



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

December 21, 2020

**Dec 21 2020**

**STATE CLEARINGHOUSE**

Martin Reeder  
Planning Division, National City  
1243 National City Boulevard  
National City, CA 91950

**Subject: PROJECT National City CarMax Project (PROJECT)  
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
SCH# 2016111035**

Dear Mr. Reeder:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of National City (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW previously submitted comments in response to the Notice of Preparation of the DEIR, on December 16, 2016.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. National City does not participate in the

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<sup>1</sup> 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.

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NCCP program. The County of San Diego participates in the NCCP program by implementing its approved City Multiple Species Conservation Program (MSCP) through implementation of the County of San Diego South County MSCP Subarea Plan (SAP). The Metro Lakeside Jamul Segment of the County's SAP overlaps the Project boundary in the southwest corner. National City is not signatory to the SAP, and is neither bound to the requirements, nor does it have coverage for covered species.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** Centerpoint Integrated Solutions

**Objective:** The objective of the Project is to develop an economically viable automobile sales (CarMax) facility that would provide additional commercial opportunities for the City and the San Diego region. Primary Project activities include construction of the CarMax facilities, and redirection of the unnamed creek located on the project parcel by constructing an earthen channel that would traverse the northwestern boundary of the property. The earthen channel would connect to the existing storm drain that outlets to the Sweetwater River. The Project also includes extending the current drainage in the northeast corner and installing riprap dissipaters at the drainage outlets within the proposed channel, construction of retaining walls and underground storage, and development and maintenance of an access road along the downstream segment of the proposed channel.

**Location:** The project site is in southwestern San Diego County within the City. Regional access to the project site is provided by Interstate 805 (I-805) which is located west of the project site and State Route 54 (SR-54) located adjacent to the northern boundary of the project site. The project site is situated along the Sweetwater River channel and is bordered to the west by I-805, to the north by SR-54 and Sweetwater Road, to the east by Plaza Bonita Road and Westfield Plaza Bonita Mall, and to the south by the vegetated channel of the Sweetwater River. The Project site would be accessed by two public access driveways and one restricted access driveway that would connect to Plaza Bonita Road.

The Project site consists of two distinct pieces of land: The 15.08-acre Project parcel (assessor's parcel number 564-471-11) and the 2.90-acre off-site area. The proposed CarMax facility and earthen channel would be constructed on the 15.08-acre Project parcel, while the 2.90-acre Offsite Area consists of California Department of Transportation (Caltrans) and City right-of-way (ROW) that would be temporarily impacted during construction.

**Biological Setting:** Fifteen vegetation communities and other land cover types were mapped within the study area: arroyo willow thickets, cattail marshes, cottonwood trees, coyote bush scrub, mule-fat thickets, red willow thicket, San Diego sunflower scrub, sycamore trees, disturbed habitat, eucalyptus groves, giant reed breaks, nonnative riparian, nonnative woodland, urban/developed, and naturalized warm-temperate riparian and wetland semi-natural stands. One pair of Federal Endangered Species Act (FESA)- and California Endangered Species Act (CESA)-listed and Fully Protected light-footed Ridgway's rail (*Rallus obsoletus levipes*) was detected in the southern cattail marsh located southwest of the project area within the Sweetwater River. Two bird Species of Special Concern were noted on site: yellow breasted chat (*Icteria virens*) and yellow warbler (*Setophaga petechia*). Three species of hawks were also observed on site. Three other FESA-and/or CESA-listed bird species have the potential to be on site or adjacent to the project; these include least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii*

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*extimus*), and coastal California gnatcatcher (*Polioptila californica californica*). Protocol level surveys for these species were conducted in 2015 and were negative. There are three special status plant species on site that are ranked California Native Plant Rank (CNPR) 4.2; these include San Diego sunflower (*Bahiopsis laciniata*), southwestern spiny rush (*Juncus acutus ssp. leopoldii*), and Southern California black walnut (*Juglans californica*).

Permanent direct impacts are anticipated to arroyo willow thickets (0.56 acre), cattail marsh (0.07 acre), mule-fat thickets, (0.07 acre), San Diego sunflower scrub (0.01 acre), and nonnative habitats (6.45 acres). Temporary direct impacts are anticipated to arroyo willow thickets (0.17 acre), coyote bush scrub (0.02 acre), mule-fat thickets (0.01 acre), San Diego sunflower scrub (0.07 acre), sycamore trees (0.08 acre), and nonnative habitats (7.64 acres). Restoration is proposed for on-site impacts to sensitive vegetation community riparian habitats at a 3:1 ratio, and a 2:1 ratio for impacts to San Diego sunflower.

**Timeframe:** A timeframe was not provided for the Project.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist National City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

### I. Listed and Fully Protected Species

#### COMMENT #1:

##### Light-footed Ridgway's Rail

###### Section # EIR 4.3.1.3 (b) Table S-1, Page #4.3-9

**Issue:** The Project proposes permanent and temporary impacts within 500 feet of known observations of light-footed Ridgway's rail, and does not require consultation or provide a sufficient avoidance measure to avoid indirect impacts that could lead to take. Light-footed Ridgway's rail is a California Fully Protected Species and listed as a state and federally endangered species. Fully Protected Species may not be taken or possessed at any time and no licenses or permits may be issued for their take, with the exception of scientific collection or predation issues, neither of which apply to the Project.

**Specific impact:** The EIR lists Light-footed Ridgway's rail under Section (b) of 4.3.1.3, "[Species] Not Observed", but then in that same section notes that a pair of rails has been observed directly adjacent to the Project, within the Study Area, over multiple years. Although rails were not observed within the Project area, they should still be noted as observed within the Study Area.

**Why impact would occur:** Although the Project assumes presence of Ridgway's rails within the Project area, permanent Project impacts, including the CarMax facilities and access road,

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are within 100 feet of the documented rail location. Mitigation measure MM-BIO-2 lists mitigation measures which call for protocol surveys and pre-construction surveys, but only calls for a 300-foot nesting buffer and does not require consultation with the Wildlife Agencies. This is not sufficient to ensure that temporary and permanent indirect impacts to a Fully Protected Species is completely avoided. As proposed, the Ridgway's rails may be impacted by the Project, both temporarily during construction and permanently by vehicle and human disturbance. The 300-foot buffer during construction is not sufficient to demonstrate complete avoidance of take. CDFW strongly recommends that a minimum buffer of 500 feet be employed to ensure avoidance of take of this Fully Protected Species.

Additionally, consultation with U.S. Fish and Wildlife Service (USFWS) is required for impacts to this rail species and its habitat. This measure and any resulting conditions from USFWS should be included in the impact analysis and appropriate mitigation for the Project.

**Evidence impact would be significant:** Appendix G of the CEQA Guidelines notes that an impact to listed species would be significant, and mitigation measure MM-BIO-2 does not provide sufficient avoidance reduce the impact below significance. Also, Section 3511 of the Fish and Game Code covers Fully Protected bird species. Light-footed Ridgway's rail is listed under Section 3511; therefore, all take must be avoided (please see editorial comments for more information on Fully Protected Species).

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To minimize significant impacts:

#### **Recommendation # CDFW-REC-1:**

Please consider alternate alignments for the access road that provide a greater buffer between the road and areas occupied by light-footed Ridgway's rail. Additionally, there should be a full discussion of alternate alignments for the access road in the Final EIR. Also, impacts to potentially occupied Ridgway's rail habitat should trigger consultation with USFWS. Take of Ridgway's rails, as defined by the Fish and Game Code, must be avoided.

#### **Mitigation Measure # CDFW-BIO-1**

To avoid take, incidental or otherwise, of light-footed Ridgway's rail, the City or Project proponent shall implement the following measures when conducting work during the bird nesting season, or as required by USFWS during consultation for the species:

- a. when initiating activities within 500 feet of light-footed Ridgway's rail suitable habitat, a qualified biologist shall conduct surveys prior to activity initiation. Surveys shall consist of three visits separated by 2 weeks starting March 1 prior to ground disturbance. The results of the surveys shall be reported to the City. If light-footed Ridgway's rail is noted on site or immediately adjacent within 500 feet of Project impacts, USFWS and CDFW, collectively known as the Wildlife Agencies, will be contacted; no work will begin until the Wildlife Agencies have been notified and appropriate buffers are established
- b. when conducting work within or adjacent to suitable habitat, the Project biologist or designated biological monitor shall be on site during construction to ensure that any

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CESA-listed species and/or their nests are not agitated, killed, or injured. The monitoring schedule may be modified with Wildlife Agency approval; and,

- c. if nesting light-footed Ridgway's rail are detected, the City or Project proponent shall establish, flag, and implement a 500-foot no operations buffer around any active nest. The buffer shall remain in place until the nest has fledged or is no longer active.

## II. Mitigation Shortcoming for Sensitive Habitats, and Potential Impacts to Listed Species

### COMMENT #2:

#### **Insufficient Arroyo Willow Scrub Mitigation, and Loss of Potential Least Bell's Vireo Habitat**

##### **Section # 4.3-4, Page # 4.3-25**

**Issue:** Direct, indirect, and cumulative impacts to sensitive species and their habitats may not be offset by the mitigation proposed in the DEIR.

**Specific impact:** The Project does not propose full mitigation per the proposed mitigation ratios for impacts to Arroyo willow scrub, which is also suitable habitat for FESA- and CESA-listed least Bell's vireo and southwestern willow flycatcher. Table 4.3-4 notes that there will be a 0.86-acre deficit in the mitigation per the proposed ratio for Arroyo willow scrub. This will also lead to a potential deficit of habitat mitigation for listed species, as well as type convert wetland habitat as part of the restoration. There will also be a 0.06-acre deficit of required mitigation of Coyote brush scrub.

**Why impact would occur:** Without sufficient mitigation for these habitats, there may be indirect and/or cumulative impacts to the above-referenced species through loss of nesting habitat. Although National City does not have codified mitigation ratios, the Project shows proposed ratios equivalent to the County's SAP, but it neither offers mitigation per those recommended ratios, nor does it offer additional mitigation. Therefore, the EIR does not propose sufficient mitigation to offset these impacts. Furthermore, if work is conducted during the breeding season and CESA-listed birds (e.g. least Bell's vireo) are noted on site during preconstruction surveys, then direct impacts may occur without species specific mitigation measures.

**Evidence impact would be significant:** Impacts to sensitive habitats and listed species is significant per Appendix G of the CEQA guidelines, and the Project does not propose sufficient mitigation to reduce those impacts below significance.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To minimize significant impacts:

##### **Recommendation # CDFW-REC-2:**

- A. Please revise Table 4.3-4 and provide mitigation per the proposed mitigation ratios, or as required through consultation with the Wildlife Agencies.

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B. Impacts to suitable habitat require consultation with USFWS, and consultation with USFWS for FESA-listed species should also be included. If the breeding season cannot be avoided, consultation with CDFW is also recommended for CESA-listed species.

**Mitigation Measure # CDFW-BIO-2:**

To avoid take, incidental or otherwise, of least Bell's vireo, the City or Project proponent shall implement the following measures when conducting work during the bird nesting season, or as required by the Wildlife Agencies during consultation for the species:

a. when initiating activities within 300 feet of least Bell's vireo suitable habitat, a qualified Project biologist shall conduct surveys prior to activity initiation. Surveys shall consist of three visits separated by 2 weeks starting April 1 prior to ground disturbance. The results of the surveys shall be reported to the City. If nesting least Bell's vireos are noted on site or immediately adjacent within 300 feet of Project impacts, Wildlife Agencies will be contacted; no work will shall begin until the Wildlife Agencies have been notified and appropriate buffers are established

b. when conducting work within suitable habitat the Project biologist or designated biological monitor shall be on-site during construction to ensure that any listed species and/or their nests are not agitated, killed, or injured. The monitoring schedule may be modified with approval of both Wildlife Agencies

c. if nesting least Bell's vireos are detected, the City or Project proponent shall establish, flag, and implement a 300-foot no operations buffer around any active nest. The buffer shall remain in place until the nest has fledged or is no longer active, or,

ii. the City or Project proponent shall cease work within 500 feet of the active nest and consult with the Wildlife Agencies

**COMMENT #3:**

**Coastal Sage Scrub and Coastal California Gnatcatcher**

**Section #4.3.1.1 (g), Page #4.3-4, 4.3-25**

**Issue:** The Project DEIR identifies San Diego Sunflower Alliance on site but does not identify that San Diego sunflower is usually a component of California Sage Scrub (CSS) habitat for mitigation purposes. CSS habitat is the primary habitat of the FESA-listed coastal California gnatcatcher (gnatcatcher), which has been noted incidentally on-site during surveys for other species. The Project proposes mitigation measures to address impacts to coastal California gnatcatcher, but does not require consultation or sufficient mitigation measures to ensure that impacts to the gnatcatcher or CSS are adequately accounted for.

**Specific impact:** The BTR and DEIR identify the San Diego Sunflower Alliance on site. The DEIR states, "[s]everal small patches of this species were detected within coastal sage scrub habitat near the western edge of the BSA." The text of the document recognizes that San Diego sunflower is a component of CSS, but then Table 4.3-4 does not show it as an impacted habitat type. If San Diego sunflower will be impacted, CSS will also likely be impacted.

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The Western San Diego Vegetation manual notes that the only association within the San Diego Sunflower Alliance is the *Bahiopsis laciniata-Artemisia californica-Eriogonum fasciculatum* Association (Sproul et al., 2011). This association is very similar to the broader category of CSS. Appendix G of the BTR lists California sagebrush (*Artemisia californica*) and California buckwheat (*Eriogonum fasciculatum*), which are primary components of CSS. For the purposes of mitigation and impacts to potentially suitable habitat for California gnatcatcher, San Diego Sunflower habitat should be more broadly characterized as CSS.

**Why impact would occur:** Impacts to CSS, including San Diego Sunflower Alliance, may indirectly impact gnatcatcher through take of habitat or directly through physical take. The Project identifies direct impacts to San Diego Sunflower habitat, but then does not fully recognize these as impacts to the surrounding CSS. Table 4.3-4 shows that there would be a 1.44-acre gain in CSS but does not remove the direct impacts to the San Diego Sunflower Alliance, therefore this is an inaccurate representation of mitigation obligations. Furthermore, some of the restoration will be in Caltrans right ROW, which may be impacted in the future due to its location. Although it notes that these areas would be subtracted from the overall acreage totals, the removal of the acreage is not evident in any table or figure (see Comment #5 for more information), as it is included in the mitigation totals in Table 4.3-4.

**Evidence impact would be significant:** Appendix G of the CEQA guidelines notes that impacts to sensitive natural communities identified in local and regional plans, policies, or regulations by CDFW and USFWS, such as CSS, would be significant even though impacts to the specific species, such as San Diego sunflower may not be considered significant.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To minimize significant impacts:

#### **Recommendation # CDFW-REC-3:**

- A. The amount of direct impacts to San Diego sunflower habitat should be subtracted from the CSS component of the mitigation obligations in Table 4.3-4.
- B. A table that depicts what habitats would potentially be subject to maintenance or future modification should be provided. Permanent impacts must be mitigated with permanent preservation so these habitats should not be showing in the mitigation totals in Table 4.3-4.

#### **Mitigation Measure # CDFW-BIO-3:**

To avoid take, incidental or otherwise, of coastal California gnatcatcher, the City or Project proponent shall implement the following measures when conducting work during the bird nesting season, or as required by USFWS during consultation for the species:

- a. when initiating activities within 300 feet of coastal California gnatcatcher suitable habitat, a qualified Project biologist shall conduct surveys prior to activity initiation. Surveys shall consist of three visits separated by 2 weeks starting March 1 prior to ground disturbance. The results of the surveys shall be reported to the City. If

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nesting coastal California gnatcatcher are noted on-site or immediately adjacent within 300 feet of Project impacts, Wildlife Agencies will be contacted; no work will begin until the Wildlife Agencies have been notified and appropriate buffers are established;

- b. when conducting work within suitable habitat, the Project biologist or designated biological monitor shall be on-site during construction to ensure that any listed species and/or their nests are not agitated, killed, or injured. The monitoring schedule may be modified with Wildlife Agency approval; and,
- c. if nesting coastal California gnatcatcher are detected, the City or Project proponent shall implement one of the following: establish, flag, and implement a 300-foot no operations buffer around any active nest. The buffer shall remain in place until the nest has fledged or is no longer active, or the Lead Agency or Project proponent shall cease work within 300 feet of the active nest and consult with the Wildlife Agencies.

### III. Mitigation Measures and Related Impact Shortcomings

#### COMMENT # 4:

#### Potential Impacts to Tree Roosting Bat Species

##### Section # BTR Appendix G and J,

**Issue:** The DEIR does not provide avoidance and minimization measures for bat species, even though there is potential for them to roost and forage on site.

**Specific impact:** The BTR notes that there are Mexican fan palms on site in Appendix G, and notes that there is a low potential for many bat species in the Appendix J and no physical bat surveys were conducted. The Project is located directly adjacent to the Sweetwater River, which is local migration corridor for several bat species, and provides potential foraging and roosting habitat for many species. The BTR identifies suitable habitat such as Mexican fan palms on site and a potential for bat presence but does not provide any avoidance measures if the habitat is occupied.

**Why impact would occur:** If the site is occupied by tree roosting bat species, they could be directly impacted by the removal of fan palm trees, especially if work is conducted during the maternity season which is generally from March - October (Drew Stokes, pers comm. 12/2/20). Surveys for bat species were not conducted, and are not proposed for the Project; therefore, bats may be present on site, and may be impacted by the Project.

**Evidence impact would be significant:** As noted in Appendix G of the CEQA guidelines, an impact would be significant if it would have a substantial adverse effect, 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 CDFW and USFWS. Many bat species that have the potential to occur are also considered California Species of Special Concern by CDFW. Direct impacts to bat species during maternity season would be considered a substantial adverse effect.



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### **Recommended Potentially Feasible Mitigation Measure(s)**

#### **Mitigation Measure # CDFW-BIO-4A:**

##### **To reduce impacts to less than significant:**

A preconstruction survey shall be conducted by a qualified bat biologist within 60 days prior to construction to assess potential bat habitat that would be disturbed during construction. The survey shall consist of a daytime pedestrian survey to inspect for indications of bat use (e.g., occupancy, guano, staining, smells, or sounds) and a night roost/emergence survey. If the bat biologist determines that habitat is occupied by special-status bats or is likely to be used as a bat maternity roost, and may be affected by construction, then Mitigation Measure CDFW BIO-4B will be implemented.

#### **Mitigation Measure # CDFW-BIO-4B:**

To avoid the bat maternity season, in order to minimize impacts on individual colonial bats using trees for temporary roosts, and obligate tree bats, tree removal shall occur between October 15 - March 1, unless a focused survey conducted by a qualified bat biologist per Mitigation Measure CDFW BIO-4A determines that no bats are present in tree(s) to be removed:

- a) a two-stage tree removal process over two consecutive days shall be implemented for trees that may support colonial roosts (i.e., trees with cavities, crevices, or exfoliating bark) unless a focused survey conducted by a qualified bat biologist determines that no bats are present in tree(s) to be removed. The two-stage tree removal process is as follows:
  - i. Step 1: small branches and small limbs containing no cavity, crevice or exfoliating bark are removed with chainsaws under field supervision by a qualified bat biologist; and,
  - ii. Step 2: the remainder of the tree is to be removed the following day. The disturbance caused by chainsaw noise and vibration, coupled with the physical alteration, has the effect of causing colonial bat species to abandon the roost tree after nightly emergence for foraging. Removing the tree the next day prevents re-habituation and re-occupation of the altered tree; and,
- b) if bat roosts cannot be avoided or if it is determined that construction activities or site development may cause roost abandonment, such activities shall not commence until roost sites have been replaced. To replace tree roosts, elevated bat houses shall be installed outside of, but near, the construction area. Placement and height will be determined by a qualified wildlife biologist, but the bat house would be at least 15 feet high. The number of bat houses required will depend on the size and number of colonies found, but at least one bat house will be installed for each pair of bats (if occurring individually), or of sufficient size and number to accommodate each colony of bats to be relocated.

#### **COMMENT # 5:**

#### **Subtraction of Easement and Areas Required for Maintenance from Mitigation Acreages**

**Section # Table 4.3-4, Figure 4.3-6, BTR 7.4 and Table 7-1 Page # DEIR 4.3-25-26, 7-3, 4, 5**

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**Issue:** As noted in Comment #3, restored areas that will be subject to future disturbance should not be included in mitigation totals used to demonstrate Project impacts minimization.

**Specific impact:** Footnote #2 in Table 4.3-4 of the DEIR states, “[r]estoration in offsite areas will be maintained and monitored; however, because the areas are within Caltrans ROW there is a potential for impacts in the future. All areas on site will be protected in perpetuity.” Figure 4.3-6 shows multiple other easements, as well as the culvert, which will require future maintenance or possible future work. The BTR notes that multiple utility easements cross the proposed restored channel and that the riprap dissipaters at the culvert outlets will require future maintenance. The footnote at the bottom of page 7-5 says, “[a]ll temporary impacts will be restored to conditions better than existing conditions. Additionally, a portion of the proposed channel will occur within rights-of-way and cannot be counted towards mitigation credits; that acreage has been removed from the mitigation credit presented in this document.”

The removal of these areas from the mitigation totals is neither clear in the BTR nor the DEIR. Table 7-1 of the BTR includes off-site restoration within the Caltrans ROW in the mitigation totals, these numbers are also reflected in Table 4.3-4. The mitigation totals in the provided tables include the off-site restoration area, which may be impacted in the future; it is unclear from the Tables if the other easements are also included in these numbers. As noted in the BTR, areas that are subject to future disturbance should not be included in the mitigation totals. The acreage amount of these easement areas should be identified and removed from the mitigation totals.

**Why impact would occur:** Mitigation for habitat should be preserved in perpetuity by an appropriate land preservation mechanism that will protect the area from future disturbance. When considering mitigation that will adequately offset Project impacts to below significant, areas subject to repeated or future maintenance should not be considered for restoration; rather, mitigation and should only occur in areas that will provide permanent resource value or in areas considered to be impact neutral.

**Evidence impact would be significant:** CDFW considers impacts to sensitive habitat significant. The mitigation totals provided may not be an accurate reflection of the mitigation area that will be preserved in perpetuity. Without a clear analysis of permanent and temporary impacts and subsequent mitigation that will be preserved in perpetuity, CDFW cannot determine if significant impacts have been adequately mitigated.

### **Recommended Potentially Feasible Mitigation Measure(s)**

#### **Mitigation Measure # CDFW-REC-5**

**To reduce impacts to less than significant:** Please include a Table in the Final EIR that clearly identifies the utility easements, ROW areas, culverts, and dissipaters that are subject to future maintenance; these areas should be removed from the mitigation totals. A discussion of mitigation considerations with respect to impacts analysis and in-perpetuity preservation (or lack thereof) should also be included.

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**COMMENT # 6:**

**Lack of Riparian Buffer and Future Lake and Streambed Alteration Coordination**

**Section # Table S-1, 3.2.2.2, 4.9.5.2, Page # 3-6, 4.9-11**

**Issue:** Mitigation measure MM-BIO-1 states that adequate wetland buffers will be provided through coordination; however, the text of the DEIR states that an additional buffer increase would not be possible: “[t]he planting design shall also include adequate wetland buffers as determined in consultation with the agencies.” Page 3-6 states,

“[i]n consultation with the Wildlife Agencies, the project footprint has been reduced to minimize impacts on jurisdictional waters and to allow for a small buffer between proposed habitat and the development footprint. Further reductions of the development area would cause the project to be infeasible. Buffers between wetland and riparian habitat that would be established within the proposed channel and the project would be limited and range from 5 to 25 feet wide.”

**Specific impact:** While CDFW concurs that adequate wetland buffers should be determined through permitting, Section 3.2.2.2 states that determination of the buffers has already occurred and will be as little as 5 feet in some places. The buffer and the CarMax facilities are also within the 100-year flood area in some places.

**Why impact would occur:** Although appropriate wetland buffers are determined on a case by case basis determined by functions, values, and sensitivities of the wetland in question, as well as the type of development, the general standard is a 100-foot buffer. The Project does not propose a 100-foot wetland buffer, nor does it allow for further coordination with CDFW for an additional buffer.

**Evidence impact would be significant:** The analysis of the significance of this impact in the BTR is unclear and is not discussed at all in the DEIR. BTR Section 8.2C states, “[t]he proposed project includes work within waters of the U.S./CDFW jurisdictional waters, and by its nature will not have a wetland buffer. Impacts on this jurisdictional habitat would be considered significant...[t]he proposed project would not result in significant impacts.” Working within CDFW-regulated waters does not preclude the need for an appropriate wetland buffer post construction, nor does it negate the significance of the impact.

**Recommended Potentially Feasible Mitigation Measure(s)**

**Mitigation Measure # CDFW-REC-6:**

**To minimize significant impacts:** Please revise the BTR and DEIR to include a clear discussion of the significant impacts potentially caused by the reduced wetland buffer. The DEIR should also acknowledge that the buffer size and restoration design will be determined through the permitting process. CDFW recommends that additional modification to the proposed Project design be considered in order to increase the wetland buffer.

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**COMMENT # 7:**

**Polyphagous and Kuroshio Shot Hole Borers (SHBs)**

**Section # NA, Page # NA**

**Issue:** The DEIR did not include a discussion of the Polyphagous and Kuroshio Shot Hole Borers (SHBs), which are invasive ambrosia beetles that introduce fungi and other pathogens into host trees, as requested by CDFW in our comments on the Notice of Preparation (NOP) for this Project dated December 13, 2016.

**Specific impact:** CDFW responded to the NOP, and requested a thorough discussion on direct, indirect, and cumulative impacts that can occur from the spread of SHBs. The DEIR did not include any discussion of this issue, and possible impact(s).

**Why impact would occur:** The SHB adult female (1.8-2.5 mm long) tunnels galleries into the cambium of a wide variety of host trees, where it lays its eggs and propagates the Fusarium fungi species for the express purpose of feeding its young. These fungi cause Fusarium Dieback disease, which interrupts the transport of water and nutrients in at least 43 reproductive host tree species, with impacts to other host tree species as well. With documented occurrences throughout southern California, the spread of SHBs could have significant impacts in local ecosystems. SHBs are present in other nearby watersheds such as the Tijuana River, and have caused large die backs of riparian vegetation, especially arroyo willows (*Salix lasiolepis*). As this project is located directly adjacent to the Sweetwater River, and has riparian vegetation including arroyo willows on site, and will be restoring riparian vegetation, there is the potential to spread SHBs.

**Evidence impact would be significant:** Introduction of SHB's would be considered significant as it would directly impact riparian vegetation which would be significant.

Please refer to UC Riverside's Eskalen lab website for more information regarding SHBs:  
<https://ucanr.edu/sites/eskalenlab/>.

**Recommended Potentially Feasible Mitigation Measure(s)**

**Mitigation Measure # CDFW-BIO-6**

**To reduce impacts to less than significant:**

To reduce impacts of Polyphagous and Kuroshio Shot Hole Borers (SHBs), the Project Proponent and/or City shall implement the following measures:

- a. a qualified Biologist shall be responsible for monitoring for signs of infestation from SHBs on site, directly adjacent, and on restoration materials:
- b. the Biologist shall conduct an education seminar for on-site workers regarding SHB and its spread:

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- c. signs of SHB infestation shall be reported to CDFW and UCR's Eskalen Lab (eskalenlab.ucr.edu); this includes sugary exudate ("weeping") on trunks or branches and SHB entry/exit-holes (about the size of the tip of a ballpoint pen); and,
- d. if signs of SHB infestation are noted on site, additional BMP's shall be required and may include but are not limited to:
  - i. equipment disinfection
  - ii. pruning in infested areas where project activities may occur
  - iii. avoidance and minimization of transport of potential host tree materials
  - iv. chipping potential host materials to less than one inch (<1"), prior to delivering to a landfill
  - v. chipping potential host materials to less than one inch (<1"), prior to composting on site; and,
  - vi. solarization of cut logs; and/or burning of potential host tree materials.

#### **IV. Editorial Comments and/or Suggestions**

- a. Section 4.3.1.6 discusses the Project's regulatory framework for biological resources but does not discuss Fish and Game Code Section 3511 Fully Protected Bird Species, which is relevant for the Project. The BTR discusses Fully Protected Species, but uses Fish and Game Code Section 4700, which is Fully Protected Mammals, which is not relevant to the Project. It also discusses Section 2081.7, which addresses take of species resulting from impacts to implementation of a quantified settlement agreement; this is also not applicable to the Project. The DEIR also notes that Fish and Game Code Section 2835 pertains to NCCPs; CDFW only authorizes take of Fully Protected species through an approved NCCP, and National City is not a participating entity in the NCCP program. Inclusion of these unrelated Sections of the Fish and Game Code may contribute to confusion on behalf of the public. Please revise this section and remove Fish and Game Code Sections that do not relate to the Project.
- b. Appendix J of the Biological Technical Report (BTR) notes that both rails and suitable rail habitat are absent from the Study Area; however, the text of the BTR and DEIR discuss presence of rails and rail habitat in the Study Area. Please revise accordingly.
- c. The DEIR, Section 4.3.1.6(g) states, "CDFW jurisdiction does not include tidal areas or isolated resources." This is not reflective of the regulatory authority of CDFW under Fish and Game Code Section 1600 *et seq.*, which regulates a substantial change or use of any material from the bed, channel or bank of any river, stream, or lake, or deposition into any of the above. As some rivers and streams have tidally influenced reaches in coastal areas, riparian habitat associated with these areas may also be regulated under Section 1600 *et seq.* While CDFW also has regulatory authority over marine biological resources under different legislation, the above statement should be revised to indicate that marine habitats are not subject to Fish and Game Code Section 1600 *et seq.*

#### **ENVIRONMENTAL DATA**

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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](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](mailto: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](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 DEIR to assist the City of National City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Elyse Levy, Senior Environmental Scientist at [Elyse.Levy@wildlife.ca.gov](mailto:Elyse.Levy@wildlife.ca.gov).

Sincerely,

DocuSigned by:



David A. Mayer

Environmental Program Manager

cc: David Mayer – [David.Mayer@wildlife.ca.gov](mailto:David.Mayer@wildlife.ca.gov)  
Jennifer Turner – [Jennifer.Turner@wildlife.ca.gov](mailto:Jennifer.Turner@wildlife.ca.gov)  
Jennifer Ludovissy – [Jennifer.Ludovissy@wildlife.ca.gov](mailto:Jennifer.Ludovissy@wildlife.ca.gov)  
Susan Howell – [Susan.Howell@wildlife.ca.gov](mailto:Susan.Howell@wildlife.ca.gov)  
Jonathan Snyder – [Jonathan\\_Snyder@fws.gov](mailto:Jonathan_Snyder@fws.gov)  
CEQA Program Coordinator, Sacramento – [CEQACommentLetters@wildlife.ca.gov](mailto:CEQACommentLetters@wildlife.ca.gov)  
State Clearinghouse, Sacramento – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

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## REFERENCES

1. California Office of Planning and Research. 2019 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, CEQA Guidelines § §15126.4, §15381, § 15386, Appendix G.
2. Fish & Game Code §1600, §2080, §3503, §3511.
3. Sproul, F. *et al.* 2011. Vegetation Classification Manual for Western San Diego County. SANDAG. Available from: [https://sdmmp.com/upload/projects/20160330\\_2357\\_94.pdf](https://sdmmp.com/upload/projects/20160330_2357_94.pdf)
4. Drew Stokes, San Diego Natural History Museum. 2020. Personal communication regarding bat roost locations on the Sweetwater River. On file, California Department of Fish and Wildlife, South Coast Region Office. December 2, 2020.
5. Eskalen Lab. Division of Agriculture and Natural Resources, University of California. 2020. [cited 2020 Dec. 4]. Available from: <https://ucanr.edu/sites/eskalenlab/>
6. . The Ecology and Management of the Kuroshio Shot Hole Borer in the Tijuana River Valley Tijuana River National. Estuarine Research Reserve 2020. [cited 2020 Dec. 4]. Available from: <https://trnerr.org/kshb/>

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Attachment A:

**CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations**

Biological Resources			
	Mitigation Measures	Timing	Responsible Party
CDFW-BIO-1	<p>To avoid take, incidental or otherwise, of light-footed Ridgway’s rail, the City or Project proponent shall implement the following measures when conducting work during the bird nesting season, or as required by USFWS during consultation for the species:</p> <p>a. when initiating activities within 500 feet of light-footed Ridgway’s rail suitable habitat, a qualified biologist shall conduct surveys prior to activity initiation. Surveys shall consist of three visits separated by 2 weeks starting March 1 prior to ground disturbance. The results of the surveys shall be reported to the City. If light-footed Ridgway’s rail is noted on-site or immediately adjacent within 500 of Project impacts, USFWS and CDFW, collectively known as the Wildlife Agencies, will be contacted; no work will shall begin until the Wildlife Agencies have been notified and appropriate buffers are established</p> <p>b. when conducting work within or adjacent to suitable habitat, the Project biologist or designated biological monitor shall be on site during construction to ensure that any CESA-listed species and/or their nests are not agitated, killed, or injured. The monitoring schedule may be modified with Wildlife Agency approval; and,</p>	Prior to and During Construction	National City/Project Proponent



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	<p>c. if nesting light-footed Ridgway's rail are detected, the City or Project proponent shall establish, flag, and implement a 500-foot no operations buffer around any active nest. The buffer shall remain in place until the nest has fledged or is no longer active.</p>		
<p>CDFW-BIO-2</p>	<p>To avoid take, incidental or otherwise, of least Bell's vireo, the City or Project proponent shall implement the following measures when conducting work during the bird nesting season, or as required by the Wildlife Agencies during consultation for the species:</p> <p>a. when initiating activities within 300 feet of least Bell's vireo suitable habitat, a qualified Project biologist shall conduct surveys prior to activity initiation. Surveys shall consist of three visits separated by 2 weeks starting April 1 prior to ground disturbance. The results of the surveys shall be reported to City. If nesting least Bell's vireos are noted on-site or immediately adjacent within 300 feet of Project impacts, Wildlife Agencies will be contacted; no work will shall begin until the Wildlife Agencies have been notified and appropriate buffers are established</p> <p>b. when conducting work within suitable habitat the Project biologist or designated biological monitor shall be on site during construction to ensure that any listed species and/or their nests are not agitated, killed, or injured. The monitoring schedule may be modified with Wildlife Agency approval</p> <p>c. if nesting least Bell's vireos are detected, the City or Project proponent shall establish, flag, and implement a 300-foot no operations buffer around any active nest. The buffer shall remain in</p>	<p>Prior to and During Construction</p>	<p>National City/Project Proponent</p>

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	<p>place until the nest has fledged or is no longer active, or,</p> <p>d. the City or Project proponent shall cease work within 300 feet of the active nest and consult with the Wildlife Agencies</p>		
<p>CDFW-BIO-3</p>	<p>To avoid take, incidental or otherwise, of coastal California gnatcatcher, the City or Project proponent shall implement the following measures when conducting work during the bird nesting season, or as required by USFWS during consultation for the species:</p> <p>a. when initiating activities within 300 feet of coastal California gnatcatcher suitable habitat, a qualified Project biologist shall conduct surveys prior to activity initiation. Surveys shall consist of three visits separated by 2 weeks starting March 1 prior to ground disturbance. The results of the surveys shall be reported to the City. If nesting coastal California gnatcatcher are noted on-site or immediately adjacent within 300 feet of Project impacts, Wildlife Agencies will be contacted; no work will shall begin until the Wildlife Agencies have been notified and appropriate buffers are established</p> <p>b. when conducting work within suitable habitat the Project biologist or designated biological monitor shall be on site during construction to ensure that any listed species and/or their nests are not agitated, killed, or injured. The monitoring schedule may be modified with Wildlife Agency approval; and,</p> <p>c. if nesting coastal California gnatcatcher are detected, the City or Project proponent shall implement one of the following: establish, flag, and</p>	<p>Prior to and During Construction</p>	<p>National City/Project Proponent</p>

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	<p>implement a 500-foot no operations buffer around any active nest. The buffer shall remain in place until the nest has fledged or is no longer active; or the Lead Agency or Project proponent shall cease work within 500 feet of the active nest and consult with the Wildlife Agencies.</p>		
<p>CDFW-BIO-4A &amp; B</p>	<p>A. A preconstruction survey shall be conducted by a qualified bat biologist within 60 days prior to construction to assess potential bat habitat that would be disturbed during construction. The survey shall consist of a daytime pedestrian survey to inspect for indications of bat use (e.g., occupancy, guano, staining, smells, or sounds) and a night roost/emergence survey. If the bat biologist determines that habitat is occupied by special-status bats or is likely to be used as a bat maternity roost, and may be affected by construction, then Mitigation Measure CDFW BIO-4B will be implemented.</p> <p>B. To avoid the bat maternity season, in order to minimize impacts on individual colonial bats using trees for temporary roosts, and obligate tree bats, tree removal shall occur between Oct 15-March 1, unless a focused survey conducted by a qualified bat biologist per Mitigation Measure CDFW BIO-4A determines that no bats are present in tree(s) to be removed:</p> <ol style="list-style-type: none"> <li>i. a two-stage tree removal process over two consecutive days shall be implemented for trees that may support colonial roosts (i.e., trees with cavities, crevices, or exfoliating bark) unless a focused survey conducted by a qualified bat biologist determines that no bats are present in tree(s) to be</li> </ol>	<p>Prior to and During Construction</p>	<p>Project Proponent</p>

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	<p>removed. The two-stage tree removal process is as follows:</p> <ul style="list-style-type: none"> <li>ii. step 1: small branches and small limbs containing no cavity, crevice or exfoliating bark are removed with chainsaws under field supervision by a qualified bat biologist; and,</li> <li>iii. step 2: the remainder of the tree is to be removed the following day. The disturbance caused by chainsaw noise and vibration, coupled with the physical alteration, has the effect of causing colonial bat species to abandon the roost tree after nightly emergence for foraging. Removing the tree the next day prevents re-habituation and re-occupation of the altered tree; and,</li> <li>iv. if bat roosts cannot be avoided or if it is determined that construction activities or site development may cause roost abandonment, such activities shall not commence until roost sites have been replaced. To replace tree roosts, elevated bat houses shall be installed outside of, but near, the construction area. Placement and height will be determined by a qualified wildlife biologist, but the bat house would be at least 15 feet high. The number of bat houses required will depend on the size and number of colonies found, but at least one bat house will be installed for each pair of bats (if occurring individually), or of sufficient size and number to accommodate each colony of bats to be relocated.</li> </ul>		
<p>CDFW-BIO-6</p>	<p>To reduce impacts of Polyphagous and Kuroshio Shot Hole Borers (SHBs), the Project Proponent and/or City shall:</p> <ul style="list-style-type: none"> <li>a. a qualified Biologist shall be responsible for monitoring for signs of</li> </ul>	<p>Prior to and During Construction</p>	<p>Project Proponent</p>

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	<p>infestation from SHBs on site, directly adjacent, and on restoration materials</p> <p>b. the Biologist shall conduct an education seminar for on-site workers regarding SHB and its spread</p> <p>c. signs of SHB infestation shall be reported to CDFW and UCR’s Eskalen Lab (eskalenlab.ucr.edu); this includes sugary exudate (“weeping”) on trunks or branches and SHB entry/exit-holes (about the size of the tip of a ballpoint pen); and,</p> <p>d. if signs of SHB infestation are noted on site, additional BMP’s shall be required and may include but are not limited to:</p> <ul style="list-style-type: none"> <li>vii. equipment disinfection</li> <li>viii. pruning in infested areas where project activities may occur</li> <li>ix. avoidance and minimization of transport of potential host tree materials</li> <li>x. chipping potential host materials to less than one inch (&lt;1”), prior to delivering to a landfill</li> <li>xi. chipping potential host materials to less than one inch (&lt;1”), prior to composting on site; and,</li> <li>xii. solarization of cut logs; and/or burning of potential host tree materials.</li> </ul>		
	<p>Recommendations</p>	<p>Timing</p>	<p>Responsible Party</p>
<p>CDFW-REC-1</p>	<p>Please consider alternate alignments for the access road that provide a greater buffer between the road and areas occupied by Fully Protected Species.</p>	<p>Prior to certification of Final</p>	<p>National City</p>

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	Please include a full discussion of alternate alignments for the access road in the Final EIR. Also, impacts to potentially occupied habitat require consultation with USFWS; please include consultation with USFWS for FESA-listed species. Take of rails, as defined by the Fish and Game Code, must be avoided.	Environmental Document	
CDFW-REC-2	A. Revise Table 4.3-4 and provide mitigation per the proposed mitigation ratios, or as required through consultation with the Wildlife Agencies. B. Impacts to suitable habitat require consultation with USFWS; include consultation with USFWS for FESA-listed species. If the breeding season cannot be avoided, consultation with CDFW is also recommended for CESA-listed species.	Prior to certification of Final Environmental Document	National City
CDFW-REC-3	A. The amount of direct impacts to San Diego sunflower habitat should be subtracted from the CSS component of the mitigation obligations in table 4.3-4. B. A table that depicts what habitats would potentially be subject to maintenance or future modification should be provided. This should not include these habitats in the mitigation totals in Table 4.3-4 because mitigation for permanent impacts must be preserved in perpetuity.	Prior to certification of Final Environmental Document	National City
CDFW-REC-5	Include a table in the Final EIR that clearly shows the utility easements, ROW areas, culverts, and dissipators that are subject to future maintenance, and the remove these areas from the mitigation totals. A discussion of mitigation considerations with respect to impacts analysis and in-perpetuity preservation (or lack thereof) should also be included.	Prior to certification of Final Environmental Document	National City

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CDFW-REC-6	Revise the BTR and DEIR to include a clear discussion of the significant impacts potentially caused by the reduced wetland buffer. The DEIR should also acknowledge that the buffer size and restoration design will be determined through the permitting process and should not preclude further discussion of additional modification to the proposed design in order to potentially increase the wetland buffer.	Prior to certification of Final Environmental Document	National City/project proponent
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