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February 24, 2021

Governor's Office of Planning & Research

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Feb 24 2021

STATE CLEARINGHOUSE

Subject: Mitigated Negative Declaration for the Old Road Over Castaic Creek Project, Unincorporated Community of Val Verde, Los Angeles County

Dear Mr. Anidi:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) from the County of Los Angeles Department of Public Works (County; Lead Agency) for the Old Road Over Castaic Creek Project (Project). Supporting documentation for the Project include the *Natural Environment Study – Discussions of Habitat Assessment, Focused Species Surveys, and Wetland Studies – January 2020* (NES). 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 & Game 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 & Game 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 & Game Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

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Project Description and Summary

Objective: The County proposes to seismically retrofit the existing Old Road Bridge to bring the structure into conformance with seismic standards. The proposed Project activities would include the following:

- Removal of unsound concrete at the pile extensions and replacement of concrete where necessary;
- Retrofitting of the existing concrete foundation;
- Driving of steel micro piles at the piers;
- Construction of infill walls and foundation; and,
- Construction of seat extenders and shear keys at the abutments and piers.

Within Castaic Creek, the Project would involve a temporary disturbance footprint of approximately 0.43 acre, which would include areas within Castaic Creek and adjacent upland areas outside of the creek. A temporary ramp would be installed during construction, allowing construction equipment to access the creek. Upon completion of construction, any disturbance areas within the creek would be returned to pre-construction conditions.

Temporary staging areas would be established to the north and south of the existing bridge, on the existing dirt shoulders of the Old Road on either side of Castaic Creek. No grading or removal of vegetation is expected to occur to prepare the staging areas.

Project construction is anticipated to occur in 2024 and would be completed in approximately 24 weeks. During construction, approximately 180 cubic yards of earthwork and demolition material would be removed from the site and exported.

Location: The Project site is primarily surrounding the Old Road Bridge along the Old Road roughly 0.8 mile north of State Route 126 and immediately west of I-5 in the unincorporated community of Val Verde. The site is generally located within Castaic Valley just north of the junction where Castaic Creek merges with the Santa Clara River, approximately 40 miles north of downtown Los Angeles.

Comments and Recommendations

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

Project Description and Related Impact Shortcoming

Comment #1: Impacts to Unarmored Threespine Stickleback

Issue: CDFW is concerned that some of Project-related activities could damage the riparian habitat and water quality of Castaic Creek. There are numerous historical records of unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*; UTS), a State fully protected species, in Castaic Creek and immediately downstream in the Santa Clara River. A review of California Natural Diversity Database (CNDDDB) shows at least one occurrence of UTS within the Project site and multiple records downstream in the Santa Clara River.

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Specific impacts: The Project may result in the loss of streams, associated watershed function, and biological diversity that could directly or indirectly impact the local population of unarmored threespine stickleback.

Why impacts would occur: Ground disturbing activities from grading and filling, water diversions and dewatering would physically remove or otherwise alter existing streams or their function and associated riparian habitat on the Project site. Downstream areas and associated biological resources beyond the Project development footprint may also be impacted by Project related releases of sediment and altered watershed effects resulting from Project activities.

Evidence impacts would be significant: Except as provided in the Fish and Game Code (e.g., for necessary scientific research), take of any fully protected species is prohibited and cannot be authorized by the Department (Fish and Game Code § 5515 and § 3511). "Take" is defined in Section 86 of Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Species designated under Fish and Game code as Fully Protected may not be taken or possessed at any time and no licenses or permits may be issued for their take (Fish & G. Code §§ 3511, 4700, 5050, and 5515). Fully protected status precludes CDFW from authorizing any amount of incidental take or intentional take to meet any project mitigation requirement. Given the legal status of fully protected animals, take avoidance measures should meet very high standards of effectiveness.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: UTS is a fully protected species and therefore cannot have any take authorized. The County should completely avoid working in proximity to any wetted portion of the stream or during any wet/rainy weather conditions. CDFW should be consulted prior to any Project-related activities to ensure that "take" will be avoided.

Recommendation #1: CDFW recommends the environmental document include measures to preclude "take" on the Project site during operations and from the increase in temporary traffic and human presence in relation to construction. The environmental document should view the potential "take" as a result of habitat modification. If the Project's modification of occupied habitat causes mortality of individuals, then the Project will be considered the cause of the take. Therefore, to avoid take, construction and operation activities should avoid all fully protected species by a distance of no less than the distance that the specific species are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data.

Comment #2: Impacts to Least Bell's Vireo and Southwestern Willow Flycatcher

Issue: The Project site occurs within United States Fish and Wildlife Service (USFWS)-[designated critical habitat](#) (USFWS 2021) for least Bell's vireo (*Vireo bellii pusillus*; LBV) and southwestern willow flycatcher (*Empidonax traillii extimus*; SWFL), both CESA- and Federal Endangered Species Act (FESA)-listed species, along Castaic Creek. A review of CNDDDB indicates that there are recorded observations of LBV immediately south (and downstream) of the Project site in Castaic Creek. The Project site contains riparian willow thickets, vital habitat for LBV and SWFL, that extend downstream into the Santa Clara River, where these listed species are present.

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Specific impacts: Impacts to LBV or SWFL could result from the loss of habitat, diminished flows, or diminished water quality. Riparian vegetation, such as arroyo willow or Fremont cottonwood-red willow, are reliant upon nearby water levels. If stream banks are to recede or less water is allowed to flow downstream, sensitive species such as LBV and SWFL, may experience a loss of habitat. Indirect effects such as noise, dust, and artificial lighting may also adversely impact the two species as well as other nesting birds.

Why impact would occur: Project disturbance activities could result in temporary or long-term loss of suitable nesting and 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.

Noise from road use, generators, and other equipment may disrupt mating calls or songs, which could impact reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has been shown to reduce the density of nesting birds (Francis et al. 2009), and Bayne et al. (2008) found that songbird abundance and density was significantly reduced in areas with high levels of noise. Additionally, noise exceeding 70 dB(A) may affect feather and body growth of young birds (Kleist et al. 2018).

Artificial light may attract or disorient migrating birds by disrupting navigation (Ogden 1996, Longcore and Rich 2004, 2016) and may also suppress their immune system (Moore and Siopes 2000). In addition, songbirds that live in areas with artificial light often begin morning choruses during night hours (Derrickson 1988, Miller 2006, Fuller et al. 2007), which may disrupt typical breeding behaviors.

Evidence impact would be significant: Consistent with CEQA Guidelines, Section 15380, the status of the LBV and SWFL as endangered species pursuant to FESA (16 U.S.C. § 1531 *et seq.*) and CESA (Fish & G. Code, § 2050 *et seq.*) qualifies it as an endangered, rare, or threatened species under CEQA.

Project impacts may result in substantial adverse effects, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS. Adverse impacts to LBV and/or SWFL may occur without implementing take avoidance surveys prior to operations, including, but not limited to, ground and vegetation disturbing activities.

Ground clearing and construction activities could lead to the direct mortality of a listed species. The loss of occupied and suitable habitat could yield a loss of foraging potential, nesting sites, roosting sites, or refugia and would constitute a significant impact absent appropriate mitigation. CDFW considers impacts to CESA-listed species a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. In addition, 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: CDFW recommends the County perform appropriate protocol surveys for LBV and SWFL, both available through [the CDFW website](#), prior to Project construction (CDFW 2021a). The survey(s) should be performed based on the species found, or likely to

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occur, on the Project's site. Survey results including negative findings should be submitted to CDFW and USFWS prior to implementing Project related ground disturbing activities.

Mitigation Measure #2: CDFW recommends fully avoiding impacts to LBV and SWFL. CDFW recommends that the County submit an avoidance plan to CDFW for review and comment. A final avoidance plan should be fully developed prior to implementing Project related ground disturbing activities.

Mitigation Measure #3: If "take" or adverse impacts to LBV and/or SWFL cannot be avoided either during Project activities or over the life of the Project, the County must consult CDFW to determine if a CESA ITP is required (pursuant to Fish & Game Code, § 2080 et seq.) and with UWFWS to determine if an ESA ITP is required, prior to construction.

Appropriate authorization from CDFW may include an Incidental Take Permit (ITP) or a Consistency Determination in certain circumstances, among other options [Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)]. Early consultation is encouraged, as significant modification to the 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.

Comment #3: Impacts to Aquatic and Riparian Resources

Issue: CDFW is concerned that Project activities will impact Castaic Creek and riparian habitat found on-site as well as downstream.

Specific impacts: According to *Table 3.4-1. Jurisdictional Waters and Waters Delineated within the BSA*, an estimated 0.22 acres of CDFW defined stream will be impacted by Project activities. As much as 0.43 acres of the site will be directly disturbed by Project related activities. Seismic retrofitting of the Old Road Bridge's piers will involve equipment and personal working in the streambed. In addition, Project-related activities are subject to notification under Fish and Game Code section 1600 *et seq.*

Why impacts would occur: The Project's proposal to seismically retrofit the piers of the Old Road Bridge will involve earthwork, demolition of old concrete and steel structures, pile-driving, and heavy equipment use in Castaic Creek. These activities have the potential to release sediment or pollutants into the surrounding areas that may contribute to diminished water quality in Castaic Creek and downstream in the Santa Clara River.

Evidence impact would be significant: Fish and Game Code section 1602 requires any person, State or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

- Divert or obstruct the natural flow of any river, stream, or lake;
- Change the bed, channel, or bank of any river, stream, or lake;

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- Use material from any river, stream, or lake; or,
- Deposit or dispose of material into any river, stream, or lake.

The Project may impact streams, which absent appropriate mitigation, could result in substantial erosion or siltation within the Project's development, grading, and staging areas and/or or upstream of those zones. Furthermore, the Project may result in loss of sensitive riparian habitat for multiple listed species.

In addition, the Project site is located within the Santa Clara River Significant Ecological Area (SEA), as designated by the County of Los Angeles (County), which warrants prescribed levels of protection from the County. Table 5 of the *Significant Ecological Areas (SEA) Ordinance Implementation Guide, Effective January 16, 2020* recommends that Category 1 – Water Resources (e.g., wetlands, streams, ponds, lakes, vernal pools, marshes, etc.) should be preserved at a ratio of at least 5:1.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: The Project may result in the alteration of streams. As such, CDFW concurs with the Project's proposal to notify CDFW pursuant under Fish and Game Code, section 1600 *et seq.* The Project applicant (or "entity") must provide notification to CDFW pursuant to Fish and Game Code, section 1600 *et seq.* Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities. Please visit CDFW's [Lake and Streambed Alteration Program](#) webpage to for information about LSA Notification and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2021b). LSA Notification should occur prior to the County's issuance of a grading permit.

Mitigation Measure #2: The LSA Notification should include a hydrology report to evaluate whether altering streams within the Project's development, grading, and staging areas could impair streams where there is hydrologic connectivity. The hydrology report should also include a scour analysis to demonstrate that stream banks and streambed would not erode and result in impacts downstream.

Mitigation Measure #3: As part of the LSA Notification process, CDFW requests a hydrological evaluation of the 200, 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions.

Mitigation Measure #4: CDFW recommends the Project mitigate for impacts to streams and riparian habitat by replacing habitat at no less than 5:1 for all temporary and permanent impacts to streams and riparian habitat. This follows the recommendations in Table 5 of the *Significant Ecological Areas (SEA) Ordinance Implementation Guide, Effective January 16, 2020*, which applies to the Project site that is in the Santa Clara River SEA. Mitigation lands should support streams and willow thickets of similar vegetation composition, density, coverage, and species richness and abundance.

Mitigation Measure #5: As part of the LSA Notification process, the County should identify impacts and potential mitigation sites prior to drafting an LSA Agreement. CDFW recommends

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the County work to preserve and restore as much riparian habitat as possible within proximity to the Project site.

Mitigation Measure #6: Mitigation lands should be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012). Assembly Bill 1094 amended Government Code sections 65965-65968. Under Government Code section 65967(c), 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. An appropriate non-wasting endowment should be provided for the long-term management of mitigation lands. A mitigation plan should include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that should be addressed include, but are not limited to, restrictions on access, proposed land dedications, control of illegal dumping, water pollution, and increased human intrusion. A conservation easement and endowment funds should be fully acquired, established, transferred, or otherwise executed prior to the County's issuance of a grading permit.

Mitigation Measure #7: CDFW recommends avoiding working during the rainy season to the fullest extent possible. No work should occur in Castaic Creek during wet weather conditions. Project activities should not occur when weather reports forecast great than 40 percent chance of precipitation or greater than 1/4 inch of rain. Adequate time should be given to prepare and move equipment out of the river should a weather system be expected to affect the site. Time should also be given for the site to completely dry to the extent that no visible on-site surface water is present.

Recommendation #1: CDFW's issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 *et seq.* and/or under CEQA, the CEQA 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 LSA Agreement.

Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project site. The LSA Agreement may include further erosion and pollution control measures. To compensate for any on- and off-site impacts to riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: avoidance of resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.

Recommendation #2: CDFW recommends minimizing heavy equipment and worker access into Castaic Creek to the fullest extent possible. Access in and out of the streambed should be done via one path on one bank rather than both sides of the bridge.

Comment #4: Impacts to White Rabbit-Tobacco

Issue: *Figure 4: Biological Resources* of the Natural Environment Study (NES) shows at least three white rabbit-tobacco (*Pseudognaphalium leucocephalum*) plants are located directly in the

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construction footprint of the proposed Project with more individuals shown to be immediately downstream. White rabbit-tobacco is listed by California Native Plant Society (CNPS) as having a rarity ranking of S2.2.

Specific impacts: White rabbit-tobacco is considered moderately threatened in California and thus a locally rare plant species that warrants mitigation. Project activities, such as grading for equipment staging, demolition, and construction, are likely to have direct or indirect effects to this sensitive species. CDFW is concerned that proposed Project mitigation measure MM-BIO-3 may not fully prevent impacts to white rabbit-tobacco. It assumes that all individual plants have been identified on the Project site and will be avoided. The measures presented do not offer guidance should impacts occur to white rabbit-tobacco.

Why impacts would occur: Project implementation includes grading for staging of heavy equipment, demolition and removal of portions of the existing bridge, construction, and other activities. Based on *Figure 3: Construction Staging Areas and Work Area*, it is unclear if work access into Castaic Creek will take place on one or both banks of the river. At least three white rabbit tobacco plants are located within these areas and activities may result in direct mortality, population declines, or local extirpation of sensitive plant species.

Evidence impacts would be significant: CDFW considers plant communities, alliances, and associations with a California Rare Plant Rank of S1, S2, S3 and S4 as sensitive and declining at the local and regional level (Sawyer et al., 2008). An S3 ranking indicates there are 21 to 80 occurrences of this community in existence in California, S2 has 6 to 20 occurrences, and S1 has less than 6 occurrences.

According to the CNPS Ranking System, plants are also assigned a Threat Rank, which represents the immediacy of threat to a sensitive plant species. The CNPS Threat Ranks are as follows:

- 0.1 - Seriously threatened in California (over 80 percent of occurrences threatened / high degree and immediacy of threat)
- 0.2 - Moderately threatened in California (20 to 80 percent occurrences threatened / moderate degree and immediacy of threat)
- 0.3 - Not very threatened in California (less than 20 percent of occurrences threatened / low degree and immediacy of threat or no current threats known)

Impacts to special status plant species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate avoidance, minimization, and mitigation measures for impacts to these sensitive plant species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS).

The Project site is located within the Santa Clara River Significant Ecological Area (SEA) as designated by the County of Los Angeles (County), which warrants prescribed levels of protection from the County. Table 5 of the *Significant Ecological Areas (SEA) Ordinance Implementation Guide, Effective January 16, 2020* recommends that Category 2 - California Rare Plant Rank 2 should be preserved at a ratio of at least 4:1.

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Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: If the Project cannot feasibly avoid impacts to rare plants, either during Project activities or over the life of the Project, the County should mitigate for impacts at no less than 4:1 for white rabbit-tobacco. Utilizing a replacement of at least 4:1 for each plant impacted by Project-related activities will attempt to remedy an assortment of impacts:

- loss of sensitive plants located within the Santa Clara River SEA (which Los Angeles County Planning requires at least 4:1 ratio)
- the loss of locally sensitive vegetation itself (2.2 rarity ranking indicating a moderately threatened local population)
- temporal loss of functioning sensitive habitat

Comment #5: Impacts to Bat Species, including California Species of Special Concern

Issue: The Project includes activities that will result in the removal of a structure and vegetation that may provide habitat for bats. The NES indicates that multiple bat species were detected during acoustic surveys, including Yuma myotis (*Myotis yumanensis*), California myotis (*Myotis californicus*), canyon bat (*Parastrellus hesperus*), and Mexican free-tailed bat (*Tadarida brasiliensis*). The NES also states that pallid bat (*Antrozus pallidus*), a California Species of Special Concern (SSC), has moderate potential to occur on the Project site as Castaic Creek provides suitable foraging habitat. A review of CNDDDB shows historic observations of spotted bat (*Euderma maculatum*), also as SSC, on the Project site.

Specific impacts: Project activities include the removal of structures and vegetation that may provide maternity roost (e.g., in cavities or under loose bark) or foraging habitat, and therefore has the potential for the direct loss of bats.

Why impacts would occur: The removal of bridges or other structures will potentially result in the loss of habitat for bats.

Evidence impacts would be significant: Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment, (Fish & Game Code, § 4150; California Code of Regulations, § 251.1). Bat species can be found year-round in urban areas throughout the south coast region (Miner & Stokes, 2005). Several bat species are considered California Species of Special Concern and meet the CEQA definition of rare, threatened or endangered species (CEQA Guidelines, § 15065). Take of California Species of Special Concern could require a mandatory finding of significance by the Lead Agency (CEQA Guidelines, § 15065).

An [SSC](#) is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role.
- is listed as ESA-, but not CESA-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed.
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State

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threatened or endangered status.

- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA status (CDFW 2021c).

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure: To the extent feasible, Project activities should be scheduled between October 1 and February 28, outside of the maternity roosting season. Maternity season lasts from March 1 to September 30. Structures determined to be maternity roosts should be left in place until the end of the maternity season.

If structures must be removed during the maternity season (March 1 to September 30), a qualified bat specialist should conduct a pre-construction survey to identify those structures and/or trees proposed for disturbance that could provide hibernacula or nursery colony roosting habitat for bats. CDFW recommends the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. Each structure identified as potentially supporting an active maternity roost should be closely inspected by the bat specialist no greater than 7 days prior to disturbance to determine the presence or absence of roosting bats more precisely.

The bat specialist should document all demolition monitoring activities and prepare a summary report to the County upon completion of tree disturbance and/or building demolition activities.

Comment #6: Impacts to nesting birds

Issue: Castaic Creek is known to contain critical habitat for multiple sensitive nesting bird species. The presence of willow thickets and other riparian vegetation in the Project site and along Castaic Creek are likely to support local bird populations beyond CESA- and ESA-listed species. *Figure 4: Biological Resources of the NES* shows that there was at least one observation of yellow warbler (*Setophaga petechial*), an SSC, within the survey area for the Project.

Specific impacts: Construction during the breeding season for nesting birds could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment. The Project could also lead to the loss of foraging habitat for sensitive bird species.

Why impact would occur: Impacts to nesting birds could result from vegetation clearing and other ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable nesting and foraging habitats. Construction during the breeding season for nesting birds could result in the incidental loss of reproductive 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. CDFW also considers impacts to

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SSC a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: To protect nesting birds that may occur on-site, CDFW recommends that the final environmental document include a measure that no construction should occur from February 15 through August 31. If construction during this period must occur, a qualified biologist should complete a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys should be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. If any nests of birds of prey are observed, they will be designated an ecologically sensitive area and protected (while occupied) by a minimum 500-foot radius during project construction.

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 in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

Conclusion

We appreciate the opportunity to comment on the Project to assist the County of Los Angeles Department of Public Works in adequately analyzing and minimizing/mitigating impacts to biological resources. Please consider incorporating the attached Biological Mitigation Measure and Recommendation Table into a future environmental document for the Project. CDFW requests an opportunity to review and comment on any response that the County has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines; § 15073(e)]. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist, at Andrew.Valand@wildlife.ca.gov or (562) 342-2142.

Sincerely,

DocuSigned by:

Erinn Wilson-Olgin

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ec: CDFW

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References:

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CHARLTON H. BONHAM, Director



CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources			
	Mitigation Measure	Timing	Responsible Party
MM-BIO-1 – Surveys for Fully-protected Species	The County shall completely avoid working in proximity to any wetted portion of the stream or during any wet/rainy weather conditions. CDFW shall be consulted prior to any Project-related activities to ensure that “take” will be avoided.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-2 – Least Bell’s Vireo & Southwestern Willow Flycatcher Focused Surveys	The County/Applicant shall perform appropriate protocol survey for least Bell’s vireo (LBV) and southwestern willow flycatcher (SWFL) prior to Project construction. The survey(s) shall be performed based on the species found, or likely to occur, on the Project’s site. Survey results including negative findings shall be submitted to CDFW and USFWS prior to implementing Project related ground disturbing activities.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-3 – Least Bell’s Vireo & Southwestern Willow Flycatcher Avoidance	The County/Applicant shall fully avoid impacts to LBV and SWFL. The County shall submit an avoidance plan to CDFW for review and comment. A final avoidance plan shall be fully developed prior to implementing Project related ground disturbing activities.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-4 – Incidental Take Permit for LBV and Flycatcher	If “take” or adverse impacts to LBV and/or SWFL cannot be avoided either during Project activities or over the life of the Project, the County must consult CDFW to determine if a CESA ITP is required (pursuant to Fish & Game Code, § 2080 et seq.)	Prior to construction	Los Angeles County Department of Public Works

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	and with UWFWS to determine if an ESA ITP is required, prior to construction.		
MM-BIO-5 – Lake and Streambed Alteration Agreement (LSA) Notification	The Project applicant (or “entity”) must provide notification to CDFW pursuant to Fish and Game Code, section 1600 <i>et seq.</i> Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration (LSA) Agreement with the applicant is required prior to conducting the proposed activities. LSA Notification shall occur prior to the County’s issuance of a grading permit.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-6 – Lake and Streambed Alteration Agreement – Hydrology Report	The LSA Notification shall include a hydrology report to evaluate whether altering streams within the Project’s development, grading, and staging areas could impair streams where there is hydrologic connectivity. The hydrology report shall also include a scour analysis to demonstrate that stream banks and streambed would not erode and result in impacts downstream.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-7 – Lake and Streambed Alteration Agreement – Analysis of Storm Events	The County shall provide CDFW a hydrological evaluation of the 200, 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions.	Prior to construction	Los Angeles County Department of Public Works

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MM-BIO-8 – Lake and Streambed Alteration Agreement – Mitigation	The Project shall mitigate for impacts to streams and riparian habitat by replacing habitat at no less than 5:1 for all temporary and permanent impacts to streams and riparian habitat. Mitigation lands shall support streams and willow thickets of similar vegetation composition, density, coverage, and species richness and abundance.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-9 – Lake and Streambed Alteration Agreement – Mitigation	As part of the LSA Notification process, the County shall identify impacts and potential mitigation sites prior to drafting an LSA Agreement. The County shall work to preserve and restore as much riparian habitat as possible within proximity to the Project site.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-10 – Lake and Streambed Alteration Agreement – Mitigation Lands	Mitigation lands shall be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012). Assembly Bill 1094 amended Government Code sections 65965-65968. Under Government Code section 65967(c), 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. An appropriate non-wasting endowment shall be provided for the long-term management of mitigation lands. A mitigation plan shall include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. Issues that shall be addressed include, but are not limited to, restrictions on access, proposed land dedications, control of illegal dumping, water pollution, and increased human intrusion. A conservation easement and endowment funds shall be fully acquired, established, transferred, or otherwise executed prior to the County's issuance of a grading permit.	Prior to issuance of grading permit	Los Angeles County Department of Public Works

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MM-BIO-11 – White Rabbit-Tobacco	If the Project cannot feasibly avoid impacts to rare plants, either during Project activities or over the life of the Project, the County shall mitigate for impacts to each plant at no less than 4:1 for S2.2 ranked plants.	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-12 – Bats	<p>To the extent feasible, Project activities shall be scheduled between October 1 and February 28, outside of the maternity roosting season. Maternity season lasts from March 1 to September 30. Structures determined to be maternity roosts shall be left in place until the end of the maternity season.</p> <p>If structures must be removed during the maternity season (March 1 to September 30), a qualified bat specialist shall conduct a pre-construction survey to identify those structures and/or trees proposed for disturbance that could provide hibernacula or nursery colony roosting habitat for bats. CDFW recommends the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. Each structure identified as potentially supporting an active maternity roost shall be closely inspected by the bat specialist no greater than 7 days prior to tree disturbance to more precisely determine the presence or absence of roosting bats.</p> <p>The bat specialist shall document all demolition monitoring activities and prepare a summary report to the County upon completion of tree disturbance and/or building demolition activities.</p>	Prior to construction	Los Angeles County Department of Public Works
MM-BIO-17 – Nesting Bird Avoidance	The final environmental document shall include a measure that no construction shall occur from February 15 through August 31. If construction during this period must occur, a qualified biologist shall complete a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys shall be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. If any nests of birds of prey are observed, they will be designated an ecologically sensitive area	Prior to adopting the MND	Los Angeles County Department of Public Works

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	and protected (while occupied) by a minimum 500-foot radius during project construction.		
Recommendations			
REC-BIO-1 – Avoiding Take of Fully-protected Species	CDFW recommends the environmental document include measures to preclude “take” on the Project site during operations and from the increase in temporary traffic and human presence in relation to construction. The environmental document shall view the potential “take” as a result of habitat modification. If a development project’s modification of occupied habitat causes mortality of individuals, then the development project will be considered the cause of the take. Therefore, to avoid take, construction and operation activities shall avoid all raptors by a distance of no less than the distance that the specific species are known or expected to travel within their home range, based on telemetry, mark-recapture, or other data.		Los Angeles County Department of Public Works
REC-BIO-2 – Lake and Streambed Alteration Agreement Standards	<p>CDFW’s issuance of an LSA Agreement for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document from the County for the Project. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 <i>et seq.</i> and/or under CEQA, the CEQA document shall fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the LSA Agreement.</p> <p>Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project site. The LSA Agreement may include further erosion and pollution control measures. To compensate for any on- and off-site impacts to riparian resources, additional mitigation conditioned in any LSA Agreement may include the following:</p>		Los Angeles County Department of Public Works

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	avoidance of resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.		
REC-BIO-3 – Minimizing Access into Castaic Creek	CDFW recommends minimizing heavy equipment and worker access into Castaic Creek to the fullest extent possible. Access in and out of the streambed shall be done on one path on one bank rather than both sides of the bridge.		Los Angeles County Department of Public Works
REC-BIO-4 – Avoiding Work During Wet Conditions	CDFW recommends avoiding working during the rainy season to the fullest extent possible. No work shall occur in Castaic Creek during wet weather conditions. Project activities shall not occur when weather reports forecast greater than 40 percent chance of precipitation or greater than 1/4 inch of rain. Adequate time shall be given to prepare and move equipment out of the river shall a weather system be expected to affect the site. Time shall also be given for the site to completely dry to the extent that no visible on-site surface water is present.		Los Angeles County Department of Public Works