



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY Gavin Newson, Governor
DEPARTMENT OF FISH AND WILDLIFE Charlton H. Bonham, Director

South Coast Region
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wildlife.ca.gov

June 23, 2023

Jay Paul
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Subject: Eagle Scout lake Bridge Replacement Project (Project), Mitigated Negative Declaration (MND), SCH #2023050625

Dear Mr. Paul:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced MND for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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, CDFW appreciates 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.

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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.

CDFW also administers the Natural Community Conservation Planning (NCCP) program. The Project is within the boundaries of the Draft Escondido Multiple Habitat Conservation Program Subarea Plan (Escondido Subarea Plan); however, this plan has not yet been approved or adopted. Nonetheless, the draft Escondido Subarea Plan identifies key biological resources and conservation objectives considered critical to address when in potential conflict with proposed development projects.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Escondido

Objective: The objective of the Project is to replace an existing bridge at Kit Carson Park that is damaged, is accumulating excess sediment, and has become a public safety issue. The project will involve the removal of the existing damaged 72-inch by 44-inch corrugated steel oval "squash" pipe (measuring 17 feet in length) and construction of a new, cast-in-place, double wall, 34-foot by 16-foot concrete box culvert. All existing concrete will be removed. Existing riprap on the north side of the bridge will be removed, salvaged, and re-installed after channel grading to improve flow. A portion of an existing 18-inch diameter reclaimed water line and a 4-inch-diameter PVC fiber optic conduit located in the vicinity of the existing culvert will be removed and relocated to the southern side of the new bridge. During construction, the Arroyo Del Oro Creek will be re-routed temporarily.

Location: The Project site is in Kit Carson Park, which is in the City of Escondido at 3341 Bear Valley Parkway. The park has three ponds, one of which is the centrally located Eagle Scout Lake. The Arroyo Del Oro tributary of Kit Carson Creek is an open channel drainage that conveys runoff from the north end of

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the park and flows south, terminating at Eagle Scout Lake. The 0.33-acre Project site is located at the existing Arroyo Del Oro Creek culvert bridge.

Biological Setting: The Project is located within the San Dieguito River watershed. The Arroyo Del Oro tributary of Kit Carson Creek is an intermittent, seasonally flooded streambed that drains through the Project site into the northern portion of Eagle Scout Lake. In high water conditions, Eagle Scout Lake overflows into wetland areas in the southern portion of the park. Flow from the lake enters Lake Hodges from a tributary and associated wetlands approximately 2.5 miles southwest of the Project site, and then eventually to the San Dieguito River approximately 7 miles to the southwest of the Project site at Lake Hodges Dam.

Four vegetation communities were mapped within the Study Area, including southern cottonwood-willow riparian forest (1.64 acres), southern willow scrub (1.71 acres), coast live oak woodland (2.45 acres), and non-native grassland (0.57 acre). No direct impacts, e.g., vegetation removal, are planned for these areas. The majority of the Study Area (approximately 28.5 acres), including the 0.33-acre Project site, consists of developed or disturbed land cover, such as roads, parking lots, landscaped areas planted with ornamental vegetation, and the shore of Eagle Scout Lake. The northern edge of the Project site borders the southern cottonwood-willow riparian forest habitat.

Sensitive wildlife species with moderate-to-high potential to occur within the Study Area include western pond turtle (*Emys marmorata*; California Species of Special Concern (SSC)), southwestern willow flycatcher (*Empidonax traillii extimus*; CESA listed-endangered, Federal Endangered Species Act (ESA) listed-endangered), least Bell's vireo (*Vireo bellii pusillus*; CESA listed-endangered, ESA listed-endangered), coastal California gnatcatcher (*Polioptila californica californica*; SSC, ESA listed-threatened), pallid bat (*Antrozous pallidus*; SSC), and western yellow bat (*Lasiurus xanthinus*; SSC).

No special status plant species are expected to occur on site. One coast live oak tree is located within the Project site footprint, but it will be preserved in place.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Escondido in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

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COMMENT #1: Impacts to Western Pond Turtle

Issue: The proposed avoidance measure for western pond turtle may not be sufficient to lower impacts to less than significant.

Specific impact: Mitigation Measure (MM) BIO-1 states that if construction must occur during the breeding season for western pond turtle, preconstruction surveys shall be performed by a qualified biologist within the Project Area and staging area to determine whether active western pond turtle nests are present, and that construction shall not occur within 50 feet of an active nest site. However, no measure is in place for avoidance of non-nesting turtles, and no survey time frame is provided. Additionally, no western pond turtle exclusion or relocation plan is provided.

Why impact would occur: Western pond turtle is a Species of Special Concern known to be present within Eagle Scout Lake; per the MND, they have been observed on site as recently as 2021. This species uses both aquatic and terrestrial habitats and is known to nest up to 325 feet from suitable aquatic sites. Project activities could lead to trapping or crushing western pond turtles.

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

Mitigation Measure #1

To minimize significant impacts: CDFW recommends that MM BIO-1 be modified as follows (suggestions in ~~strikeout~~ and **bold**):

Construction ~~If construction must occur during the breeding season for western pond turtle (April through August),~~ **shall be avoided as feasible. Within one week prior to any construction activities,** preconstruction surveys shall be performed by a qualified biologist within the Project Area and staging area (including a 50-foot buffer) to determine whether **western pond turtles or** active western pond turtle nests are present. If active nests are present, they shall be flagged and avoided until the eggs have hatched or they are no longer active, as determined by the qualified biologist. To avoid impacts to western pond turtle, construction shall not occur within 50 feet of an active nest site (burrow). **Prior to Project activities, exclusionary fencing shall be used to ensure western pond turtles are kept out of the construction area. This fencing will be maintained throughout the duration of construction. The integrity of the**

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exclusion fencing will be checked daily by a Biological Monitor. Additionally, a Biological Monitor will check the work area every morning before construction begins to ensure that no turtles are within the exclusion area. If a western pond turtle individual or nest is observed in the impact area, construction activities will stop until the Biological Monitor establishes an appropriate buffer, or the turtle is no longer in the impact area. A qualified biologist (with pond turtle trapping/handling experience and holding a CDFW Scientific Collecting Permit) may relocate western pond turtles to an appropriate nearby location if necessary. Relocation areas shall be approved by CDFW prior to relocation of any turtles.

COMMENT #2: Impacts to Nesting Birds

Issue: The MND may not adequately address impacts to nesting birds.

Specific impact: MM BIO-2 states that if construction activities must occur during the avian nesting season, a nesting bird survey shall be completed by a qualified biologist no earlier than one week prior to construction activity. This timeline may not be sufficient to avoid impacts to nesting birds. Additionally, specific buffer distances from nests are not discussed.

Why impact would occur: Areas directly adjacent to the Project site contain suitable habitat for a variety of sensitive avian species, including southwestern willow flycatcher, least Bell's vireo, and coastal California gnatcatcher. 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)

Recommendation #1

To minimize significant impacts: CDFW recommends that preconstruction nesting bird surveys be conducted no more than three days prior to construction activities, including vegetation removal. If nesting birds are detected during surveys, CDFW recommends that buffers be established around nest sites with the following distances: a minimum of 100 feet for general bird nests, 300 feet for sensitive bird species, 500 feet for raptors. Reductions in buffers may be appropriate based on screening vegetation, ambient levels of human activities, or other factors.

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COMMENT #3: Streambed Alteration Agreement

CDFW has regulatory authority over activities in streams 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. Given that the proposed Project would require the temporary diversion of a creek to install the new concrete culvert bridge, we strongly encourage the City of Escondido to consider submittal of a streambed notification package to the Lake and Streambed Alteration Program. A Notification package for a LSAA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

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.

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

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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 of Escondido in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov
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OPR
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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).

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ATTACHMENT A: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)		
Mitigation Measure (MM) or Recommendation (REC) Description	Implementation Schedule	Responsible Party
<p>MM 1: CDFW recommends that MM BIO-1 be modified as follows (suggestions in strikeout and bold):</p> <p>Construction If construction must occur during the breeding season for western pond turtle (April through August), shall be avoided as feasible. Within one week prior to any construction activities, preconstruction surveys shall be performed by a qualified biologist within the Project Area and staging area (including a 50-foot buffer) to determine whether western pond turtles or active western pond turtle nests are present. If active nests are present, they shall be flagged and avoided until the eggs have hatched or they are no longer active, as determined by the qualified biologist. To avoid impacts to western pond turtle, construction shall not occur within 50 feet of an active nest site (burrow). Prior to Project activities, exclusionary fencing shall be used to ensure western pond turtles are kept out of the construction area. This fencing will be maintained throughout the duration of construction. The integrity of the exclusion fencing will be checked daily by a Biological Monitor. Additionally, a Biological Monitor will check the work area every morning before construction begins to ensure that no turtles are within the exclusion area. If a western pond turtle individual or nest is observed in the impact area, construction activities will stop until the Biological Monitor establishes an appropriate buffer, or the turtle is no longer in the impact area. A qualified biologist (with pond turtle</p>	<p>Before and during Project activities</p>	<p>City of Escondido</p>

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<p><i>trapping/handling experience and holding a CDFW Scientific Collecting Permit) may relocate western pond turtles to an appropriate nearby location if necessary. Relocation areas shall be approved by CDFW prior to relocation of any turtles.</i></p>		
<p>REC 1: CDFW recommends that preconstruction nesting bird surveys be conducted no more than three days prior to construction activities, including vegetation removal. If nesting birds are detected during surveys, CDFW recommends that buffers be established around nest sites with the following distances: a minimum of 100 feet for birds, 300 feet for sensitive bird species, 500 feet for raptors.</p>	<p>Before and during Project activities</p>	<p>City of Escondido</p>