



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE

South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 12, 2021

Melanie Tylke
Environmental Project Manager
Department of General Services
County of San Diego
5560 Overland Avenue, Suite 410
San Diego, CA 92123
Melanie.Tylke@sdcounty.ca.gov

Governor's Office of Planning & Research

Jan 13 2021

STATE CLEARINGHOUSE

Subject: County Animal Shelter (PROJECT), Mitigated Negative Declaration (MND), SCH #2020120258

Dear Ms. Tylke:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of San Diego (County) for the County Animal Shelter (Project) pursuant to 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 also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The County participates in the NCCP program by implementing its approved Multiple Species Conservation Program Subarea Plan (SAP) for the southwestern portion of the County.

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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PROJECT DESCRIPTION SUMMARY

Proponent: County of San Diego, Department of General Services

Objective: The objective of the proposed Project is the construction of an approximately 24,000-square-foot animal shelter to replace the existing shelter in the community of Bonita, California. The shelter will include four separate buildings with an internal open courtyard, an outdoor livestock area, an activity yard, a staff parking lot, and a public parking lot. Additional work includes off-site improvements along Riverview Parkway such as sidewalk, curb, and gutter improvements.

Location: The proposed 10.59-acre Project is located on undeveloped County-owned land within the City of Santee (City), bordered by Riverview Parkway to the south and North Magnolia Avenue to the east. The site is approximately 0.8 mile north of California State Route 52 and 0.6 mile west of Highway 67. While the County does have an adopted SAP for the southwestern portion of the County, the proposed Project does not fall within the SAP boundaries. The City's Town Center Specific Plan Amendment Area which guides development of the approximately 154 acres of County-owned land within the City's Town Center Specific Plan Area does encompass the proposed Project site.

Biological Setting: The proposed Project contains 0.02 acre of vernal pool habitat, 0.08 acre of disturbed wetland, 3.45 acres of disturbed Diegan coastal sage scrub (*Baccharis* dominated), 0.45 acre of eucalyptus woodland, 6.57 acres of disturbed habitat, and 0.02 acre of urban/developed cover. No special status wildlife or plant species are on-site. Direct development impacts will occur to 0.08 acre of disturbed wetland, 2.71 acres of disturbed Diegan coastal sage scrub (*Baccharis* dominated), and 1.79 acres of disturbed habitat.

The proposed Project does not fall within a County-defined Biological Resource Core Area (BRCA). Per Attachment M in the County's Biological Mitigation Ordinance (BMO), wetlands are a sensitive Tier I habitat and the mitigation ratio is 1:1 for impacts outside of a BRCA being mitigated within a BRCA. Diegan coastal sage scrub is a sensitive Tier II habitat, and the mitigation ratio is also 1:1 for impacts outside of a BRCA being mitigated within a BRCA. Disturbed habitat is Tier IV and does not require mitigation. The County proposes to mitigate either by purchasing mitigation credits at a San Diego County Conservation Bank that has a signed Implementing Agreement with CDFW and the U.S. Fish and Wildlife Service or by purchasing mitigation credits through the County's Mitigation Lands Policy within the same watershed of the development area.

Timeframe: Construction is anticipated to begin in November 2021 and end in January 2023.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

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I. Project Description and Related Impact Shortcoming

COMMENT #1: Project design

Issue: The Biological Technical Report (BTR) mentions that the Project is considered a public facility with public use and therefore exempt from following the guidelines in the County's Resource Protection Ordinance (RPO). Page 1 in the RPO defines an essential public facility or project as "any structure or improvement necessary for the provision of public services, which must be located in the particular location to serve its purpose and for which no less environmentally damaging location, alignment, or non-structural alternative exists." For an essential public facility to be considered exempt from following the RPO guidelines, it states again on Page 12 in the RPO that, "there are no feasible less environmentally damaging location, alignment, or non-structural alternatives that would meet project objectives." The issue is that the development footprint is sited approximately two hundred feet west of the urban edge where Riverview Parkway and North Magnolia Avenue meet, putting it directly over the disturbed wetland and most of the Diegan coastal sage scrub (*Baccharis* dominated) on-site. The area closest to the roadways is primarily disturbed habitat, so it appears that the Project footprint is not located in the least environmentally damaging location. Neither the BTR nor the MND provide an explanation or justification why the development footprint is located where it is within the site.

Wetland habitat is designated as Tier I and Diegan coastal sage scrub as Tier II within the BMO. These sensitive habitats require specific mitigation, while disturbed habitat is designated as Tier IV and does not require any mitigation. The Project is outside the County's SAP and the City has not adopted their Subarea Plan. However, the BTR and MND reference that the Project will comply with County's guidelines and follow the mitigation recommendations.

Within the RPO under Section 86.605 Exemptions, it states that, "if there are located wetlands or floodplains or riparian habitat on the portion sought to be exempted, that (aa) none of said lands is affected directly or substantially by the project, or (bb) that measures have been taken which avoid development on said lands." The entire Project site falls within the 100-year floodplain of the San Diego River and the proposed footprint is on top of a disturbed wetland that will be directly impacted. While the Project is following the County's no-net-loss of wetlands policy through off-site mitigation, the layout of the Project footprint still does not appear to be in the least environmentally impactful area within the available open space and therefore appears to be inconsistent with the RPO.

Specific impact: There is a direct impact in the reduction of Tier I and Tier II habitats. Species utilize these habitats for their ecological needs such as foraging and nesting. By not locating the Project footprint in the least environmentally sensitive area along the urban edge of Riverview Parkway and North Magnolia Avenue, there are increased edge effects and habitat fragmentation of the remaining open space on the site. Indirect impacts to resources can result from edge effects and habitat fragmentation, such as increased exposure to predators and invasive species, and microclimatic changes due to increased or decreased climate factors.

Why impact would occur: The impact would occur through the removal of habitat.

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Evidence impact would be significant: The loss of sensitive habitat could potentially directly or indirectly reduce the number of sensitive bird species, through nest abandonment or reproductive suppression. This 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:

Recommendation Measure #1: CDFW recommends the Project footprint be sited closer to the urban edge associated with Riverview Parkway and North Magnolia Avenue, alleviating all direct impacts to a wetland and reducing direct impacts to Diegan coastal sage scrub.

COMMENT #2: Habitat mitigation

Issue: Mitigation Measure 2 on page 29 of the MND mentions that mitigation for impacts to a 0.08 acre of wetland and 2.71 acres of Diegan coastal sage scrub would be accomplished either by purchasing mitigation credits at a San Diego County Conservation Bank or purchasing credits through the County's Mitigation Lands Policy. There is no mention within the MND which mitigation option the Project applicant will choose, including no mention of the location of the potential mitigation lands or a detailed description of the habitat type being purchased.

Specific impact: The location of the off-site mitigation area and type of habitat credits being purchased is not stated in the MND.

Why impact would occur: The impact would potentially occur if the type of habitat purchased off-site as mitigation was not in-kind or sufficient to bring the level of Project impacts to below significant.

Evidence impact would be significant: There is not enough evidence to determine whether the Project impacts are being sufficiently mitigated.

Recommended Potentially Feasible Mitigation Measure:

Recommendation Measure #2: CDFW recommends that the Project applicant provide more specific information on where mitigation credits will be purchased, along with a detailed description of the habitat being purchased.

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #3: Nest avoidance measures

Issue: Mitigation Measure BIO-1 in the MND addresses avian protection requirements by proposing to avoid direct impacts to nesting birds by avoiding construction during the general migratory bird breeding season (February 1 to September 15) and during raptor breeding season (January 15 to July 15). Preconstruction surveys are required if construction must occur during these nesting periods, but neither the MND nor the BTR recommend how soon before construction these surveys need to occur. The mitigation measure requires the preconstruction survey to cover the limits of disturbance along with a

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300-foot buffer, and includes a 300-foot buffer around any nesting birds observed. Draft guidelines for buffer distances are provided below.

Specific impacts: The Project site contains disturbed Diegan coastal sage scrub (*Baccharis* dominated) and eucalyptus woodland. The sage scrub provides nesting habitat for passerines. The woodland habitat provides suitable perch and nesting sites for raptors and picids. 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.

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:

Mitigation Measure #1: If Project activities cannot be avoided during the breeding season, 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 five 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.

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](#).

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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 County 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

cc: CDFW

Karen Drewe, San Diego – Karen.Drewe@wildlife.ca.gov
Susan Howell, San Diego – Susan.Howell@wildlife.ca.gov
Jennifer Ludovissy, San Diego – Jennifer.Ludovissy@wildlife.ca.gov
CEQA Program Coordinator, Sacramento – CEQACommentLetters@wildlife.ca.gov

State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov
Jonathan Snyder, USFWS – Jonathan_d_Snyder@fws.gov

Attachment A: Draft MMRP (CDFW 2021)

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Attachment A:

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

Biological Resources	Mitigation Measures	Timing	Responsible Party
MM-REC-1	CDFW recommends the Project footprint be sited closer to the urban edge associated with Riverview Parkway and North Magnolia Avenue, alleviating direct impacts to a wetland and Diegan coastal sage scrub.	Before the final MND is approved	County of San Diego
MM-REC-2	CDFW recommends that the Project applicant provide more specific information on where mitigation credits will be purchased, along with a detailed description of the habitat being purchased.	Before construction	County of San Diego
MM-BIO-1	If Project activities cannot be avoided during the nesting season, 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 five 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	Before construction	County of San Diego in coordination with the qualified biologist

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	<p>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>		
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