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Agenda Item 9(b)  
SMMC  
12/14/15

December 2, 2015

Mr. Michael Klein  
City of Calabasas  
100 Civic Center Way  
Calabasas, CA 91302  
Email: mklein@cityofcalabasas.com

**Subject: Department Comments on the Draft Mitigated Negative Declaration and Initial Study for the Rondell Oasis Hotel Project, City of Calabasas, Los Angeles County (SCH # 2015111019)**

Dear Mr. Klein:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Draft Mitigated Negative Declaration (DMND) and Initial Study (IS). The City of Calabasas (City) is the lead agency for the DMND under the California Environmental Quality Act (CEQA).

If approved the proposed project involves the construction of a 4-story hotel with up to 127-rooms, a pool and surface parking on an approximately 4.13-acre project site that is currently vacant, but was previously graded. The hotel would have a building footprint of approximately 20,410 square feet. A fire access road would be provided on the south side of the hotel.

The project site is located at 26300 Rondell Street in the City of Calabasas along the Ventura Freeway (101 Freeway) corridor in the Santa Monica Mountains. The project site is on the east side of Rondell Street, east of Las Virgenes Road and adjacent to the Ventura (101) Freeway southbound on-ramp. Commercial land uses are located to the south and west, the 101 Freeway is located to the north, and open space is immediately east of the project site.

The IS describes the biological resources observed onsite as “typical of those found on properties with a disturbance history”. Examples of known disturbances on this property include fire, development, and grading. The project site is dominated by ruderal vegetation, but also contains sage (*Savia spp.*) scrub and oak (*Quercus spp.*) savannah habitat types as well as a variety of trees, some of which have been planted.

The following comments and recommendations have been prepared pursuant to the Department’s authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.*, and pursuant to our authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act, [CEQA] Guidelines § 15386) to assist the Lead Agency in avoiding or minimizing potential project impacts on biological resources.

## **Biological Resources**

Biological Surveys. The IS describes that a reconnaissance level wildlife and botanical survey was performed by Rincon Consultants on March 6, 2015. No species that are identified as candidate, sensitive, or special status species in local or regional plans, the Department, or U.S. Fish and Wildlife Service were observed.

Although the majority of the site has been previously disturbed resulting in the reduction of wildlife habitat on the site, certain botanical species can be missed during a reconnaissance level survey, particularly when conducted during an extreme drought. The Drought will reduce germination and detection of herbaceous species. Disturbance by fire and grading may also provide suitable habitat for disturbance adapted special status plants such as but not limited to Lyon's pentachaeta (*Pentachaeta lyonii*) which has been detected approximately four miles away at Malibu Creek State Park on disturbed utility easements. In order to maximize detection of special status botanical species the Department recommends a thorough, recent floristic-based assessment of special status plants and natural communities, following the Department's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <http://www.dfg.ca.gov/habcon/plant/>). The Department recommends focused, repeated surveys be conducted by a qualified botanist during the appropriate floristic period(s) with results disclosed in the environmental document. Surveys should be no more than two years old and surveys periods should be verified with a known reference site.

The Department recommends that floristic, alliance- and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2008). Adjoining habitat areas should 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. The *Vegetation Classification for the Santa Monica Mountains National Recreation Area and Environs in Ventura and Los Angeles County* overlaps with the project area and should be used to assist in identifying the vegetation setting and habitat conditions within the Project vicinity, as appropriate (Keeler-Wolf and Evens, 2006).

## **Analyses of the Potential Project-Related Impacts on the Biological Resources**

California Endangered Species Act (CESA). Additional floristic focused surveys for botanical species may warrant consideration for avoidance and mitigation measures for CESA listed plants. The Department considers adverse impacts to special status species protected by CESA, and the Federal Endangered Species Act (ESA) for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any state endangered, threatened, candidate species, or state-listed rare plant species pursuant to the Native Plant Protection Act (NPPA; Fish and Game Code §1900 et seq.) that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Take is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as rare, endangered or threatened, or a candidate for listing under CESA, the Department recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from the Department

may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the fully mitigated requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

Other Special Status Species. CEQA provides protection not only for CESA listed and candidate species, but for any species such as: California Species of Special Concern (SSC) including but not limited to western burrowing owl (*Athene cunicularia*), coast horned lizard (*Phrynosoma blainvillii*), and silvery legless lizard (*Anniella pulchra pulchra*) which can be shown to meet the criteria for State-listing. Plants designated as 1A, 1B and 2 of the California Native Plant Society Inventory of Rare and Endangered Vascular Plants of California, consist of plants that, in a majority of cases, would also qualify for listing (CEQA Guidelines Sections 15380 (d), 15065 (a)).

Western Burrowing Owl. The disturbed nature of the Project site as described in the IS, may provide habitat for burrowing owl. Burrowing owl, especially in the Project area may utilize disturbed areas as wintering habitat and could be adversely impacted during ground disturbance activities. The Department recommends burrowing owl protocol surveys be conducted per the Department's *Staff Report on Burrowing Owl Mitigation* prior to any discretionary action or administrative action taken by the City on the proposed Project site and vicinity (California Department of Fish and Wildlife, 2012). As suggested by the burrowing owl guidance, a Mitigation Management Plan requiring sufficient habitat acreage to support impacts to burrowing owl burrows shall be acquired, preserved and managed in perpetuity in sufficient quantity to ensure the success of subsequent nest attempts. Absent an adequate analysis of the necessary compensatory mitigation pursuant to a Burrowing Owl Management Plan, the Department recommends 19.5 acres of occupied habitat is provided for each impacted burrow. All mitigation and mitigation plans shall be provided in advance of any Project entitlements.

Coast horned lizard and silvery legless lizard. Coast horned lizard and silvery legless lizard may inhabit marginal habitat, especially if the Project site is adjacent to more appropriate habitat for these species. Efforts should be made to salvage and move these species prior to ground disturbances (see comment below under "Moving out or Harms Way").

Mitigation for Special Status Species. Project impacts and adequate avoidance and mitigation measures for unavoidable impacts to special status species may include, for example, off site acquisition and protection of occupied habitat. To fully mitigate take of species listed under CESA, or State-listed rare plants under NPPA, further consultation with the Department under CESA and NPPA is recommended.

Impacts to Native Birds. The project will result in the removal of vegetation and ground disturbance on the project site which may adversely impact native bird species. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5, and 3513 of

the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). The Department recommends the following measures to assist in avoidance of take of native birds:

Proposed project activities (including, but not limited to, staging and disturbances to native and nonnative vegetation, structures, and substrates) should occur outside of the avian breeding season which generally runs from February 1 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs. Take includes take of eggs and/or young resulting from disturbances which cause abandonment of active nests. Depending on the avian species present, a qualified biologist may determine that a change in the breeding season dates is warranted.

If avoidance of the avian breeding season is not feasible, the Department recommends that, beginning thirty days prior to the initiation of project activities, a qualified biologist with experience in conducting breeding bird surveys conduct weekly bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). The surveys should continue on a weekly basis with the last survey being conducted no more than 3 days prior to the initiation of project activities. If a protected native bird is found, the project proponent should delay all project activities within 300 feet of on- and off-site suitable nesting habitat (within 500 feet for suitable raptor nesting habitat) until August 31. Alternatively, the qualified biologist could continue the surveys in order to locate any nests. If an active nest is located, project activities within 300 feet of the nest (within 500 feet for raptor nests) or as determined by a qualified biological monitor, must be postponed until the nest is vacated and juveniles have fledged and there is no evidence of a second attempt at nesting. Flagging, stakes, and/or construction fencing should be used to demarcate the inside boundary of the buffer of 300 feet (or 500 feet) between the project activities and the nest. Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. The project proponent should provide the City the results of the recommended protective measures described above to document compliance with applicable State and federal laws pertaining to the protection of native birds.

If the biological monitor determines that a narrower buffer between the project activities and observed active nests is warranted, he/she should submit a written explanation as to why (e.g., species-specific information; ambient conditions and birds' habituation to them; and the terrain, vegetation, and birds' lines of sight between the project activities and the nest and foraging areas) to the City, to allow a narrower buffer.

The biological monitor should be present on site during all grubbing and clearing of vegetation to ensure that these activities remain within the project footprint (i.e., outside the demarcated buffer) and that the flagging/stakes/fencing is being maintained, and to minimize the likelihood that active nests are abandoned or fail due to project activities. The biological monitor should send weekly monitoring reports to the City during the grubbing and clearing of vegetation, and should notify the CEQA lead agency immediately if project activities damage active avian nests.

Impacts to Streams, Riparian and Aquatic Resources. The IS describes a debris impact/deflection wall that would replace an existing wall for the purpose of deflecting debris away from the hotel and toward an underground debris basin. Drainage ditches and the presence of willow (*Salix* spp.) are also described as being on the Project site.

As a Responsible Agency under CEQA Guidelines section 15381, the Department has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream, or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to the Department pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, the Department determines whether a Lake and Streambed Alteration Agreement (LSA) with the applicant is required prior to conducting the proposed activities. The Department's issuance of a LSA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. As a Responsible Agency, the Department may consider the Negative Declaration or Environmental Impact Report of the local jurisdiction (Lead Agency) for the project. To minimize additional requirements by the Department pursuant to section 1600 et seq. and/or under CEQA, the 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. A notification package for a LSA may be obtained by accessing the Department's web site at: <https://www.wildlife.ca.gov/Conservation/LSA>.

Impacts to Conserved Land. The IS describes public open space as being located immediately to the east of the Project site.

The MND should include a discussion regarding direct and indirect Project impacts including edge effects on biological resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands. The assessment should also include potential adverse impacts from brush clearing for wildfire fuel reduction, lighting, noise, artificial irrigation which can encourage the introduction of invasive exotic plant species and Argentine ants (*Linepithema humile*), and pest control which can result in secondary poisoning of wildlife which is of particular concern in the Project area.

Habitat Mitigation Lands. The environmental document should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. The Department recommends that all on-site and/or off-site lands designated as mitigation for project impacts be protected in perpetuity under a conservation easement managed by a local land conservancy. This condition may be in any ITP or LSA issued by the Department for the project.

Human Wildlife Conflict. The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.

Landscape Plan. The IS describes that the proposed hotel Project would be landscaped with native and drought-tolerant plants. The Department concurs that species native to the Project area should be used in the Landscape plan. To avoid the introduction of invasive plant species into the landscape plan please consult the California Exotic Plant Council's California Invasive Plant Inventory Data Base. The Data Base can be found on the following website:  
<http://www.cal-ipc.org/paf/>.

Fencing. The IS states: "Wildlife friendly fencing would provide permeability to retain connectivity of the habitats on-site with the habitats off-site."

The Department concurs that wildlife friendly fencing should be utilized whenever possible. In addition, fences may pose additional hazards that may not be readily recognized. Birds and reptiles seek out hollow metal fence posts in which to reside and then become trapped, resulting in mortality. Hollow fence posts should be capped to avoid this hazard. Raptor's talons can become entrapped within the bolt holes of fence stakes resulting in mortality. Fence stakes should be plugged with bolts or other plugging materials to avoid this hazard. Further information on this subject may be found at: [http://kern.audubon.org/death\\_pipes.htm](http://kern.audubon.org/death_pipes.htm).

Moving out of Harms Way. The proposed Project is anticipated to result in clearing of natural habitats that support species of indigenous wildlife. To avoid direct mortality to, wildlife, the Department recommends a qualified biological monitor be on site prior to and during ground and habitat disturbing activities to move out of harms way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction 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.

Thank you for this opportunity to provide comments. The Department requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of the forthcoming hearing date for the project (CEQA Guidelines; §15073(e)). Please contact Mr. Scott Harris, Environmental Scientist at (805) 644-6305 or [Scott.P.Harris@wildlife.ca.gov](mailto:Scott.P.Harris@wildlife.ca.gov) if you should have any questions and for further coordination on the proposed project.

Sincerely,



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## References

California Department of Fish and Wildlife, March 7, 2012. Staff Report on Burrowing Owl Mitigation.

Keeler Wolf, T. and J. Evens. 2006. Vegetation Classification of the Santa Monica Mountains National Recreation Area and Environs in Ventura and Los Angeles Counties, California. Unpublished Report to the National Park Service. California Department of Fish and Game and California Native Plant Society, Sacramento CA.

Sawyer, John O., Todd Keeler-Wolf and Julie Evens. 2008. A Manual of California Vegetation, 2<sup>nd</sup> ed. 1300 pp. California Native Plant Society Press.1.