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**GAVIN NEWSOM, Governor**  
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**Governor's Office of Planning & Research**

**April 1, 2021**

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## **STATE CLEARINGHOUSE**

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**Subject: City of San Diego La Jolla View Reservoir Project No. 331101 (PROJECT),  
Draft Environmental Impact Report (DEIR), SCH #2018041020**

Dear Ms. Ferrell:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from The City of San Diego (CITY) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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. The City participates in the NCCP program by implementing its approved City of San Diego Multiple Species Conservation Program

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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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(MSCP) Subarea Plan (SAP). The Multi-Habitat Preserve Area (MHPA) is the area from which a final hardline reserve becomes established to adequately conserve covered species pursuant to the SAP.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** The City of San Diego, Engineering and Capital Projects

**Objective:** The Project will replace the existing Exchange Place Reservoir and La Jolla View Reservoir with a new 3.1-million-gallon reservoir within La Jolla Heights Natural Park, and require approval of a Coastal Development Permit and a Site Development Permit due to the presence of Environmentally Sensitive Lands. The existing reservoirs and the Exchange Place Pump Station will be demolished, and their sites will be returned to historical contours and restored with native vegetation. The new reservoir will be entirely buried, except for reservoir access hatches, and control and data acquisition equipment. The new reservoir will include an approximately 200-foot-long, 18-inch overflow pipe with an at grade outlet and energy dissipation structure. In addition, an 8-inch utility water connection to the new reservoir will be provided from the existing water main in Brodiaea Way. To minimize the need for hauling all the backfill material to and from an off-site location, approximately 56,000 cubic yards will be temporarily stockpiled within La Jolla Heights Natural Park near Country Club Drive.

The Project also includes construction of approximately 2,790 linear feet of 30-inch pipeline. The pipeline will run from the new La Jolla View Reservoir in a general east-to-west direction through La Jolla Heights Natural Park to connect with the existing 16-inch Muirlands Pipeline in Country Club Drive.

An existing paved access road from Encelia Drive will be reconstructed to allow access to the new reservoir site for maintenance vehicles. The remaining portion of the existing access road to the La Jolla View Reservoir will be demolished, and the area will be revegetated. A temporary access road will be constructed from the new reservoir site to (and partially on) the stockpile area.

**Location:** The Project is primarily located within the existing La Jolla View Reservoir within La Jolla Heights Natural Park, approximately 500 feet east of Country Club Drive and 150 feet north of existing residences on Remley Place. The Project also includes the Exchange Place Reservoir, which is east of the intersection of Country Club Drive and Pepita Way. In addition, the Project includes improvements along Country Club Drive between Soledad Avenue and Romero Drive.

**Biological Setting:** The Project site is within the MHPA and supports six vegetation communities, including Diegan coastal sage scrub, disturbed Diegan coastal sage scrub, southern maritime chaparral, *Eucalyptus* woodland, ornamental vegetation, and disturbed land. It also includes two ephemeral drainages. Special status wildlife species identified on site include the Federal Endangered Species Act (FESA)- and California Endangered Species Act (CESA)- endangered and MSCP covered least Bell's vireo (*Vireo bellii pusillus*), and the federal candidate monarch butterfly (*Danaus plexippus*). Special status species with high to moderate potential to occur include federally threatened and MSCP covered coastal California gnatcatcher (*Polioptila californica californica*), California Species of Special Concern and MSCP covered San Diego or coast horned lizard (*Phrynosoma blainvillii*), and MSCP covered orange-throated whiptail (*Aspidoscelis hyperythra*). Three sensitive plant species were identified on site. These include the MSCP covered San Diego barrel cactus (*Ferocactus viridescens*), the California Native Plant Society (CNPS) Rare Plant Rank 1B.1 Nuttall's scrub oak (*Quercus dumosa*), and the CNPS Rare Plant Rank 4.1 ashy spike moss (*Selaginella cinerascens*).

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The MSCP categorizes vegetation communities into “tiers” based on general rarity and sensitivity, with Tier 1 considered the most sensitive. The project proposes to permanently impact the following MSCP vegetation types: Tier 1 southern maritime chaparral (5.53 acres); Tier II Diegan coastal sage scrub (0.14 acre); and Tier IV eucalyptus woodland (0.79 acre), ornamental (0.31 acre), and disturbed land (2.92 acres). Mitigation includes on-site restoration of 4.53 acres of southern maritime chaparral, and off-site restoration of maritime succulent scrub, via enhancement of 6.64 acres of disturbed coastal sage scrub and non-native grassland at Los Peñasquitos Canyon Preserve, for a total of 11.20 acres of mitigation within the MHPA.

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

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the 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. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project’s CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

### I. Potential Impacts to MSCP Covered Species

#### COMMENT #1

##### Coastal California Gnatcatcher

**Section: 5.5.2.2, Appendix F of the Biological Technical Report (BTR) (Appendix D1 of EIR), Page:5.5-12**

**Issue:** The coastal California gnatcatcher (gnatcatcher) has the potential to be present. The mitigation measure provided does not require new protocol level surveys prior to construction, and it does not specifically preclude clearing of gnatcatcher-occupied habitat in the MHPA between March 1 and August 15 as required in the City’s SAP; therefore, significant impacts to gnatcatcher may occur.

**Specific impacts:** The Project DEIR notes, “[gnatcatchers were] not observed on site. As identified in Appendix F of the BTR, however, the coastal California gnatcatcher has some potential to occur on the project site and the previous protocol surveys have expired. While the potential for this species to occur is considered low, it is conservatively assumed to potentially occur.” Coastal sage scrub and open southern maritime chaparral both may support gnatcatchers, and there are California Natural Diversity Database (CNDDDB) occurrences within a mile of the Project site recorded in 2017. Additionally, the surveys provided with the BTR were conducted in October, which is outside of the breeding season. Surveys that are conducted at that time are not consistent with the requirements of an active NCCP, which require surveys to be conducted between February and August (U.S. Fish and Wildlife Service [USFWS], 1997).

**Why impact would occur:** Suitable habitat for gnatcatchers occurs within the Project impact areas as well as directly adjacent to them. As noted in CNDDDB, there are recent occurrences of gnatcatchers in the area, so there is a moderate potential for the species to be present and

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impacted by construction. Although the Project DEIR provides an Avian Protection Measure as part of BIO-1, impacts to gnatcatchers may not be mitigated to below significant because this measure does not specifically preclude clearing of occupied habitat within the MHPA during the breeding season.

Protocol level surveys are required to determine if gnatcatchers are present. Regular avian presence surveys, depending on how they were/are conducted, may not detect gnatcatchers even if present. If the Project proposes to assume presence, as noted above, due to the lack of recent protocol level surveys conducted during the breeding season, then clearing of suitable habitat should occur outside of the breeding season from March 1 to August 15, as required by the conditions of coverage for gnatcatcher under the MSCP.

**Evidence impact would be significant:** As noted in section 5.5.2 of the DEIR and Appendix G of the CEQA Guidelines, impacts to listed species and sensitive habitat are significant. Appendix A of the City's MSCP SAP conditions of coverage for gnatcatcher states, "[n]o clearing of occupied habitat within the cities' MHPAs and within the County's Biological Resource Core Areas may occur between March 1 and August 15." Because the most recent focused surveys are out of date and were performed outside of the USFWS protocols, the mitigation measures as proposed do not ensure consistency with the MSCP requirements to avoid nesting gnatcatchers within the MHPA. For this reason, CDFW finds that impacts may not have been mitigated below significance

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

To address project work during the gnatcatcher breeding season, the final EIR should include as a separate measure for gnatcatchers to ensure avoidance during construction and during restoration. The Project should follow the City's *Mitigation, Monitoring and Reporting Conditions for Potential Impacts to Habitats Occupied by Sensitive Avian Species* (2002) for all Project-related activities including mitigation and brush management, which requires breeding season protocol surveys per the USFWS guidelines, and avoidance of the breeding season March 1 - August 15, including any impacts from construction noise, if occupied.

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

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

1. Prior to the issuance of any grading permit (For Public Utility Projects: prior to the preconstruction meeting), the City Manager (or appointed designee) shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:

No clearing, grubbing, grading, or other construction activities shall occur between March 1 and August 15, the defined breeding season of the coastal California gnatcatcher for the City's SAP, until the following requirements have been met to the satisfaction of the City Manager:

- A. A qualified biologist (possessing a valid FESA section 10(a)(1)(a) recovery permit) shall survey those habitat areas within the MHPA that would be subject to construction noise levels exceeding 60 decibels [dB(A)] hourly average for the presence of the gnatcatchers. Surveys for the gnatcatcher shall be conducted pursuant to the protocol survey guidelines established by the USFWS within the

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breeding season prior to the commencement of any construction. If gnatcatchers are present, then the following conditions must be met:

- I. Between March 1 and August 15, no clearing, grubbing, or grading of occupied gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; and
- II. Between March 1 and August 15, no construction activities shall occur within any portion of the site where construction activities would result in noise levels exceeding 60 dB(A) hourly average at the edge of occupied gnatcatcher habitat. An analysis showing that noise generated by construction activities would not exceed 60 dB(A) hourly average at the edge of occupied habitat must be completed by a qualified acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the City Manager at least two weeks prior to the commencement of construction activities. Prior to the commencement of construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; or
- III. At least two weeks prior to the commencement of construction activities, under the direction of a qualified acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60 dB(A) hourly average at the edge of habitat occupied by the coastal California gnatcatcher. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring shall be conducted at the edge of the occupied habitat area to ensure that noise levels do not exceed 60 dB(A) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (August 16).

Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.

- B. If coastal California gnatcatchers are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the City Manager and applicable resource agencies, which demonstrates whether mitigation measures such as noise walls are necessary between March 1 and August 15 as follows:

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- I. If this evidence indicates the potential is high for coastal California gnatcatcher to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.
- II. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.

### **Potential Impacts to Cooper's Hawks and Other Raptors**

#### **COMMENT #2**

#### **Section: 5.5, Page: 5.5-12**

**Issue:** The DEIR does not identify potential indirect and direct impacts to raptors, including MSCP covered species Cooper's hawk (*Accipiter cooperii*), although it notes it as an observed species in Appendix C of the BTR, and suitable nesting habitat is present. The DEIR does not propose sufficient avoidance and mitigation measures to address the potential impact. A condition for coverage of Cooper's hawk under the City's SAP is that active nests will be avoided by a project's impacts by a minimum of 300 feet. The measure should be incorporated into the Project (e.g., Measure 1E).

**Specific impacts** Although the DEIR states that it will comply with the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code (FGC) Section 3503 *et seq.*, it does not propose pre-construction surveys during the breeding season for raptors to accomplish this. Cooper's hawk was observed, and suitable nesting habitat (e.g., Eucalyptus woodland) is present on site. The breeding season for raptors is January 15 through August 31, and Avian Protection Requirements Mitigation Measure 1E solely addresses the general avian nesting season (February 1 through September 15).

**Why impact would occur:** Cooper's hawk may begin breeding in January; therefore, there may already be an active nest by February 1, and the earliest egg dates can occur by the end of January (Unitt 2003). This means that Cooper's hawks and other raptors could be impacted if work commences in January and pre-construction surveys are not conducted until February.

**Evidence impact would be significant:** Since Cooper's hawk is a covered species, the SAP conditions of coverage require a 300-foot buffer around an active Cooper's hawk nest. Potential impacts to other nesting raptor species would be in violation of the Fish and Game Code Section 3503.5 and would be considered significant without either a seasonal avoidance or incorporating a sufficient buffer distance between construction and an active raptor nest. CDFW generally recommends a 500-foot buffer from active raptor nests; however, reduction of this recommended distance may be reasonable depending on site-specific conditions such as existing levels of human activity and/or the presence of screening vegetation between the activity and the raptor nest. Follow-up surveys by a qualified biologist would be necessary to determine if there are any nesting raptor species to be avoided, and if so, to subsequently determine a buffer distance to avoid adverse impacts to the active raptor nest.

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

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

**To reduce impacts to less than significant:** Revise the first sentence of Mitigation Measure MM-BIO-1(E) to include the full breeding season for Cooper’s hawks and other raptors, and state that removal of active nests is prohibited, but removal of potential habitat is permitted outside of the breeding season. If an active Cooper’s hawk nest is identified on site, a 300-foot buffer from construction activities will be maintained until the nestlings have fledged. If other raptor species are present and nesting, construction will either be performed outside of the raptor breeding season (January 15 – August 15) or a sufficient buffer will be established to avoid adverse impacts to the raptor nest until the young have fledged and are no longer dependent on the nest site.

### **Mitigation Measure #CDFW-REC-2b:**

**To reduce impacts to less than significant:** To avoid any potential direct and indirect impacts to other nesting bird species, CDFW recommends that removal of potential nesting habitat, including native habitats and Eucalyptus trees in the proposed area of disturbance should occur outside of the general avian breeding season (March 1 - August 31). Pre-construction surveys (i.e., prior to clearing of habitat) may also be performed to determine the presence of any nesting birds, and depending on the findings, an avian nest avoidance program be developed. This program would include provisions for nest buffers depending on the site-specific conditions.

## **II. MSCP Consistency and Adjacency Guidelines**

### **Avoidable Construction Impacts to the MHPA**

#### **COMMENT #3**

#### **Section: 3.4.1, 5.5, 8.3.3.3-4, 8.4.2.2, Figure 5.5-1, Page:3-4**

**Issue:** The Project will stockpile large amounts of soil on site and locate utility easements within the MHPA, in an ephemeral stream, within sensitive habitat. This site selection is inconsistent with the City’s SAP. The Project DEIR identifies several Project alternatives that would avoid impacts to the MHPA. These include, “Alternative Alignment Along Country Club Drive,” “Alternative Construction Techniques,” and the “Encelia Drive Construction Access Alternative,” which would avoid stockpiling and the access road but still meet all Project objectives. The DEIR does not discuss in detail why they were not considered as the preferred Project, as they appear to minimize impacts to the MHPA and thus better conform to the SAP.

**Specific impacts:** Figure 5.5-1 identifies the stockpile location directly in an ephemeral stream and is located within sensitive habitat rather than within the disturbed areas on site. Section 3.4.1 states,

“[t]he temporary stockpile area (excluding the associated access road) would extend over approximately 0.4 acre, with a total manufactured slope height of up to 80 feet. The majority of the fill would occur in a ravine, with the elevation of the top of the stockpile similar to that of the adjacent hillside. The total area of disturbance would be approximately 7.2 acres... [w]here the stockpile and access road would extend across the existing natural drainage in

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the western portion of the site, a temporary 24-inch box culvert would be installed to allow for continued flow of water. The easterly portion of the temporary access road also would facilitate the construction of a portion the 30-inch pipeline that is located up to 40 feet below existing grade.”

This is inconsistent with the City’s SAP which states on page 44 #1 and 3

“[a]ll proposed utility lines (e.g., sewer, water, etc.) should be designed to avoid or minimize intrusion into the MHPA. These facilities should be routed through developed or developing areas rather than the MHPA, where possible. If no other routing is feasible, then the lines should follow previously existing roads, easements, rights-of-way and disturbed areas, minimizing habitat fragmentation...[t]emporary construction areas and roads, staging areas, or permanent access roads must not disturb existing habitat unless determined to be unavoidable.”

Given the analysis in the DEIR, it is not clear that the impacts to sensitive habitats, including wetlands, are unavoidable. Discussion as to why the Alternative Alignment Along Country Club Drive, Alternative Construction Techniques, and the Encelia Drive Construction Access Alternative were not considered further was not provided.

**Why impact would occur:** There appear to be feasible ways to avoid or substantially reduce impacts within the MHPA. The DEIR does not provide elaborate as to why some soil cannot be stockpiled within the demolished existing reservoir site, or why the proposed access road cannot follow the existing disturbed access road. The DEIR justification for not selecting the Alternative Alignment Along Country Club drive states, “[a]lthough construction of the pipeline in this roadway would result in inconvenience for area residents, associated impacts would remain below the CEQA significance thresholds; therefore, construction outside of the roadway would not avoid or reduce a CEQA-significant traffic impact.” This analysis does not account for the 7.2-acre reduction in biological impacts that appear to be provided by some of the other alternatives.

**Evidence impact may be significant:** Appendix G of the CEQA Guidelines Biological Resources (f) notes that an impact would be significant if it conflicts with provisions of an adopted NCCP. While CDFW does conclude that selection of a more impactful Project alternative results in a significant finding under CEQA, the additional impact does require additional mitigation for the City, and encourages the City to reduce impacts within the MHPA to the maximum extent practicable.

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

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

**To reduce impacts to less than significant:** CDFW recommends selecting from among the alternatives that minimize impacts to the MHPA. The Encelia Drive Alternative minimizes impacts to the MHPA to the greatest extent. Other alternatives that reduce impacts to the MHPA compared to the preferred project are the Alternative Alignment Along Country Club Drive and the Alternative Construction Techniques.

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

**To reduce impacts,** CDFW recommends that if stockpiling is necessary, areas previously disturbed by the demolition and removal the existing reservoir be used to the maximum extent feasible. Appropriate wetland permits shall be obtained for impacts to jurisdictional resources.

**MHPA Adjacency Guidelines**

**COMMENT #4**

**Section: 5.5, Page:5.5-3**

**Issue:** The DEIR identifies an eroded drainage that is caused by runoff into the MHPA. This is inconsistent with MHPA Adjacency Guidelines, so CDFW recommends that this issue be addressed during project implementation.

**Specific impacts:** The DEIR confirms that the drainage condition from the paved roadway has resulted in increased flows and appears to be fostering establishment of an invasive species into the MHPA. The DEIR notes that, “[t]he channel appears to have some increased water conveyance due to runoff from nearby residences and roadways; at one point a concrete-lined feature re-directs roadway runoff flows from Country Club Drive directly into the channel.” The DEIR notes that this drainage condition has resulted in, “...one small patch of invasive giant reed (*Arundo donax*).”

**Why impact would occur:** Impacts from runoff can directly affect habitat quality within the MHPA. The Adjacency Guidelines in the SAP state, “[a]ll developed and paved areas must prevent the release of toxins, chemicals, petroleum products, exotic plant materials and other elements that might degrade or harm the natural environment or ecosystem processes within the MHPA.” The Project proposes work in this area but does not propose to fix this condition; therefore, CDFW recommends that the final EIR be amended to include a measure or measures which resolve this issue.

**Recommended Potentially Feasible Measure(s)**

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

**To reduce impacts:** The Project shall employ measures to prevent runoff from entering the MHPA as part of Project construction.

**Drainage**

1. All new and proposed parking lots and developed areas in and adjacent to the preserve must not drain directly into the MHPA. All developed and paved areas must prevent the release of toxins, chemicals, petroleum products, exotic plant materials and other elements that might degrade or harm the natural environment or ecosystem processes within the MHPA. This can be accomplished using a variety of methods including natural detention basins, grass swales or mechanical trapping devices. These systems should be maintained approximately once a year, or as often as needed, to ensure proper functioning. Maintenance should include dredging out sediments if needed, removing exotic plant materials, and adding chemical-neutralizing compounds (e.g., clay compounds) when necessary and appropriate.

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### III. Candidate FESA-listed Species

#### Potential Direct and Indirect Impacts to Western Monarch Butterfly

##### COMMENT #5:

**Section:** Appendix C of the BTR (Appendix D1 of DEIR), **Page:** NA

**Issue:** The Project BTR identifies monarch butterflies (monarchs) on site. There is potential overwintering habitat, and historically occupied locations within a half a mile of the Project site. The species was not addressed the Project DEIR. Western monarchs are recognized as a candidate species for listing under FESA because of a dramatic reduction in the wintering population in the western United States. Under 2,000 western monarch butterflies were observed wintering in California in 2020, down from an estimated 4.5 million butterflies in the 1980s. Causes of the decline are believed to be loss of overwintering sites, pesticides, and other factors. Experts consider the western monarch to be at serious risk of extinction (Xerces 2021A).

**Specific impacts:** The La Jolla View Reservoir Project Wildlife List notes the monarch butterfly as a species identified on site. The western population of monarch butterflies is considered a candidate species under FESA. The DEIR does not address this sensitive species, and there is potential for direct impacts.

**Why impact would occur:** Monarchs have been identified on site during coastal California gnatcatcher surveys, which were conducted in October; however, the number of individual butterflies was not reported. Xerces Society identifies a historic monarch overwintering site in La Jolla Park (Xerces Western Monarch Thanksgiving Site ID 3180), within approximately 1,500 feet of the Project site (Xerces 2021B). The Monarch Milkweed Mapper (Xerces *et al* 2018) notes that,

“[m]onarchs begin arriving at these overwintering sites in September and the first half of October, forming fall aggregations. By mid-November, they have formed more stable aggregations that persist through January or into February. The butterflies cluster in dense groups on the branches, leaves, and occasionally, the trunks of trees. The adults usually remain in reproductive diapause throughout the winter and activity is limited to occasional sunning, rehydrating, and nectaring. In February and March, the surviving monarchs breed at the overwintering site before dispersing.”

Monarchs were identified on the Project site at the beginning of the potential overwintering season. The Project site was not surveyed specifically for monarchs during the overwintering season; therefore, aggregations could potentially be present due to the presence of suitable wintering habitat (*Eucalyptus* sp.) and nectaring plant species. As a result, Project activities may directly and permanently impact wintering habitat and wintering monarchs. Impacts may also occur to nectaring habitat in close proximity to the wintering habitat (*Eucalyptus* woodland).

**Evidence impact would be significant:** Without measures to avoid, minimize, or mitigate possible impacts to monarch butterflies and their overwintering habitat, the City should consider potential direct impacts to the species significant under CEQA. Appendix G, IV Biological Resources (a) of the CEQA Guidelines states that impacts are significant if they will “[h]ave a substantial adverse effect, either directly or through habitat modifications, on any species

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identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.” Although candidate species are not afforded formal protection under FESA, CDFW strongly recommends the project avoid negative effects to monarch and coordinate future cooperative conservation efforts. These efforts will ensure that the monarch is not significantly impacted by this Project without the inclusion of offsetting mitigation.

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

#### **Mitigation Measure # CDFW-BIO-5:**

**To reduce impacts to less than significant:** CDFW recommends a focused study for monarchs be performed during the overwintering season following the Xerces’ western monarch monitoring protocol, and certainly prior to initiating any construction activities during the overwintering season (November 1 to March 31) (Xerces *et al* 2018). CDFW recommends that the *Eucalyptus* habitat not be removed during the overwintering season (November-March) to the extent practicable. If suitable habitat is proposed to be impacted during the overwintering season, further coordination with USFWS and CDFW (jointly referred to as the Wildlife Agencies) is recommended. If overwintering monarch individuals or clusters are identified on site, the Wildlife Agencies shall be notified, and additional avoidance and mitigation measures shall be considered. These measures may include avoidance of overwintering habitat while the species is present, prohibiting the use of neonicotinoid insecticides and other highly toxic, systemic insecticides, and replanting of host, nectaring, and overwintering habitat at an appropriate on site or nearby location that is expected to directly benefit monarchs.

## **IV. Section 1600 *et seq.* of the Fish and Game Code**

### **COMMENT #6**

**Section: 3.4.1, 5.5.2.2, 8.4.2.2, Page: 3-4, 5.5-13, 5.5-25, 8-17**

**Issue:** The DEIR does not clearly indicate what aspects of the Project will impact the bed, bank and channel subject to FGC, nor does it fully discuss the potential impacts of stockpiling soils in an ephemeral drainage. Additionally, the Project, as proposed, does not comply with the conditions required in the mitigation measures in the DEIR.

**Specific impacts:** The Project Description states, “[w]here the stockpile and access road would extend across the existing natural drainage in the western portion of the site, a temporary 24-inch box culvert would be installed to allow for continued flow of water.” This impact is not sufficiently discussed in the biological impacts’ analysis in Section 5.5.2.2, as it does not identify what areas of the drainage are included in the impact total and does not distinguish the impacts according to the various wetland permitting agencies. Furthermore, mitigation measure BIO-3 of DEIR states, “[s]poil sites will not be located within 30 feet from the boundaries of jurisdictional waters or in locations that may be subject to high storm flows, where spoils might be washed back into drainages.” The Project, as proposed, appears to be inconsistent with this requirement because Project mapping identifies a drainage feature within the stockpile area.

**Why impact would occur:** The DEIR states that there will be impacts to jurisdictional resources but does not clearly specify the impacts that may be subject to FGC section 1600 *et seq.*, nor does it specifically describe the jurisdiction of U.S. Army Corps of Engineers and

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Regional Water Quality Control Board. Impacts under FGC are distinct from those of other wetland permitting entities and should be individually addressed. Figure 5.5-2 of the DEIR indicates that the stockpile area will cover a section of Feature 1 and part of Feature 1A, and that both the access road and pipeline alignments cross Feature 1. The 24-inch culvert is identified in the Project Description, but not mentioned again until the Encelia Drive Alternative Hydrology section. Based on the information provided, CDFW cannot determine exactly where the culvert will be placed, and how the Project will avoid direct and indirect impacts to the drainage while placing an 80-foot sediment stockpile over the top of it. Other Project features that cross the drainage, including the 30-inch pipeline and temporary access road, may also have potential impacts under FGC.

**Evidence impact would be significant:** Appendix G of the CEQA guidelines (b) states impacts that, “[h]ave a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service[.]” are considered significant. The DEIR does not fully describe these impacts to 1600 regulated resources in the analysis or mitigation measures.

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

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

**To reduce impacts to less than significant:** A Notification shall be submitted to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. CDFW recommends that the first sentence of BIO-3 be amended to, “[a]pplicable 404 permits and/or clearances and a Streambed Alteration Agreement with CDFW shall be obtained prior to any disturbance of jurisdictional features on site.”

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

**To reduce impacts to less than significant:** The Project should be revised to only stockpile on disturbed areas, and those areas shall be, at a minimum, consistent with BIO-3, and provided a 100-foot buffer where possible.

## **V. Sensitive Plant Species**

### **Direct Impacts to Nuttall’s Scrub Oak**

#### **COMMENT #7**

#### **Section: 5.5.2.2 Impact Analysis, Page: 5.5-11**

**Issue:** The DEIR makes a conclusion that direct impacts to Nuttall’s scrub oak would not be significant but CDFW believes this conclusion is not sufficiently supported.

**Specific impact:** The DEIR states,

“[p]ursuant to the City’s Biology Guidelines, however, securing comparable habitat in accordance with the City’s Biology Guidelines will mitigate for impacts to most special-status species as well, including CRPR 1B.1 species. The regional MSCP plan was designed to protect regional native habitats and the species they support. Nuttall’s scrub

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oak is being conserved incidentally through the habitat-based (Tier I) mitigation requirements of the City Biology Guidelines. Therefore, although potentially adverse, the loss of Nuttall's scrub oak within the project area would not be considered significant."

A review of the City of San Diego Biology guidelines (2018) does not fully support this statement. The City of San Diego Biology guidelines on page 73 states, "[c]ertain species covered by the MSCP and VPHCP [see Section I of the Biology Guidelines] and other species not covered by the MSCP, may be considered significant on a case-by-case basis taking into consideration all pertinent information regarding distribution, rarity, and the level of habitat conservation afforded by the MSCP."

**Why impact would occur:** The Conceptual On-Site Upland and Ephemeral Drainage Restoration and Revegetation Plan for the La Jolla Reservoir Replacement Project states, "[t]he loss of approximately 45 Nuttall's scrub oak plants is considered adverse; however, securing comparable habitat and compliance with the MSCP offsets impacts to this species; therefore, impacts are not considered significant, and no species-specific mitigation is required." The Project DEIR does not elaborate on the local distribution and rarity of the species. Further, the Project proposes to provide Tier I mitigation out-of-kind and would not necessarily provide replacement of Nuttall's scrub oak by post-project restoration and on-site success criteria, including mitigation for temporal losses during construction.

**Evidence impact may be significant:** As noted above, impacts to sensitive species not covered by the MSCP may be considered significant. Calflora only identifies 4 other occurrences of Nuttall's scrub oak in the La Jolla area, so CDFW considers a population of 45 individuals to be locally significant. CDFW appreciates that the on-site restoration plan proposes to replant Nuttall's scrub oak; however, success criteria are not identified so the offsetting measure is not ensured. Furthermore, as noted above the Project does not propose to replace southern maritime chaparral off site. Los Peñasquitos Canyon Preserve, where the off-site restoration is proposed, is presumably highly suitable habitat for Nuttall's scrub oak due to the high number of occurrences noted in Calflora and should also be considered for mitigation for the species where appropriate.

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

#### **Mitigation Measure # CDFW-REC-7a:**

Species specific success criteria should be included in the on-site restoration plan. Up to 5 years of monitoring for scrub oak species is appropriate.

#### **Mitigation Measure # CDFW-REC-7b:**

Areas within the proposed restoration area adjacent to areas of existing chaparral should include Nuttall's scrub oak within the off-site restoration planting palette. CDFW recommends a minimum of 5 years of monitoring be conducted. During the ongoing (no less than annual) inspection, planted Nuttall's scrub oaks which did not survive should be replaced, and monitored for an additional 5 years.

### **Editorial Comments and Suggestions**

- Please include Notification to CDFW pursuant to 1600 *et seq.* of the FCG as a discretionary action required for the Projects in Section 1.2 of the DEIR. Please also include a description

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of Fish and Game Code 1600 *et seq.* in section 5.5.1.2 Regulatory Framework, under State regulations.

- The Project BTR notes three species of *Dudleya* on site. Please be aware of proposed Assembly Bill (AB) No. 233, which will prohibit uprooting of *Dudleya sp.* unless certain conditions are met.
- The off-site restoration plan (Appendix D3 of DEIR) discusses pest management in Section 6.3.7. Please be aware of a new California law, AB 1788, which bans the use of second-generation rodenticides.

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 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 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:  
  
D700B4520375406...

David Mayer  
Environmental Program Manager I  
South Coast Region

## Attachments:

Attachment A: Recommended Mitigation Measures

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ec: CDFW

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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)

Jonathan Snyder, USFWS – [Jonathan\\_d\\_Snyder@fws.gov](mailto:Jonathan_d_Snyder@fws.gov)

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### Attachment A: Recommendations and Mitigation Measures

Biological Resources			
	Mitigation Measures	Timing	Responsible Party
CDFW-BIO-1	<p>Prior to the issuance of any grading permit (For Public Utility Projects: prior to the preconstruction meeting), the City Manager (or appointed designee) shall verify that the Multi-Habitat Planning Area (MHPA) boundaries and the following project requirements regarding the coastal California gnatcatcher are shown on the construction plans:</p> <p>No clearing, grubbing, grading, or other construction activities shall occur between March 1 and August 15, the breeding season of the coastal California gnatcatcher, until the following requirements have been met to the satisfaction of the City Manager:</p> <p>A. A qualified biologist (possessing a valid FESA section 10(a)(1)(a) recovery permit) shall survey those habitat areas <u>within the MHPA</u> that would be subject to construction noise levels exceeding 60 decibels [dB(A)] hourly average for the presence of the gnatcatcher. Surveys for the gnatcatcher shall be conducted pursuant to the protocol survey guidelines established by the USFWS within the breeding season prior to the commencement of any construction. If gnatcatchers are present, then the following conditions must be met:</p> <p>I. Between March 1 and August 15, no clearing, grubbing, or grading of occupied gnatcatcher habitat shall be permitted. Areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; <u>and</u></p> <p>III. Between March 1 and August 15, no construction activities shall occur within any portion of the site where construction activities would result in noise levels exceeding 60 dB(A) hourly average at the edge of occupied gnatcatcher habitat. An analysis showing that noise</p>	Prior to and During Construction	City/Project Proponent

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	<p>generated by construction activities would not exceed 60 dB(A) hourly average at the edge of occupied habitat must be completed by a qualified acoustician (possessing current noise engineer license or registration with monitoring noise level experience with listed animal species) and approved by the City Manager at least two weeks prior to the commencement of construction activities. Prior to the commencement of construction activities during the breeding season, areas restricted from such activities shall be staked or fenced under the supervision of a qualified biologist; <u>or</u></p> <p>III. At least two weeks prior to the commencement of construction activities, under the direction of a qualified acoustician, noise attenuation measures (e.g., berms, walls) shall be implemented to ensure that noise levels resulting from construction activities will not exceed 60 dB(A) hourly average at the edge of habitat occupied by the coastal California gnatcatcher. Concurrent with the commencement of construction activities and the construction of necessary noise attenuation facilities, noise monitoring shall be conducted at the edge of the occupied habitat area to ensure that noise levels do not exceed 60 dB(A) hourly average. If the noise attenuation techniques implemented are determined to be inadequate by the qualified acoustician or biologist, then the associated construction activities shall cease until such time that adequate noise attenuation is achieved or until the end of the breeding season (August 16).</p> <p>Construction noise monitoring shall continue to be monitored at least twice weekly on varying days, or more frequently depending on the construction activity, to verify that noise levels at the edge of occupied habitat are maintained below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. If not, other measures shall be implemented in</p>		
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	<p>consultation with the biologist and the City Manager, as necessary, to reduce noise levels to below 60 dB(A) hourly average or to the ambient noise level if it already exceeds 60 dB(A) hourly average. Such measures may include, but are not limited to, limitations on the placement of construction equipment and the simultaneous use of equipment.</p> <p>B. If coastal California gnatcatchers are not detected during the protocol survey, the qualified biologist shall submit substantial evidence to the City Manager and applicable resource agencies, which demonstrates whether mitigation measures such as noise walls are necessary between March 1 and August 15 as follows:</p> <p>I If this evidence indicates the potential is high for coastal California gnatcatcher to be present based on historical records or site conditions, then condition A.III shall be adhered to as specified above.</p> <p>II. If this evidence concludes that no impacts to this species are anticipated, no mitigation measures would be necessary.</p>		
CDFW-BIO-2a	<p>Revise the first sentence of Mitigation Measure MM-BIO-1(E) to include the full breeding season for Cooper's hawks and other raptors, and state that removal of active nests is prohibited, but removal of potential habitat is permitted outside of the breeding season. If an active Cooper's hawk nest is identified on site, a 300-foot buffer from construction activities will be maintained until the nestlings have fledged.</p>	Prior to and During Construction	City/Project Proponent
CDFW-BIO-3a	<p>CDFW recommends selecting from alternatives that minimize impacts to the MHPA. The Encelia Drive Alternative minimizes impacts to the MHPA to the greatest extent. Other alternatives that provide minimization of impacts to the MHPA include: Alternative Alignment Along Country Club Drive, Alternative Construction Techniques.</p>	Prior to and During Construction	Project Proponent

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CDFW-BIO-3b	If stockpiling is necessary, areas previously disturbed by the demolition and removal of the existing reservoir shall be used to the extent practicable. Appropriate wetland permits shall be obtained for impacts to jurisdictional resources.	Prior to and During Construction	Project Proponent
CDFW-BIO-4	<p>The Project shall employ measures to prevent runoff from entering the MHPA as part of Project construction consistent with the Section 1.4.3 Land Use Adjacency:</p> <p>Drainage</p> <ol style="list-style-type: none"> <li>1. All new and proposed parking lots and developed areas in and adjacent to the preserve must not drain directly into the MHPA. All developed and paved areas must prevent the release of toxins, chemicals, petroleum products, exotic plant materials and other elements that might degrade or harm the natural environment or ecosystem processes within the MHPA. This can be accomplished using a variety of methods including natural detention basins, grass swales or mechanical trapping devices. These systems should be maintained approximately once a year, or as often as needed, to ensure proper functioning. Maintenance should include dredging out sediments if needed, removing exotic plant materials, and adding chemical-neutralizing compounds (e.g., clay compounds) when necessary and appropriate (City of San Diego 1997).</li> </ol>	Prior to and During Construction	City and Project Proponent
CDFW-BIO-5a	CDFW recommends a focused study for monarchs be performed during the overwintering season following the Xerces western monarch monitoring protocol, and certainly prior to initiating any construction activities during the overwintering season (November 1 to March 31) (Xerces2018). CDFW recommends that the Eucalyptus habitat not be removed during the overwintering season (November-March) to the extent practicable. If suitable habitat is proposed to be impacted during the overwintering season, further coordination with USFWS and CDFW (jointly referred to as the Wildlife Agencies) is recommended. If overwintering monarch individuals or clusters	Prior to and During Construction	Project Proponent

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	are identified on site, the Wildlife Agencies shall be notified, and additional avoidance and mitigation measures shall be considered. These measures may include avoidance of overwintering habitat while the species is present, prohibiting the use of neonicotinoid insecticides and other highly toxic, systemic insecticides, and replanting of host, nectaring, and overwintering habitat at an appropriate on site or nearby location that is expected to directly benefit monarchs.		
CDFW-BIO-6a	A Notification shall be submitted to CDFW pursuant to section 1600 <i>et seq.</i> of the Fish and Game Code. CDFW recommends that the first sentence of BIO-3 be amended to, “[a]pplicable 404 permits and/or clearances and a Streambed Alteration Agreement with CDFW shall be obtained prior to any disturbance of jurisdictional features on site.”	Prior to and During Construction	Project Proponent
CDFW-BIO-6b	The Project should be revised to only stockpile on disturbed areas, and those areas shall be, at a minimum, consistent with BIO-3, and provided a 100-foot buffer where possible.	Prior to and During Construction	Project Proponent
	Recommendations	Timing	Responsible Party
CDFW-REC-2b	To avoid any potential direct and indirect impacts to other (non-Covered Species) nesting bird species, CDFW recommends that removal of potential nesting habitat, including native habitats and Eucalyptus trees in the proposed area of disturbance occur outside of the general avian breeding season (March 1 - August 31). Pre-construction surveys (i.e., prior to clearing of habitat) may also be performed to determine the presence of any nesting birds, and depending on the findings, an avian nest avoidance program be developed. This program would include provisions for nest buffers depending on the site-specific conditions.	Prior to and During Construction	Project Proponent
CDFW-REC-7a	Species specific success criteria should be included in the on-site restoration plan. Up to 5 years of monitoring for scrub oak species is appropriate.	Prior to, during construction, and after	Project Proponent
CDFW-REC-7b	Areas within the proposed restoration area adjacent to areas of existing chaparral should include Nuttall’s scrub oak within the off-site restoration planting palette. CDFW recommends a minimum of 5 years of monitoring be conducted. During the ongoing (no less than annual) inspection, planted	Prior to, during construction, and after	Project Proponent

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	Nuttall's scrub oaks which did not survive should be replaced.		
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