August 5, 2019 Sent via email

AUG 05 2019

STATE CLEARINGHOUSE

Governor's Office of Planning & Research

Ms. Cecily Session-Goins Assistant Planner City of Fontana 8353 Sierra Avenue Fontana, CA 92335 CSGoins@fontana.org

Subject:

Notice of Preparation of a Draft Environmental Impact Report

Sierra Avenue and Casa Grande Project State Clearinghouse No. 2019070040

Dear Ms. Sessions-Goins:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Sierra Avenue and Casa Grande Project (Project; State Clearinghouse No. 2019070040) pursuant 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

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.

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.

Project Location

The Project site is located within three parcels encompassing approximately 16.76 undeveloped acres located immediately northeast of the Sierra Ave. and Casa Grande Ave intersection in the City of Fontana, San Bernardino County (APN 0239-151-22, 0239-151-34, 0239-151-40).

Project Description

The Project proposes a General Plan Amendment to convert parcel APN 0239-151-22 from Multi Family High Density Residential Zone to Regional Mixed Use (GPA No. 18-006); extend the boundary of the Warehousing Distribution/Logistics District Overlay (ZCA No. 18-006); apply the Overlay to all three Project parcels; and construction of a 317,820 square foot warehouse. The warehouse development will include landscape improvements and parking improvements.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources); and administers the Natural Community Conservation Planning Program (NCCP Program). CDFW offers the comments and recommendations presented below to assist the City of Fontana (City; the CEQA lead agency) in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed project with respect to impacts on biological resources. CDFW recommends that the forthcoming DEIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. CDFW recommends that the DEIR specifically include:

- 1. An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
- 2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. CDFW's California Natural Diversity Database (CNDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed project. CDFW recommends that CNDDB Field Survey Forms be completed and submitted to CNDDB to document survey results. Online forms can be obtained and submitted at: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data

Please note that the CDFW's CNDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

3. A complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the

project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. 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.

Based on CDFW's local biological knowledge of the project area, and review of CNDDB, the project site has a high potential to support both nesting and foraging habitat for burrowing owl (*Athene cunicularia*), a California Species of Special Concern. As such, CDFW recommends that City, during preparation of the DEIR, follow 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 CDFW's website at:

https://www.wildlife.ca.gov/Conservation/Survey-Protocols

The Staff Report on Burrowing Owl Mitigation specifies that project impact evaluations include:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the *Staff Report on Burrowing Owl Mitigation*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following the CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see https://www.wildlife.ca.gov/Conservation/Plants).

5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources
The DEIR should provide a thorough discussion of the direct, indirect, and cumulative
impacts expected to adversely affect biological resources as a result of the project. To
ensure that project impacts to biological resources are fully analyzed, the following
information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address project-related changes on drainage patterns and water quality within, upstream, and downstream of the project site, including: volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site.

With respect to defensible space: please ensure that the DEIR fully describes and identifies the location, acreage, and composition of defensible space *within* the proposed project footprint. Please ensure that any graphics and descriptions of defensible space associated with this project comply with San Bernardino County Fire (or other applicable agency) regulations/requirements. The County, through their planning processes, should be ensuring that defensible space is provided and accounted for *within proposed development areas*, and not transferred to adjacent open space or conservations lands.

2. A discussion of potential indirect project impacts on biological resources, including resources in areas adjacent to the project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

Please note that the Project area supports significant biological resources and contains habitat connections, providing for wildlife movement across the broader landscape, sustaining both transitory and permanent wildlife populations. CDFW encourages project design that avoids and preserves onsite features that contribute to habitat connectivity. The DEIR should include a discussion of both direct and indirect impacts to wildlife movement and connectivity, including maintenance of wildlife corridor/movement areas to adjacent undisturbed habitats.

- 3. An evaluation of impacts to adjacent open space lands from both the construction of the project and long-term operational and maintenance needs.
- 4. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. Please include all potential direct and indirect project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Alternatives Analysis

Note that the DEIR must describe and analyze a range of reasonable alternatives to the project that are potentially feasible, would "feasibly attain most of the basic objectives of the project," and would avoid or substantially lessen any of the project's significant effects (CEQA Guidelines § 15126.6[a]).

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the project. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

- 1. Fully Protected Species: Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.
- 2. Sensitive Plant Communities: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to

fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.

3. Mitigation: CDFW considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If burrowing owls and/or their habitat may be impacted from the project, CDFW recommends that the City include specific mitigation in the DEIR. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d. 296; Gentry v. City of Murrieta (1995) 36 Cal. App. 4th 1359; Endangered Habitat League, Inc. v. County of Orange (2005) 131 Cal. App. 4th 777).

CDFW recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). Furthermore, in order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. Current scientific literature supports the conclusion that mitigation for permanent burrowing owl habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.

4. Habitat Revegetation/Restoration Plans: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

CDFW recommends that local onsite propagules from the project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or recreating them in areas affected by the project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

5. Nesting Birds and Migratory Bird Treaty Act: Please note that it is the project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is 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; section 3503.5 states that is it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or 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; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as

provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

CDFW recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. If pre-construction surveys are proposed in the DEIR, CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

- 6. Moving out of Harm's Way: The proposed project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise by injured or killed, and individuals should be moved only as far a necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.
- Translocation of Species: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

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 the California Endangered Species Act (CESA). CDFW recommends that a CESA ITP be obtained 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.

CDFW encourages early consultation, as significant modification to the proposed project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. Please note that the proposed avoidance, minimization, and mitigation measures must be sufficient for CDFW to conclude that the project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard. The California Fish and Game Code requires that CDFW comply with CEQA for the issuance of a CESA ITP. CDFW recommends the DEIR address all Project impacts to listed and candidate species and specify a mitigation monitoring and reporting program that will meet the requirements of CESA.

Based on review of CNDDB, and knowledge of the project site/vicinity, CDFW is aware that the following CESA candidate species has high potential to occur onsite/have previously been reported onsite: *Bombus crotchii* (Crotch bumble bee).

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to

https://www.wildlife.ca.gov/Conservation/LSA/Forms.

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.)

Additional Comments and Recommendations

The Project site falls within the City's 2004 North Fontana Conservation Program area. CDFW has expressed concerns and disagreement with the City's continued deferment of mitigation for impacts to sensitive alluvial habitats with the collection of mitigation fees (see enclosure: CDFW comment letter on DEIR for Monarch Hills Residential Development Project). As implemented, the North Fontana Conservation Program has failed to mitigate for the cumulative and temporal loss of over 375 acres of alluvial habitats and species associated with those habitats including Northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*), southern California legless lizard (*Anniella stebbinsi*), Parry's spineflower (*Chorizanthe parryi* var. *parryi*), coastal California gnatcatcher (*Polioptila californica californica*), and San Bernardino kangaroo rat (*Dipodomys merriami parvus*). The DEIR should thoroughly analyze the cumulative and temporal loss of alluvial habitats in the region and address how the Project will offset the continued loss of the remaining alluvial habitats prior to impacts.

To ameliorate the water demands of this project, CDFW recommends incorporation of water-wise concepts in project landscape design plans. In particular, CDFW recommends xeriscaping with locally native California species, and installing water-efficient and targeted irrigation systems (such as drip irrigation). Local water agencies/districts, and resource conservation districts in your area may be able to provide information on plant nurseries that carry locally native species, and some facilities display drought-tolerant locally native species demonstration gardens (for example the Riverside-Corona Resource Conservation District in Riverside). Information on drought-tolerant landscaping and water-efficient irrigation systems is available on the Department of Water Resources website: https://water.ca.gov/Water-Basics/Conservation-Tips/Plant-and-Landscape-Guide.

Further Coordination

CDFW appreciates the opportunity to comment on the NOP of a DEIR for the Sierra Avenue and Casa Grande Project (SCH No. 2019070040) and recommends that the City of Fontana address CDFW's comments and concerns in the forthcoming DEIR. CDFW is available to meet with the City early in the planning process, and attend a site visit for this project.

If you should have any questions pertaining to the comments provided in this letter, or wish to schedule a meeting and/or site visit, please contact Brandy Wood at (909) 483-6319 or at brandy.wood@willdife.ca.gov.

Sincerely,

Scott Wilson

Environmental Program Manager

Inland Deserts Region

Sout Welson

Enclosure: CDFW comment letter on the DEIR for Monarch Hills Residential Development Project (SCH No. 2016101065, May 29, 2018)

Literature Cited

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California. http://vegetation.cnps.org/