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February 23, 2023

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Subject: West Coast Tomato Growers Farmworker Housing Project, Mitigated Negative Declaration (MND), SCH #2023010426

Dear Ms. Vitale:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Oceanside (City) for the West Coast Tomato Growers Farmworker Housing Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding the 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; 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 expects that it 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.). Likewise, to the extent implementation of the Project as proposed may result in "take" (see Fish & G. Code, § 2050) of

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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any species protected under the California Endangered Species Act (CESA; Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of Oceanside has participated in the NCCP program by preparing a draft Subarea Plan (SAP) under the North County Subregional Multiple Habitat Conservation Program (MHCP). The MHCP was a comprehensive planning document prepared by the San Diego Association of Governments (SANDAG) addressing the cities in north San Diego County, specifically the cities of Oceanside, Carlsbad, Encinitas, Solana Beach, Vista, San Marcos, and Escondido (SANDAG 2003). The MHCP identified critical areas for the conservation of important sensitive species populations to ensure their persistence, core blocks of habitat large enough to support viable populations of diverse sensitive species, and essential areas for connecting between core blocks of habitat. In effect, the MHCP identified critically important biological resources, which if lost to development, would arguably result in significant specific or cumulative impacts within a given jurisdiction and perhaps across the MHCP subregion. Critical areas for conservation in each of the seven jurisdictions were identified as Focused Planning Areas (FPAs). Unfortunately, the Oceanside SAP has not been finalized and has not been adopted by the City or received permits from the Wildlife Agencies (jointly, CDFW and the U.S. Fish and Wildlife Service (USFWS)). The FPAs nonetheless are considered highly relevant when evaluating the significance of biological resources on a given property within the cities comprising the MHCP planning effort.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Oceanside

Objective: The proposed Project involves construction of four buildings on approximately four acres of the West Coast Tomato Growers 20-acre agricultural packing plant facility located just north of State Route (SR) 76 in Oceanside, California. The buildings will consist of prefabricated modular units for housing, kitchen/dining, office, storage, and laundry facilities and will accommodate up to 338 farm workers. The Project site will also include 22 spaces for visitor parking, a biofiltration basin, and outdoor dining area, a soccer field, basketball court, a volleyball court, internal traffic circulation and infrastructure improvements.

The Project site was primarily used for agriculture since 1967. The site was approved as a soil placement site for use during the construction of the San Luis Rey Mitigation Bank. However, it was not utilized for permanent soil placement. The site is zoned for agriculture and is currently vacant.

Direct impacts from the development of the project total 3.91 acres. The vegetation communities that would be impacted consist of 0.06 acre of Diegan coastal sage scrub (DCSS), 0.04 acre of coastal scrub, 3.57 acres of "disturbed habitat," 0.21 acre of non-native vegetation, and 0.03 acre of developed land. As part of the mitigation measures discussed in the Biological Technical Report (BTR) the proposed mitigation for impacts to DCSS (0.06 acre) and coastal scrub (0.04 acre) would be mitigated at a 1:1 ratio through off-site restoration and/or purchase of sage scrub credits at a mitigation bank. The remaining 3.81 acres of impacted habitat would not be

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mitigated. The Project also proposes to install a biofiltration basin within the 100-foot riparian buffer at the northern end of the site. The riparian buffer is in place due to the close proximity to the San Luis Rey Mitigation Bank and the San Luis Rey River.

Location: The Project site is located directly north of State Route 76 in Oceanside, California. The 4-acre site is located on a 20-acre agricultural packing plant facility located at 5870 Mission Road. The site is surrounded by the San Luis Rey Mitigation Bank and the San Luis Rey River to the north, SR 76 to the south, the West Coast Tomato Growers to the west, and undeveloped land to the east. The site is not located within a Focused Planning Area (FPA) of the MHCP.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in identifying and/or mitigating Project impacts on biological resources and to ensure regional conservation objectives in the MHCP and draft Oceanside SAP would not be eliminated by implementation of the Project. The BTR mentions that the City Council has voted not to adopt the SAP; however, the San Luis Rey River and the surrounding area provide important biological value within the City of Oceanside, which includes habitat for State and Federally listed species as well as serving as an important regional corridor that supports very high biological diversity.

Specific Comments

1. Mitigation for Impacts to Habitat: CDFW recommends the impacts to Diegan coastal sage scrub (DCSS) and coastal scrub be consistent with the draft SAP. Per the BTR, there is 0.06 acre of DCSS and 0.04 acre of coastal scrub onsite that will be impacted by the development. In the BTR it states that “in the MHCP, impacts to Group C (coastal sage scrub) outside the FPA are 1:1. The City is not planning to adopt the draft SAP, making this the applicable mitigation ratio.” However, the draft SAP (2010) Table 5-2, requires CSS to be mitigated at a 2:1 ratio if the impacts are outside a Focused Planning Area (FPA), within Offsite Mitigation Zone II, or Remaining Areas as identified in the draft SAP. The federally threatened coastal California gnatcatcher (*Poliioptila californica californica*; gnatcatcher) and its requisite sage scrub habitat were a focus of the MHCP planning effort. Although the gnatcatcher was not observed during the general biological survey on January 27, 2022, there is a high potential for it to occur on or adjacent to the Project site, which justifies making the DCSS on the site even more valuable. For this reason, CDFW recommends the DCSS and coastal scrub be mitigated at a minimum 2:1 ratio consistent with the draft SAP. CDFW also cautions that gnatcatchers not be assumed to be absent from the property without performing focused surveys following protocols established by the U.S. Fish and Wildlife Service (USFWS). Furthermore, Mitigation Measure 8.1.1 indicates that the impacts would be “...through off-site restoration and/or purchase of sage scrub mitigation credits at approved mitigation bank, or other location deemed acceptable by the City”. CDFW recommends that the Mitigation Measure be revised to indicate that the mitigation should be approved by the City and both the United States Fish and Wildlife and CDFW.

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2. San Luis Rey Riparian Buffer: The San Luis Rey River and the areas surrounding the river are part of an essential wildlife corridor and open space that supports the biological diversity in the area. Any impacts to this watershed, which included the riparian habitat, could affect this major corridor within the City of Oceanside.

The Project proposes to install a biofiltration basin, overflow outfall, and a storm drain connection in the northwest corner of the site, which would occur within the riparian buffer. The basin would treat runoff from the Project site and would be installed with native coastal sage scrub (CSS) seed mix and container plant palette. The basin would be regularly maintained, but human usage is not otherwise expected in this area. As stated in the BTR, "City Senior Planner Robert Dmohowski gave guidance regarding riparian buffers and he indicated that the Project should provide a 100-foot buffer, consisting of a 70-foot habitat buffer and a 30-foot fuel modification buffer. He indicated that drainage facilities, such as the proposed biofiltration basin, would be permissible within the buffer." Although it is stated in the BTR that the city council voted to abandon the pursuit of the adopted SAP, CDFW recommends remaining consistent with the tenets of the SAP to avoid potentially significant impacts to biological resources. Section 5-15 (Conservation and Buffer Requirements along the San Luis Rey River) in the draft SAP states:

"Wherever development or other discretionary actions are proposed in or adjacent to riparian habitats along the main stem San Luis Rey River, the riparian area and other wetlands or associated natural habitats shall be designated as biological open space and incorporated into the preserve. In addition, a minimum 100-foot biological buffer shall be established for upland habitats, beginning at the outer edge of riparian vegetation. Within the 100-foot biological buffer, no new development shall be allowed, and the area shall be managed for natural biological values as part of the preserve system. In the event that natural habitats do not currently (at the time of proposed action) cover the 100-foot buffer area, habitats appropriate to the location and soils shall be restored as a condition for the proposed action. In most cases, coastal sage scrub vegetation shall be the preferred habitat to restore within the biological buffer".

This 100-foot buffer is also important to protect the Federally and State Listed least Bell's vireo (*Vireo bellii pusillus*; vireo). Per the BTR, vireo was detected in 2019 and 2020 just north of the site in the San Luis Rey Mitigation Bank (Figure 7, of BTR). Importantly, no USFWS protocol level surveys for vireo were conducted; rather a general biological survey was conducted on January 27th, which is not within the appropriate timeframe for detection of the migratory vireo. CDFW recommends vireo surveys be conducted during the appropriate time of the year to determine the presence or absence of vireo on the Project site, and that the BTR recognize that vireos are found in close proximity within the San Luis Rey River. As a result, CDFW concludes a 100-foot riparian buffer is biologically appropriate to prevent potential adverse impacts to vireo.

Mitigation Measure 8.3.4 indicates that "Lighting for the project adjacent to the biological preserve shall be selectively placed, shielded, and directed away from the conserved

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habitat to the satisfaction of the City.” CDFW recommends that the lighting is placed to avoid any impacts to the 100-foot riparian buffer.

The BTR also states that within the 100-foot riparian buffer, an allowable 30-foot fuel modification buffer is allowed. CDFW disagrees with this assessment and further strongly recommends against any fuel modification be performed in the 100-foot biological buffer of the riparian habitat. Further, any impacts should be entirely restricted to the Project site. Because vireo are in the adjacent property to the north, we recommend that any development or activities, including fuel modification and lighting, be fully outside of the riparian buffer.

General Comments

1. Lake and Streambed: 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. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the DEIR 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. CDFW recommends the Applicant submit a Lake and Streambed Alteration Notification to CDFW. Notifications can be submitted through CDFW’s Environmental Permit Information Management System (EPIMS) [Environmental Permit Information Management System \(ca.gov\)](#).

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:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>

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

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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 significant Project-specific and cumulative impacts on biological resources by following the tenets of the draft Oceanside SAP under the overarching Subregional Northwestern San Diego County MHCP.

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

Sincerely,

DocuSigned by:

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David Mayer
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South Coast Region

ec: CDFW

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References

California Department of Fish and Wildlife. 2020. California Natural Diversity Database.
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Final MHCP Executive Summary. 2003. Multiple Habitat Conservation Program for the Cities of Carlsbad, Escondido, Oceanside, San Marcos, Solana Beach, and Vista.

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<https://ci.oceanside.ca.us/gov/dev/planning/subarea.asp>