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August 30, 2022

Governor's Office of Planning & Research

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County of San Diego
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Aug 30 2022

STATE CLEARING HOUSE

Subject: Los Cocheros Low Flow Urban Runoff Diversion to Sewer Project (Project) Draft Mitigated Negative Declaration (Draft MND), SCH #2022080030

Dear Ms. Jones:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the County of San Diego 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.

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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PROJECT DESCRIPTION SUMMARY

Proponent: County of San Diego (County)

Objective: A 30-inch concrete pipe is located under Los Coches Road, which collects water runoff into a triple box culvert at Los Coches Creek. During the dry season, urban runoff flows into the pipe without receiving water quality treatment. The objective of the Project is to improve water quality by capturing and diverting dry weather flows to an existing County sewer line. The County proposes the installation of a debris separating baffle box underneath Los Coches Road, which would divert dry weather flows to an existing sewer line, and wet weather flows through a new 36-inch reinforced concrete pipe which would outlet into Los Coches Creek. Additional Project activities include replacing an existing headwall at Los Coches Creek, erosion control, improvements to sidewalks, curbs, gutters, and road surfaces, installing an island median, and relocating existing utilities.

Location: The Project is located in the unincorporated community of Lakeside in San Diego County, on Los Coches Road between Via Diego and Ha Hana Road.

Biological Setting: Los Coches Creek is a stream that supports riparian habitats and connects to the San Diego River. The Project survey area contains eleven vegetation communities: coast live oak woodland, southern willow scrub, disturbed southern riparian scrub, non-native riparian, non-vegetated channel, disturbed habitat, ornamental vegetation, urban/developed, eucalyptus woodland, non-native grassland, and non-vegetated channel/urban/developed. Per the Biological Resources Letter Report, both the coast live oak woodland and southern willow scrub habitats are considered high-quality due to the dominance of mature native trees.

Special-status wildlife with moderate to high potential to occur on the Project site include least Bell's vireo (*Vireo bellii pusillus*; Federal Endangered Species Act (ESA)-listed endangered, CESA-listed endangered, Multiple Species Conservation Plan (MSCP)-covered), Cooper's hawk (*Accipiter cooperii*; CDFW watch list and MSCP-covered), monarch (*Danaus plexippus*; Federal candidate species), Belding's orange-throated whiptail (*Aspidoscelis hyperythrus beldingi*; CDFW watch list and MSCP-covered), Coronado skink (*Plestiodon skiltonianus interparietalis*; CDFW watch list), San Diegan tiger whiptail (*Aspidoscelis tigris stejnegeri*; CDFW Species of Special Concern (SSC)), and San Diegan legless lizard (*Anniella stebbinsi*; SSC).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County 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: Impacts to Least Bell's Vireo

Issue: Mitigation Measure BIO-1 (MM BIO-1) may not adequately mitigate for potential impacts to least Bell's vireo (vireo).

Specific impact: MM BIO-1 indicates that, if vegetation clearing or other construction must occur within 300 feet of southern willow scrub during vireo nesting season (March 15 through September 15), then a qualified biologist shall conduct a pre-construction clearance survey for nesting birds in suitable habitat within 300 feet of the construction area. MM BIO-1 goes on to

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state that if construction must occur within 300 feet of an active nest, sound barriers must be placed, and an acoustician shall measure noise levels at the edge of the project footprint near the occupied habitat closest to the nest.

Preconstruction surveys of suitable vireo habitat during vireo nesting season, in the absence of protocol-level surveys, may not be sufficient to make Project impacts to this species less than significant or to avoid take. Additionally, without establishment of a buffer, noise levels may disturb or lead to abandonment of active nests.

Why impact would occur: The Biological Resources Letter Report indicates that vireo were detected on the Project site during a biological resources survey. Southern willow scrub provides suitable breeding habitat for vireo. In addition to direct removal of habitat, construction noise, vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting vireo on the Project site.

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

Mitigation Measure #1

To minimize significant impacts: CDFW recommends complete avoidance of occupied vireo habitat during nesting season to avoid potential take of vireo. Any adverse impacts to vireo are considered significant without sufficient mitigation. CDFW recommends species-specific protocol level surveys (United States Fish and Wildlife Service (USFWS), 2001), focusing on potential nesting sites within and adjacent to the Project area, prior to ground disturbance, construction activities, or vegetation clearing during vireo nesting season.

Additionally, CDFW recommends modifying MM-BIO1 as follows (suggestions in ~~strikeout~~ and **bold**):

*"c. If least Bell's vireo are nesting within vegetation not to be removed, construction activity should be avoided within 300 feet of the active nest, if possible. If construction must occur within 300 feet of an active nest, temporary sound barriers may be required, or grading may be restricted in construction areas near the nest site to reduce noise levels. Temporary sound barriers must be placed within or surrounding the project footprint and not in the habitat outside the project boundary. In addition, an acoustician shall measure noise levels during construction activities ~~at the edge of the project footprint near the occupied habitat closest to the nest.~~ **at the edge of a 300-foot buffer zone from the nest.** Noise levels must be less than 60 decibels (dB) averaged over a one-hour period on an A-weighted decibel (dB[A]) scale (i.e., 1-hour Leq/dB[A]) or the ambient noise level, whichever is greater."*

COMMENT #2: Impacts to Nesting Birds

Issue: MM BIO-2 may not adequately mitigate for potential impacts to nesting birds.

Specific impact: MM BIO-2 indicates that, if construction (including removal of vegetation) occurs between January 15 and September 15, a qualified biologist shall complete a pre-construction nesting bird and raptor survey. However, no time period for the survey is discussed. MM BIO-2 goes on to state that if any active nests are detected, the qualified biologist will determine an appropriate buffer, and the area will be flagged. Without time periods

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specified in the MND, MM BIO-2 may not be sufficient to avoid or minimize take to migratory and nesting birds.

Why impact would occur: The Project site contains suitable habitat for nesting birds, including Cooper's hawk. In addition to direct removal of habitat, construction noise, vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting birds on the Project site.

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

Mitigation Measure #2

To minimize significant impacts: CDFW recommends modifying MM BIO-2 as follows (suggestions in **bold**):

*"If construction initiation occurs between January 15 and September 15, a preconstruction nesting bird and raptor survey of the project impact area shall be completed by a qualified biologist prior to vegetation removal. The pre-construction survey shall be conducted **within three days** prior to the start of construction activities (including removal of vegetation). If any active nests are detected, the area will be flagged and mapped along with a buffer as recommended by the qualified biologist. The buffer area(s) established by the qualified biologist will be avoided until the nesting cycle is complete or it is determined that the nest is no longer active. The qualified biologist shall be a person familiar with bird breeding behavior and capable of identifying the bird species of San Diego County by sight and sound and determining alterations of behavior as a result of human interaction. Buffers will be based on species-appropriate buffers and/or local topography and line of sight, species behavior and tolerance to disturbance, and existing disturbance levels, as determined appropriate by the qualified 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.**"*

COMMENT #3: Impacts to Sensitive Reptile Species

Issue: Potential impacts to sensitive reptile species are not adequately minimized.

Specific impact: Per the Biological Resources Letter Report, the Project area potentially contains a variety of sensitive reptile species. Additionally, the Biological Resources Letter Report states that direct impacts to these species could result from vegetation clearing and other construction activities within suitable habitat in the Project area. However, no mitigation measure is included to avoid or minimize significant impacts.

Why impact would occur: Sensitive reptile species such as San Diegan legless lizard, San Diegan tiger whiptail, Coronado skink, and Belding's orange-throated whiptail may get trapped in trenches, holes, or pipes on the project site, or may be crushed by construction equipment.

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

Recommendation #1

To minimize significant impacts: CDFW recommends that a wildlife pre-construction survey be conducted on the day that construction activities, including vegetation removal, occur within

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the Project site where suitable habitat is present. Construction personnel should conduct daily inspections of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspections of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day. If sensitive wildlife species are observed during the pre-construction survey, a qualified biologist should require additional measures to reduce potential impacts, such as establishing an appropriate buffer, or moving individuals out of harm's way.

The qualified biologist 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 Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.

COMMENT #4: Mitigation Sites

Issue: MM BIO-3 and MM BIO-4 may require further detail to adequately mitigate for impacts to sensitive natural communities.

Specific impact: MM BIO-3 and MM BIO-4 state that mitigation for 0.01 acre of permanent impacts to southern willow scrub and CDFW riparian habitat will be implemented. These measures go on to state that this mitigation shall be accomplished in the form of either enhancement, restoration, and/or creation of habitat, deduction of credits from a County-approved mitigation area, or other off-site preservation of in-kind or better habitat.

Why impact would occur: Without details about the chosen method and site for mitigation, CDFW cannot determine whether these measures adequately compensate for the impacts to biological resources.

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

Recommendation #2

The MND should provide a discussion and rationale regarding the chosen mitigation site(s) and methods.

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 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.

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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 draft MND to assist the County in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

C3D449ECB7C14DE...

Jennifer Turner signing for

David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
Jennifer Turner – Jennifer.Turner@wildlife.ca.gov
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REFERENCES

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).

United States Fish and Wildlife Service. 2001. Least Bell’s Vireo Survey Guidelines. Available: https://www.fws.gov/pacific/ecoservices/endangered/recovery/documents/LBVireo.2001_protocol.pdf

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Attachment A: CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

Biological Resources		
Mitigation Measure (MM) or Recommendation (REC)	Timing	Responsible Party
<p>MM BIO-1 Impacts to Least Bell's Vireo</p> <p>c. If least Bell's vireo are nesting within vegetation not to be removed, construction activity should be avoided within 300 feet of the active nest, if possible. If construction must occur within 300 feet of an active nest, temporary sound barriers may be required, or grading may be restricted in construction areas near the nest site to reduce noise levels. Temporary sound barriers must be placed within or surrounding the project footprint and not in the habitat outside the project boundary. In addition, an acoustician shall measure noise levels during construction activities at the edge of the project footprint near the occupied habitat closest to the nest. at the edge of a 300-foot buffer zone from the nest. Noise levels must be less than 60 decibels (dB) averaged over a one-hour period on an A-weighted decibel (dB[A]) scale (i.e., 1-hour Leq/dB[A]) or the ambient noise level, whichever is greater.</p>	Prior to and during Project activities	County
<p>MM-BIO 2 Impacts to Nesting Birds</p> <p>If construction initiation occurs between January 15 and September 15, a preconstruction nesting bird and raptor survey of the project impact area shall be completed by a qualified biologist prior to vegetation removal. The pre-construction survey shall be conducted within three days prior to the start of construction activities (including removal of vegetation). If any active nests are detected, the area will be flagged and mapped along with a buffer as recommended by the qualified biologist. The buffer area(s) established by the qualified biologist will be avoided until the nesting cycle is complete or it is determined that the nest is no longer active. The qualified biologist shall be a person familiar with bird breeding behavior and capable of identifying the bird species of San Diego County by sight and sound and determining alterations of behavior as a result of human interaction. Buffers will be based on species-appropriate buffers and/or local topography and line of sight, species behavior and tolerance to disturbance, and existing disturbance levels, as determined appropriate by the qualified biologist. Typically, this is a minimum of 100-300 feet from</p>	Prior to and during Project activities	County

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	the nest site in all directions, species dependent, and up to 500 feet for raptors.		
REC-1 Impacts to Sensitive Reptile Species	<p>CDFW recommends that a wildlife pre-construction survey be conducted on the day that construction activities, including vegetation removal, occur within the Project site where suitable habitat is present. Construction personnel should conduct daily inspections of trenches and holes for entrapped wildlife each morning prior to the onset of Project construction, and inspections of pipes, culverts, and similar construction material for entrapped wildlife at the beginning and end of the day. If sensitive wildlife species are observed during the pre-construction survey, a qualified biologist should require additional measures to reduce potential impacts, such as establishing an appropriate buffer, or moving individuals out of harm's way.</p> <p>The qualified biologist 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 Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.</p>	Prior to and during Project activities	County
REC-2 Mitigation Sites	The draft MND should provide a discussion and rationale regarding the chosen mitigation site(s) and methods.	Prior to Project activities	County