



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

July 20, 2021

July 20 2021**STATE CLEARINGHOUSE**

Mr. Brian Lee
City of Covina
125 E. College Street
Covina, CA 91723
BLee@covina.ca.gov

**Subject: Wingate Park Regional Enhanced Watershed Management Plan Project,
Mitigated Negative Declaration, SCH #2021060561, City of Covina,
Los Angeles County**

Dear Mr. Lee:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) from the City of Covina (City; Lead Agency) for the Wingate Park Regional Enhanced Watershed Management Plan Project (Project). 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 & G. Code, §§ 711.7, subdivision (a) & 1802; Pub. 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 (Pub. 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 & 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 (CESA) (Fish & G. Code, § 2050 *et seq.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. 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 Project proposes to capture water from Charter Oak Wash located along the southern portion of Wingate Park for the purposes of groundwater recharge. The Charter Oak Wash is a natural, soft bottom channel that drains to Walnut Creek, a tributary to the San Gabriel River. The Project would capture up to 350 acre-feet of wet-weather runoff per year from approximately 1,100 acres within the Walnut Creek subwatershed. Only wet-weather runoff would be diverted. The Project would allow dry-weather runoff to bypass the diversion structure in order to sustain downstream habitat and infiltrate Charter Oak Wash. The Project would contribute to groundwater recharge and replenishment of local aquifers that are used as sources of water to offset water transported from more distant resources.

Water would be diverted from the Charter Oak Wash just downstream of the existing 69-inch reinforced concrete pipe and 6-foot by 6-foot double reinforced concrete box storm drain confluence. The proposed diversion structure would be located within the channel to capture runoff conveyed by the existing drainage system. Water would be diverted into a 36-inch diameter pipe and then proceed to a pretreatment device to remove pollutants, sediment, and trash debris. Then, water would enter the 1.65-acre underground infiltration gallery to be constructed in Wingate Park. Once runoff fills the underground infiltration gallery, stormflows would continue as they do under existing conditions down the Charter Oak Wash. An on-site flow meter would be used to quantify the volume captured.

The Project also includes improvements to amenities and features in Wingate Park. This may include improvements to a multi-purpose field (i.e., baseball, soccer), lighting, and natural play areas. The Project may include installation of solar panels above parking stalls and electric vehicle charging stations in the parking lot.

Location: The Project is located within the eastern portion of Wingate Park (formerly Kahler Russell Park), located at 734 North Glendora Avenue in the northeast portion of the City. The 1,100-acre drainage area within the Walnut Creek subwatershed includes the cities of Covina (35 percent of total acreage), Glendora (20 percent) and San Dimas (11 percent), as well as the surrounding unincorporated areas of Los Angeles County (34 percent).

Comments and Recommendations

CDFW visited the Project site with the City on July 12, 2021. Based on the documents for review and the site visit, CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).

Specific Comments

Comment: Lake and Streambed Alteration (LSA)

Issue: The Project would potentially impact streams.

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Specific impacts: The Project would divert up to 350 acre-feet of wet-weather runoff from the soft bottomed Charter Oak Wash. The Project proposes to install devices within and adjacent to the channel to facilitate water diversion. This could result in temporary and/or permanent impacts to Charter Oak Wash and associated vegetation.

Why impacts would occur: The Project would divert water from the Charter Oak Wash. To do so, according to Figure 4 in the MND, the Project would install the following components: (1) a grated drop inlet, (2) a diversion structure, and (3) an outlet and flap gate for discharge back to the Charter Oak Wash. Construction of these components may require ground disturbing activities (e.g., trenching, excavating, compacting soil, and placing fill) that could impact the bed, bank, and channel of Charter Oak Wash. Construction of these components may also require removing vegetation along Charter Oak Wash. Page 3-26 of the MND states, “the installation of connective infrastructure including a permanent grated drop inlet to divert flows to the underground vault could result in removal of some riparian vegetation in the immediate vicinity of the inlet.”

Evidence impacts would be significant: The Project has proposed Mitigation Measure BIO-5 in order to reduce the Project’s impact on state or federally protected wetlands to less than significant. Mitigation Measure BIO-5 states, “Prior to work activities, a jurisdictional delineation and report will be prepared to determine whether Charter Oak Creek is subject to regulation by federal and state agencies.” Mitigation Measure BIO-5 only would require a jurisdictional delineation. It does not propose specific action(s) that would be necessary if there are streams subject to regulation by CDFW pursuant to Fish and Game Code section 1600 *et seq.* 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;
- Use material from any river, stream, or lake; or,
- Deposit or dispose of material into any river, stream, or lake.

Mitigation Measure BIO-5 does not (1) commit the Project to mitigation, (2) adopt specific performance standards the mitigation will achieve, nor (3) identify the type(s) of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed, and potentially incorporated in the mitigation measure (CEQA Guidelines, § 15126.4). Accordingly, the Project could be deferring mitigation. Consequently, Mitigation Measure BIO-5, as it is currently proposed, may be inadequate to reduce the Project’s potential impacts on streams to less than significant.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1: CDFW has concluded that the Project may result in the alteration of streams. As such, 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 an 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 2021a).

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Mitigation Measure #2: CDFW recommends the LSA Notification include a hydrological evaluation of the 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions in order to provide information on how water and sediment is conveyed through the Project site.

Mitigation Measure #3: CDFW recommends the LSA Notification include results from season-appropriate and species-specific surveys for least Bell's vireo (*Vireo belli pusillus*), yellow warbler (*Setophaga petechia*), bats, and nesting birds and raptors, with a focus on the presence of any rare or special status species. Surveys should be conducted by qualified biologists according to established protocol if available. Survey reports should also include information on habitat within the Project site and whether the habitat could support individuals/populations of those species.

Recommendation: 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 City 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. As such, CDFW recommends the City consider CDFW's comments and revise the MND by incorporating Mitigation Measure #1 through #3 into the final environmental document.

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

Additional Recommendations

Least Bell's Vireo Surveys. The Project may impact least Bell's vireo because there is moderately suitable habitat within the Project site. CDFW concurs with the City's proposed Mitigation Measure BIO-2 which is to first avoid impacts on the nesting season for least Bello's vireo (March 15 to September 15). Then, if avoidance is not feasible, Mitigation Measure BIO-2 would require surveys for least Bell's vireo to be performed in accordance with protocol established by the U.S. Fish and Wildlife Service. Any occupied nests detected would be avoided and no work would occur within 500 feet of the nest(s) as the mitigation measure states. In addition to the mitigation proposed, CDFW recommends the City conduct least Bell's vireo surveys before notifying CDFW pursuant to Fish and Game Code section 1600 *et seq.* (see Mitigation Measure #3 above). Depending on the survey results, CDFW may condition a LSA Agreement with additional measures to avoid, minimize, or mitigate for potential impacts on least Bell's vireo and habitat.

Revegetation and Landscaping. CDFW concurs with the City's plan to revegetate with drought tolerant plants. CDFW strongly recommends avoiding non-native, invasive plants, particularly any species, particularly 'Moderate' or 'High' listed by the [California Invasive Plant Council](#) (Cal-IPC 2021a). CDFW recommends the City use native species found in naturally occurring vegetation communities within or adjacent to the Project site. CDFW recommends the following

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resources for the City's reference. Information on alternatives for invasive, non-native, or landscaping plants may be found on the [California Invasive Plant Council's, Don't Plant a Pest](#) webpage for southern California (Cal-IPC 2021b). The [California Native Plant Society's Gardening](#) and [Xerces Society's Pollinator-Friendly Native Plant Lists](#) webpage has information on native plant species that invite insects and pollinators (CNPS 2021; Xerces Society 2021).

Habitat for Birds. CDFW recommends the City plant native tree and shrub species preferred by birds and are native to the area. CDFW recommends Audubon Society's [Plants for Birds](#) for more information (Audubon Society 2021).

Data. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database (i.e., California Natural Diversity Database) which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special status species detected by completing and submitting [CNDDDB Field Survey Forms](#) (CDFW 2021b). The City should ensure the data has been properly submitted, with all data fields applicable filled out, prior to finalizing/adopting the environmental document. The City should provide CDFW with confirmation of data submittal.

Mitigation and Monitoring Reporting Plan. CDFW recommends the City update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter. CDFW provides comments to assist the City in developing mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The City is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided the City with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; Attachment A).

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 City of Covina 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

We appreciate the opportunity to comment on the Project to assist the City of Covina in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City of Covina 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 Ruby Kwan-Davis, Senior Environmental Scientist (Specialist), at Ruby.Kwan-Davis@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

Erinn Wilson-Olgin

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South Coast Region

ec: CDFW

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References

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<https://www.audubon.org/PLANTSFORBIRDS>
- [CDFWa] California Department of Fish and Wildlife. 2021. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.
- [CDFWb] California Department of Fish and Wildlife. 2021. Submitting Data to the CNDDDB. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>
- [Cal-IPCa] California Invasive Plant Council. 2021. The Cal-IPC Inventory. Available from: <https://www.cal-ipc.org/plants/inventory/>
- [Cal-IPCb] California Invasive Plant Council. 2021. Don't Plant a Pest. Southern California. Available from: <https://www.cal-ipc.org/solutions/prevention/landscaping/dpp/?region=socal>
- [CNPS] California Native Plant Society. 2021. Gardening and Horticulture. Available from: <https://www.cnps.org/gardening>
- [Xerces Society] Xerces Society for Invertebrate Conservation. 2021. Pollinator-Friendly Native Plant Lists. Available from: <https://xerces.org/pollinator-conservation/pollinator-friendly-plant-lists>.



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Attachment A: Draft Mitigation and Monitoring Reporting Plan

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

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		Timing	Responsible Party
MM-BIO-1- Lake and Streambed Alternation Notification	The City shall notify CDFW pursuant to Fish and Game Code section 1600 <i>et seq.</i> prior to any ground disturbing activities or vegetation removal within or adjacent to the Charter Oak Wash.	Prior to any ground disturbing activities or vegetation removal	City of Covina
MM-BIO-2- Lake and Streambed Alternation Notification	As part of the LSA Notification, the City shall include a hydrological evaluation of the 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions.	Prior to any ground disturbing activities or vegetation removal	City of Covina
MM-BIO-3- Lake and Streambed Alternation Notification	As part of the LSA Notification, the City shall include results from season-appropriate and species-specific surveys for least Bell's vireo (<i>Vireo belli pusillus</i>), yellow warbler (<i>Setophaga petechia</i>), bats, and nesting birds and raptors. Survey shall also include information on habitat within the Project site and whether the habitat could support individuals/populations of those species.	Prior to any ground disturbing activities or vegetation removal Prior to LSA Notification	City of Covina

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REC-1-LSA	<p>To minimize additional requirements by CDFW pursuant to Fish and Game Code section 1600 <i>et seq.</i> and/or under CEQA, the Project's 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. As such, CDFW recommends the City consider CDFW's comments and revise the MND by incorporating Mitigation Measure #1 through #3 into the final environmental document.</p> <p>To compensate for any on- and off-site impacts to aquatic and riparian resources, additional mitigation conditioned in any LSA Agreement may include the following: erosion and pollution control measures, avoidance of resources, protective measures for downstream resources, on- and/or off-site habitat creation, enhancement or restoration, and/or protection, and management of mitigation lands in perpetuity.</p>	Prior to finalizing CEQA document	City of Covina
REC-2-Landscaping	The City should avoid using non-native, invasive plants, particularly any species, particularly 'Moderate' or 'High' listed by the California Invasive Plant Council . The City should use native species found in naturally occurring vegetation communities within or adjacent to the Project site.	Project design/ During Project construction/ activities	City of Covina
REC-3-Habitat for Birds	The City should plant native tree and shrub species preferred by birds and are native to the area.	Project design/ During Project construction/ activities	City of Covina
REC-4-Data	The City should ensure sensitive and special status species data has been properly submitted to the California Natural Diversity Database with all data fields applicable filled out. The City should provide CDFW with confirmation of data submittal.	Prior to/after Notification pursuant to Fish and Game Code	City of Covina

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		section 1600 et seq.	
REC-5- Mitigation and Monitoring Reporting Plan	The City should update the Project's proposed Biological Resources Mitigation Measures and condition the environmental document to include mitigation measures recommended in this letter.	Prior to finalizing CEQA document	City of Covina