



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
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December 3, 2020

Governor's Office of Planning & Research

Dec 01 2020

STATE CLEARINGHOUSE

Jamie Kennedy
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City of San Diego
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Subject: Water and Storm Water Group Job 968 (PROJECT) Mitigated Negative Declaration (MND) SCH #2020110047

Dear Ms. Kennedy:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of San Diego (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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.

¹ 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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CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of San Diego (City) participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP).

PROJECT DESCRIPTION SUMMARY

Proponent: Natalie DeFreitas, City of San Diego Engineering and Capital Projects Department

Objective: The objective of the Project is to address necessary City water and storm drain pipeline improvements. This will be accomplished by replacing, rehabilitating, constructing, and abandoning several existing water mains and replacing a storm drain. Proposed work includes the installation of approximately 8,380 linear feet of 8", 12", and 16" water mains, and 193 linear feet of storm drain, as well as abandonment of 6,375 linear feet of 6", 8" and 12" water main. Abandonment of pipeline will occur in place. Additional work includes cutoff walls, fire service connections and hydrants, and curb inlets.

Location: The proposed Project includes a total of 11 sites. Six of the sites are in urban areas in the neighborhoods of Old Town, North Park, City Heights, Encanto, and the San Diego Airport Authority Property. These six sites do not contain any biological impacts. The remaining five sites do have the potential for biological impacts and are in the neighborhoods of Mission Valley (Site 4), Point Loma (Site 5) and City Heights (Sites 8, 10, and 12). Site 4 is located on the north side of Camino del Rio North, approximately 0.2 mile west of the Interstate 8 and Interstate 15 connection. Site 5 is located along Silvergate Avenue in Point Loma, extending east between Behberg Road and Silvergate Place, adjacent to and partially within the Space and Naval Warfare Systems Command (SPAWAR). The remaining three sites are all located within the neighborhood of City Heights. Site 8 is located parallel to and directly east of Central Avenue, between Redwood Street to the north and Quince Street to the south. Site 10 is located between the southern terminus of Roseview Place, Laurel Street, and Home Avenue. Site 12 is located at the southern terminus of 39th Street headed southeast onto Manzanita Drive, and directly east of the Interstate 805 and Interstate 15 intersection.

Biological Setting: Six of the 11 proposed Project sites are in heavily urbanized areas where there will be no direct or indirect biological impacts. The remaining five sites do have the potential for direct and indirect biological impacts. The Project footprint of Site 4 contains only urban/developed cover and will not impact any sensitive vegetation communities directly. The northern terminus of the construction, however, extends by 0.01 acre into the MHPA and is directly adjacent to the southern edge of the San Diego River corridor where there is southern willow scrub and eucalyptus woodland present. The Project footprint of Site 5 will not impact any sensitive vegetation communities, and contains 0.04 acre of ornamental plantings and 0.40 acre of urban/developed cover. This site, however, is directly adjacent to Diegan coastal sage scrub on the southern edge of the site. The Project footprint of Site 8 extends into the MHPA by 0.01 acre and contains 0.01 acre of Diegan coastal sage scrub, 0.01 acre of scrub oak chaparral, 0.09 acre of disturbed habitat, and 0.08 acre of urban/developed cover. The Project footprint for Site 10 contains 0.02 acre of Diegan coastal sage scrub, 0.01 acre of disturbed Diegan coastal sage scrub, 0.06 acre of scrub oak chaparral, 0.10 acre of disturbed habitat, and 0.09 acre of urban/developed cover. The Project footprint for Site 12 extends into the MHPA by less than 0.01 acre and contains less than 0.01 acre of Diegan coastal sage scrub, 0.04 acre of eucalyptus woodland, and 0.07 acre of urban/developed cover. Two special status plant species were observed at two of the sites: Nuttall's scrub oak (*Quercus dumosa*; California Rare Plant Rank 1B.1) at Sites 10 and 12, and the MSCP-covered wart-stemmed ceanothus (*Ceanothus*

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verrucosus; California Native Plant Rank 2B.2) at Site 12. No special status wildlife species were observed.

Per Table 3 (Upland Mitigation Ratios) in the City's Biology Guidelines and consistent with the City's MSCP, Diegan coastal sage scrub (Tier II) within and outside of the MHPA will be mitigated at a 1:1 ratio within the MHPA. Scrub oak chapparal (Tier I) within the MHPA will be mitigated at a ratio of 2:1 inside the MHPA and habitat outside of the MHPA will be mitigated at a 1:1 ratio inside the MHPA. Canyon View is an existing City Public Utilities Department mitigation site that will be used for Project mitigation requirements.

Timeframe: The MND does not provide start and end dates for the work proposed. Work will be performed Monday through Friday during daytime hours, with the potential for weekend work.

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.

I. Project Description and Related Impact Shortcoming

COMMENT #1: Potential subsurface stream impacts from trenchless drilling and upland receiving pit impacts

Issue: The BRL mentions the water main underneath the stream in Site 12 would be replaced by trenchless drilling and refers to this as "aqua pipe." There is no description within the BRL, MND or the Preliminary Geotechnical Investigation (PGI) as to what "aqua pipe" is. The PGI mentions that waterline installation at Site 12 will vary from 2.5 to 4.5 feet below ground surface. There is no discussion if this depth is measured from the top of the pipe or the bottom. At the terminus of the trenchless drilling, there is also a temporary 10-foot by 15-foot receiving pit proposed within Diegan coastal sage scrub. In looking at Figure 3E in the BRL, it appears the receiving pit is approximately 70-feet up-slope from the stream. The stream within the Project footprint is seasonal and unvegetated, with a cobble bottom and vertical banks. There are signs of scouring and wracking.

CDFW 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 CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. CDFW 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 CDFW 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

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

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It is unclear in the MND, BRL, and PGI what an “aqua pipe” is and how the receiving pit will be created. The PGI presents several possibilities for the type of trenchless drilling, but the MND does not identify which method will be used. The depth of the pipe is not clearly addressed. There are also no measures discussed on how frack-out will be avoided if the trenchless drilling method used requires the use of pressurized drilling fluids.

Specific impact: One impact would be the alteration of subsurface water flow through the stream, impacting future seasonal surface flow on-site and downstream. Another impact would be the release of chemicals into the groundwater from frack-outs. This could potentially have downstream impacts to plants and wildlife as groundwater appears on the surface. The PGI mentions a shallow pipe depth (ranging from 2.5 feet to 4.5 feet) underneath the stream and an impact from a pipe not buried deep enough could be exposure of the pipe from scouring, possibly leading to impediment of flow.

Why impact would occur: Page five of the PGI states that the depth of the groundwater table below the Project footprint is unknown, and that it is difficult to predict where perched or true groundwater will appear in the future. With no description of the trenchless drilling method being used under the stream at Site 12, there is not enough evidence within the MND and supporting documentation to know if the impacts will be not significant.

Evidence impact would be significant: The impact would be significant if no mitigation measures were in place and the trenchless drilling caused subsurface water issues, if the pipe was not buried deep enough and scour occurred leading to impediment of future flow, or if frack-out occurred and contaminated the groundwater and/or impacted downstream habitat.

Recommended Potentially Feasible Mitigation Measure:

Recommendation Measure #1: CDFW recommends the MND provide more information about the type of trenchless drilling being performed underneath the stream, the depth of the pipe under the stream, the distance from the stream of the receiving pit and how it will be created, and how frack-out will be avoided depending on the type of trenchless drilling method being used. CDFW recommends a scour analysis be performed or the pipe be located under the stream below scour depth to avoid future exposure of the pipe.

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #2: Potential impacts to coastal California gnatcatcher (*Poliioptila californica californica*; gnatcatcher) at Site 12

Issue: Page 5 of the MND under BIO-3 states that no clearing, grubbing, or grading of occupied gnatcatcher habitat will happen at Sites 8 and 10 between March 1st through August 15th until protocol surveys are performed following United States Fish and Wildlife (Service) guidelines. There is also Diegan coastal sage scrub at Site 12, but page 5 of the MND makes no mention of this. While the work being performed at Site 12 involves avoidance of Diegan coastal sage scrub impacts through abandonment of pipeline and trenchless drilling, there will be a temporary 10-foot by 15-foot receiving pit located within the habitat. It is unclear in the MND what a receiving pit is and how it will be created. Table 3 (Impacts to Vegetation Communities and Land Cover Types in the Proposed Project Limits) on page 19 of the Biological Resources Letter (BRL) does reference mitigation for less than 0.001 acre of Diegan coastal sage scrub at Site 12, so the small impact is identified.

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Specific impact: Site 12 contains the same possibility of impacts to gnatcatcher as Sites 8 and 10, and should receive the same avian nesting protections.

Why impact would occur: Impacts to nesting birds could result from ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of nesting birds could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

Evidence impact would be significant: The loss of occupied habitat or reductions in the number of rare bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish and Game Code sections 3503 and 3503.5.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To protect potentially nesting gnatcatcher on this Project, protocol level surveys should be performed on Site 12 along with Sites 8 and 10 prior to construction.

COMMENT #3: Adjacency to the San Diego River

Issue: The BRL and MND reference avoiding direct impacts to sensitive species such gnatcatcher and rufous-crowned sparrow (*Aimophila ruficeps canescens*). The northern terminus of the pipeline work at Site 4 in Mission Valley ends in disturbed habitat that is directly adjacent the San Diego River and the MHPA, containing eucalyptus woodland and southern willow scrub. Indirect impacts to sensitive species that inhabit the river corridor are not addressed in the MND.

Specific impact: The San Diego River corridor supports the Endangered Species Act (ESA)-listed, California Endangered Species Act (CESA)-listed, and MSCP-covered least Bell's vireo (*Vireo bellii pusillus*); the ESA-listed and CESA-listed light-footed Ridgway's rail (*Rallus obsoletus levipes*); the MSCP-covered and California Species of Special Concern tricolored blackbird (*Agelaius tricolor*); and the MSCP-covered and State Watch List Cooper's hawk (*Accipiter cooperii*). Per the California Natural Diversity Database (CNDDDB), least Bell's vireo occurrences are found within 400 meters to the west and 500 meters to the east of Site 4. While light-footed Ridgway's rails, tricolored blackbird, and Cooper's hawk occurrences have been documented by CNDDDB approximately 0.6 mile to three miles west of Site 4, it is still important to be aware that these sensitive species move throughout the river corridor and could be present adjacent to the work site at any time.

Why impact would occur: Indirect project disturbance activities could result in nest abandonment and incidental loss of breeding success.

Evidence impact would be significant: The reduction in the number of sensitive bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish and Game Code sections 3503 and 3503.5.

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Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #2: To protect sensitive species in the San Diego River corridor and MHPA adjacent to Site 4, the Land Use Adjacency Guidelines as outlined in Section 1.4.3 in the City's MSCP should be followed. These guidelines involve avoiding drainage from impervious surfaces and the release of toxins into the MHPA. If construction activity occurs during the avian breeding season (January 1 through September 15), light should be directed away from sensitive resources and noise impacts minimized through noise reduction measures.

COMMENT #4: Nest avoidance measures

Issue: Mitigation Measure BIO-3 in the MND addresses avian protection requirements by proposing to avoid direct impacts to nesting birds by avoiding construction during the breeding season (February 1 to September 15) and requiring preconstruction nesting surveys to be performed no more than 10 days before the commencement of construction activities. This mitigation measure only requires preconstruction surveys be performed in the disturbance area with no guidance on surveys within a buffer around the impact area. Draft guidelines for buffer distances are provided below.

Specific impacts: The Project site contains scrub oak chaparral and Diegan coastal sage scrub, along with Nuttall's scrub oak at two of the sites. The oak trees provide suitable perch and nesting sites for raptors and picids, while the scrub provides nesting habitat for passerines. The specific impacts include the incidental loss of fertile eggs or nestlings, possible nest abandonment, and the loss of foraging habitat, both on-site and in adjacent habitat on MHPA.

Why impact would occur: Impacts to nesting birds could result from ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well as temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of nesting birds could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

Evidence impact would be significant: The loss of occupied habitat or reductions in the number of sensitive bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish and Game Code sections 3503 and 3503.5.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #3: If Project activities cannot be avoided from January 1 through September 15, CDFW recommends a qualified biologist complete a preconstruction survey no more than three days prior to the beginning of any Project-related activity for nesting bird activity within the limits of disturbance and 500 feet from the area of disturbance. The nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. If Project activities are delayed or suspended for more than 14 days during the breeding season, surveys should be repeated. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 100 feet around non-listed active passerine (perching birds and songbirds) nests, 300 feet around any listed passerine nests (e.g., gnatcatcher), and 500 feet around active non-listed raptor nests. These buffers should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

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Nest buffers may be reduced, as appropriate, by a qualified biologist based on the existing ambient (noise, human activities, etc.) condition, presence of screening vegetation, or other factors.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals](#).

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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 MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Melissa Stepek, Senior Environmental Scientist at (858) 637-5510 or Melissa.Stepek@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David A. Mayer
Environmental Program Manager I
South Coast Region

Ec: CDFW

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Attachment A: Draft MMRP (CDFW 2020)

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

Biological Resources	Mitigation Measures	Timing	Responsible Party
REC BIO-1	CDFW recommends the MND provide more information about the type of trenchless drilling being performed underneath the stream, the depth of the pipe under the stream, the distance from the stream of the receiving pit and how it will be created, and how frack-out will be avoided depending on the type of trenchless drilling method being used. CDFW recommends a scour analysis be performed or that the pipeline be buried below scour depth to avoid future exposure of the pipe.	Before construction	City of San Diego
MM BIO-1	CDFW recommends that gnatcatcher protocol level surveys be performed on Site 12 along with Sites 8 and 10 prior to construction.	Before construction	City of San Diego in coordination with the qualified biologist
MM BIO-2	CDFW recommends the Land Use Adjacency Guidelines as outlined in Section 1.4.3 in the City's MSCP should be followed. These guidelines involve avoiding drainage from impervious surfaces and the release of toxins into the MHPA. If construction activity occurs during the avian breeding season (January 1 through September 15), light should be directed away from sensitive resources and noise impacts minimized through noise reduction measures.	Before and during construction	City of San Diego

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MM BIO-3	<p>If Project activities cannot be avoided from January 1 through September 15, CDFW recommends a qualified biologist complete a preconstruction survey no more than three days prior to the beginning of any Project-related activity for nesting bird activity within the limits of disturbance and 500 feet from the area of disturbance. The nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. If Project activities are delayed or suspended for more than 14 days during the breeding season, surveys should be repeated. If nesting raptors and migratory songbirds are identified, CDFW recommends the following minimum no-disturbance buffers be implemented: 100 feet around non-listed active passerine (perching birds and songbirds) nests, 300 feet around any listed passerine nests (e.g., gnatcatcher) and 500 feet around active non-listed raptor nests. These buffers should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Nest buffers may be reduced, as appropriate, by a qualified biologist based on the existing ambient (noise, human activities, etc.) condition, presence of screening vegetation, or other factors.</p>	Before construction	City of San Diego in coordination with the qualified biologist
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