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March 25, 2024

Tatiana Holden
Project Manager
City of Calabasas
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Calabasas, CA 91302
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SUBJECT: MULHOLLAND HIGHWAY SAFETY IMPROVEMENTS PROJECT SCH# 2024020736; LOS ANGELES, CA

Dear Tatiana Holden:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Calabasas (City; Lead Agency) for the Mulholland Highway Safety Improvements Project (Project) pursuant 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.

[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.

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.*).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Calabasas

Objective: The objective of the Project is to improve 2.4 miles of Mulholland Highway. Primary Project activities include shoulder widening, centerline realignment, slope stabilization improvements, intersection improvements, culvert improvements, drainage improvements, and construction of a retaining wall.

Location: The Project is located along a 2.4. mile stretch of the Mulholland Highway, in the Santa Monica Mountains. The highway section begins at the southern City limit, and generally extends northward, to approximately 700 feet northeast of the Old Topanga Canyon Road West intersection.

Timeframe: Construction will take approximately 12 months, beginning in 2024.

Biological Setting: General biological surveys of the Project site were conducted in January of 2023. Three species protected by the City's Oak Tree Ordinance were documented: coast live oak (*Quercus agrifolia*), scrub oak (*Quercus berberidifolia)*, and valley oak (*Quercus lobata*). Southern California black walnut (*Juglans californica)* was documented in the Mulholland Highway right-of-way, but not within areas that will be affected by the Project. The Project involves removal of 35 coast live oak trees, one valley oak, and eight scrub oaks. Special-status wildlife identified in the Project site and surrounding vicinity include Nuttall's woodpecker (*Dryobates nuttallii)*, Allen's hummingbird (*Selasphorus sasin*), and oak titmouse (*Baeolophus inornatus*); all three species are considered species of conservation concern on a regional basis by the U.S. Fish and Wildlife Service, but do not have special designation by CDFW. Segments of the Mulholland Highway near Wild Walnut Park, between Viewpoint School and Condell Drive, and between Mountain Park Drive and the southern City limit are adjacent to Los Angeles County-designated Significant Ecological Areas (SEAs). Dry Canyon Creek runs adjacent to the Project site; culvert improvements within a small unnamed tributary to the creek are proposed as part of the Project**.**

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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: Oak Tree Mitigation

Issue: The MND proposes Mitigation Measure BIO-1 (MM BIO-1) to mitigate for removal of oak trees, but does not disclose specific details regarding mitigation ratios, location of new plantings, implementation, or management.

Specific impact: The Project proposes removal of 35 coast live oak, eight scrub oak, one valley oak, and one western sycamore tree within the Project site. Removal of 44 trees will directly result in loss of habitat for wildlife, including nesting and foraging habitat for birds.

Why impact would occur: The MND indicates that the Project is exempt from the City's oak tree ordinance; however, does not provide an explanation regarding the exemption. MM BIO-1 is proposed to reduce impacts to oak trees to less than significant. The proposed measures are detailed below:

- *A certified arborist shall conduct a tree valuation of the oak trees to be removed according to the current mitigation fee schedule.*
- *Oak tree removal shall be mitigated by planting new oak trees within the Project area.*
- *Oak trees to be preserved that are located immediately adjacent to Project construction areas shall be fenced to avoid inadvertent damage or removal.*
- *Oak trees to be preserved that are located immediately adjacent to Project construction areas shall be pruned as needed under the direction of a certified arborist to avoid inadvertent damage to limbs.*
- *Vehicle parking or materials storage shall not occur within the protected zone of oak trees to be preserved.*

MM BIO-1 as written does not specify mitigation ratios, success criteria, monitoring protocols, or management details to ensure the success of planted oak trees. Discussion of planting location is limited to the Aesthetics section of the MND, which generally states that oaks will be planted between the proposed retaining wall and an existing right-of-way to provide visual screening from the highway, as well as in open space areas.

Oak tree provides habitat for a diverse array of wildlife species, including nesting and foraging habitat for many species of birds. Removal of oaks will result in a direct loss of habitat for these species. Oaks also provide important ecological services, such as carbon sequestration, protecting soils from erosion and landslides, and regulating water flow within watersheds. Oak species are typically slow growing; some species may take between 30 to 50 years to reach maturity. Coast live oaks, for instance, grow approximately 24 inches per year; mature trees can reach up to 82 feet in height and 4 feet in diameter (Hickman 1993). Individual coast live oak trees can live for over 250 years (Steinberg 2002). Although the Project proposes planting of new oak trees, it

does not factor in the temporal loss of the ecological services that the oaks provide, resulting from removal of mature trees.

According to the MND, the affected native trees are either incorporated into landscape plantings or widely scattered, so the Project considers loss of native plant communities such as coast live oak woodland to be avoided. The MND also acknowledges that the 29 coast live oak trees being removed provide habitat for Nuttall's woodpecker, Allen's hummingbird, and oak titmouse; however, because there are 'many hundreds' of oak trees in adjacent habitat, the Project considers impacts related to loss of habitat for these species to be less than significant. This assessment fails to analyze the temporal loss of habitat for wildlife species that rely on these native plant communities; due to the slow-growing nature of oak species, it may take decades for trees to reach a similar level of maturity and provide comparable habitat to existing conditions. **Evidence impact may be significant:** Oak trees and woodlands are protected by the Oak Woodlands Conservation Act (pursuant under Fish and Game Code sections 1360-1372) and Public Resources Code section 21083.4, due to the historic and ongoing loss of these resources. The City of Calabasas also has an oak tree ordinance: 637165034673200000 (cityofcalabasas.com); the MND indicates that the Project impacts are exempt from the ordinance, but does not provide an explanation for the exemption.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1 (MM BIO-1): The MND should be amended to incorporate mitigation measures that adequately compensate for both the loss of individual oak trees, as well as temporal loss of habitat. The mitigation measure should ensure the preservation, restoration, or creation of equivalent or higher-quality oak tree habitat within the City. The City should also clarify why the Project is deemed exempt from the City's oak tree ordinance. The MND amendment should incorporate an oak tree Habitat Restoration Plan, to provide compensatory mitigation for impacts to individual coast live oak, valley oak, and scrub oak trees. Mitigation ratios should factor in both loss of individual trees, as well as temporal loss of habitat, and be consistent with the City's oak tree ordinance. Compensatory mitigation shall consist of on-site creation that is protected and managed in perpetuity (e.g., not part of general landscaping), or off-site creation. In addition to providing clarification in the MND regarding the City's oak tree ordinance exemption, we recommend that the below language be added to MM BIO-1:

"**Prior to the issuance of a grading permit, the City shall prepare an oak tree Habitat Restoration Plan (HRP) to mitigate for the removal of 35 coast live oak, eight scrub oak, and one valley oak. The plan shall be provided to CDFW for review and approval prior to implementation. At a minimum, the plan shall include:**

•Mitigation ratios that factor in the temporal loss of habitat

•A description and map of the receiver site(s) for new plantings, installation methods, monitoring procedures, plant spacing, and timeline
•Maintenance requirements that ensure establishment of the newly established oaks
•Success criteria to ensure that the oaks are reestablished successfully at the ratios provided in the MMRP
•Adaptive management strategies and corrective measures, should survival percentages not meet the replacement ratio
•Annual reports, provided to CDFW"

COMMENT #2: Avian Nest Avoidance

Issue: The MND does not incorporate any mitigation measures to ensure avoidance of impacts to nesting birds.

Specific impact: The MND indicates that 66 trees and large native shrubs will be removed as part of the Project, including the native oaks discussed above. Trees and shrubs provide important habitat for nesting and migratory birds; however, the MND does not include any measures to ensure that there will be no nest disturbance as a result of Project activities.

Why impact would occur: A general wildlife survey was conducted in January of 2023, which documented 16 species of birds in the Project vicinity. Pre-construction nesting bird surveys or nesting season avoidance were not discussed in the MND. Absent inclusion of protective measures to ensure that nests are not disturbed, direct impacts to nesting birds may occur from removal of trees and shrubs. Indirect impacts may occur from vibration, noise, dust, and increased human activity related to construction.

Evidence impact may be significant: California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of fertile eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq*.).

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #2 (MM BIO-2): To avoid potential direct and indirect impacts to nesting birds in conformance with the California Fish and Game Code and Migratory Bird Treaty Act, the MND should be amended to 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 breeding season, CDFW recommends 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 (300 feet for special-status species and 500 feet for raptors) should be established around the nest. 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.

We recommend that the MND be amended to incorporate the below mitigation measure:

*"***All vegetation clearing and construction activities shall occur outside of the avian breeding season (generally February 1st through September 1st, as early as January 1st for some raptors), to ensure that no active nests will be disturbed. If clearing and/or grading activities cannot be avoided during the nesting season, all suitable habitats within the Project site and a 300' buffer shall be thoroughly surveyed, no more than three days prior to activities. If an active nest is detected, the area shall be flagged along with a 100'–500' buffer, dependent on the species, and as determined by the monitoring biologist. The flagged area shall be avoided until it is determined by the monitoring biologist that all chicks have fledged and that the nest is no longer active."**

COMMENT #3: Botanical Surveys

The MND indicates that a general botanical resources survey was conducted in January of 2023. Although no ESA- or CESA-listed species were documented on the Project site, the field survey was conducted outside of the normal blooming period for most species. Botanical field surveys within the blooming period for most species are necessary to provide information on the Project's potential impacts on rare, sensitive, and special-status plants. Proceeding with vegetation removal and construction based on surveys conducted in January may result in the Project having an adverse impact on undetected rare plants.

Mitigation Measure #3 (MM BIO-3): CDFW recommends that the City revise the MND to include the following language:

"Prior to the issuance of any construction related permits, a qualified biologist shall be retained to conduct a springtime sensitive plant survey within the Project site and adjacent areas. Surveys shall be conducted according to CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). Surveys shall be conducted at the appropriate blooming period for optimal detection. The City shall submit a survey report, including negative findings, to CDFW. At a minimum, the survey report shall provide the following information:

•A description and map of the survey area

•Field survey conditions that shall include name(s) of qualified botanists(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched
•If rare plants are found, a map(s) showing the location of individual plants or populations, and number of plants or density of plants per square feet occurring at each location. The map should distinguish between species found and which plants/populations will be avoided versus impacted by Project construction and activities that would require mitigation
•A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species); and
•If rare plants are found, species-specific measures to mitigate impacts to rare plants and habitat"

COMMENT #4: 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 necessary 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.

Section 1.6 of the MND indicates that the proposed culvert improvements northeast of Old Topanga Canyon Road West intersection would occur within a drainage with a defined bed and bank and will require a streambed alteration agreement with CDFW. The current culvert is a 48-inch corrugated metal pipe. The Project proposes extension of the culvert on both sides of the highway, including a new concrete inlet and outlet. A temporary wooden footbridge that was constructed during prior Phase 1 improvements will be removed and replaced with a paved shoulder over the upstream culvert extension.

Recommendation #1 (Rec-1): We recommend early consultation with CDFW regarding submittal of an LSAA Notification package and look forward to further coordination with the City. Please visit CDFW's Lake and Streambed Alteration Program webpage for additional information (CDFW 2023). The LSAA Notification should include hydrological analysis of the culvert extension's impacts to the bed, bank, and channel of the stream.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines, § 15073(e)].

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at (858) 354-4105 or Jessie.Lane@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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Victoria Tang
Environmental Program Manager
South Coast Region

Attachments
A. Draft Mitigation and Monitoring Reporting Plan

EC: California Department of Fish and Wildlife
Victoria Tang
Jennifer Turner
Jessie Lane
Frederic Rieman
CEQA Program Coordinator – CEQACommentLetters@wildlife.ca.gov

Office of Planning and Research
State Clearinghouse – state.clearinghouse@opr.ca.gov

REFERENCES

[CDFW] California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. Available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959)

[CDFW] California Department of Fish and Wildlife. 2023a. Lake and Streambed Alteration Program. Available from: https://wildlife.ca.gov/Conservation/LSA

Hickman, James C., ed. 1993. The Jepson manual: Higher plants of California. Berkeley, CA: University of California Press. 1400 p. [21992]

Steinberg, Peter D. 2002. *Quercus agrifolia*. In: Fire Effects Information System, [Online]. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory (Producer). Available: https://www.fs.usda.gov /database/feis/plants/tree/queagr/all.html [2024, March 21].

Attachment A: Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM) or Recommendation (REC)		**Timing**	**Responsible Party**
MM BIO-1 Native Oak Habitat Restoration Plan	Prior to the issuance of a grading permit, the City shall prepare an oak tree Habitat Restoration Plan (HRP) to mitigate for the removal of 35 coast live oak, eight scrub oak, and one valley oak. The plan shall be provided to CDFW for review and approval prior to implementation. At a minimum, the plan shall include: •Mitigation ratios that factor in the temporal loss of habitat •A description and map of the receiver site(s) for new plantings, installation methods, monitoring procedures, plant spacing, and timeline •Maintenance requirements that ensure establishment of the newly established oaks •Success criteria to ensure that the oaks are reestablished successfully at the ratios provided in the MMRP •Adaptive management strategies and corrective measures, should survival percentages not meet the replacement ratio •Annual reports, provided to CDFW	Prior to issuance of a grading permit	City of Calabasas (City)
MM BIO-2 Avian Nest Avoidance	All vegetation clearing and construction activities shall occur outside of the avian breeding season (generally February 1st through September 1st, as early as January 1st for some raptors), to ensure that no active nests will be disturbed. If	Prior to vegetation removal or construction	City

	clearing and/or grading activities cannot be avoided during the nesting season, all suitable habitats within the Project site and a 300' buffer shall be thoroughly surveyed, no more than three days prior to activities. If an active nest is detected, the area shall be flagged along with a 100'–500' buffer, dependent on the species, and as determined by the monitoring biologist. The flagged area shall be avoided until it is determined by the monitoring biologist that all chicks have fledged and that the nest is no longer active.		
MM BIO-3 Botanical Surveys	Prior to the issuance of any construction related permits, a qualified biologist shall be retained to conduct a springtime sensitive plant survey within the Project site and adjacent areas. Surveys shall be conducted according to CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). Surveys shall be conducted at the appropriate blooming period for optimal detection. The City shall submit a survey report, including negative findings, to CDFW. At a minimum, the survey report shall provide the following information: •A description and map of the survey area •Field survey conditions that shall include name(s) of qualified botanists(s) and brief qualifications; date and time of survey; survey duration; general weather conditions; survey goals, and species searched •If rare plants are found, a map(s) showing the location of individual plants or populations, and number of plants or density of plants per square feet occurring at each location. The map should distinguish between species found and which plants/populations will be avoided versus impacted by	Prior to issuance of a grading permit	City

	Project construction and activities that would require mitigation •A description of physical (e.g., soil, moisture, slope) and biological (e.g., plant composition) conditions where each rare plant or population is found. A sufficient description of biological conditions, primarily impacted habitat, should include native plant composition (e.g., density, cover, and abundance) within impacted habitat (e.g., species list separated by vegetation class, density, cover, and abundance of each species); and, •If rare plants are found, species-specific measures to mitigate impacts to rare plants and habitat		
REC-1 Lake and Streambed Alteration Agreement	We recommend early consultation with CDFW regarding submittal of an LSAA Notification package and look forward to further coordination with the City. Please visit CDFW's Lake and Streambed Alteration Program webpage for additional information (CDFW 2023). The LSAA Notification should include hydrological analysis of the culvert extension's impacts to the bed, bank, and channel of the stream.	Prior to issuance of a grading permit	City