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Governor's Office of Planning & Research

Apr 22 2021

STATE CLEARINGHOUSE

May Duong
 County of Orange, OC Public Works
 601 North Ross Street
 Orange, CA 92701
May.Duong@ocpw.ocgov.com

Subject: Comments on the Initial Study/Mitigated Negative Declaration for the Peters Canyon Bikeway Extension Project (SCH #2021030579)

Dear Ms. Duong:

The Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Initial Study/Mitigated Negative Declaration (IS/MND) for the Peters Canyon Bikeway Extension Project (Project). The following statements and comments have been prepared pursuant to CDFW's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the Project that come under the purview of the California Endangered Species Act (Fish and Game Code § 2050 et seq.) and Fish and Game Code section 1600 et seq. CDFW also administers the Natural Community Conservation Planning (NCCP) program. The County of Orange, which includes Orange County Public Works (OCPW), participates in the NCCP program through its role as a Participating Landowner under the County of Orange Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

The Project includes the construction of a new Class I shared-use path along Jamboree Road and a Class II buffered bike lane along Pioneer Road. Primary Project activities include construction of the Class I and Class II paths, vegetation removal, relocation of utilities, sidewalk improvements, construction of a retaining wall, installation of signs, and landscaping. The northern portion of the Project site is located in the City of Orange and is surrounded by Peters Canyon Regional Park and open space, running parallel to Jamboree road. The southern portion of the Project site is located in the City of Tustin, bordered by residential development, schools, and neighborhood parks. Peters Canyon Regional Park is part of the Habitat Reserve System (Reserve) established by the NCCP/HCP. Approximately 0.765 acre¹ of permanent impacts and 0.797 acre² of temporary impacts to native upland vegetation are anticipated as

1 Permanent impacts in or adjacent to Peters Canyon Regional Park include 0.563 acre of coastal sage scrub (CSS)/buckwheat scrub, 0.202 acre of deerweed scrub, 0.168 acre of non-native vegetation/ornamental landscaping, and 0.027 acre of developed or barren areas.

2 Temporary impacts in or adjacent to Peters Canyon Regional Park include 0.606 acre of CSS/buckwheat scrub, 0.191 acre of deerweed scrub, 0.149 acre of non-native vegetation/ornamental

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part of Project implementation. A total of approximately 1.56 acres of upland vegetation is anticipated to be impacted, with 0.96 acre of impact occurring in the Reserve. The IS/MND does not differentiate in-Reserve permanent impacts from in-Reserve temporary impacts. It is expected that the Project will take approximately 12 months to complete, beginning in 2023.

CDFW offers the comments and recommendations below to assist Orange County Public Works in adequately avoiding and minimizing potential Project impacts on biological resources and maintaining consistency with the NCCP/HCP.

1. The proposed Project will permanently and temporarily impact approximately 0.96 acre of native upland vegetation within the Reserve. As a Participating Landowner under the NCCP/HCP, OCPW is authorized take of coastal sage scrub (CSS) vegetation and associated Covered Species for implementation of Planned Activities within the Reserve. This includes the construction of recreational facilities identified in a Recreation Management Plan (RMP) or construction of roads and infrastructure facilities identified on the County Circulation Plan. Temporary impacts generally require revegetation in accordance with a revegetation plan prepared in coordination with the Reserve owner/manager, and permanent impacts require a deduction from the County's allotted take of in-Reserve CSS credits.

Based on prior email correspondence with OCPW staff, it is CDFW's understanding that the proposed Project will be added to the Transportation Element of the General Plan, thus authorizing the impact of in-Reserve habitat in accordance with the requirements of the NCCP/HCP. In order for the Project to be covered under the NCCP/HCP, the update to the Transportation Element must be completed prior to impacts occurring. Therefore, we recommend OCPW complete the update of the Transportation Element prior to finalizing the IS/MND. For the purpose of tracking impacts to in-Reserve CSS vegetation, we recommend the Final IS/MND also clearly differentiate in-Reserve permanent impacts from in-Reserve temporary impacts. Finally, the final acreage of impacts to be debited from the County's allotted take should be reported to the Natural Communities Coalition (NCC), CDFW, and the United States Fish and Wildlife Service (USFWS) as part of the County's NCCP/HCP Annual Reporting requirements.

2. The IS/MND indicates that the state and federally endangered least Bell's vireo (*Vireo bellii pusillus*; vireo) has been observed adjacent to the Project site, in Peters Canyon Regional Park (IS/MND page 31). The take of any species listed as endangered, threatened, or a candidate species under the California Endangered Species Act (CESA) that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085, and 2835). Although vireo is identified as a conditionally Covered Species in the NCCP/HCP, incidental take is only allowed for migrant and nesting vireo in locations with lesser long-term conservation values and provided that the activities are consistent with a mitigation plan meeting the requirements of the NCCP/HCP. CDFW does not consider the population at Peters Canyon Regional Park to be of lesser long-term conservation value at this time. Therefore, if Project activities will result in take of vireo, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project.

Appropriate authorization from CDFW may include an incidental take permit (ITP) or a

landscaping, and 0.062 acre of developed or barren areas.

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consistency determination in certain circumstances, among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b), (c)). Early consultation is encouraged, as significant modification to the Project and mitigation measures may be required 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.

3. Mitigation Measure BIO-4 proposed in the IS/MND indicates that, if vegetation clearing cannot occur outside of the avian nesting season (February 15 through September 15), then a qualified biologist will conduct a nesting bird survey within 500 feet of any planned construction within seven days prior to the start of activities. Suitable buffers of no less than 500 feet will be established around any active vireo nests, prohibiting construction activities within the buffer until the nests are no longer active. While CDFW agrees that focused surveys and implementation of appropriate buffers can assist OCPW in avoiding impacts to nesting birds not covered under the NCCP/HCP and as required by California Fish and Game Code Sections 3503, 3503.5, and 3513, a 7-day timeframe may allow birds to move into the Project site and begin nesting prior to Project grading activities occurring. To adequately identify nesting bird presence in the Project area, we recommend surveys be conducted no more than 3 days prior to ground disturbance, vegetation removal, or construction activities.

CDFW appreciates the opportunity to comment on the IS/MND to assist OCPW in identifying and mitigating Project impacts on biological resources and ensuring Project consistency with the requirements of the NCCP/HCP. Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist at Jessie.Lane@wildlife.ca.gov. Questions pertaining to the NCCP/HCP should be directed to Kyle Rice, Environmental Scientist at Kyle.Rice@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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David A. Mayer
Environmental Program Manager
South Coast Region

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