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March 18, 2022

Governor's Office of Planning & Research

Mar 18 2022

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STATE CLEARINGHOUSE

Subject: City of Anaheim General Plan Update (Project), Notice of Preparation (NOP), SCH #2022020363

Dear Ms. Hwang:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft programmatic environmental impact report (PEIR) from the City of Anaheim (City) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (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 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. As proposed, for example, the Project may be subject to CDFW'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 (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also oversees implementation of the Natural Community Conservation Planning (NCCP) program. The City of Anaheim participates in the NCCP program through its role as a Participating Jurisdiction under the County of Orange Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Anaheim (City)

Objective: The objective of the Project is to prepare a technical update to parts of the City's General Plan. The City is in the process of updating the sixth cycle housing element for the 2021-2029 planning period to address the City's Regional Housing Needs Assessment (RHNA). This Housing Element update will require changes to the City's Zoning Code and land use maps. Primary Project activities include a new Environmental Justice Element, a new Climate Action Plan, and updates to the Circulation Element, Safety Element, Zoning Code, Zoning Map, and Land Use Element to implement the 2021-2029 Housing Element.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Key project components are outlined below:

New Environmental Justice Element: The state law requires local jurisdictions with disadvantaged communities to adopt a new Environmental Justice Element when they are updating two or more elements of their general plan. The Environmental Justice Element will be compliant with all relevant State laws, including California Senate Bill 1000 (2016).

New Climate Action Plant (CAP): The new CAP will serve as a strategic framework for measuring, planning, and reducing greenhouse gas emissions and related climatic impacts in the City.

Circulation Element Update: This identifies the general location and extent of existing and proposed major transportation facilities. The Circulation Element update will reflect changes in the transportation needs, new technologies, and other projects, such as the Housing Element.

Zoning Code and Land Use Changes: The 2021-2029 Housing Element and updates to the other General Plan elements require updates to the City's Zoning Code, Zoning Map, and the Land Use Element to ensure consistency and allow for future implementation.

Location: The Project encompasses the City of Anaheim, which is approximately 35 miles southeast of downtown Los Angeles and 7 miles north of Santa Ana. The city is surrounded by the cities of Fullerton, Placentia, and Yorba Linda to the north; Riverside County to the east; the cities of Orange, Garden Grove, and Stanton and unincorporated Orange County to the south; and the cities of Cypress and Buena Park to the west. The City encompasses over 32,000 acres of land, stretching nearly 20 miles along State Route 91.

Biological Setting: The City of Anaheim is largely urbanized and is largely surrounded by other developed cities. The developed areas of the City contain non-native species of plants and animals while the Hill and Canyon Area, located in the eastern portion of the City and Sphere of Influence, contains the majority of the City's remaining significant biological resources. The Hill and Canyon Area is within the County of Orange Central and Coastal Subregion NCCP/HCP. The State of California purchased approximately 1,400 acres within Coal Canyon to conserve natural habitats and provide a wildlife corridor between the Cleveland National Forest and the Chino Hills State Park. This site will be maintained in perpetuity as an open space wildlife corridor. The General Plan and Zoning Code Update reflects this use by designating this area for open space purpose. The other significant biological resource located in the City is the Santa Ana River.

Vegetation types likely to occur in the undeveloped portions of the City include annual grassland, chaparral, coastal sage scrub, riparian, woodland, forest communities, and cliff and rock. Sensitive plant communities found within the Hill and Canyon Area include coastal sage scrub communities, coast live oak communities (e.g., oak savannah and oak woodland), Tecate Cypress communities, nolina chaparral, needlegrass grassland, and riparian communities. Portions of the Hill and Canyon Area are utilized for local movement by a wide variety of resident wildlife. Observations made during the course of field work, as well as photographs taken at automated photo stations, have confirmed the presence of a variety of reptiles, birds, and medium to large mammals including, but not limited to skunk, raccoon, mule deer, coyote, bobcat, gray fox, and mountain lion.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, wildlife, and natural habitats, we recommend the following information be included in the PEIR:

General Comments

- 1) **NCCP Compliance:** The City of Anaheim participates in the NCCP program through its role as a Participating Jurisdiction under the County of Orange Central and Coastal Subregion NCCP/HCP. Due to the potential for covered species and their habitats to occur within the Project area, which is defined as the entire City, CDFW recommends the updated General Plan maintaining consistency with the NCCP/HCP in order to avoid, minimize, and/or mitigate potential impacts to biological resources.
- 2) **Biological Resource Inventory:** Where the General Plan Update may result in impacts to natural resources, the document should contain a complete description of the Project, including purpose and need, that describes all habitats within or adjacent to the Project

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area. The Project area is described as the area in which potential effects may occur. Where applicable, the document should also provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire Project site, undertaken at the appropriate time of year. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish and wildlife species. Seasonal variations in use of the Project area by wildlife should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required in order to adequately determine potential effects. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service.

- 3) **Biological Impacts:** To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the PEIR:

a) a discussion of potential adverse impacts from lighting, noise, human activity, sensitive species, recreational uses, and potential impacts to the Santa Ana River. The latter subject should address: Project-related changes to drainage patterns on, and downstream of, the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in the stream; and post-Project fate of runoff from the Project site. Mitigation measures proposed to alleviate such impacts should be included.

b) discussion regarding indirect Project impacts on biological resources, including appropriate biological buffers, resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., existing preserve lands or lands designated as within the County of Orange Central and Coastal Subregion NCCP/HCP).

c) the zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible wildlife conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.

d) CDFW also recommends that a habitat gain/loss table be included, which calculates the expected net habitat losses and gains of each type of habitat area lost, restored, enhanced, and created.

- 4) **Special-status Species:** The PEIR should thoroughly analyze direct, indirect, and cumulative impacts to any special-status species likely to occur in the Project area. Impacts to species designated as Fully Protected must be completely avoided; FPS may not be taken or possessed at any time per § 3511 of the Fish and Game Code. Avoidance measures for avian species may include phasing construction to occur outside of nesting season, conducting species-specific surveys when construction will occur within 500' of a nesting site, retaining a qualified biological monitor on-site during construction, and implementation of no-activity buffers around active nests.

CDFW also considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species not already covered by the Orange County Central and Coastal NCCP/HCP that results from the Project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project related activity during the life of the Project will result in take of a non-NCCP covered species designated as endangered or threatened, or a candidate for listing under CESA, 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 consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subs. (b),(c)). Early consultation is encouraged, as significant modification to a 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.

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Lake and Streambed Alteration Notification:

- 1) The Project area covers the entire City of Anaheim and thus includes the Santa Ana River. CDFW 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 CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. CDFW as a Responsible Agency under CEQA may consider the City's PEIR for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the 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 LSAA.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a 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 and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order 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

CDFW appreciates the opportunity to comment on the NOP assist the City of Anaheim in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Troeller, Environmental Scientist, at Alexandra.Troeller@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW

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REFERENCES

City of Anaheim. 2020. Climate Action Plan.
<https://anaheim.net/DocumentCenter/View/7987/Greenhouse-Gas-Reduction-Plan?bidId=>

City of Anaheim. 2004. Anaheim General Plan/Zoning Code Update EIR.
<https://www.anaheim.net/DocumentCenter/View/2185/53-Biological-Resources-?bidId=>