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Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Wetlands Mitigation Bank at Pond 20 and Port Master Plan Amendment, San Diego, CA (SCH# 2019060167)

Dear Mr. Galvez:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation (NOP) for the Wetland Mitigation Bank at Pond 20 and Port Master Plan Amendment Draft Program Environmental Impact Report (DEIR). The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program. The City of San Diego (City) participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP).

The project includes two components: project-level analysis of the creation of a wetland mitigation bank within a portion of Pond 20, and program-level analysis of the incorporation of Parcels A, B, and C into the San Diego Unified Port District's (District) Port Master Plan. Land use designations of "wetlands, and "commercial recreation/wetlands" would be assigned to the two areas within project site. The District-owned portion of Pond 20 (referred to herein as the Bank Parcel; 83.5 acres) is located in the City, north of Palm Avenue, south of the San Diego Bay National Wildlife Refuge, east of the City of Imperial Beach, and southwest of Otay Valley Regional Park. Parcels A, B, and C (collectively 11.7 acres) are located immediately adjacent to the Bank Parcel outside of the Pond 20 berms. The Bank Parcel of the project is located within the existing Multiple Habitat Planning Area (MHPA), which is preserve land associated with the City's SAP.

According to the NOP, the project site is currently composed of degraded, low-quality wetland habitat. Biological surveys conducted in 2017 and 2018 resulted in the observation of Western snowy plover (*Charadrius nivosus nivosus*; Endangered Species Act-Threatened and a California Species of Special Concern) and Belding's savannah sparrow (*Passerculus sandwichensis beldingi*; CESA-listed Endangered). Eight other unnamed, "special-status wildlife species and one special-status plant species" were observed. When complete, the mitigation bank is proposed to offer high marsh, mid-marsh, low marsh, intertidal mudflat, transitional habitat, and subtidal eelgrass creation credits.

Conserving California's Wildlife Since 1870

The Department offers the following comments and recommendations to assist the District in avoiding or minimizing potential project impacts on biological resources.

Specific Comments

1. Banking consultation was initiated with the Department via a preliminary Draft Prospectus (April 2017; Great Ecology Environment Design). It is our understanding that the District has opted not to continue to pursue the formal process to have the Department be a signatory agency to the Bank Enabling Instrument (BEI). Mitigation credits may not be accepted by the Department from mitigation banks where the Department is not a signatory agency to the BEI. Should the District desire to have the Department as a signatory agency to the BEI, formal consultation should be pursued. More information on our formal banking process, including templates, fee schedules, and timelines, can be found on our website at <https://www.wildlife.ca.gov/Conservation/Planning/Banking>.
2. The NOP only discusses two observed special status species—Western snowy plover and Belding’s savannah sparrow, and refers to eight other unnamed, “special-status wildlife species and one special-status plant species”. The DEIR should identify the full suite of species observed during the 2017 and 2018 biological surveys and those species with the potential to be found on site or otherwise indirectly impacted by the proposed project (see comment 6 below). If impacts to these species cannot be wholly avoided, or if impacts cannot be mitigated below a significant level, then significant impacts could possibly be mitigated through a reduction of banking credits generated at the on-site bank.

Additionally, because of bank development, take (Fish and Game Code § 86) authorization for certain CESA-listed species may be appropriate, per Fish and Game Code section 2081(a). The Department considers adverse impacts to a species protected by the CESA, for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085). Consequently, if the project, project construction, or any project-related activity during the life of the project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subs. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

3. The Department has concerns about eelgrass (*Zostera marina*) due to its historical presence throughout south San Diego Bay. Eelgrass habitat is likely present within or adjacent to the project area, and this should be documented and addressed in the DEIR, in alignment with

the California Eelgrass Mitigation Policy (CEMP; NOAA 2014). As per the CEMP, the Department recommends that the DEIR contain a mitigation measure that addresses eelgrass impacts. This measure should incorporate the following elements:

- a. an initial pre-construction eelgrass survey;
- b. should eelgrass habitat be identified, post-construction surveys and long-term monitoring should be conducted in order to identify short- and long-term impacts such as: direct losses and indirect impacts from dredging/excavation, filling, or shading;
- c. if eelgrass mitigation is necessary, mitigation should meet or exceed minimum compensation requirements and performance standards unless otherwise approved in writing by the Department's Marine Region; and,
- d. a Department-issued Scientific Collecting Permit for eelgrass collection and a Letter of Authorization for eelgrass translocations are required, if eelgrass mitigation through translocation is warranted.

The Department requests any pre-project survey reports or draft mitigation and monitoring plans be sent to our Marine Region with sufficient time for review so that we may provide meaningful feedback and collaboration.

General Comments

4. The Department has responsibility for wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion that would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. Development and conversion can include but are not limited to placement of fill or building of structures within the wetland. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks that preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations.
 - a) The project area supports aquatic, and wetland habitats; therefore, a jurisdictional delineation of the creeks and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service wetland definition adopted by the Department.¹ Please note that some wetland and riparian habitats subject to the Department's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers.

¹ Cowardin, Lewis M., et al. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

- b) The Department also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification to the Department pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, the Department determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. The Department's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA may consider the local jurisdiction's (lead agency) Negative Declaration or Environmental Impact Report for the project. To minimize additional requirements by the Department pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA.²
5. To enable the Department to adequately review and comment on the proposed project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the draft DEIR.
 - a) The document should contain a complete discussion of the purpose and need for, and description of, the proposed project, including all staging areas and access routes to the construction and staging areas.
 - b) A range of feasible alternatives should be included to ensure that alternatives to the proposed project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources. Specific alternative locations should be evaluated in areas with lower resource sensitivity where appropriate.

Biological Resources within the Project's Area of Potential Effect

6. The document should provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire project site, undertaken at the appropriate time of year. The draft DEIR should include the following information.
 - a) CEQA Guidelines, section 15125(c), specifies that knowledge on the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.

² A notification package may be obtained by accessing the Department's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

- b) A thorough, recent floristic-based assessment of special status plants and natural communities, following the Department's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <https://www.wildlife.ca.gov/Conservation/Plants/Info>). The Department recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2008³). Alternately, for assessing vegetation communities located in western San Diego County, the Vegetation Classification Manual for Western San Diego County (Sproul et al. 2011⁴) may be used. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
- c) A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. The Department's California Natural Diversity Data Base in Sacramento should be contacted at <http://www.wildlife.ca.gov/Data/CNDDDB> to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.
- d) An inventory of rare, threatened, endangered and other sensitive species on site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service.

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

- 7. To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the draft DEIR.
 - a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address: project-related changes on drainage patterns on and downstream of the project site; the

3 Sawyer, J. O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

4 Sproul, F., T. Keeler-Wolf, P. Gordon-Reedy, J. Dunn, A. Klein and K. Harper. 2011. Vegetation Classification Manual for Western San Diego County. First Edition. Prepared by AECOM, California Department of Fish and Game Vegetation Classification and Mapping Program and Conservation Biology Institute for San Diego Association of Governments.

volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included.

- b) Discussions regarding indirect project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing MHPA (e.g., preserve lands associated with the City's SAP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the draft DEIR.
- c) The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.

Mitigation for the Project-related Biological Impacts

- 8. The draft DEIR should include measures to fully avoid and otherwise protect Rare Natural Communities from project-related impacts. The Department considers these communities as threatened habitats having both regional and local significance.
- 9. For proposed preservation and/or restoration, the draft DEIR should include measures to perpetually protect the targeted habitat values from direct and indirect negative impacts. Issues that should be addressed include restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.
- 10. The Department recommends that measures be taken to avoid project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503.5 and 3513 of the California Fish and Game Code prohibit take of all raptors and other migratory nongame birds and section 3503 prohibits take of the nests and eggs of all birds. Proposed project activities (including, but not limited to, staging and disturbances to native and nonnative vegetation, structures, and substrates) should occur outside of the avian breeding season which generally runs from February 1-September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, the Department recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

11. The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.
12. Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity

Sincerely,



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ec: Patrick Gower (U.S. Fish and Wildlife Service)
Scott Morgan (State Clearinghouse)

