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April 20, 2022

Governor's Office of Planning & Research

Apr 20 2022

Mike Rohde
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STATE CLEARINGHOUSE

Subject: Bluebird Canyon and Park Avenue Fuel Modification Projects (Project), Mitigated Negative Declaration (MND), SCH #2022030589

Dear Mr. Rohde:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Laguna Beach (City) Fire Department for the Project pursuant 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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Laguna Beach Fire Department

Objective: The objective of the Project is to conduct fuel management in the Bluebird Canyon area and along Park Avenue in Laguna Beach, California. Bluebird Canyon consists of Fuel Modification Zone (FMZ) 17 and FMZ 18, totaling 17.8 acres of fuel reduction. Approximately 7.2 acres of fuel reduction will take place in FMZ 22 on either side of Park Avenue. Fuel management methods include the use of hand tools and crews, with the option of goat-grazing.

Hand crews will cut down all non-native vegetation and dead/dying native vegetation and remove dead branches from trees and large shrubs. Tree-form shrubs that are over six feet tall will be

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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pruned of lower branches to increase the Crown Base Height to 50 percent of the plant height. Large non-native trees will be considered for removal on a case-by-case basis and native trees will be pruned of dead components and lower branches, up to eight feet or one half their height, whichever is less. Where there is still over 50 percent vegetative cover after the above material has been removed, the contractor will remove healthy live vegetation in accordance with a hierarchical list, until 50 percent vegetative cover is achieved. Most roots of perennial plants will remain, and native vegetation waste will be mulched and left on site. Non-native vegetation waste will be recycled at a green waste facility or taken to a landfill if not recyclable. Exclusion areas within all three FMZs would be established to avoid disturbance to High and Very High Value Habitat and sensitive biological resources.

Goat grazing may be utilized in select areas. Protocol for goat grazing includes cleaning the fur and hooves of seeds and debris before arrival at the treatment area and when being moved between enclosures, establishing a 15-foot buffer fence around any sensitive plants to prohibit grazing, wildlife friendly fencing around the enclosures, and periodic moving of the goats. Grazing shall be preferred for removal of non-natives or native herbaceous species. Up to 80 percent of native and 100 percent of non-native species in this cover type may be removed in such areas. Goat grazing in woody or woody-herbaceous chaparral species shall be limited to 50 percent removal of vegetative cover. Goat-grazed fuel breaks shall be limited to a 100-foot width. A targeted invasive control plan will be implemented in all goat-grazed areas to prevent invasive species from propagating.

Location: Bluebird Canyon and Park Avenue are primarily within the City of Laguna Beach, California, with a small portion of FMZ 17 within the unincorporated County of Orange. FMZ 18 is on the south side of Temple Hills Drive and west of Zell Drive and Bernard Court, behind residential properties. A small portion of the southern end is within the Aliso and Wood Canyons Wilderness Park. FMZ 18 consists of three separate areas on the south side of Bluebird Canyon Drive and north of Summit Drive. The Park Avenue Fuel Modification Project includes FMZ 22, located on either side of Park Avenue. The Project sites are within the coastal zone, which is under the permitting authority of the City of Laguna Beach through the City's Local Coastal Program. The Project sites are also entirely within the Orange County Central Coastal Natural Community Conservation Plan (NCCP)/Habitat Conservation Plan (HCP) area; however, the City is not a signatory to the Orange County Central Coastal NCCP/HCP.

Biological Setting: An interim memo from Glenn Lukos Associates informs that general biological surveys and habitat assessments were completed for FMZs 17, 18, and 22, as well as focused protocol-level breeding surveys for coastal California gnatcatcher (*Poliioptila californica californica*; gnatcatcher) within FMZ 17 and FMZ 18. Protocol non-breeding surveys for FMZ 22 were anticipated to be completed in February 2022, but the results were not provided for review. Gnatcatchers were not detected in the FMZ 17 or FMZ 18 surveys. Detailed vegetation mapping and focused plant surveys are still being conducted, as the Project was not contracted early enough in 2021 to conduct focused plant surveys during the blooming period for most species (Appendix C, Glenn Lukos Associates 2021).

Sensitive plants with the potential to occur on the Project sites include big-leaved crownbeard (*Verbesina dissita*; California Endangered Species Act (CESA)- and Federal Endangered Species Act (ESA)-listed Threatened; California Rare Plant Rank (CRPR) 1B.1), cliff spurge (*Euphorbia misera*; CRPR 1B.2), intermediate mariposa lily (*Calochortus weedii* var. *intermedius*; CRPR 1B.2), many-stemmed dudleya (*Dudleya multicaulis*; CRPR 1B.2), Nuttall's scrub oak (*Quercus dumosa*; CRPR 1B.1), and summer-holly (*Comarostaphylis diversifolia* ssp. *diversifolia*; CRPR 1B.2). The

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MND indicates that sensitive plants will be flagged for avoidance by hand crews, and a 15-foot exclusion barrier will be installed around sensitive plants in areas where goat grazing will occur.

Special-status wildlife with the potential to occur on the Project sites include gnatcatcher (ESA-listed Threatened), California glossy snake (*Arizona elegans occidentalis*; CDFW Species of Special Concern (SSC)), coast patch-nosed snake (*Salvadora hexalepis virgulata*; SSC), coastal whiptail (*Aspidoscelis tigris stejnegeri*; SSC), orange-throated whiptail (*Aspidoscelis hyperythrus*; SSC), red diamond rattlesnake (*Crotalus ruber*; SSC), coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*; SSC), Cooper's hawk (*Accipiter cooperii*; a CDFW designated Watch List (WL) species), and Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*; WL).

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.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Habitat Restoration Plan and Mitigation Ratios

Issue: Mitigation Measure BIO-10 (MM BIO-10) requires further rationale and detail to adequately mitigate for impacts to sensitive natural communities.

Specific impact: The Open Space/Conservation Element of the City's General Plan provides guidance for fuel modification projects based on established habitat values. FMZs 17 and 18 occur partially within areas designated as Very High Value Habitat, and FMZs 17, 18, and 22 occur partially within areas designated as High Value Habitat. Policy 8N of the General Plan prohibits intrusion of fuel modification programs into environmentally sensitive areas, including chaparral and coastal sage scrub.

The Project site contains 1.1 acres of Very High Value Habitat consisting of coastal sage scrub and chaparral that will be impacted. Project impacts to High Value Habitat consisting of coastal sage scrub or chaparral habitats include 2.3 acres at the Park Avenue Project site and 3.1 acres at the Bluebird Canyon site. The Projects propose to reduce the cover within these areas by up to 50 percent with selective thinning. The MND indicates that this is a significant impact to Very High Value Habitat, but less than significant impact to High Value Habitat. To mitigate for the loss of Very High Value Habitat, MM BIO-10 states that, "...the City shall complete 0.55 acres of active restoration, 1.1 acres of partial restoration (20-50%), or 1.65 acres of passive restoration." Mitigation is not proposed for impacts to High Value Habitat. Additionally, MM BIO-10 requires that a Habitat Restoration Plan (HRP) or similar document be completed prior to the start of the Project, which will be implemented no more than 12 months after the start of Project activities. Details such as location of mitigation and methodology are not discussed in the MND, and specific details of the HRP are not available for review.

Why impact would occur: Pursuant to the MND, the HRP is a required Project component to mitigate for sensitive natural communities that will be removed during fuel modification. However, the MND does not include a detailed discussion of the ecological value of impacted habitat, or a draft HRP for public review and comment. Absent its inclusion, the MND's requirement to prepare and implement the HRP does not benefit from public review and analysis.

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

Mitigation Measure #1:

To reduce impacts to less than significant:

The MND should provide rationale for use of a 1:1 ratio for impacts to 50% of the 1.1 acre of Very High Value Habitat, consisting of coastal sage scrub and chaparral. Coastal sage scrub and chaparral communities are present in both the Very High Value and High Value Habitat areas. Coastal sage scrub has a global ranking of G3 (Vulnerable) and a state ranking of S3.1 (Vulnerable). Both vegetation communities have the potential to support gnatcatcher, as well as big-leaved crown beard. CDFW recommends that the MND additionally consider impacts to High Value Habitat significant and provide compensatory mitigation for the 6.5 acres of cumulative area being impacted. CDFW recommends a ratio of at least 2:1 for impacts to coastal sage scrub. The results of the protocol non-breeding gnatcatcher surveys for FMZ 22 were not available for review; however, if habitat being removed in FMZ 22 supports gnatcatcher, a mitigation ratio of at least 3:1 may be appropriate. Specific details of mitigation location, methodology, and acreage should be provided in the MND.

CDFW recommends that the MND specify how the HRP will be implemented, who the responsible party for overseeing the HRP's implementation is, when the HRP will be approved, as well as define the specific measures that the HRP will utilize to minimize potential impacts to sensitive natural communities and associated biological resources. The HRP should be made available for review by CDFW and the United States Fish and Wildlife Service (collectively the Wildlife Agencies) prior to final approval and implementation. We recommend that the MM BIO-10 be amended with the following language (changes in ~~strike through~~ and **bold**):

*“Mitigation Measure BIO-10: This mitigation measure applies to both the Bluebird Canyon Fuel Modification Project and Park Avenue Fuel Modification Project. To mitigate for the loss of Very High Value Habitat **and High Value Habitat**, the City shall complete **mitigation at a ratio of at least 2:1; if sensitive species such as California gnatcatcher are identified in the impacted vegetation, a ratio of at least 3:1 will be used. The City shall provide the updated vegetation mapping and floristic surveys, as well as analysis of the ecological value of the impacted habitat used to determine mitigation ratios. 0.55 acres of active restoration, 1.1 acres of partial restoration (20-50%), or 1.65 acres of passive restoration. Prior to the start of the Project, the City shall develop and implement a Habitat Restoration Plan or similar document, subject to site and methods approval of the California Coastal Commission. that provides all the details of the restoration sites, species to be planted, schedule, maintenance plans, and other pertinent information. The plan shall include adaptive management practices to achieve the specified ratio for restoration/ enhancement. At a minimum, the plan shall include a description of the existing conditions of the receiver site(s), goals and timeline, installation methods, monitoring procedures, plant spacing, adaptive management strategies, and maintenance requirements which will be reviewed and approved by the monitoring biologist to ensure the sensitive communities referred to above are reestablished successfully at the ratios set forth above. The plan will also include information on the responsible party for implementation of the mitigation. The habitat restoration plan will be made available to the Wildlife Agencies for review and approval prior to implementation. The Habitat Restoration Plan shall be implemented no more than 12 months after the start of Project activities.”***

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COMMENT #2: Nesting Bird Impacts

Issue: Mitigation Measure BIO-3 (MM BIO-3) indicates that nesting bird surveys will be conducted by a qualified biologist prior to Project activities and that avoidance buffers shall be established; however, no timeline is indicated, and buffer distances are not discussed.

Why impact would occur: Direct impacts to nesting birds may occur from vegetation removal; indirect impacts may occur from increased human activity, vibration and noise from equipment, or presence of goats.

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 #2:

To minimize significant impacts: To adequately identify nesting bird presence in the Project area, surveys should be conducted no more than three days prior to vegetation removal. If vegetation removal must occur during avian breeding season, avoidance buffers of 100-300 feet should be established by the Project biologist, and 300 feet for gnatcatcher. 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. The nests should be monitored by the Project biologist until the young have fledged or the nest is no longer active.

We recommend that the MM BIO-3 be amended with the following language (changes in ~~striketrough~~ and **bold**):

*“This mitigation measure applies to the Bluebird Canyon Fuel Modification Project. Vegetation removal and initial ground disturbance shall be completed outside the bird breeding season (i.e., no removal of potential nesting habitat from January 1 through September 1), or after a pre-construction nesting bird survey has been completed. **The survey shall be completed no more than three days prior to Project activities to ensure that birds are not engaged in active nesting within the Project site and a 100-foot buffer.** ~~The Project Biologist shall confirm that no birds are nesting in or adjacent to areas to be disturbed.~~ If native **any** birds are nesting on the site, then Project activities will be postponed until nesting is completed, or the Project Biologist shall designate appropriate avoidance buffers around nests to protect nesting birds. **The width of the buffer will be determined by the Project Biologist. Typically, this is a minimum of 100-300 feet from the nest site in all directions, species dependent, and up to 500 feet for raptors or gnatcatcher.** No Project related disturbance shall be allowed within these buffers **until the Project biologist has confirmed that the juveniles have fledged and there has been no evidence of a second attempt at nesting.** If a buffer is within a goat-grazing treatment area, a secure enclosure shall be installed to ensure goats do not enter the nesting bird buffer.”*

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

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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. The completed form can be mailed electronically to CNDDDB at the following email address: 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.

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 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.

Sincerely,

DocuSigned by:

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REFERENCES

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