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 DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

April 2, 2021

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STATE CLEARINGHOUSE

Jamie Kennedy
 City of San Diego
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Subject: Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Sewer Job 806 Project (SCH #2021030074)

Dear Ms. Kennedy:

The Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Intent to adopt a Mitigated Negative Declaration (MND) for the Sewer Job 806 Project (Project) dated March 3, 2021. The City of San Diego (City) has an approved Subarea Plan (SAP) and Implementing Agreement (IA) under the Natural Community Conservation Planning (NCCP) program. The MND for the proposed project must ensure and verify that all requirements and conditions of the SAP and IA are met. The MND should also address biological issues that are not addressed in the SAP and IA, such as specific impacts to, and mitigation requirements for, wetlands or sensitive species and habitats that are not covered by the SAP and IA.

The Department 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).) The Department, 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 the California Environmental Quality Act (CEQA), the Department 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.

The Department is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) The Department 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 the Department'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 (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

The proposed Project will replace approximately 2,400 linear feet (LF) of existing 8-inch sewer pipe, and rehabilitate 2,100 LF of existing 6-inch sewer pipe and 2,500 LF of existing 8-inch sewer pipe. Fourteen manholes will be replaced, eleven manholes will be rehabilitated, and three new manholes installed. Sewer pipe replacement will require trenching, while rehabilitation will not. A permanent single-lane truss bridge will be installed across an ephemeral streambed

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with footings located outside the channel. A temporary access path will be created that will widen the existing Public Utilities Department (PUD) access path from eight to ten feet. Additional activities include trench shoring and street resurfacing.

The Project is located directly south of Interstate 8 and east of Fairmount Avenue. The work will take place within a PUD right-of-way, undeveloped canyon habitat, and residential housing. The footprint currently supports seven vegetation community/land cover types: 0.24 acre of Diegan coastal sage scrub, 0.09 acre of disturbed Diegan coastal sage scrub, 0.01 acre of southern mixed chaparral (*Rhus integrifolia* dominated), 0.03 acre of ornamental vegetation, 0.03 acre of disturbed land (areas previously disturbed by human activity and do not contain any native or naturalized vegetation), 0.07 acre of bare ground, and 0.21 acre of developed land. The Project falls both outside and within the City's Multi-Habitat Planning Area (MHPA). Within the MHPA, the Project will impact 0.13 acre of Diegan coastal sage scrub, 0.06 acre of disturbed Diegan coastal sage scrub, and 0.01 acre of southern mixed chaparral. Outside the MHPA, the Project will impact 0.11 acre of Diegan coastal sage scrub and 0.02 acre of disturbed Diegan coastal sage scrub. Following Table 3 (Upland Mitigation Ratios) within the City's Biology Guidelines, the proposed impacts will be mitigated at a 1:1 ratio for Tier II (coastal sage scrub) and Tier III (mixed chaparral) habitats with a total of 0.34 acre of mitigation required.

Per the Biological Technical Report (BTR), there were no sensitive wildlife species observed within the Project footprint. However, there were four special status plant species observed within and adjacent to the footprint: Engelmann oak (*Quercus engelmannii*; California Rare Plant Rank 4.2), San Diego sunflower (*Bahiopsis laciniata*; California Rare Plant Rank 4.2), and the MSCP-covered San Diego barrel cactus (*Ferocactus viridescens*; California Rare Plant Rank 2B.1) and wart-stemmed ceanothus (*Ceanothus verrucosus*; California Rare Plant Rank 2B.2). The Engelmann oak, San Diego barrel cactus, and wart-stemmed ceanothus will be completely avoided by Project activities. Fifteen individuals of San Diego sunflower will be permanently impacted by the Project, but the City has added San Diego sunflower seed to the Diegan coastal sage scrub seed mix as part of the native plant palette being used for revegetation of temporary impacts. Indirect effects will be minimized to less than significant within the surrounding MHPA following the City's Land Use Adjacency Guidelines in the SAP.

The Department offers the following specific comments and recommendations to assist the City in avoiding, minimizing, and adequately mitigating Project-related impacts to biological resources, and to ensure that the Project is consistent with all applicable requirements of the SAP.

1. Figure 3 (Aerial Vicinity) of the BTR demonstrates that Project impacts will occur both within and outside the MHPA. The City proposes to mitigate for Project impacts at the PUD Otay Mesa Mitigation Site. Per Section III.b.2 (Upland Impacts Outside of the MHPA (Outside of the Coastal Overlay Zone)) of the City's Biology Guidelines, it states that "due to the critical nature and high biological value of the MHPA, mitigation should be directed to the MHPA." The Department does not think that off-site mitigation is the most suitable option for this Project. The City's Biology Guidelines emphasize the importance of mitigating within the MHPA where feasible and this Project is located primarily within an interconnected urban canyon network within the MHPA where possibilities for mitigation exist.
2. Mitigation Measure BIO-1 in the BTR discusses an on-site revegetation plan that includes a 25-month monitoring period. Per the City's Biology Guidelines (General

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Outline for Revegetation/Restoration Plans), there should be a 120-day plant establishment maintenance period, followed by a five-year monitoring period. Two years is much less than what is required in the City's Biology Guidelines. The Department recommends a minimum of five years of site monitoring. Within the MND, the only mention of the City's revegetation plan is Section XIX (Utilities and Service Systems) where it reads "the project revegetation plan revegetates all impact areas, in accordance with the City's Landscape Regulations and Land Development Code." The Department recommends expanding upon this description within the MND because discussion of the revegetation plan is an important component of the mitigation being provided for this Project.

3. The BTR contains avian protection requirements as part of their General Avoidance and Mitigation Measures section. The MND does not include any avian protection requirements. The Department recommends that the avian avoidance and impact minimization measures mentioned in the BTR be included within the MND to bring possible impacts to nesting birds to below a level of significance.

The BTR mentions preconstruction surveys within ten days of construction activity and avoiding the general migratory breeding season (February 1 to September 15). The BTR does not indicate the size of the survey area for preconstruction surveys, nor the size of the no-distance buffers around possible nests. Field surveys documented the presence of Cooper's hawk (*Accipiter cooperii*) on-site. To protect nesting raptors that may occur within or adjacent to the Project boundary, the Department recommends that construction avoidance be expanded to include an earlier window beginning January 1 through September 15.

If Project activities cannot be avoided from January 1 through September 15, the Department 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 a minimum of 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, the Department generally 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., California gnatcatcher), and 500 feet around active non-listed raptor nests. The buffers may be reduced, if appropriate, depending on site-specific conditions such as ambient levels of human activity, presence of visually shielding vegetation between the nest and construction activities, or possibly other factors. 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.

4. The Department has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the Project applicant (or "entity") must provide written notification to the Department pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information,

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the Department determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. The Department's issuance of a LSAA for a Project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. To minimize additional requirements by the Department pursuant to section 1600 *et seq.* and/or under CEQA, the MND 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.

The Project proposes eighty-seven square feet of impacts to unvegetated streambed that falls under the Department's protection. As stated in the BTR, "City staff will coordinate with USACE, RWQCB, and CDFW to determine if the agencies will require permit applications to be submitted for anticipated proposed project impacts to this unvegetated drainage." The MND acknowledges that "the project is expected to temporarily impact CDFW jurisdictional habitats based on HELIX's jurisdictional delineation and the analysis of the proposed project impact footprint." However, the MND continues to say that impacts would not be considered significant because there would be no adverse impacts to any riparian habitat and therefore no mitigation would be required. The Department recommends the City follow the guidance found within the BTR that City staff should coordinate with the respective agencies responsible for regulating water resources to determine whether additional permits are needed.

The Department appreciates the opportunity to review and comment on the MND and assisting the City in identifying 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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