



State of California - Natural Resources Agency
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GAVIN NEWSOM, Governor
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September 17, 2019

Governor's Office of Planning & Research

SEP 30 2019

STATE CLEARINGHOUSE

Reuben J. Arceo
County of San Bernardino
Land Use Services Dept.- Planning Division
385 North Arrowhead Ave.
San Bernardino, CA 92415

Subject: Initial Study/Mitigated Negative Declaration- Lake Dolores Water Park
(SCH2019089076).

Dear Mr. Arceo:

The California Department of Fish and Wildlife (CDFW) received the Initial Study and Mitigated Negative Declaration (MND) for Lake Dolores Water Park (SCH2019089076) (Project) from the County of San Bernardino Land Use Services Department- Planning Division (Lead Agency) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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.

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PROJECT DESCRIPTION SUMMARY

Project Location

The proposed project is in the city of Newberry Springs, along Interstate 15 about 20 miles northeast of the City of Barstow. The project location is bounded by Mountain View Road to the east, Bragdon Road to the west, Cherokee Road to the north, and Hacienda Road to the south.

Project Description

The proposed project includes the following:

G&GF Enterprises, LLC (Applicant) is requesting approval of a General Plan Land Use District Amendment to rezone a 267-acre lot from Rural Living to Highway Commercial. The Applicant is also requesting approval of a Conditional Use Permit to redevelop and operate a former water park and lake venue and provide a new RV Park. The Applicant proposes to reconstruct the park and construct approximately 45,727 square feet of Commercial Retail space, and 54,554 square feet of Office and Administrative floor area in 5 phases. Acreage of specified uses are noted in Table 1 below.

Phase I: Lake Operations.

Consists of the reconstruction and reopening and operation of the 22-acre lake and 2-acre pond.

Phase II:RV Park and Campground.

Consists of the construction and development of a Recreational Vehicle (RV) Park facility containing 224 RV trailer and camper stalls. The RV park will offer electrical power, water, gray water and black-water hook-ups services for a variety of RV vehicles that include Class A, B, C motorhomes, including 5th wheels and travel trailers, folding camping trailers and truck campers.

Phase III: Waterpark and Waterpark Parking.

Consists of the rehabilitation and construction of the waterpark and proposed parking area. The phase's primary concentration is the rehabilitation and upgrade of the 41-acre former waterpark site.

Phase IV: Office/Administrative.

Consists of the construction of approximately 89,730 square feet of office and administrative space. The facilities include a proposed library, amphitheater, offices and public service buildings.

Phase V: Commercial Retail.

The Phase V portion of the project is just over half the building area proposed in Phase IV. Phase V proposes to construct approximately 45,727 square feet of buildable area for commercial and retail uses within a 13.6-acre site.

Table 1: Lake Dolores Specified uses

SPECIFIED USES	ACRES
Gross area	267 acres
Net area	245.89
Commercial	14.0
R.V. Camping	27.7
Waterpark	13.0
Waterpark parking	14.1
Recreational Water features	8.7
Administrative	12.7
Open space	99
Misc. landscaping, roadways, walkways, etc.	57.1

COMMENTS AND RECOMMENDATIONS

Project Specific Comments and Recommendations

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

The IS/MND notes that the information included in Section IV (Biological Resources) is based in part on the findings outlined in the *General Biological Resources Assessment, Dolores Lake Project*, RCA Associates, Inc., March 2017 and the *Burrowing Owl Survey, Dolores Lake Project*, RCA Associates, Inc. August 15, 2017. CDFW offers the following comments on RCA Associates, Inc.’s findings and conclusions drawn from these documents about the project’s impacts to fish and wildlife resources:

- Subsection A concludes that the proposed project location does not contain any plant species identified as “threatened”, “endangered”, “special species”, or “species of concern” by the Federal government or the State of California. It is unclear what survey method RCA Associates, Inc. used, as Appendix B was not provided for our review. Note that CDFW generally considers biological field assessments for rare plants valid for a period of up to three years. As March 2020 will mark 3 years since the publication of *General Biological Resources Assessment, Dolores Lake Project*, RCA Associates, Inc., March 2017, CDFW recommends the Lead Agency require a thorough, floristic-based assessment of special status plants and natural communities, following CDFW’s Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) before the commencement of project activities. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if the project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought. If special status plants and natural communities may be impacted from the project, the Department recommends that the Lead Agency include specific avoidance, minimization, and mitigation measures in the environmental document and make the implementation of each measure a requirement. CDFW requests the opportunity to review the completed surveys before permitting ground disturbing

activities, and to be consulted for any avoidance, minimization, and mitigation measures that may be required.

- Subsection A concludes that the proposed project location does not support any population of burrowing owls, with a low probability of future presence at the project location. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. Therefore, CDFW agrees with the Lead Agency's implementation of a mitigation measure to ensure the presence of burrowing owls has not changed at the project location since the completion of the previous survey in January and February 2017. CDFW recommends the Initial Study's **Mitigation Measure- Bio-1- Preconstruction Burrowing Owl Survey** be modified to require the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012); available for download from the Department's website: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842&inline> The Department expects the Lead Agency to follow the Staff Report on Burrowing Owl Mitigation, which specifies that the steps for project impact evaluations include a habitat assessment, surveys, and an impact assessment. If burrowing owls and/or their habitat may be impacted from the project, the Department recommends that the Lead Agency include specific avoidance, minimization, and mitigation measures in the environmental document and make the implementation of each measure a requirement. CDFW requests the opportunity to review the completed surveys before the permitting of ground disturbing activities, and to be consulted for any avoidance, minimization, and mitigation measures that may be required.
- Subsection A concludes that the proposed project location does not support suitable habitat for desert tortoise based on previous disturbances and removal of vegetation associated with the initial construction of the water park in 1962. It is noted in the Initial Study that, "no tortoises or any potential tortoise burrows or tortoise sign (scats, etc.) were noted during the field investigations conducted on the site in January and February 2017". It is unclear what survey method RCA Associates, Inc. used, as Appendix B was not provided for our review. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period and requires 100% cover surveys for determination of desert tortoise presence/absence. Additionally, it is referenced in the Initial study that "the site supports a variety of wildlife species" therefore, desert tortoise presence may be possible. CDFW suggests the Lead Agency modify the Initial Study's recommended **Mitigation Measure- BIO-2: Desert Tortoise** and require a pre-construction survey following survey and monitoring protocols and guidelines for desert tortoise (see: https://www.fws.gov/nevada/desert_tortoise/documents/manuals/Mojave%20Desert%20Tortoise_Pre-project%20Survey%20Protocol_2017.pdf). If desert tortoise may be impacted by the project, the Department would like to reiterate that take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, the Department recommends that the project proponent seek appropriate authorization prior to project implementation. This may include an incidental

take permit (ITP) or a consistency determination in certain circumstances (Fish and Game Code, §§ 2080.1 & 2081).

The Department also recommends that the Lead Agency include specific avoidance, minimization, and mitigation measures in the environmental document, and make the implementation of each measure a requirement. The Department requests the opportunity to review the completed surveys before the permitting of ground disturbing activities, and to be consulted for any avoidance, minimization, and mitigation measures that may be required. The permittee should also immediately notify the Department if any desert tortoise is observed/found on the project site.

- Subsection A concludes that the proposed project location does not support suitable habitat for Mohave ground squirrel. (MGS) The IS/MND states this is the opinion of RCA Associates, Inc. and their assumption is based on limited connectivity with surrounding suitable habitat, absence of small mammal burrows, lack of observations, and previous disturbances and removal of vegetation associated with the initial construction of the water park in 1962. It is acknowledged in the Initial Study that “the species is infrequently observed above ground except during a small window in the spring, but it should be noted that no Mohave ground squirrels were visually observed during the field investigations” therefore, CDFW recommends the Lead Agency require a focused species-specific survey, conducted by a qualified biologist at the appropriate time of year and time of day when MGS is active or otherwise identifiable using Mohave Ground Squirrel Survey Guidelines (see:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>)

If Mohave ground squirrels and/or their habitat may be impacted by the project, the Department recommends that the Lead Agency include specific avoidance, minimization and mitigation measures in the environmental document, and make the implementation of each measure a requirement. Mohave ground squirrels are CESA-listed species. Please consider that take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, results in take of CESA-listed species, the Department recommends that the project proponent seek appropriate authorization prior to project implementation. This may include an incidental take permit (ITP) or a consistency determination in certain circumstances (Fish and Game Code, §§ 2080.1 & 2081). CDFW requests the opportunity to review the completed surveys before the permitting of ground disturbing activities, and to be consulted for any avoidance, minimization, and mitigation measures that may be required.

Lake and Streambed Alteration Program

It is unclear from the project description if any of the project activities will impact any dry washes, drainages, culverts, water crossings, or any surface flow. CDFW requires notification for work undertaken in or near any river, stream, or lake that flows at least episodically, including ephemeral streams, desert washes, and watercourses with a subsurface flow. Fish and Game Code section 1602 states, “An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless

all of the following occur....” Upon receipt of a complete notification, CDFW determines if the activities may substantially adversely affect existing fish and wildlife resources. CDFW recommends that prior to adoption of the MND the Lead Agency condition a new mitigation measure requiring the submission of a Notification of Lake or Streambed Alteration to CDFW’s Lake and Streambed Alteration Program. Specifically, CDFW requests that the Lead Agency include the following new mitigation measure in the MND:

Mitigation Measure: Prior to commencement of Project activities the Applicant shall either: Obtain written correspondence from the California Department of Fish and Wildlife stating that notification under Section 1602 of the California Fish and Game Code is not required for the project; or obtain a copy of a CDFW-executed Lake or Streambed Alteration Agreement, authorizing impacts to California Fish and Game Code, section 1602 resources associated with the project.

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 appreciates the opportunity to comment on the IS/MND. If you should have any questions pertaining to this letter, please contact Ashley Rosales, Environmental Scientist at Ashley.Rosales@Wildlife.ca.gov or (909)-980-8607.

Sincerely,


for Scott Wilson
Environmental Program Manager
Inland Deserts Region

Cc: State Clearing House