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Governor's Office of Planning & Research

March 23, 2020

MAR 23 2020

STATE CLEARINGHOUSE

Adrian Fernandez
 City of Malibu
 Planning Department
 23825 Stuart Ranch Road
 Malibu, CA 90265
afernandez@malibucity.org

Subject: Malibu Jewish Center and Synagogue Project, Mitigated Negative Declaration (MND), SCH #2020029082, Los Angeles County

Dear Mr. Fernandez:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Malibu Jewish Center and Synagogue Project (Project). The Initial Study's supporting documentation includes a *Biological Resources Assessment for the Malibu Jewish Center & Synagogue* (BRA), *Tree Protection Plan for the Malibu Jewish Center & Synagogue* (Tree Protection Plan), *the Mitigation Plan and Monitoring Program for the Malibu Jewish Center & Synagogue* (Mitigation Program), *Wetlands of the Malibu Jewish Center & Synagogue* (Wetlands Report), and *The Malibu Jewish Center & Synagogue Project Post Fire Assessment Memorandum* (Memo). 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

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& G. Code, §1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Project Description and Summary

Objective: The Project includes the redevelopment of approximately 1.44 acres of the Project site. Four existing buildings on the west side of the Project site would be replaced with a two-story, 16,410-square-foot classroom/administration building. The new building would have two subterranean levels, including one for parking and one for storage. A new synagogue with a basement would be developed immediately east of the proposed two-story building, on a previously graded pad north of the existing parking lot. The surface parking lot would be redeveloped to improve internal circulation and parking. In addition, a stormwater management system and a second onsite wastewater treatment system to accommodate stormwater runoff and wastewater from the new buildings will be constructed. The Project would also include new landscaping and habitat restoration/fuel modification on the north-facing slope of Puerco Canyon.

Location: The subject property is located at 24855 Pacific Coast Highway (PCH), in the City of Malibu, Assessor's Parcel Number: 4458-032-027. The Project site is east of Corral Canyon Road, between PCH and Puerco Canyon Creek. The Malibu Jewish Center and Synagogue is partially in the Puerco Canyon watershed at an elevation of approximately 160 feet (50 meters) above mean sea level.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City of Malibu (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).

Comments on Post-Wildfire Site Condition

Comment #1: Biological Surveys

Issue #1: CDFW acknowledges that the Project has utilized biological surveys from as recent as February 2017. In addition, the Memo was conducted in October of 2019. However, it is especially relevant to recognize that the Project site conditions have changed due to the occurrence of the Woolsey fire (November 2018) and proceeding wet seasons that may have allowed species to return or new species to establish.

Issue #2: The Memo states, "The Plummer's baccharis was not located; however, it may still exist within the site as an exhaustive survey was not conducted." An exhaustive survey was not conducted; therefore, there may be potential of missing species that may have established post-wildfire.

Issue #3: The BRA states that two surveys were conducted in August and September of 2014.

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A survey that is more than 4 years old is considered outdated because it no longer represents the current state of the Project site or captures the inventory of biological species that may be present.

Specific impacts: The survey conducted post-fire was not thorough or during a time of year when some plant species would be evident and identifiable; therefore, there may be potential of missing species. The Project may cause immediate species injury or death, habitat fragmentation, alteration of soil chemical and physical makeup, increased competition with exotic invasive weeds, and reduced photosynthesis and reproductive capacity. This may result in native plant population declines or local extirpation of special status plant species. The effects of these impacts would be permanent or occur over several years.

Why impact would occur: Project implementation includes grading, vegetation clearing, building construction, and other activities that may result in direct mortality, population declines, or local extirpation of sensitive plant and wildlife species. Impacts to species not previously known or identified to be on the Project site or within its vicinity have the possibility to occur.

Evidence impact would be significant: Fire is a natural and essential part of the life cycle of the plant communities of the Santa Monica Mountains. Slopes that formerly supported dense chaparral shrubs are known to bloom annual species in the spring following a fire. These annuals play an important role in helping protect vulnerable chaparral slopes from erosion following fires when little regrowth of shrubs has occurred (Rundel, P.W. & Gustafson, R. 2005).

Inadequate avoidance, minimization, and mitigation measures for impacts to these sensitive plant species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect. This, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS). Impacts to special status species should be considered significant under CEQA unless they are clearly mitigated below a level of significance.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Although the Project site currently exhibits features typical of a post-fire condition, with charred remains of vegetation, there is potential that some species have already started to recover. CDFW recommends that updated botanical and wildlife surveys be conducted to inform impact assessments, avoidance, minimization, and mitigation measures in the BRA. Focused surveys for sensitive/rare plants on-site that may have been stimulated to germinate post fire should be disclosed in the CEQA document. Based on the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW, 2018), a qualified biologist should “conduct botanical surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting.” CEQA documentation should provide a thorough discussion on the presence/absence of sensitive plants on-site and identify measures to protect sensitive plant communities from Project-related direct and indirect impacts.

Mitigation Measure #2: CDFW requests to be informed regarding any potential changes or amendments to the current mitigation and/or monitoring measures presented in the Mitigation Program. This is especially important after the spread of non-native/invasive species in the

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Project area, as these species have “begun to intensely invade the willow riparian areas and choke out individual trees,” as stated in the Memo. As the Project site contains burnt remnants of vegetation, especially in the willow riparian areas, it is essential to recognize that the seed bank, underground root crowns, or underground stems often found in chaparral species may allow baseline to eventually recover and the vegetation that existed previously should still require mitigation.

Comment #2: Impacts to Streams

Issue #1: Puerco Creek Canyon contains an ephemeral stream that flows through the Project parcel. The BRA states the Project “proposes to eradicate *Arundo donax*, an invasive exotic grass, from that portion of Puerco Creek Canyon on its property onsite...”. The Memo also states that the “*Arundo donax* population has exploded and now covers most of the creek bottom...”. Project habitat restoration and maintenance activities may result in the deposition of materials and alterations of ephemeral streams.

Issue #2: In addition, because the Project parcel is located in a significant burn area, it is likely to experience elevated stormwater flows due to reduced groundcover and increased above ground flow in the surrounding area. The Project, therefore, may be subject to notification under Fish and Game Code section 1600 *et seq.*

Specific impacts: The Project may result in the loss of ephemeral streams and associated watershed function. Invasive species removal activities will likely encroach on and potentially alter the ephemeral stream bank and creek bottom.

Why impacts would occur: Eradication of dense stands of exotic/invasive species in the creek bottom in soils with high runoff potential may impact downstream streams and associated biological resources beyond the Project restoration footprint. These areas may also be impacted by Project related releases of sediment or vegetation debris and altered watershed effects resulting from Project activities.

Evidence impacts would be significant: The Project may substantially adversely affect the existing stream pattern on the Project site through the alteration or encroachment of a stream, which absent specific mitigation, could result in substantial erosion or siltation on site or off site of the Project.

Water diversions can impact flow regimes, decreasing the frequency of high flows. Prolonged low flows can cause streams to become graded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic species including fish that utilize floodplains for nursery grounds. Undersized culverts and other stream crossings can also cause downstream channel erosion and tributary head-cutting, reduced magnitude and frequency of high flows, channel narrowing, and reduced formation of secondary channels and oxbows (Poff et al. 1997). Additionally, these structures can degrade water quality and associated wildlife habitats (Santucci, Jr. et al. 2005). Streams with such structures can have reduced abundance of anurans due to decreased availability of breeding habitat (Eskew et al. 2012). Based on the foregoing, Project impacts may substantially adversely affect the existing stream pattern and associated habitat of the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

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Mitigation Measure #1: Impacts from the Woolsey fire and subsequent rainy seasons could have altered drainage patterns in the Project area. CDFW recommends a hydrogeomorphology study be conducted to evaluate the impacts of elevated flows of water and sediment through ephemeral drainages within a recently burned watershed.

Mitigation Measure #2: 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 #3: 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 #4: 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.

Comments on Pre-Wildfire Site Condition

Comment #3: Impacts to nesting birds

Issue: The BRA indicates that least Bell’s vireo (*Vireo belli* ssp. *pusillus*), a California Endangered Species Act (CESA) and Endangered Species Act (ESA) listed species, has the possibility of occurring on site. In addition, a review of the California Natural Diversity Database (CNDDB) indicates an occurrence of American peregrine falcon (*Falco peregrinus anatum*), a

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species classified as fully protected under CDFW, within a mile and a half of the Project site. The occurrence of oak and sycamore woodland indicate the potential for nesting within and around the Project vicinity.

Specific impacts: Construction during the breeding season of nesting birds could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species.

Why impact would occur: Impacts to nesting birds could result from ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of nesting birds could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

Evidence impact would be significant: The loss of occupied habitat or reductions in the number of rare bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish and Game Code sections 3503 and 3503.5.

Fully protected status precludes CDFW from authorizing any amount of incidental take or intentional take to meet any project mitigation requirement. When projects show the potential to cause take of fully protected species, CDFW advises on appropriate measures to avoid take. Given the legal status of fully protected animals, take avoidance measures must meet very high standards of effectiveness, substantially greater than the measures to minimize take required under Incidental Take Permits.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To protect nesting birds that may occur on site or adjacent to the Project boundary, CDFW recommends that no construction should occur from February 15 (January 1 for raptors) through August 31 unless a qualified biologist completes a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. CDFW recommends the Lead Agency require surveys be conducted by a qualified biologist no more than 14 days prior to the beginning of any Project-related activity likely to impact raptors and migratory songbirds, for the entire Project site. If Project activities are delayed or suspended for more than 14 days during the breeding season, repeat the surveys. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 300 feet around active passerine (perching birds and songbirds) nests, 500 feet around active non-listed raptor nests and 0.5 mile around active listed bird nests.

These buffers should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Mitigation Measure #2: CDFW recommends surveying the entire Project site to determine the

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potential distribution of peregrine falcon and assure that “take” will be avoided during Project construction. The environmental document should also include measures to preclude “take” on the Project site during operations and from traffic increased related to the Project. The environmental document should analyze the potential “take” as a result of habitat modification. If a Project’s modification of occupied habitat causes mortality of individuals, then the Project will be considered the cause of the take. Therefore, to avoid take, construction and operation activities should avoid all raptors by a distance of no less than the distance that peregrine falcon are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data.

Mitigation Measure #3: Additional buffers may also be warranted to ensure that the Project would not reduce the species’ abundance or distribution over time due to habitat loss and fragmentation. CDFW recommends assessing whether the habitat alteration, habitat loss, and additional traffic would hinder expansion of the local peregrine falcon population in good years, which allows the population to maintain viable numbers through poor years. Peregrine falcon abundance and distribution can fluctuate in response to climatic conditions and land management. Absence in part of the Project site in one year does not mean that the species is absent from that area in other years or that the species does not rely on it for population persistence.

Comment #4: Impacts to Environmentally Sensitive Habitat Areas (ESHA)

Issue: The BRA states that “The northern portion of the site is just within the southern boundary of 1,498 acres of contiguous ESHA as mapped by the City of Malibu.” In addition, Table 12 of the BRA indicated Onsite ESHA acreage totals 1.21 acres.

Specific impact: The Coastal Act provides a definition of “environmentally sensitive area” as “Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments” (Pub. Resources Code, § 30107.5). The Project may have direct or indirect effects to such sensitive species.

The Project may cause immediate species injury or death, habitat fragmentation, alteration of soil chemical and physical makeup, increased competition with exotic invasive weeds, and reduced photosynthesis and reproductive capacity. This would result in native plant population declines or local extirpation of special status plant species. The effects of these impacts would be permanent or occur over several years.

Why impact would occur: Project implementation includes grading, vegetation clearing, road construction, road maintenance, and other activities that may result in direct mortality, population declines, or local extirpation of environmentally sensitive habitat areas.

Evidence impact would be significant: The Coastal Commission found that the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the Santa Monica Mountains, is rare and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the Santa Monica Mountains are designated ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife. This area provides the opportunity for

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unrestricted wildlife movement among habitats, supports populations of rare species, and prevents the erosion of steep slopes, thereby protecting riparian corridors, streams and, ultimately, shallow marine waters (Dixon, 2013). Section 30240 of the Coastal Act prohibits any significant disruption of habitat values and limits development within ESHA to uses that are dependent on the resources. It also requires that development adjacent to ESHA be sited and designed to prevent significant degradation, and be compatible with the continuance of the habitat.

Recommended Potentially Feasible Mitigation Measure(s):

Recommendation #1: Mitigation should not substitute for implementation of an alternative that would completely avoid impacts to ESHA. Completely avoiding impacts to ESHA would significantly reduce adverse impacts of the Project on these sensitive habitats.

Mitigation Measure #2: If avoidance is not possible, impacts to ESHA should be mitigated through habitat restoration or conservation. 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).

Comment #5: Impacts to Bat Species, including California Species of Special Concern

Issue: The Project includes activities that will result in the removal of trees that may provide habitat for bats. In addition, Table 10 (Special-status Wildlife Potentially Occurring Onsite) identifies six bat species, five of which are California Species of Special Concern (including pallid bat (*Antrozous pallidus*), spotted bat (*Euderma maculatum*), western mastiff bat (*Eumops perotis* ssp. *californicus*), western red bat (*Lasiurus blossevillii*), and California leaf-nosed bat (*Macrotus californicus*), as possible likelihood to occur on site.

Specific impacts: Project activities include the removal of trees, vegetation, and/or structures that may provide maternity roost (e.g., in cavities or under loose bark) or foraging habitat, and therefore has the potential for the direct loss of bats.

Why impacts would occur: The removal of trees, buildings or other adequate structures will potentially result in the loss of habitat for bats.

Evidence impacts would be significant: 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 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).

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Recommended Potentially Feasible Mitigation Measure(s):

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 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 #6: Impacts to California Species of Special Concern

Issue: Two mammal species, San Diego desert woodrat (*Neotoma lepida* ssp. *intermedia*) and the American badger (*Taxidea taxus*), are identified in Table 10 (Special-status Wildlife Potentially Occurring Onsite) as having the possible likelihood to occur onsite. The San Diego desert woodrat also has several occurrences recorded in CNDDDB. In addition, two reptile species with a possible to likely potential to occur on site from Table 10 include the San Diego mountain king snake (*Lampropeltis zonata pulchra*) and coast horned lizard (*Phrynosoma blainillii*).

Specific impact: Project ground disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating native vegetation that may support essential foraging and breeding habitat.

Why impact would occur: Project implementation includes grading, vegetation clearing, and other activities that may result in direct mortality, population declines, or local extirpation of Special Status reptile and mammal species.

Evidence impact would be significant: CEQA provides protection not only for State and federally listed species, but for any species including but not limited to California Species of

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Special Concern which can be shown to meet the criteria for State listing. These Species of Special Concern meet the CEQA definition of rare, threatened or endangered species (CEQA Guidelines, § 15065). Take of Species of Special Concern could require a mandatory finding of significance by the Lead Agency, (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, qualified biologists familiar with the reptile and mammal species behavior and life history should conduct specialized surveys to determine the presence/absence of Species of Special Concern. Surveys should be conducted during active season when the reptiles are most likely to be detected, between March 1 to October 31 (Thomson, R.C. et al., 2016). Badgers are nocturnal and diurnal species, and surveys should be conducted in spring to fall when they are most active (Long, 1973). The desert woodrat is mainly nocturnal but also crepuscular and occasionally diurnal and are active year-round (Stones and Hayward, 1968). 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 grubbing or Project-related grading 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.

Filing Fees

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. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project. 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:
Erinn Wilson-Olgin
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Erinn Wilson
Environmental Program Manager I

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ec: CDFW

Victoria Tang – Los Alamitos
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Scott Morgan (State Clearinghouse)

References:

- California Department of Fish and Wildlife, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Accessed at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.
- Clarke, Oscar F., Svehla, Danielle, Ballmer, Greg, Montalvo, Arlee. *Flora of the Santa Ana River and Environs: with References to World Botany*. Oscar F. Clarke, 2007
- Dixon, J. (2003, March 25). *Designation of ESHA in the Santa Monica Mountains* [Memorandum]. California Coastal Commission. <https://www.coastal.ca.gov/ventura/smm-esh-a-memo.pdf>
- Eskew, E. A., S. J. Price, and M. E. Dorcas. 2012. Effects of river-flow regulation on anuran occupancy and abundance in riparian zones. *Conservation Biology* 26:504–512.
- Long, Charles A. "Taxidea Taxus." *Mammalian Species*, no. 26, 1973, pp. 1–4. *JSTOR*, www.jstor.org/stable/3504047. Accessed 6 Mar. 2020.
- 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
- Poff, N. L., J. D. Allan, M. B. Bain, J. R. Karr, K. L. Prestegarrd, B. D. Richter, R. E. Sparks, and J. C. Stromberg. 1997. The natural flow regime: a paradigm for river conservation and restoration. *BioScience* 47:769–784.
- Rundul, Philip W., and Gustafson, Robert. *Introduction to the Plant Life of Southern California*. University of California Press, 2005.
- Santucci, Jr., V. J., S. R. Gephard, and S. M. Pescitelli. 2005. Effects of multiple low-head dams on fish, macroinvertebrates, habitat, and water quality in the Fox River, Illinois. *North American Journal of Fisheries Management* 25:975–992.
- Sawyer, J.O., Keeler Wolf, T., and Evens J.M. 2008. *A manual of California Vegetation*, 2nd ed. ISBN 978 0 943460 49 9.
- Stones, R.C. and Hayward, C.L. 1968. Natural History of the desert woodrat, *Neotoma lepida*. *Am. Midl. Nat.* 80:458-476.
- Thomson, Robert C., Wright, Amber N., Shaffer, H. Bradley. *California Amphibian and Reptile Species of Special Concern*. Oakland. University of California Press and California Department of Fish and Wildlife, 2016.
- Thorp, Robbin W., Horning Jr, Donald S., and Dunning, Lorry L. 1983. Bumble Bees and Cuckoo Bumble Bees of California. *Bulletin of the California Insect Survey* 23.



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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-Post-fire botanical and wildlife surveys	Updated botanical and wildlife surveys shall be conducted to inform impact assessments, avoidance, minimization, and mitigation measures in the BRA. Focused surveys for sensitive/rare plants on-site that may have been stimulated to germinate post fire shall be disclosed in the CEQA document. Based on the <i>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (CDFW, 2018), a qualified biologist shall “conduct botanical surveys in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting.” CEQA documentation shall provide a thorough discussion on the presence/absence of sensitive plants on-site and identify measures to protect sensitive plant communities from Project-related direct and indirect impacts.	Prior to Construction	City of Malibu
MM-BIO-2- Inform CDFW of changes to mitigation measures	Inform CDFW regarding any potential changes or amendments to the current mitigation and/or monitoring measures presented in the Mitigation Program.	Prior to Construction	City of Malibu Project Proponent
MM-BIO-3- Hydrogeomorphology study	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-4- 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	Prior to Construction	City of Malibu Project Proponent

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	pursuant to section 1600 <i>et seq.</i> of the Fish and Game Code.		
MM-BIO-5- Additional LSA measures	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-6-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-7-Nesting Birds	No construction shall occur from February 15 through August 31 (January 1 for raptors) unless a qualified biologist completes a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys shall be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. Surveys shall be conducted by a qualified biologist no more than 14 days prior to the beginning of any Project-related activity likely to impact raptors and migratory songbirds, for the entire Project site.	Prior to Construction	City of Malibu
MM-BIO-8-Protection measures for fully protected species	Survey the entire Project site to determine the potential distribution of peregrine falcon and assure that “take” will be avoided during Project construction. The environmental document should also include measures to preclude “take” on the Project site during operations and from traffic increased related to the Project.	Prior to Construction	City of Malibu Project Proponent
MM-BIO-9-Protection measures for fully protected species	Assess whether the habitat alteration, habitat loss, and additional traffic would hinder expansion of the local peregrine falcon population in good years, which allows the population to maintain viable numbers through poor years.	Prior to Construction	City of Malibu Project Proponent
MM-BIO-10-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	Prior to Construction	City of Malibu

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	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.		
MM-BIO-11-Bat Species	To the extent feasible, tree removal or relocation shall 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 shall be left in place until the end of the maternity season.	Prior to Construction	City of Malibu
MM-BIO-12-Bat Species	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.	Prior to Construction	City of Malibu
MM-BIO-13-Bat Species	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 shall be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active.	Prior to Construction	City of Malibu
MM-BIO-14-Species of Special Concern	Prior to vegetation removal and/or grading, qualified biologists familiar with the reptile and mammal species behavior and life history shall conduct specialized surveys to determine the presence/absence of Species of Special Concern. Surveys shall be conducted during active season when the reptile and mammal species are most likely to be detected.	Prior to Construction	City of Malibu

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MM-BIO-15-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 grubbing or Project-related grading activities.	Prior to Construction	City of Malibu
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