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In Reply Refer to:  
FWS/CDFW-23-0090700-CEQA\_SD

July 14, 2023  
*Sent Electronically*

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Governor's Office of Planning & Research

**Jul 13 2023**  
**STATE CLEARINGHOUSE**

Subject: Joint Response to the Notice of Preparation of an Initial Study and Draft  
Environmental Impact Report for the Fenton Parkway Bridge Project  
(SCH#2023050534)

Dear Paul Jackson:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), jointly the Wildlife Agencies, have reviewed the Notice of Preparation (NOP) of an Initial Study and Draft Environmental Impact Report for the Fenton Parkway Bridge Project (project). The comments provided in this letter are based on information provided in the Initial Study and NOP; our review and comments (FWS-SD-2133.2, dated August 17, 2001) on the Draft Environmental Impact Report (LDR No. 40-0559; SCH No. 2000101088) for the Mission City Parkway Bridge and Associated Facilities (2001 DEIR); our review and comments (FWS/CDFW-19B0115-19TA0706, dated March 28, 2019) on the Draft Programmatic Environmental Impact Report for the Mission Valley Community Plan (MVCP) Update (SCH# 2017071066) (2019 DPEIR); the San Diego State University Mission Valley Campus Master Plan Draft Environmental Impact Report (2019 DEIR); our knowledge of sensitive and declining species and their habitats in the region; and our participation in regional conservation planning efforts, including the City of San Diego's (City) Multiple Species Conservation Program Subarea Plan (SAP). We appreciate the extension San Diego State University (SDSU) granted the Wildlife Agencies for comments on the NOP.

The mission of the Service is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The Service also has the legal responsibility for the welfare of migratory birds, anadromous fish, and threatened and endangered animals and plants occurring in the United States. The Service also is responsible for administering the Federal Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), including habitat conservation plans (HCP) developed under section 10(a)(2)(A) of the Act. The CDFW is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§ 15386 and 15381, respectively) and is

responsible for ensuring appropriate conservation of the State's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and other sections of the Fish and Game Code. CDFW also administers the Natural Community Conservation Planning (NCCP) program. The City of San Diego participates in the HCP and NCCP programs by implementing its approved SAP.

SDSU, an entity of the Board of Trustees of the California State University (CSU), will serve as the CEQA Lead Agency for this Project on behalf of the City. As described in a Memorandum of Understanding between CSU and the City, as well as City Ordinance No. O-21564, SDSU will design, plan, and construct the bridge to City Standards. SDSU and the City will share the cost of the project, and the City will assume operation and maintenance obligations upon completion. The Initial Study indicates that the City will serve as a Responsible Agency under CEQA, and SDSU is responsible for securing all environmental permits required from State and Federal agencies.

### **Biological Importance of the San Diego River and Relationship to the City's SAP**

The project site is at the same location as the bridges previously proposed in the 2001 DEIR and 2019 PDEIR within the City's MVCP area north of Interstate 8, between Interstates 805 and 15, and southwest of Snapdragon Stadium. The proposed bridge will span the San Diego River, which is in the City's Multi-Habitat Planning Area (MHPA or preserve) and adjacent to the City's Stadium Wetland Mitigation Site. The bridge will be 450 feet long and 58 feet wide and connect the southern terminus of Fenton Parkway to the northern terminus of Mission City Parkway at the intersection of Camino Del Rio North. The bridge will be supported by concrete seat-type abutments in the river embankments at each end, and two to three piers within the river channel, each consisting of two to three approximately 20-foot-tall, 6-foot-diameter circular concrete columns. The existing storm drain infrastructure in the area will require relocation and/or extension to accommodate bridge construction.

The San Diego River is an important component of the MHPA. The relative lack of channelization and remaining riparian vegetation in the San Diego River benefit a myriad of wildlife species in the San Diego area. As the 2001 DEIR stated, "The importance of San Diego River habitat should not be underestimated.... The linear riparian habitats along the San Diego River provide the only remaining wetland habitat within the urbanized area of Mission Valley, and thus contribute heavily to localized biological diversity and provide shelter for migrating species (primarily birds)." At the time of the 2001 DEIR, the habitat in and adjacent to the proposed project site consisted of high-quality southern cottonwood willow riparian forest, coastal and valley freshwater marsh, and open water. The area also supported high biological functions due to its perennial flows, mature vegetation, high wildlife diversity, and high regional wildlife value. Since the evaluation done for the 2001 DEIR, wetland restoration and enhancement done for the Stadium Wetland Mitigation Site has increased the quality and value of the habitat adjacent to the project site, and the mitigation site has been and/or will be used to mitigate wetland impacts for other projects.

The proposed project site plays a significant role in wildlife breeding and wintering. In addition to the federally and State endangered least Bell's vireo (*Vireo bellii pusillus*; vireo), numerous other migratory avian species use the site, including yellow warbler (*Dendroica petechia brewsteri*), yellow-breasted chat (*Icteria virens auricollis*), and Cooper's hawk (*Accipiter cooperii*), which are all State Species of Special Concern (CSC). Several subspecies of willow flycatcher migrate through the San Diego River watershed, and it is possible that the southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher) occurs on site as a short-term migrant species. Among species that potentially use the area as a stop-over or nesting area are common yellowthroat (*Geothlypis trichas*), red-winged blackbird (*Agelaius phoeniceus*), marsh wren (*Cistothorus palustris*), yellow-rumped warbler (*Dendroica coronata*), waterfowl such as mallards and grebes, and raptor species such as white-tailed kite (*Elanus leucurus*). The site also provides year-round habitat for amphibian, reptile, and mammal species, serving as a local wildlife corridor allowing movement of resident animals within their home range and dispersal of individuals into riparian habitats beyond the area. The biological functions provided by the San Diego River, and its support of listed and sensitive species, are why the riparian corridor is within the City's MHPA.

The Department seeks mutual cooperation with the Regional Board in solving water quality problems. In addition to its status under the MHPA, the San Diego River has been designated by the Regional Water Quality Control Board (Regional Board) as providing several beneficial uses including, but are not limited to, "warm freshwater habitat," "cold freshwater habitat," "wildlife habitat," and "rare, threatened, or endangered species" for portions of the San Diego River, including the reach downstream from the proposed project.

### **Likely Effects of Proposed Project**

The 2001 DEIR identified the local and regional biological importance of the San Diego River and concluded: "an increase in fragmentation and corresponding increase in edge habitat could have substantial adverse effects to local wildlife. In the event that such fragmentation results in the conversion of a habitat source to a sink, the deleterious effects could be far reaching." The 2001 DEIR also stated: "The proposed bridge would impact the local movement wildlife corridor at a single crossing. Significant indirect impacts to the wildlife corridor, as a result of construction, and permanent significant impacts associated with increased volumes of human and vehicular traffic, increased illumination, and potential increases in noise would also result." Further, the 2001 DEIR stated: "even with the implementation of mitigation measures, cumulatively significant impacts associated with the loss of wetland on a regional level would remain significant and unmitigated".

Among the species that could be affected by the proposed bridge are the vireo and other sensitive birds. The riparian habitat in the San Diego River in and adjacent to the project site was known to be occupied by vireo in 2001 when the DEIR was completed. Protocol vireo surveys in 2017 found a single male vireo in the channel that extends south of Fenton Parkway and a vireo pair in the San Diego River adjacent to the channel, and surveys in 2019 found 2 single vireos in the same channel and adjacent area in the San Diego River (Dudek 2017, 2019). In addition, three vireo pairs were found in the San Diego River adjacent to the SDSU Campus Master Plan project

site during surveys in 2020 (Kus 2020). Therefore, the riparian area in the channel that extends south of Fenton Parkway may be part of a breeding territory of one vireo pair, and the San Diego River adjacent to the project site may support additional vireo pairs during their nesting season. The past and current use by vireo demonstrates the biological value of the project site, and use of the area by vireo and other avian species would be substantially impacted by the proposed project.

The bridge may reduce or eliminate the use of the area by these species because of the additional break in habitat and the associated increase in edge effects such as noise, artificial light, increased human intrusion, and traffic. The edge effects would potentially disrupt avian foraging and nesting behavior. Additional fragmentation may also lead to or increase brood parasitism by the brown-headed cowbirds (*Molothrus ater*, cowbird) in the project area and/or nest predation by the meso-predators in the area (gray fox, raccoon, and striped skunk) or raptors that perch on the bridge. Vireo and other birds flying over the bridge may also collide with vehicles. Overall, it appears that the proposed bridge at Fenton Parkway across the San Diego River would result in significant biological impacts including to adjacent areas in the Stadium Wetland Mitigation Site that have or will be used as mitigation for other projects.

Based on the above and as stated in our comments on the 2001 DEIR and 2019 DPEIR, we have concerns about the significant biological impacts from the removal of habitat and the additional fragmentation that the proposed bridge would cause to MHPA habitat in the San Diego River.

### **Consistency with the City's SAP**

The City's Biology Guidelines for implementing the SAP state that impacts to wetlands should be avoided and minimized to the maximum extent practicable. In addition, the SAP conditions for coverage for vireo and flycatcher require specific measures to protect against detrimental edge effects to these species.

The City's Biology Guidelines require a deviation for projects that propose wetland impacts. While there is a deviation option for essential public projects (EPP), the project must be essential in both location and need. Based on traffic analysis in the 2001 DEIR, construction of the Mission City Parkway Bridge at this location did not appear necessary and other alternatives were available with lesser biological impacts including the retrofit of existing bridges at Mission Center Road, Camino del Este, Ward Road, or Stadium Way. On May 28, 2002, the City Council and mayor voted unanimously to deny the permit for the Mission City Parkway Bridge because it "could result in maximum disturbance to environmentally sensitive lands" and "increase the alteration of natural landforms which would result in undue risks." Further, they did "not believe that the proposed development is consistent with the City of San Diego's MSCP Subarea Plan," and "would contribute to increase in water quality degradation in an already impaired water body." In addition, the 2019 DPEIR identified a biologically superior alternative (i.e., Alternative 1) that would not include a bridge for Fenton Parkway across the San Diego River. Finally, the more recent 2019 DEIR also concluded that a bridge for Fenton Parkway "is not required to reduce significant project [transportation-related] impacts and the project's impacts

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can be reasonably mitigated with physical and other improvements without the bridge in place.” Based on the above, it does not appear that the proposed project would qualify for an EPP deviation or be consistent with the City’s SAP. Therefore, we strongly recommend that SDSU and the City adopt an alternative that does not cross the San Diego River and thereby avoids and minimizes wetland impacts and detrimental edge effects to the vireo and flycatcher to the maximum extent practicable to be consistent with the City’s SAP.

Thank you for the opportunity to comment on the NOP. Additional specific comments on the NOP are enclosed. We are available to meet with SDSU and the City if you have any questions regarding this letter or would like to discuss potential approaches to addressing our comments. To coordinate with the Wildlife Agencies on this project, please contact Jessie Lane of CDFW at [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov), or Anita Eng of the Service at [Anita\\_Eng@fws.gov](mailto:Anita_Eng@fws.gov).

Sincerely,

**JONATHAN  
SNYDER**

Jonathan D. Snyder  
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U.S. Fish and Wildlife Service

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Enclosure

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## References

Dudek. 2017. Focused Least Bell's Vireo Survey Report for the Stadium Wetland Mitigation Project, San Diego, California. 16 pp.

Dudek. 2019. Focused Least Bell's Vireo and Southwestern Willow Flycatcher Survey Report for the Proposed SDSU Mission Valley Campus Master Plan Project, County of San Diego, California. 26 pp.

Kus, B.E. 2020. Distribution and breeding status of Least Bell's Vireo along the San Diego and Tijuana Rivers in San Diego County, California (2020). U.S. Geological Survey data release, <https://doi.org/10.5066/P9WPPIQY>.

### Enclosure

- 1) **City of San Diego Subarea Plan (SAP):** The proposed Project occurs within the SAP Plan Area and is subject to its provisions and policies. To be considered a covered activity under the SAP, SDSU in coordination with the City needs to demonstrate that proposed actions are consistent with the SAP and the City's Implementing Agreement.
- 2) **Biological Resource Inventory:** The document should contain a complete description of the Project, including purpose and need, that describes all habitats within or adjacent to the Project area, all staging areas and access routes to the construction and staging areas. The Project area is described as the area in which potential effects may occur. The document should also provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, locally unique species, and sensitive habitats. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, should be conducted for all such species potentially impacted by the project. Acceptable species-specific survey procedures should conform with established protocol or be developed in consultation with the Wildlife Agencies.
- 3) **Analysis of Project Impacts:** To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:
  - a) A discussion of potential adverse impacts to biological resources, including but not limited to, lighting, noise, human activity, edge effects, introduction of non-native species, habitat loss, fragmentation, and disruption of avian nesting and foraging behavior.
  - b) Discussions regarding indirect project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with an NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR.
  - c) A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 4) **Mitigation for Project-related Biological Impacts:** The DEIR should include mitigation measures for adverse project-related impacts to sensitive plants, animals, and habitats. Temporal loss of mature riparian corridors and the loss of function and value of a wildlife corridor should be considered. The DEIR should demonstrate how the proposed mitigation would meet the requirement of "no net loss" of habitat value. Mitigation measures should

emphasize avoidance and reduction of project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible, or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be discussed.

- 5) **Nesting birds:** To avoid potential impacts to nesting birds in conformance with the California Fish and Game Code and Migratory Bird Treaty Act, the DEIR should require that clearing of vegetation and construction activities occur outside of the peak avian breeding season, which generally runs from February 1st through September 1st (as early as January 1st for some raptors). If Project activities cannot occur outside of the bird nesting season, the Wildlife Agencies recommend that nesting bird surveys be conducted no more than three days prior to construction-related activities, including clearing of vegetation, grubbing, or grading. If active nests or breeding behavior are observed within the Project area during the survey, a buffer zone with a minimum width of 100 feet (up to 500 feet for special-status species or raptors) should be established around the nest and a qualified biologist should be on-site to monitor activity daily during vegetation clearing and grading. Buffer zones should be delineated by temporary fencing and remain in effect as long as construction is occurring or until the nest is no longer active.

**The following comments are specific to CDFW:**

- 6) **City of San Diego Subarea Plan (SAP):** CDFW issued NCCP Approval and Take authorization for the City of San Diego SAP per section 2800, et seq., of the California Fish and Game Code on July 16, 1997. The SAP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans, such as the SAP, is discussed in CEQA. Specifically, section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the SAP as a result of this Project is necessary to address CEQA requirements.
- 7) **Lake and Streambed Alteration Agreement:** 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. Whether an LSAA is required to satisfy the requirements of Fish and Game Code section 1600 *et seq.* can only be determined at the time a formal notification package is submitted to CDFW. The NOP indicates that a formal jurisdictional delineation will be conducted, and that a Lake and Streambed Alteration Agreement may be required. We encourage SDSU to



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consult further with CDFW regarding the possible submittal of an LSAA Notification package and look forward to further coordination.