



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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Governor's Office of Planning & Research

July 12, 2021

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STATE CLEARINGHOUSE

Subject: Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Coastal Rail Trail Site Development Permit (SDP) (SCH #2021060230)

Dear Ms. Osborn:

The Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Intent to adopt a Mitigated Negative Declaration (MND) for the Coastal Rail Trail Site Development Permit (SDP) Project (Project) dated June 17, 2021. The City of San Diego (City) has an approved Subarea Plan (SAP) and Implementing Agreement (IA) under the Natural Community Conservation Planning 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 involves construction of an approximately 1.8-mile segment of the Coastal Rail Trail bicycle route along Gilman Drive between the University of California, San Diego campus and the Rose Canyon Bikeway at Interstate 5. This is one segment of an approximately 44-mile regional bicycle route that will run between Oceanside, California, and the Santa Fe

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Railroad Depot in downtown San Diego. The Project proposes a protected bicycle track on each side of Gilman Drive and a continuous pedestrian sidewalk on the west side of Gilman Drive. Construction also includes a raised median to separate the bicycle route from vehicular traffic, a two-foot recovery slope along the route adjacent to natural habitat, retaining walls for approximately 2,174 linear feet, roadway widening and re-striping, drainage improvements for failing existing storm drains along Gilman Drive, bus stop improvements, and traffic signal modifications.

The linear Project site begins several hundred feet north of the intersection of Gilman Drive and La Jolla Village Drive and terminates at the Rose Canyon Bikeway where Gilman Drive intersects with Interstate 5. At its furthest point, Gilman Drive is approximately 0.5 mile west of Interstate 5. The southern terminus of the Project is approximately 0.8 mile north of State Route 52. The surrounding land uses are primarily apartments and single-family homes, along with some natural areas present on steep and eroded slopes (15% to 45%).

The Project footprint currently supports eight vegetation community/land cover types (Oberbauer 2008): 1.26 acres of Diegan coastal sage scrub, 0.57 acre of disturbed Diegan coastal sage scrub, 0.19 acre of coastal sage scrub/chaparral transition, 0.03 acre of southern riparian woodland, 0.27 acre of southern riparian scrub, 0.14 acre of eucalyptus woodland, 2.79 acres of disturbed habitat, and 19.38 acres of urban/developed areas. The Project falls both outside and within the City's Multi-Habitat Planning Area (MHPA). The portion of the project within the MHPA will impact 0.23 acre of disturbed Diegan coastal sage scrub, 0.02 acre of coastal sage scrub/chaparral transition, 0.03 acre of southern riparian woodland, 0.07 acre of southern riparian scrub, 0.13 acre of eucalyptus woodland, and 0.07 acre of disturbed habitat. Following Table 3 (Upland Mitigation Ratios) within the City's Biology Guidelines, the proposed impacts for Tier II habitats (coastal sage scrub and coastal sage scrub/chaparral transition) will be mitigated at a 1:1 ratio for a total of 2.02 acres of mitigation required. Following Table 2A (Wetland Mitigation Ratios) within the City's Biology Guidelines, the proposed impacts for southern riparian woodland will be mitigated at a 3:1 ratio and the southern riparian scrub at a 2:1 ratio for a total of 0.62 acre of mitigation required. The City proposes to mitigate for the 2.02 acres of upland habitat impacts through payment into their Habitat Acquisition Fund. Impacts to wetland habitat is proposed to be mitigated by the City through the allocation of credits at the City's Stadium Mitigation Site.

Per the Biological Technical Report (BTR), there were two special status plant species observed adjacent and within the Project footprint: the Multiple Species Conservation Program (MSCP)-covered Torrey pine (*Pinus torreyana*; California Rare Plant Rank 1B.2) and Palmer's sagewort (*Artemisia palmeri*; California Rare Plant Rank 4.2). Twelve Torrey pines were observed adjacent to the Project footprint and will be completely avoided by construction activities. Eighteen of the fifty Palmer's sagewort individuals onsite will be permanently impacted through grading activities. Per the BTR, this species will be added to the planting palette for the Project's 25-month revegetation plan for temporary impacts.

Per the BTR, the Endangered Species Act-listed coastal California gnatcatcher (*Poliioptila californica californica*; gnatcatcher) was observed adjacent to the Project footprint on the east side of Gilman Drive within the 100-foot biological survey area. One pair was observed nesting during the 2018 United States Fish and Wildlife Service protocol surveys conducted for the Project. While Diegan coastal sage scrub will be permanently impacted by this project, preconstruction surveys will be performed. The City's Land Use Adjacency Guidelines will be

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followed to ensure there will be no direct or indirect impacts to these gnatcatchers or other birds nesting in the vicinity during construction.

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. The BTR and MND both reference that 0.63 acre of impacts to wetland habitat will be mitigated through the allocation of credits at the City's Stadium Mitigation Site. The permanent loss of riparian habitat will be offset through allocation of rehabilitation credits, while temporary loss will be offset through allocation of enhancement credits. There is no description of the habitat types these credits cover at the mitigation site in the BTR or MND; nor is there a description of what enhancement or rehabilitation entails. Per the City's Biology Guidelines, it states that "any impacts to wetlands must be mitigated "in-kind" and achieve a "no-net loss" of wetland functions and values." The Department recommends the BTR and MND provide a more detailed description of the mitigation site and what habitat types are being used as credit, and discuss how rehabilitation and restoration will bring impacts to wetland habitat to below a level of significance.
2. The BTR mentions eighteen of the fifty Palmer's sagewort onsite will be permanently impacted by Project activities. With a California Rare Plant Rank of 4.2, this species is considered moderately threatened with a limited distribution in California. Per the BTR, this species will be included in the planting palette for the 25-month restoration plan for temporary Project impacts. The MND mentions this species is not covered by the City's MSCP and that eighteen individuals will not impact the overall population. It does not mention the addition of the species to the restoration plant palette. The Department recommends the MND remain consistent with the BTR in compensating for the loss of this sensitive species by including it in the plant palette.
3. The BTR contains avian protection requirements as part of their Avoidance and Mitigation Measures (AMM) section. The MND briefly refers to the avian AMMs in the BTR but does not provide the measure details. The Department recommends that the avian AMMs mentioned in the BTR be included within the MND to reduce the potential for impacts to nesting birds.

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*), red-tailed hawk (*Buteo jamaicensis*), and red-shouldered hawk (*Buteo lineatus*) onsite. 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. This earlier survey window is mentioned in MND, but not consistent with what is proposed in the BTR.

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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 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 least Bell's vireo), 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, 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. Please visit the Department's [Lake and Streambed Alteration Program](#) webpage for more information (CDFW 2021). The Project proposes 0.3 acre of impact to southern riparian woodland and southern riparian scrub that falls under the Department's protection.

The Department appreciates the opportunity to review and comment on the MND and ensure Project consistency with the requirements of the SAP. Questions regarding this letter or further coordination should be directed to Melissa Stepek, Senior Environmental Scientist (Specialist), at Melissa.Stepek@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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REFERENCES

[CDFW] California Department of Fish and Wildlife. 2021. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.

Oberbauer, T., M. Kelly, and J. Buegge. March 2008. *Draft Vegetation Communities of San Diego County*. Based on "Preliminary Descriptions of the Terrestrial Natural Communities of California," Robert Holland, October 1986. 73pp.