceable mitigation measure to outside of the CEQA process, depriving the public an opportunity to comment on the adequacy of the future mitigation. Furthermore, CDFW is aware that Drainage B (or the NTS) has been placed in conservation, with long-term management funding, as mitigation for other project

impacts. As such, it would be inappropriate to “stack” additional mitigation obligations and funding onto an already encumbered site.

CDFW finds the section of MM BIO-3 under the “City of Chino, RMP Boundary” header inappropriate and inadequate and suggests that portion of the measure be deleted, and that the entirety of the Project follow the mitigation measures specified for “Areas Outside of the Chino RMP Boundary” as shown in the above revised measure.

Nesting Birds

It is the Project proponent’s responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). The issuance of this Agreement does not in any way exempt or excuse compliance with these statutes. CDFW appreciates the inclusion of MM BIO-1, but requests revisions to address species that may nest outside of the specified nesting season. CDFW recommends MM BIO-1 be revised as follows:

- BIO-1 Prior to the issuance of permits for any construction activity, the project applicant shall demonstrate compliance with the federal MBTA **and Fish and Game Code** to the satisfaction of the City of Ontario that ~~either of the following~~ has been accomplished:
- ~~Conduct grading activities and vegetation removal outside of the nesting season (February 1 to August 31), to avoid impacts to nesting birds, including raptors.~~
 - ~~If vegetation removal will occur during the bird nesting season, between February 1 and August 31, pre-construction nesting bird surveys shall be performed~~ within three days prior to any disturbance of the site, including **staging, site preparation**, disking, demolition activities, and grading. If active nests are found, they shall be flagged and the biologist shall establish suitable buffers around the nest (generally a minimum of 200 feet up to 500 feet for raptors and a minimum of 50 feet up to 300 feet for passerine species, with specific buffer widths to be determined by a

qualified biologist). The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests.

Bats

Regulations of particular relevance to this project include Title 14, Section 251.1 of the California Code of Regulations, which prohibits harassment (defined in that section as an intentional act that disrupts an animal's normal behavior patterns, including breeding, feeding, or sheltering) of nongame mammals (e.g., bats), and California Fish and Game Code Section 4150, which prohibits "take" or possession of all nongame mammals or parts thereof. Any activities resulting in bat mortality (e.g., the destruction of an occupied bat roost that results in the death of bats), disturbance that causes the loss of a maternity colony of bats (resulting in the death of young), or various modes of nonlethal pursuit or capture may be considered "take" as defined in Section 86 of the California Fish and Game Code. Take is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." In addition, impacts to bat maternity colonies, which are considered native wildlife nursery sites, could be considered potentially significant under CEQA.

The DEIR recognizes that the Project site may support roosting and breeding bats, including western red bat and western yellow bat, and that the removal of potential roosting/breeding bat habitat would be potentially significant. The DEIR proposes to implement MM BIO-4 to mitigate impacts to bats by survey "between late-spring and late summer and/or in the fall (generally mid-March through late October)". To capture information regarding the use of the project site for breeding, CDFW recommends that bat surveys be done during the maternity season (April 1 through August 31). Further, the Project specifies that "If the results of the bat survey find a total of a single roosting individual of a special-status bat species or 25 or more individuals of non-special-status bat species with potential to be present in the project impact area, a Bat Management Plan shall be developed." CDFW is unclear why the City chose a threshold of 25 non special-status bats to justify the development of a Bat Management Plan and recommends that if roosts are found, a Bat Avoidance, Monitoring, and Protection Plan (BAMPP) be prepared to minimize impacts to bats regardless of species conservation status, number of individuals, or colony type.

CDFW recommends the measure be revised not only to consider the potential impacts from the loss of habitat, but also the potential impacts from the loss of roosts through the removal of agricultural structures, residential buildings, and trees. CDFW recommends MM BIO-4 be revised as follows:

BIO-4 Prior to implementation of project activities, a ~~qualified~~ CDFW-approved bat biologist shall be retained to determine whether potential roosting sites for bats may be affected. For **habitats or structures** ~~large ornamental trees~~ suitable for bat roosting/nursery, **an appropriate combination of structure inspection, sampling, exit counts**, and acoustic surveys shall

be performed prior to initial ground disturbance and vegetation removal to determine whether the project footprint and a 300-foot buffer supports a nursery or roost, and by which species. This survey work will occur between **April 1 through August 31** ~~late spring and late summer and/or in the fall (generally mid-March through late October).~~

If the results of the bat surveys ~~finds a total of a single-roosting individuals of a special-status bat species or 25 or more individuals of non-special-status bat species with potential to be present in the study area (i.e., western Mastiff bat, big free-tailed bat, pallid bat, western red bat, and western yellow bat),~~ a Bat Management Plan shall be developed to ensure mortality to bats does not occur. For each location confirmed to be occupied by bats, the plan will provide details both in text and graphically where exclusion devices/and or staged tree removal will need to occur, the timing for exclusion work, and the timeline and methodology needed to exclude the bats. The plan will need to be reviewed and approved by CDFW prior to disturbance of the roost(s). **The results of the bat surveys will be provided as an appendix to the Final EIR and will include: 1) the exact location of all maternity sites, if applicable (location shall be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) each species of bat present shall be named (include how the species was identified); and 4) the location, amount, and distribution of all bat guano shall be described and pinpointed on a map.**

If surveys determine that roosts potentially supporting special-status bats will be lost as a result of the Project, the Applicant shall mitigate the loss through the perpetual conservation and management of occupied habitat, approved by CDFW, at a minimum 1:1 ratio.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and or/candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA incidental Take Permit (ITP) be obtained for tricolored blackbird (*Agelaius tricolor*) if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture or kill') of State-listed CESA species, either through construction or over the life of the Project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

Artificial night lighting

CDFW is concerned regarding the lack of impact analysis of the indirect effects due to night lighting on the adjacent habitats. The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to affect biological resources as a result of the Project (including the plan's land use designations, policies and programs). To ensure that project impacts to biological resources are fully analyzed, a discussion of potential impacts from lighting created by Project activities should be included in the Final EIR. CDFW suggests this analysis be completed and included in the Final EIR. If, following the completion of an appropriate analysis, the City determines impacts to habitat connectivity could be significant, CDFW suggests the DEIR be recirculated to disclose this information along with an appropriate and enforceable mitigation measure.

Mitigation

When considering mitigation, it is important that the land ultimately conserved for mitigation has the same or better resource value than the resource value being impacted. Mitigation lands should be enhanced and managed in perpetuity to mitigate for the impact and loss of habitat. If the mitigation land would require restoration, it would be important to consider the time it will take for the sites to fully establish, whether there will be a temporary loss of function and value, and whether some types of biological resources cannot be restored or recreated within a reasonable period (e.g., 1-3 years).

CDFW recommended mitigation, including the permanent conservation of lands, for several species presumed present that would be potentially significantly impacted by the Project. If mitigation lands identified will meet species requirements for some or all of the species requiring mitigation, the mitigation may be co-located on a single property (i.e., separate mitigation parcels for each requirement may not be necessary).

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.)

CONCLUSION

CDFW stresses the importance of the Final EIR including supporting documents used to identify or analyze impacts to inform CDFW and the public. This includes any jurisdictional delineations, biological survey reports, and habitat assessments. In addition, CDFW recommends that the City include in the Final EIR the recommended new or revised avoidance, minimization and mitigation measures offered by CDFW to reduce project impacts.

CDFW appreciates the opportunity to comment on the DEIR for the Ontario Ranch Business Park Specific Plan Project (SCH No. 2019050018) and hopes our comments assist the City of Ontario in identifying and mitigating Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Cindy Castaneda, Environmental Scientist, at 909-484-3979 or at cindy.castaneda@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

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HCPB CEQA Coordinator
Habitat Conservation Planning Branch

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ATTACHMENT A

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Mitigation Measure	Implementation Schedule	Responsible Party
<p><u>Tricolored blackbird-1</u>: The Applicant shall mitigate impacts to tricolored blackbird by creating 256.8 acres of suitable, breeding, foraging habitat at a CDFW-approved location within southwest San Bernardino County. Habitat shall be conserved in perpetuity via conveyance of a conservation easement to a CDFW-approved conservation entity and a management fund (endowment) shall be established by the Applicant consisting of an interest-bearing account with the amount of capital necessary to generate sufficient interest and/or income to fund all monitoring, management, and protection of the conservation area(s), including but not limited to, reasonable administrative overhead, biological monitoring, invasive species and trash removal, fencing and signage replacement and repair, law enforcement measures, long-term management reporting (as described below), and other actions designed to maintain and improve the habitat of the conserved land(s), in perpetuity. A Property Analysis Record, or substantially equivalent analysis, shall be conducted to determine the management needs and costs described above, which then will be used to calculate the capital needed for the management of the fund.</p>	<p>Post-construction</p>	<p>Project Proponent</p>

<p>Except for uses appropriate to a habitat conservation area, the public shall not have access to the mitigation area(s), and no activities shall be permitted within the site, except maintenance of habitat, including the removal of nonnative plant species, trash, and debris, and the installation of native plant materials.</p>		
<p><u>Western Pond Turtle-1</u>: The Applicant shall mitigate impacts to western pond turtle by creating 183 acres of suitable, breeding, foraging habitat at a CDFW-approved location within southwest San Bernardino County. Habitat shall be conserved in perpetuity via conveyance of a conservation easement to a CDFW-approved conservation entity and a management fund (endowment) shall be established by the Applicant consisting of an interest-bearing account with the amount of capital necessary to generate sufficient interest and/or income to fund all monitoring, management, and protection of the conservation area(s), including but not limited to, reasonable administrative overhead, biological monitoring, invasive species and trash removal, fencing and signage replacement and repair, law enforcement measures, long-term management reporting (as described below), and other actions designed to maintain and improve the habitat of the conserved land(s), in perpetuity. A Property Analysis Record, or substantially equivalent analysis, shall be conducted to determine the management needs and costs described above, which then will be used to calculate the capital needed for the management of the fund. Except for uses appropriate to a habitat conservation area, the public shall not have access to the mitigation area(s), and no activities shall be permitted within the site, except maintenance of habitat, including the removal of nonnative plant species, trash, and debris, and the installation of native plant materials.</p>	<p>Post-construction</p>	<p>Project Proponent</p>
<p><u>BIO-1</u>: Prior to the issuance of permits for any construction activity, the project applicant shall demonstrate compliance with the federal MBTA and</p>	<p>Prior to commencing ground- or vegetation-</p>	<p>Project Proponent</p>

<p>Fish and Game Code to the satisfaction of the City of Ontario that the following has been accomplished:</p> <p>Conduct pre-construction nesting bird surveys within three days prior to any disturbance of the site, including staging, site preparation, disking, demolition activities, and grading. If active nests are found, they shall be flagged and the biologist shall establish suitable buffers around the nest (generally a minimum of 200 feet up to 500 feet for raptors and a minimum of 50 feet up to 300 feet for passerine species, with specific buffer widths to be determined by a qualified biologist). The buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests.</p>	<p>disturbing activities</p>	
<p><u>BIO-3</u>: Prior to issuance of a demolition or grading permit for any ground disturbing activity, a qualified biologist shall conduct a pre-construction presence/absence survey for burrowing owls within 14 days prior to site disturbance. Surveys shall be conducted consistent with the procedures in outlined in the "California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation." If the species is absent, no additional mitigation will be required.</p> <p>If burrowing owl(s) are observed onsite during the pre-construction clearance survey;</p> <ul style="list-style-type: none"> • Prior to disturbance of the occupied burrows, suitable and unoccupied replacement burrows shall be provided at a ratio of 2:1 within designated off-site conserved lands to be identified through coordination with CDFW and the City in which the burrowing owl(s) is(are) detected (either the City of Ontario or the City of Chino). A qualified biologist shall confirm that the artificial burrows are currently unoccupied and suitable for use by owls. • Until suitable replacement burrows have been provided/confirmed within the off-site conserved lands to be identified through coordination with CDFW and the City of Ontario or the City of 	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>Chino, no disturbance shall occur within 50 a minimum of 200 meters (approximately 160 feet) of occupied burrows during the nonbreeding season (September 1 through January 31) or within 75 500 meters (approximately 250 feet) during the breeding season (February 1 through August 31). If reduced setbacks are implemented, a broad-scale, long-term, scientifically-rigorous monitoring program shall be implemented by the City to ensures that burrowing owls are not detrimentally affected by the project.</p> <ul style="list-style-type: none"> • Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) breeding behavior has not been observed and the birds have not begun egg-laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. • If burrowing owls are present at the time that the occupied burrows are to be disturbed, then the owls shall be excluded from the site following the 2012 CDFG Staff Report. 		
<p><u>BIO-4:</u> Prior to implementation of project activities, a CDFW-approved bat biologist shall be retained to determine whether potential roosting sites for bats may be affected. For habitats or structures suitable for bat roosting/nursery, an appropriate combination of structure inspection, sampling, exit counts, and acoustic surveys shall be performed prior to initial ground disturbance and vegetation removal to determine whether the project footprint and a 300-foot buffer supports a nursery or roost, and by which species. This survey work will occur between April 1 through August 31.</p> <p>If the results of the bat surveys find roosting individuals, a Bat Management Plan shall be developed to ensure mortality to bats does not occur. For each location confirmed to be occupied by bats,</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>the plan will provide details both in text and graphically where exclusion devices/and or staged tree removal will need to occur, the timing for exclusion work, and the timeline and methodology needed to exclude the bats. The plan will need to be reviewed and approved by CDFW prior to disturbance of the roost(s). The results of the bat surveys <i>will</i> be provided as an appendix to the Final EIR <i>and will</i> include: 1) the exact location of all maternity sites, if applicable (location shall be adequately described and drawn on a map); 2) the number of bats present at the time of visit (count or estimate); 3) each species of bat present shall be named (include how the species was identified); and 4) the location, amount, and distribution of all bat guano shall be described and pinpointed on a map.</p> <p>If surveys determine that roosts potentially supporting special-status bats will be lost as a result of the Project, the Applicant shall mitigate the loss through the perpetual conservation and management of occupied habitat, approved by CDFW, at a minimum 1:1 ratio.</p>		
<p><u>BIO-5</u>: Within the breeding season (May-July) prior to the onset of construction activities, a CDFW-approved qualified biologist shall conduct pre-construction trapping surveys, following U.S. Geological Survey trapping protocol, for western pond turtle within all areas of any suitable aquatic habitat for this species (retention ponds). If Western pond turtles are observed or trapped during the pre-construction survey, the Applicant shall prepare for CDFW review and approval, a translocation plan identifying proposed protocol for trapping and relocating turtles, including identifying potential, appropriate receiver sites to relocate western pond turtles to. If no western pond turtles are observed during the pre-construction survey, then construction activities may begin. If construction is delayed or halted for more than 30 days, another pre-construction survey for western pond turtle shall be conducted. Within seven days of the pre-construction survey, a report of findings from the survey shall be submitted to the CDFW. During</p>	<p>Prior to commencing ground- or vegetation-disturbing activities</p>	<p>Project Proponent</p>

<p>construction, a qualified biological monitor who has been approved by the CDFW to relocate western pond turtles shall be onsite to ensure that no western pond turtles are harmed. If western pond turtles are observed in the construction area at any time during construction, the onsite biological monitor shall be notified and construction in the vicinity of the sighting shall be halted until such a time as a turtle has been removed from the construction zone, and relocated by an approved biologist. If a sighting occurs during construction, the biologist shall prepare a report of the event and submit it to CDFW.</p>		
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