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Governor's Office of Planning & Research

**Nov 10 2020**

November 9, 2020

## STATE CLEARINGHOUSE

Cory Zelmer  
Los Angeles County Metropolitan Transportation Authority  
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[LAART@metro.net](mailto:LAART@metro.net)

**Subject: Los Angeles Aerial Rapid Transit Project Notice of Preparation for a Draft Environmental Impact Report, Los Angeles County, SCH #2020100007**

Dear Mr. Zelmer:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) Draft Environmental Impact Report (DEIR) for Los Angeles Aerial Rapid Transit Project (Project).

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's 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, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including 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.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

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**Project Location:** The proposed Project is located in the City of Los Angeles (City), within or adjacent to the communities of El Pueblo, Union Station, Chinatown, Mission Junction, Solano Canyon, and Elysian Park. The proposed Project would generally be located within the public right-of-way, would fly over Los Angeles State Historic Park, and State Route (SR)-110 near Dodger Stadium. The surrounding land uses include high and medium density residential, commercial, retail, institutional, transit-related infrastructure (road and rail), parks and open space, and public use facilities.

**Project Description and Objectives:** The purpose of the proposed Project is to expand mobility options for transit riders through a permanent direct transit connection between Los Angeles Union Station (LAUS) and Dodger Stadium via an aerial gondola system. The proposed Project aims to reduce traffic congestion and associated greenhouse gas emissions during game and special event days. The proposed Project provides the potential to increase transit access for open space, parks, and the surrounding communities by linking to the Los Angeles State Historic Park, Elysian Park, and the region's rapidly growing regional transit system at LAUS. The proposed Project would function as a rapid transit system, a first/last mile connector, and a new regional tourist destination that offers scenic views of Los Angeles.

### Comments and Recommendations

CDFW offers the following comments and recommendations 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.

### Specific Comments

- 1) Nesting Birds. Figures 2 and 3 of the Notice of Preparation shows the aerial gondola system traveling through some portion of Los Angeles State Historic Park, and adjacent to Solano Canyon and open space areas. CDFW is concerned that an increase in human presence and noise both during and post construction may impact avian species in these areas. Project activities occurring during the breeding season of nesting birds could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species.
  - a) CDFW 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 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).
  - b) 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 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs.
  - c) If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect

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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, 500-feet for raptors, and 0.5 a mile for special status species. Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Changes (including reductions and increases) 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.

- d) CDFW recommends providing an analysis of the increased activity due to aerial gondola operation. Such an analysis should include the expected increase in aerial traffic along the alignment and the subsequent change in sound levels and frequency of noise relative to a no build alternative. The analysis should include forecasted changes in sound and seismic levels resulting from the long-term daily operation of the aerial line after construction has completed. Using these expected elevated levels of sound and vibration, further consideration should be given to potential impacts to nearby nesting bird species.
- 2) Bat Species. A review of California Natural Diversity Database (CNDDB) indicates occurrences of several bat species within the Project vicinity. These species include, western mastiff bat (*Eumops perotis californicus*), big free-tailed bat (*Nyctinomops macrotis*), hoary bat (*Lasiurus cinereus*), and pallid bat (*Antrozous pallidus*). The mastiff, free-tailed, and pallid bat species are all designated California Species of Special Concern. Despite the high diversity and sensitivity of bats in Southern California, numerous bat species are known to roost in trees and structures throughout Los Angeles County. Project disturbance activities from construction may impact trees, vegetation, and/or structures that may provide roosting or foraging habitat and therefore has the potential for the direct loss of bats. In addition, CDFW is concerned that an increase in human presence and noise post construction due to aerial gondola system operations may also disturb foraging and roosting habitat for bats in the area.

Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish and Game Code, § 4150, California Code of Regulations, § 251.1). A DEIR should provide a thorough discussion of potential impacts to bats from construction and operation of the Project to adequately disclose potential impacts and to identify appropriate avoidance and mitigation measures. The DEIR should describe feasible measures which could minimize significant adverse impacts (CEQA Guidelines, §15126.4[a][1]). CDFW recommends providing an analysis of the increased activity due to aerial gondola operation (see Specific Comment 1d).

### **General Comments**

- 1) Biological Baseline Assessment and Impact Analysis. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species, and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts, as referred in General Comment 3 and 4. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. CDFW also considers impacts to Species of Special Concern a significant

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direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures. The DEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a [state-wide ranking](#) (CDFWa, 2020) of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level.
- b) A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities](#) (CDFW, 2018);
- c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer, 2008). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
- d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the Project. CDFW's California Natural Diversity Data Base (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that [CNDDDB Field Survey Forms](#) (CDFWb, 2020) be completed and submitted to CNDDDB to document survey results.
- e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California Species of Special Concern and California Fully Protected Species (Fish & Game Code, §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare or threatened species (CEQA Guidelines, § 15380). 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 CDFW and the USFWS; and,
- f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.

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- 2) Project Description and Alternatives. To enable CDFW 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 DEIR:
  - a) 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; and,
  - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.
- 3) CESA. CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or State-listed rare plant species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). 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, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances, among other options [Fish & Game Code, §§ 2080.1, 2081, subds. (b) and (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 CDFW 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.
- 4) Biological Direct, Indirect, and Cumulative Impacts. 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 DEIR:
  - a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the Project site; the 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 discussion 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 Project impacts should be included;
  - b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian

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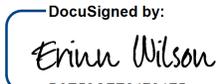
- ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & Game Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
- c) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,
  - d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 5) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.
- 6) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation are the processes of moving an individual from the Project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 7) Moving out of Harm's Way. To avoid direct mortality to wildlife that may be on site, CDFW recommends that a qualified biological monitor approved by CDFW be on site prior to and during ground activities to move out of harm's way any special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.

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## Conclusion

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Felicia Silva, Environmental Scientist, at (562) 430-0098 or by email at [Felicia.Silva@wildlife.ca.gov](mailto:Felicia.Silva@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Erinn Wilson  
Environmental Program Manager I

Ec: CDFW

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## References:

[CDFWa] California Department of Fish and Wildlife. 2020. Natural Communities. Accessed at:  
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[CDFWb] California Department of Fish and Wildlife. 2020. Submitting Data to the CNDDb. Accessed at:  
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<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>