



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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April 23, 2020

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Steven Valdez
 Senior Planner
 County of San Bernardino
 Land Use Services Department
 385 N. Arrowhead Avenue, 1st Floor
 San Bernardino, CA, 92415-0182

Subject: Summerland Senior Care Facility Chino Project
 Mitigated Negative Declaration
 CEQA-2020-0063-R6

Dear Mr. Valdez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration (MND) from the County of San Bernardino Land Use Services Department (County; Lead Agency) for the Summerland Senior Care Facility Chino 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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.

PROJECT DESCRIPTION SUMMARY

The Project is proposing to construct a new three-story, 45-foot high, senior living facility with 109 units (79 assisted living units and 30 memory care units) on 5.0 gross acres. Parking will be provided via surface parking stalls and within a subterranean parking structure. A private roadway will provide access throughout the Project site with a drop-off area on the west end of the Project, adjacent to the parking structure entrance.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW agrees that an MND could be appropriate for the Project with the addition and implementation of specific and enforceable avoidance and minimization measures and compensatory mitigation strategies, including those CDFW recommends within the body of this letter.

CEQA requires public agencies in California to analyze and disclose potential environmental impacts associated with a project that the agency will carry out, fund, or approve. Any potentially significant impact must be mitigated to the extent feasible.

Nesting Birds

The MND states, "Development of the site will result in removal of 3.16-acres of ruderal vegetation which will have a minimal impact on wildlife which currently utilize the site. The wildlife species which inhabit the site are limited in number and the mobile species will disperse through the area." (MND, p. 27).. According to the California Natural Diversity Database (CNDDB), several bird species protected under Fish and Game Code (Fish & G. Code, § 3503 & 3503.5) are known to occur within a 10-mile radius of the Project, including but not limited to: coastal cactus wren, tricolored blackbird, coastal California gnatcatcher, merlin, burrowing owl, least Bell's vireo, California horned lark, yellow warbler, California black rail, golden eagle, yellow-breasted chat, southern California rufous-crowned sparrow, white-tailed kite, western yellow-billed cuckoo, grasshopper sparrow, Swainson's hawk, southwestern willow flycatcher, yellow rail, long-eared owl, and Cooper's hawk. The MND states, "No special status species were observed during the general biological surveys conducted on August 28, 2019, nor is the site expected to support any listed or other special status species now or in the future... the site has been significantly disturbed by past human activities and does not support any habitats which are associated with any sensitive species. However, one species (i.e., burrowing owl) sometimes inhabits disturbed areas if suitable burrows are present. No owls, owl sign (castings, whitewash, etc.) or suitable burrows were observed during the field investigations" (MND, p. 27). However, for certain ground or burrow nesting bird species of special concern, site conditions could change providing

nesting opportunities in future breeding seasons. Therefore, CDFW concludes the analysis or basis to support the determination that the Project would have no impacts on nesting bird species of special concern is not supported by fair argument and CDFW recommends the following mitigation measures be included in the MND prior to adoption:

- BIO 1: Applicant shall ensure that impacts to nesting bird species of special concern at the project site are avoided through the implementation of preconstruction surveys, ongoing monitoring, and if necessary, establishment of minimization measures.
1. Applicant shall designate a biologist (Designated Biologist) experienced in: identifying local and migratory bird species of special concern; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures.
 2. Surveys shall be conducted by the Designated Biologist at the appropriate time of day/night, during appropriate weather conditions, **no more than 3 days prior to the initiation of project activities**. Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the project site; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. If a nest is suspected, but not confirmed, the Designated Biologist shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. If a nest is observed, but thought to be inactive, the Designated Biologist shall monitor the nest for one hour (four hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The Designated Biologist shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate.
 3. When an active nest is confirmed, the Designated Biologist shall immediately establish a conservative avoidance buffer surrounding the nest based on their best professional judgement and experience. The Designated Biologist shall monitor the nest at the onset of project activities, and at the onset of any changes in such project activities

(e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the Designated Biologist determines that such project activities may be causing an adverse reaction, the Designated Biologist shall adjust the buffer accordingly or implement alternative avoidance and minimization measures, such as redirecting or rescheduling construction or erecting sound barriers. If surveys confirm occupied burrowing owl habitat in or adjoining the project site, Applicant shall contact CDFW and conduct an impact assessment, in accordance with Staff Report on Burrowing Owl Mitigation prior to commencing project site activities, to assist in the development of avoidance, minimization, and mitigation measures.

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). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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 MND to assist the County in identifying and mitigating Project impacts on biological resources. The MND concluded that nesting birds and burrowing owls were unlikely to occur within the Project boundaries but did not include substantial evidence to support that determination. CDFW disagrees with these assumptions and is concerned that the County's impact analysis is inadequate to support their conclusions. As such, CDFW recommends the County adopt the recommended measures provided by CDFW prior to adopting the MND.

Steven Valdez, Senior Planner
County of San Bernardino
Summerland Senior Care Facility Chino Project
April 23, 2020
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Questions regarding this letter or further coordination should be directed to Marina Barton, Environmental Scientist at 909-948-9632 or marina.barton@wildlife.ca.gov.

Sincerely,



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Environmental Program Manager

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