



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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May 26, 2022

Elizabeth Shearer-Nguyen
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**Subject: Bella Mar Amendment (Project), Mitigated Negative Declaration (MND),
SCH #2022040642**

Dear Ms. Shearer-Nguyen:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Mitigated Negative Declaration (MND) from the City of San Diego (City) for the Bella Mar Amendment (Project No. 631240) 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'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 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.*). CDFW also administers the Natural Community Conservation Planning (NCCP) program (Fish & G. Code, § 2800 *et seq.*). The City participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP) and Implementing Agreement (IA). The MND for the proposed Project must ensure that all requirements and conditions of the SAP and IA are met. The MND should also address any biological issues that are not addressed in the SAP and IA, such as

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 1500.

Elizabeth Shearer-Nguyen
City of San Diego
May 26, 2022
Page 2 of 5

specific impacts to and mitigation requirements for sensitive species that are not covered by the SAP and IA.

PROJECT DESCRIPTION SUMMARY

The Project proposes to develop two neighborhoods (380 residential units) with associated community buildings, outdoor amenities, and off-site improvements. Project-related activities would include grading, landscaping, utilities, and construction of internal roadways to connect with existing off-site roadways. The 14.62-acre Project site is located at 408 Hollister Street within the City's Otay Nestor Community Planning Area. The Project site is undeveloped, bounded by I-5 and residential development to the west, Hollister Street to the east, and an undeveloped parcel to the south. The Otay Valley Regional Park borders the site to the north and consists of freshwater marsh and southern willow scrub habitat. Approximately 5.5 acres of the City's Multi-Habitat Planning Area (MHPA) occurs on the northern end of the Project parcel connecting to the Regional Park. On December 18, 2020, the City proposed a MHPA Boundary Line Adjustment (BLA) that would allow the Project to impact 3.2 acres of the current MHPA and preserve the remaining 2.3 acres as open space. On June 17, 2021, CDFW provided their MHPA BLA concurrence to the City.

Per RECON's 2022 Biological Technical Report (BTR), the Project's development area and off-site improvement area consist of both disturbed land (14.63 acres) and urban/developed land (1.79 acre). General biological surveys were conducted in the Project area in April 2017 and September 2018. Special-status species that may occur within or adjacent to the Project area include burrowing owl (*Athene cunicularia*; California Species of Special Concern (SSC), Cooper's hawk (*Accipiter cooperii*, SSC), least Bell's vireo (*Vireo belli pusillus*; Endangered Species Act (ESA)-listed Endangered, California Endangered Species Act (CESA)-listed Endangered), light-footed Ridgway's rail (*Rallus obsoletus levipes*; ESA-listed Endangered, CESA-listed Endangered, California Fully Protected species), southwestern willow flycatcher (*Empidonax traillii extimus*; ESA-listed Endangered, CESA-listed Endangered). A habitat assessment and four non-breeding protocol surveys for burrowing owl were conducted between September 2019 and January 2020 that resulted in no direct observations or signs of owl activity; however, four suitable burrows were found in the Project area along Hollister Road (RECON 2022).

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations 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.

COMMENT #1: Nesting Birds

Nesting birds could be indirectly impacted by grading, lighting, noise, toxics, brush management, and human activity generated by Project construction and implementation (RECON 2022). While CDFW appreciates the City's plan to implement their Land Use Adjacency Guidelines and MM BIO-1A and 1B Protections, as currently written, MM BIO-1A mentions two species of birds and fails to consider other nesting birds that may occur within the Project area. In addition, MM BIO-1A is not consistent with the BTR's proposed Avian Protections Measure language for any bird that is listed, candidate, sensitive, or special status in the MSCP. Nesting birds are protected per Fish and Game Code section 3503; therefore, to

Elizabeth Shearer-Nguyen
City of San Diego
May 26, 2022
Page 3 of 5

avoid impacts to sensitive species, these measures as written should establish clear bird breeding survey protocols and nest buffers for other nesting birds that may be impacted by Project activities.

There is a high potential for light-footed Ridgway's to occur north of the Project impact area along Otay River based on historic occurrence records (RECON 2022). In addition to being both CESA- and ESA-listed Endangered, light-footed Ridgway's rail is also Fully Protected under Fish and Game Code section 3511(b)(9). A Fully Protected bird may not be taken at any time and any impacts to the light-footed Ridgway's rail would be considered significant.

Mitigation Measure #1:

To reduce impacts to less than significant: CDFW recommends that Project activities occur outside of the avian breeding season to adequately avoid impacts to all nesting birds (including burrowing owl and least Bell's vireo) that may occur within or adjacent to the Project area.

CDFW recommends adding a nesting bird mitigation measure to the final MND that states;

"All clearing of vegetation will occur outside of the peak avian breeding season, which generally runs from February 1 through September 15 (as early as January 1 for some raptors). If Project construction is 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 to five 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 shall be established between the construction activities and the nest so that nesting activities are not interrupted. For the given Project site, CDFW generally recommends a 100-foot buffer from common avian species, 300 feet for listed or highly sensitive species (that are otherwise not addressed by the MSCP), and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect as long as construction is occurring. No Project construction shall 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".

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 Forms](#) 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: [CNDDDB Plants and Animals Information](#).

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

Elizabeth Shearer-Nguyen
City of San Diego
May 26, 2022
Page 4 of 5

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 NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alison Kalinowski, Environmental Scientist, by email at Alison.Kalinowski@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

California Department of Fish and Wildlife. 2021. California Natural Diversity Database (CNDDDB). Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

California Department of Fish and Wildlife. 2021. CNDDDB – Plants and Animals. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

California Department of Fish and Wildlife. 2021. Submitting Data to the CNDDDB. Available from: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

California Environmental Quality Act (CEQA). 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.

California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, §15097, §15126.4(2).

Elizabeth Shearer-Nguyen

City of San Diego

May 26, 2022

Page 5 of 5

City of San Diego. March 1997. City of San Diego MSCP Subarea Plan.

RECON Environmental Inc. March 2022. Biological Technical Report for the Bella Mar Project
San Diego, California.