



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor’s Office of Planning & Research

**Apr 14 2022**

April 13, 2022

**STATE CLEARINGHOUSE**

Sara Osborn  
City of San Diego  
1222 1<sup>st</sup> Ave  
San Diego, CA 92101  
[SOsborn@sandiego.gov](mailto:SOsborn@sandiego.gov)

**Subject: Spectrum Pedestrian Bridge (PROJECT), Mitigated Negative Declaration (MND), SCH #2022030361**

Dear Ms. Osborn:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of San Diego (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 also administers the Natural Community Conservation Planning (NCCP) program. The City of San Diego (City) participates under the Multiple Species Conservation Program (MSCP) NCCP/Habitat Conservation Plan (HCP).

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of San Diego (City)

**Objective:** The objective of the Project is to construct a landscaping path and a new 164-foot-long box truss pedestrian bridge over a finger canyon, to enhance connectivity between the Spectrum buildings at 3013, 3033, and 3035 Science Park Road and the Spectrum V building at 3545 Cray Court. The Project will require a site development permit (SDP), coastal development permit (CDP)

---

<sup>1</sup> 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.

Ms. Sara Osborn  
 City of San Diego  
 April 13, 2022  
 Page 2 of 5

and planned development permit (PDP) to amend the existing SDP/CDP/PDP (PTS 556056, 3115 Mayfield Row and 3013- 3033 Science Park Road) and CDP-96775 (3545 Cray Court). Project activities include vegetation removal, minor balanced grading, installation of two pile foundations and the bridge, installation of a crane pad for use during construction, creation of foot paths, and installation of landscaping.

The Project will require encroachment into an open space easement, created to preserve steep slopes as part of the La Jolla Pines Technology Center Project in 1992. Encroachment will involve 3,891.57 square feet of temporary construction impact, which will be revegetated, as well as a 192.5-square-foot impermeable bridge abutment, and permeable dirt and granite pathways over 550.94 square feet. No steep slopes will be impacted as part of the Project. The open space easement was granted to the City, with no third-party beneficiaries.

**Location:** The Project site is located in an urban canyon within the community of La Jolla, bounded to the west by North Torrey Pines Road, to the south by Cray Court and to the north by Science Park Road. The Project is outside of the City's Multi-Habitat Planning Area (MHPA), which lies approximately 1,400 feet to the southeast.

**Biological Setting:** The Project will directly impact 0.32 acre, including 0.01 acre of southern maritime chaparral (identified as Tier I in the City's Biology Guidelines; City of San Diego 2018), 0.15 acre of eucalyptus woodland, and 0.16 acre of urban/developed land. No direct impacts to sensitive plant species are anticipated.

Sensitive wildlife species with moderate to high potential to occur on site include Belding's orange-throated whiptail (*Aspidoscelis hyperythra beldingi*; CDFW Watch List), San Diegan tiger whiptail (*Aspidoscelis tigris stejnegeri*; California Species of Special Concern (SSC)), red diamond rattlesnake (*Crotalus ruber*; SSC), coastal California gnatcatcher (*Polioptila californica californica*; Federal Endangered Species Act (ESA)-listed Threatened; SSC), and southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*; CDFW Watch List).

## COMMENTS AND RECOMMENDATIONS

The City coordinated with the United States Fish and Wildlife Service (USFWS) and CDFW (collectively called the Wildlife Agencies), in a meeting on September 17, 2021, as well as through subsequent e-mails. The encroachment on the open space easement was discussed, as well as CDFW concerns over indirect impacts from bridge lighting and shading. Additionally, one of the bridge abutments will occur within 100 feet of southern riparian scrub and encroaches on a wetland buffer. After discussion, CDFW provided concurrence that the reduced wetland buffer is acceptable and had no additional concerns about bridge lighting or shading.

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.

### I. Mitigation Measure or Alternative and Related Impact Shortcoming

#### COMMENT #1: Nesting Bird Impacts

**Issue:** The MND does not adequately avoid or minimize impacts to nesting birds. The Biological Resources Report (BRR; RECON, 2021) indicates that measures such as pre-activity bird surveys,

Ms. Sara Osborn  
City of San Diego  
April 13, 2022  
Page 3 of 5

nest avoidance, and construction monitoring are anticipated, to ensure compliance with the Migratory Bird Treaty Act (MBTA) as well as other federal and state laws pertaining to migratory and nesting birds. Section 6.0 in the BRR states that, "The biological monitor will attend the pre-construction meeting, be present during construction as needed to prevent impacts to protected avian species (including coastal California gnatcatcher), educate construction personnel, and coordinate with and report to the City's Mitigation Monitoring Coordination (MMC) section. These measures will be spelled out as conditions of approval for the project." However, there are no conditions of approval in the MND, or associated mitigation measures included, to ensure that impacts to nesting birds are avoided.

To adequately identify nesting bird presence in the Project area, all vegetation within the Project footprint and a surrounding 100-foot buffer should be surveyed by a qualified biologist for nesting bird presence, no more than three days prior to ground disturbance, vegetation removal, or construction activities. Species-appropriate buffer zones of no activity should be established around any active nests and be monitored until the nest is no longer active.

**Why impact would occur:** Direct impacts to nesting birds may occur from vegetation removal; indirect impacts may occur from vibration, noise, dust, and increased human activity related to construction.

**Evidence impact would be significant:** In addition to the federal Migratory Bird Treaty Act, the California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq.*).

### **Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)**

#### **Mitigation Measure #1:**

**To minimize significant impacts:** To avoid impacts to nesting birds, the MND should require that clearing of vegetation and construction occur outside of the peak avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors). If vegetation clearing or project construction are necessary during the bird breeding season, a qualified biologist with experience in conducting bird breeding surveys should conduct weekly bird surveys for nesting birds, within three days prior to the work in the area, and ensure no nesting birds in the project area would be impacted by the project. If an active nest is identified, a buffer should be established between the construction activities and the nest so that nesting activities are not interrupted. The buffer should be a minimum width of 100-300 feet, depending on the species (500 feet for raptors), be delineated by temporary fencing, and remain in effect as long as construction is occurring or until the nest is no longer active. No project construction should occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

#### **COMMENT #2: Scientific Collecting Permit and Species Relocation Plan**

In addition to CESA, CDFW currently implements its authority to issue permits for the take or possession of wildlife, including mammals, birds, and the nests and eggs thereof, reptiles, amphibians, fish, certain plants, and invertebrates for scientific, educational, and propagation

Ms. Sara Osborn  
City of San Diego  
April 13, 2022  
Page 4 of 5

purposes through Section 650, Title 14, California Code of Regulations, by issuing Scientific Collecting Permits.

If wildlife is to be physically touched and/or moved, on-site biologists should be required to obtain, as applicable, Scientific Collecting Permits (SCP). A Species Relocation Plan may be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the project site, unless they are a CESA- and/or ESA-listed species in which case coordination and direction from CDFW and/or the USFWS, respectively, shall be required.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 found at the following link:  
[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link:  
[http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## 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 Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the 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.)

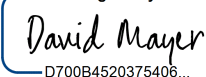
## CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
D700B4520375406...

David Mayer  
Environmental Program Manager  
South Coast Region

ec: State Clearinghouse, OPR – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)  
Cindy Hailey, CDFW – [Cindy.Hailey@wildlife.ca.gov](mailto:Cindy.Hailey@wildlife.ca.gov)  
Patrick Gower, USFWS – [Patrick.Gower@fws.gov](mailto:Patrick.Gower@fws.gov)

Ms. Sara Osborn  
City of San Diego  
April 13, 2022  
Page 5 of 5

## **REFERENCES**

City of San Diego, Land Development Code Biology Guidelines, 2018

City of San Diego, Multiple Species Conservation Program (MSCP), Subarea Plan, 1997

RECON Environmental, Inc. Biological Resources Report, September 24, 2021.