



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
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San Diego, CA 92123  
[wildlife.ca.gov](http://wildlife.ca.gov)

*GAVIN NEWSOM, Governor*  
*CHARLTON H. BONHAM, Director*



December 5, 2024

Eduardo Maguino  
Los Angeles County Department of Public Works  
Waterworks Division  
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**SUBJECT: MITIGATED NEGATIVE DECLARATION FOR THE SWEETWATER MESA TANK AND WATERLINE PROJECT, SCH NO. 2024110183, LOS ANGELES COUNTY, CA**

Dear Eduardo Maguino:

The California Department of Fish and Wildlife (CDFW) reviewed the Mitigated Negative Declaration (MND) from Los Angeles County Department of Public Works (County) for the Sweetwater Mesa Tank and Waterline Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>.

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 (Fish & G. Code, § 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

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<sup>1</sup> 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.

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 2 of 21

projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act 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<sup>2</sup> of 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Los Angeles County Department of Public Works (County)

**Objective:** The objective of the Project is to replace current infrastructure with three water mains, construct one new 1.12 million-gallon (MG) tank, install a pump station, and install multiple Pressure Regulating Stations (PRS) in coastal Malibu. The Project proposes to construct a new 12-inch water main, designated as Water Main Project No.1 (WP1), in Serra Road from Pacific Coast Highway (PCH) to Sweetwater Mesa Road. The new water main will continue to the new 1.12 MG tank at the end of Sweetwater Mesa Road. WP1 has three options for the final routing due to the ongoing determination of the County's easement. A second water main would be constructed in PCH from Serra Road to the Malibu Lagoon Bridge. The third water main would be constructed along Serra Road, between PCH and the existing Serra Tank. The new 1.12 MG domestic water tank would be constructed at the New Sweetwater Mesa Tank site. The Project proposes to retain the existing tank as an emergency back-up facility. A new pump station would replace the existing pump station at the Serra Tank site. A PRS would be constructed on Palm Canyon Lane and Mariposa De Oro Street; up to four PRS are proposed to be constructed at the Serra Tank site. A temporary staging area would be implemented on Sweetwater Mesa Road. The total acreage within the Project boundaries is 18.30 acres, consisting of the Project impact area and temporary staging area. Primary Project activities include water main installation, construction of the new Sweetwater Mesa Tank, temporary construction easements, ground disturbing activities, trenching, and landscaping.

**Location:** The Project is in the City of Malibu, Los Angeles County. The Project stretches from the beginning of the Malibu Lagoon Bridge on PCH, Serra Road, Sweetwater Mesa Road, and ends near the private residence of 3311 Sweetwater Mesa

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<sup>2</sup> "Take" is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 3 of 21

Road. Additionally, new PRS would be implemented on Palm Canyon Lane and Mariposa De Oro Street.

**Timeframe:** The Project is proposed to occur in two phases. The Sweetwater Mesa Tank construction is estimated to occur from May 2027 to May 2028. The main water installation is estimated to occur from September 2028 to September 2029.

**Biological Setting:** The Project is surrounded by residential development and undeveloped native and non-native habitat. Malibu Creek and Malibu Lagoon are located approximately 150 feet west. The Project area minimally overlaps on Serra Road and occurs adjacent to Environmentally Sensitive Habitat Area (ESHA) as designated in the Malibu Local Coastal Plan. The Project describes that there will be no direct impacts to the ESHA but indirect impacts, such as temporary dust and noise, may occur.

The Biological Assessment Report (BAR) includes that field surveys were conducted on October 14, 2019, and November 24, 2020, for special status plant and wildlife species. Additional focused rare plant surveys were conducted on April 20 and July 12, 2021. The vegetation communities within the Project boundary were assessed as blue elderberry stands – laurel sumac chaparral (0.99 acres), mountain mahogany chaparral (0.47 acres), coastal sage scrub (0.31 acres disturbed; 0.22 acres revegetated), planted olive grove (0.71 acres), non-native grassland (0.26 acres), and developed/eucalyptus groves (3.06 acres). Coulter’s matilija poppy (*Romneya coulter*; California Rare Plant Rank (CRPR) 4.2) and Southern California black walnut (*Juglans californiica*; CRPR 4.2) were observed during field surveys; no special status wildlife species were observed.

Sensitive species that are of potential concern for the Project include, but are not limited to, Cooper’s hawk (*Accipiter cooperii*; CDFW Watch List species), red-tailed hawk (*Buteo jamaicensis*), San Diego desert woodrat (*Neotoma lepida intermedia*; Species of Special Concern (SSC)), Crotch’s bumble bee (*Bombus crotchii*; CESA candidate species), western burrowing owl (*Athene cunicularia hypugaea*; CESA candidate species), and coastal whiptail (*Aspidoscelis tigris stejnegeri*; SSC).

The MND provides mitigation for monarch butterflies – California overwintering population (*Danaus plexippus plexippus*; Endangered Species Act (ESA) candidate species), as well as nesting birds and raptors. The Project does not propose any compensatory mitigation for disturbed, ornamental, developed, and non-native habitats.

## 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.

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 4 of 21

### **COMMENT # 1: Impacts on Crotch's Bumble Bee**

**Issue:** Project activities (i.e. vegetation removal and ground disturbance) could adversely impact Crotch's bumble bee.

**Specific impact:** The MND states Crotch's bumble bee has the potential to occur on site due to suitable habitat within the Project area, but no mitigation measures were proposed.

**Why impact would occur:** According to CDFW's [Crotch's Bumble Bee Range – CDFW \[ds3095\]](#)<sup>3</sup> dataset, the Project area lies within the current range for Crotch's bumble bee (CDFW 2024a). The MND and BAR include that Crotch's bumble bee may occur due to suitable foraging habitat. Additionally, coastal sage scrub and grassland habitat within the Project area may provide suitable habitat to support Crotch's bumble bee. Crotch's bumble bee primarily uses abandoned small mammal burrows to nest, this species may nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2012). Overwintering sites utilized by Crotch's bumble bee mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Given that the Project site is in the current range and has suitable habitat, there is potential for this CESA candidate species to be detected on site.

No mitigation measures specific to Crotch's bumble bee is incorporated in the MND. If the Project proceeds without appropriate focused surveys, the Project may result in mortality and/or injury of undetected individual Crotch's bumble bee that may be present during Project activities. The Project's ground and vegetation disturbance could result in potentially significant impacts to Crotch's bumble bee, including loss of foraging resources, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young, and/or queens, and direct mortality. Habitat loss, as a result of the proposed Project, may further reduce foraging habitat for this species in the broader landscape, as development increases throughout the County.

**Evidence impact would be significant:** Recently, the California Fish and Game Commission accepted a petition to list the Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

CDFW considers impacts to species that are candidates for CESA listing to be significant, under CEQA. Accordingly, the Project may have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a

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<sup>3</sup> <https://data.ca.gov/dataset/crotchs-bumble-bee-range-cdfw-ds3095>

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 5 of 21

candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the CDFW or USFWS.

## **Recommended Potentially Feasible Mitigation Measure(s)**

### **Recommendation #1: Crotch's Bumble Bee Discussion**

The MND should be revised to provide a thorough discussion on the Project's potential direct and indirect impacts on Crotch's bumble bee. If the Project may impact Crotch's bumble bee, the MND should be amended to incorporate measures to minimize, and/or mitigate potential impacts to Crotch's bumble bee as well as habitat supporting the species. The discussion should be of a depth and scope that a CESA Incidental Take Permit (ITP) can be issued based on the analysis provided in the MND.

### **Recommendation #2: CEQA**

CDFW's issuance of an ITP for a Project is subject to CEQA. As a Responsible Agency, CDFW may consider the CEQA document from the lead agency/Project proponent for the Project. However, additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 2081 and/or under CEQA, the Project's CEQA document should fully identify the potential impacts to Crotch's bumble bee and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the ITP.

### **Mitigation Measure #1: Crotch's Bumble Bee Surveys**

The Project proponent shall retain a qualified entomologist with the appropriate handling permits to conduct focused surveys. Focused surveys shall follow CDFW's [Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species](#)<sup>4</sup> (CDFW 2023). Focused surveys shall also be conducted throughout the entire Project area and during the appropriate flying season to ensure no missed detection of Crotch's bumble bee occurs. Survey results, including negative findings, shall be submitted to CDFW and the County prior to implementing Project ground-disturbing activities.

### **Mitigation Measure #2: Incidental Take Permit**

If Crotch's bumble bee is detected the Project proponent shall coordinate with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish & Game Code, § 2080 et seq). The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall provide

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<sup>4</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 6 of 21

a copy of a fully executed take authorization to the County prior to implementing Project ground-disturbing activities and vegetation removal.

## **COMMENT # 2: Impacts on SSC Species**

**Issue:** The MND does not discuss thorough SSC species potential impacts due to Project activities, nor does it discuss avoidance, minimization, or mitigation measures for SSC species.

**Specific impact:** Direct impacts to SSC species could result from Project construction and activities; ground disturbance; vegetation clearing; and trampling or crushing from construction equipment, vehicles, and foot traffic. Additionally, the Project would result in permanent loss of suitable habitat.

**Why impact would occur:** Despite habitat within the Project area being assessed as disturbed, it can still provide biological function for SSC species. On-site coastal sage scrub and chaparral provide suitable habitat for coastal whiptail and San Diego desert woodrat. Impacts to these habitats and the subsequent potential impacts to SSC species are not assessed in the environmental document. Additionally, the BAR does not include updated biological surveys for presence within the Project area. Due to surveys in the BAR being conducted in 2019 and 2020, coastal whiptail, San Diego desert woodrat, and other SSC species may occur within the Project area during the time of construction.

There are other ways in which the analysis and discussion of impacts to SSC species is incomplete. While there is potential for these SSC species to be present on site during Project activities, the MND does not provide a mitigation measure or measures to avoid direct or indirect impacts to them. Given that habitat loss on a local and regional scale is a major cause of population decline for SSC, removal of confirmed SSC habitat would be considered a significant impact and should be mitigated properly.

**Evidence impact may be significant:** A California Species of Special Concern is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

1. if the species is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
2. if the species is listed as threatened or endangered under ESA-, but not CESA-, threatened, or endangered;
3. if the species meets the State definition of threatened or endangered but has not formally been listed;
4. if the species is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 7 of 21

5. if naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or -endangered status (CDFW 2024b).

CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC that can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380). The MND does not provide mitigation for potential impacts on SSC. Inadequate avoidance, minimization, and mitigation measures for impacts to sensitive or special status species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species by CDFW.

### **Recommended Potentially Feasible Mitigation Measure(s)**

**Recommendation #3: Biological Resources Pre-Construction Survey – CDFW** recommends the County include the pre-construction survey protocol below in the final MND:

Within 72 hours of Project related activities, a qualified biologist with the appropriate handling permits shall conduct a survey to determine the presence of potential rare, listed, or other special-status wildlife species. The qualified biologist shall survey the proposed impact areas and a 50-foot buffer. The pre-construction surveys shall incorporate appropriate methods and timing to detect these species, including individuals that could be concealed in burrows, beneath leaf litter, or in loose soil. Should a special status species be located in the Project area during pre-activity surveys all individuals shall be documented and locations of presence recorded. If a special status species is found, the qualified biologist shall contact CDFW, and the species shall be passively ushered out of harm's way to an area that is unaffected by the Project. If the Project requires special status species to be removed, disturbed, or otherwise handled, the qualified biologist shall obtain all appropriate permits and prepare a species-specific list (or plan) of proper handling and passive relocation protocols. The list (or plan) of protocols shall be implemented during Project construction and activities/biological construction monitoring.

### **Recommendation #4: Updated General Field Surveys**

The BAR included general field surveys conducted for special status plant and wildlife species in 2019 and 2020, and focused rare plant surveys in 2021. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. In addition, it is possible that wildlife not previously observed on site are now residents and/or use the Project site for breeding, nesting, or foraging. For these reasons, CDFW strongly recommends the County require the Project proponent to retain a qualified biologist to perform an updated biological survey to account for the current state of the

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 8 of 21

Project site and the inventory of biological species that may be present. The survey should be conducted at the appropriate time of year and time of day when sensitive species are active or otherwise identifiable for both wildlife and plants. Based on the survey results, the final CEQA document should propose avoidance and specific mitigation for Project impacts to CEQA-rare species. Findings from the updated general field surveys should be disclosed in the CEQA document for public review.

### **Mitigation Measure #3: Compensatory Mitigation**

For SSC that have been confirmed and/or are expected to occur within the Project area, the Project proponent shall provide compensatory mitigation for temporary and permanent loss of any habitat supporting SSC. There shall be no net loss of habitat supporting SSC [CEQA Guidelines, § 15370(e)]. Compensatory mitigation shall be provided within the Project boundary at no less than 2:1. Mitigation shall provide appropriate habitat (depending on the species), refugia, and habitat structures that support that species (e.g., woody material, rocks, brush piles, pools, burrows). Any proposed mitigation area/plan shall include a discussion on the territory size; nesting, breeding, foraging, and refuge locations; invasive, non-native plant and wildlife species present; food availability; and how all life cycle functions will be mitigated. Any mitigation plan for SSC shall be distributed and approved by CDFW prior to Project activities. The replacement habitat shall be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.

### **Mitigation Measure #4: Injured or Dead Wildlife**

If any special status wildlife species are found, harmed during relocation, or a dead or injured animal is found, work in the immediate area shall stop immediately, the designated biologist should be notified, and dead or injured wildlife documented immediately. A formal report should be sent to CDFW and the County within 3 calendar days of the incident or finding. The report shall include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.

### **COMMENT # 3: Impacts on Nesting Birds and Raptors**

**Issue:** The mitigation measure for nesting birds and raptors may be improved to ensure adequate surveys occur prior to the start of construction.

**Specific impact:** Nesting birds and raptors could establish within the Project area as the MND proposes pre-construction surveys occur March 1 – August 31. Additionally, the MND recommends insufficient buffer sizes around active nests, which may result in disturbance and ultimate take of nesting birds. BIO-2 includes western burrowing owl without an expansion on focused surveys and mitigation measures.



Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 9 of 21

**Why impact would occur:** The Project area has suitable nesting bird habitat within eucalyptus and large ornamental trees for raptors such as Cooper's hawk and red-tailed hawk. Vegetation communities such as chaparral and scrub provide suitable habitat for nesting and/or foraging species that may occur year-round as well. In addition, multiple observations of potential nesting birds were seen during the field surveys according to the BAR. These nesting birds and raptors have moderate to high potential to roost or forage within the Project area during the time of construction.

Bird species can construct nests and begin laying eggs in less than seven days. Therefore, a pre-construction nesting bird survey scheduled outside the proper breeding season, during construction activities, may miss some instances of nesting. In terms of insufficient buffers, they may need to be increased based on the birds' tolerance level to the disturbance as it varies greatly depending on species, intensity of disturbance, whether the nesting pair is accustomed to disturbance, the location of the nest, the stage of development of nestlings, etc. Disturbance too close to the nest may impact the parents' ability to forage effectively and reduce nestlings' chances of survival. In some cases, disturbance can cause the parents to abandon the nest completely.

Additionally, mitigation measure BIO-2 mentions that the Project would survey for western burrowing owl alongside the pre-construction survey for nesting birds and raptors. While CDFW appreciates the inclusion of western burrowing owl in the measure, focused surveys need to be conducted to confirm presence of this CESA candidate species. If the Project proceeds without focused surveys for western burrowing owl, then Project activities (i.e., vegetation removal, trenching) may result in the potential for unauthorized take of western burrowing owl.

**Evidence impact may be significant:** Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA).

Western burrowing owl is a species designated as candidate for listing as threatened or endangered pursuant to CESA (Fish & G. Code, § 2050 et seq.). Take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9).

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 10 of 21

## **Recommended Potentially Feasible Mitigation Measure(s)**

### **Recommendation #5: Western Burrowing Owl Discussion**

The MND should be revised to provide a thorough discussion on the Project's potential direct and indirect impact on western burrowing owl. If the Project may impact western burrowing owl, the MND should incorporate measures to minimize, and/or mitigate potential impacts to western burrowing owl as well as habitat supporting the species. The discussion should be of a depth and scope that a CESA ITP can be issued based on the analysis provided in the MND.

### **Mitigation Measure #5: Western Burrowing Owl Focused Surveys**

The Project proponent shall retain a qualified biologist to conduct focused surveys for western burrowing owl prior to Project activities. Focused surveys shall be conducted pursuant to CDFW's March 7, 2012, [Staff Report on Burrowing Owl Mitigation](#)<sup>5</sup> (CDFW 2012) or CDFW's most recent guidance. If an occupied burrow or western burrowing owl is found within the Project site, the Project proponent shall coordinate with CDFW and obtain appropriate take authorization from CDFW. The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall provide a copy of a fully executed take authorization to the County prior to implementing Project ground-disturbing activities and vegetation removal.

**Mitigation Measure #6: Pre-Construction Nesting Bird Survey** - The County should revise BIO-2 to incorporate the underlined language and omit language in strikethrough:

To the extent possible, vegetation removal will be conducted during the non-breeding season (~~September 1 to February 28~~) (September 2 to January 31) in order to minimize direct impacts on nesting birds and raptors. If construction activities would be initiated during the breeding season for nesting birds/raptors (~~March 1–August 31~~) (February 1 - September 1), a pre-construction survey will be conducted by a qualified Biologist within three days prior to the initiation of construction (including demolition of structures). The area will be surveyed for 2 hours between dawn and 10:00 a.m. on five occasions with at least one week between surveys. ~~If there is appropriate habitat for owls on site, at least three of the surveys, surveys will also be conducted during the period immediately before nightfall. The nesting bird/raptor survey area will include a buffer of 300 feet around the work area for nesting birds and a buffer of 500 feet around the work area for nesting raptors (including burrowing owl). If the Biologist does not find any active nests in or immediately adjacent to the impact area, construction activities can proceed.~~

If the Biologist detects an active nest within or immediately adjacent to the construction area and determines that the nest may be impacted or breeding activities substantially

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<sup>5</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 11 of 21

disrupted by increased activity around the nest, the Biologist will determine an appropriate protective buffer around the nest depending on the sensitivity of the species and the nature of the construction activity. The protective buffer shall be ~~between 25 to 300 feet for nesting birds; 300 to 500 feet for nesting raptors.~~ The active nest will be protected within the designated buffer until nesting activity has ended. Any protective buffers will be mapped on construction plans and designated as “Environmentally Sensitive Areas”. Construction can proceed within the protective buffer when the qualified Biologist has determined that the nest is no longer active (i.e., fledglings have left the nest or the nest has failed).

During the nesting bird season (February 1 through September 1), all heavy equipment shall have installed and maintain mufflers or other noise-reducing features when working adjacent to ESHA. If an increase in sound level from baseline to post-construction initiation is observed (greater than 10 dB) and active nests are observed in close proximity to the work, then sound barriers may be determined necessary to prevent negative effects to nesting birds. The necessity or usefulness of sound barriers will be considered within each construction area within or adjacent to ESHA habitat, and will be based on vegetation density, actual or likely nesting location of birds (high in trees or low in dense cover), species tolerance, and the pre-existing sound levels measured.

## **ADDITIONAL COMMENTS**

**Monarch Overwintering Roost Survey.** The County should revise BIO-1 to incorporate the underlined language and omit language in strikethrough:

Should construction occur between ~~November 1 and March 1~~ September 15 and March 1, a pre-construction monarch overwintering roost survey shall be conducted by a qualified Biologist in the Eucalyptus groves on, and immediately adjacent to, the Project site. If a roosting population is detected, and the Biologist determines that roosting activities may be disrupted by increased Project activity in the area, the Biologist will determine an appropriate protective buffer depending on the nature of the construction activity. The protective buffer shall be no less than 200 feet and no more than 500 feet. The roosting area will be protected within the designated buffer until roosting has ended. Any protective buffers will be mapped on construction plans and designated as “Environmentally Sensitive Areas”. Construction can proceed within the protective buffer when the qualified Biologist has determined that the roost is no longer active.

**Mitigation and Monitoring Reporting Plan.** CDFW recommends the Project’s environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The Lead Agency is welcome to coordinate with CDFW to further review and refine the Project’s mitigation measures. Per Public

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 12 of 21

Resources Code section 21081.6(a)(1), CDFW has provided a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A).

## **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 website](#)<sup>6</sup> provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](#)<sup>7</sup>.

The County should ensure data collected for the preparation of the MND is properly submitted.

## **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 County in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the County has to our comments and to receive notification of any forthcoming hearing date(s) for the Project (CEQA Guidelines, § 15073(e)).

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<sup>6</sup> <https://wildlife.ca.gov/Data/CNDDDB>

<sup>7</sup> <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 13 of 21

Questions regarding this letter or further coordination should be directed to Joleena De La Fe<sup>8</sup>, Environmental Scientist.

Sincerely,

DocuSigned by:  
  
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Victoria Tang  
Environmental Program Manager  
South Coast Region

## ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

ec: California Department of Fish and Wildlife  
Victoria Tang (Environmental Program Manager)  
Jennifer Turner (CEQA Supervisor)  
Joleena De La Fe (CEQA Staff)

Los Angeles County Department of Public Works  
Darian Wong - [Darwong@dpw.lacounty.gov](mailto:Darwong@dpw.lacounty.gov)

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Eduardo Maguino  
Los Angeles County Department of Public Works  
December 5, 2024  
Page 14 of 21

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Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 15 of 21

**ATTACHMENT A: DRAFT MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

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

<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<p><b>Recommendation #1: Crotch’s Bumble Bee Discussion</b></p> <p>The MND should be revised to provide a thorough discussion on the Project’s potential direct and indirect impact on Crotch’s bumble bee. If the Project may impact Crotch’s bumble bee, the MND should be amended to incorporate measures to minimize, and/or mitigate potential impacts to Crotch’s bumble bee as well as habitat supporting the species. The discussion should be of a depth and scope that a CESA Incidental Take Permit (ITP) can be issued based on the analysis provided in the MND.</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>
<p><b>Recommendation #2: CEQA</b></p> <p>CDFW’s issuance of an ITP for a Project is subject to CEQA. As a Responsible Agency, CDFW may consider the CEQA document from the lead agency/Project proponent for the Project. However, additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species. To minimize additional requirements by CDFW pursuant to Fish and Game Code section 2081 and/or under CEQA, the Project’s CEQA document should fully identify the potential impacts to Crotch’s bumble bee and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of the ITP.</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>

Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 16 of 21

Mitigation Measure	Timing	Responsible Party
<p><b>Mitigation Measure #1: Crotch’s Bumble Bee Surveys</b></p> <p>The Project proponent shall retain a qualified entomologist with the appropriate handling permits to conduct focused surveys. Focused surveys shall follow CDFW’s <a href="#">Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species</a><sup>9</sup> (CDFW 2023). Focused surveys shall also be conducted throughout the entire Project area and during the appropriate flying season to ensure no missed detection of Crotch’s bumble bee occurs. Survey results, including negative findings, shall be submitted to CDFW and the County prior to implementing Project ground-disturbing activities.</p>	<p>Prior to Project Initiation</p>	<p>Project Proponent/Qualified Biologist</p>
<p><b>Mitigation Measure #2: Incidental Take Permit</b></p> <p>If Crotch’s bumble bee is detected the Project proponent shall coordinate with CDFW and obtain appropriate take authorization from CDFW (pursuant to Fish &amp; Game Code, § 2080 et seq). The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall provide a copy of a fully executed take authorization to the County prior to implementing Project ground-disturbing activities and vegetation removal.</p>	<p>Prior to Project Initiation</p>	<p>Project Proponent</p>
<p><b>Recommendation #3: Biological Resources Pre-Construction Survey –</b> CDFW recommends the County include the pre-construction survey protocol below in the final MND:</p> <p>Within 72 hours of Project related activities, a qualified biologist with the appropriate handling permits shall conduct a survey to determine the presence</p>	<p>Prior to Project Initiation/During Project Construction</p>	<p>Lead Agency/Qualified Biologist</p>

<sup>9</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>



Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 17 of 21

<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<p>of potential rare, listed, or other special-status wildlife species. The qualified biologist shall survey the proposed impact areas and a 50-foot buffer. The pre-construction surveys shall incorporate appropriate methods and timing to detect these species, including individuals that could be concealed in burrows, beneath leaf litter, or in loose soil. Should a special status species be located in the Project area during pre-activity surveys all individuals shall be documented and locations of presence recorded. If a special status species is found, the qualified biologist shall contact CDFW, and the species shall be passively ushered out of harm's way to an area that is unaffected by the Project. If the Project requires special status species to be removed, disturbed, or otherwise handled, the qualified biologist shall obtain all appropriate permits and prepare a species-specific list (or plan) of proper handling and passive relocation protocols. The list (or plan) of protocols shall be implemented during Project construction and activities/biological construction monitoring.</p>		
<p><b>Recommendation #4: Updated General Field Surveys</b></p> <p>The BAR included general field surveys conducted for special status plant and wildlife species in 2019 and 2020, and focused rare plant surveys in 2021. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. In addition, it is possible that wildlife not previously observed on site are now residents and/or use the Project site for breeding, nesting, or foraging. For these reasons, CDFW strongly recommends the County require the Project proponent to retain a qualified biologist to perform an updated biological survey to account for the current state of the Project site and the inventory of biological species that may be present. The survey should be conducted at the appropriate time of year and time of day when sensitive species are active or otherwise identifiable for both wildlife and</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency/Project Proponent/Qualified Biologist</p>

Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 18 of 21

<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<p>plants. Based on the survey results, the final CEQA document should propose avoidance and specific mitigation for Project impacts to CEQA-rare species. Findings from the updated general field surveys should be disclosed in the CEQA document for public review.</p>		
<p><b>Mitigation Measure #3: Compensatory Mitigation</b></p> <p>For SSC that have been confirmed and/or are expected to occur within the Project area, the Project proponent shall provide compensatory mitigation for temporary and permanent loss of any habitat supporting SSC. There shall be no net loss of habitat supporting SSC [CEQA Guidelines, § 15370(e)]. Compensatory mitigation shall be provided within the Project boundary at no less than 2:1. Mitigation shall provide appropriate habitat (depending on the species), refugia, and habitat structures that support that species (e.g., woody material, rocks, brush piles, pools, burrows). Any proposed mitigation area/plan shall include a discussion on the territory size; nesting, breeding, foraging, and refuge locations; invasive, non-native plant and wildlife species present; food availability; and how all life cycle functions will be mitigated. Any mitigation plan for SSC shall be distributed and approved by CDFW prior to Project activities. The replacement habitat shall be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity, which should include an appropriate endowment to provide for the long-term management of mitigation lands.</p>	<p>Prior to Project Initiation</p>	<p>Project Proponent</p>
<p><b>Mitigation Measure #4: Injured or Dead Wildlife</b></p> <p>If any special status wildlife species are found, harmed during relocation, or a dead or injured animal is found, work in the immediate area shall stop immediately, the designated biologist should be notified, and dead or injured</p>	<p>Prior to Project Initiation</p>	<p>Qualified Biologist</p>

Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 19 of 21

<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<p>wildlife documented immediately. A formal report should be sent to CDFW and the County within 3 calendar days of the incident or finding. The report shall include the date, time of the finding or incident (if known), and location of the carcass or injured animal and circumstances of its death or injury (if known). Work in the immediate area may only resume once the proper notifications have been made and additional mitigation measures have been identified to prevent additional injury or death.</p>		
<p><b>Recommendation #5: Western Burrowing Owl Discussion</b></p> <p>The MND should be revised to provide a thorough discussion on the Project’s potential direct and indirect impact on western burrowing owl. If the Project may impact western burrowing owl, the MND should incorporate measures to minimize, and/or mitigate potential impacts to western burrowing owl as well as habitat supporting the species. The discussion should be of a depth and scope that a CESA ITP can be issued based on the analysis provided in the MND.</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>
<p><b>Mitigation Measure #5: Western Burrowing Owl Focused Surveys</b></p> <p>The Project proponent shall retain a qualified biologist to conduct focused surveys for western burrowing owl prior to Project activities. Focused surveys shall be conducted pursuant to CDFW’s March 7, 2012, <a href="#">Staff Report on Burrowing Owl Mitigation</a><sup>10</sup> (CDFW 2012) or CDFW’s most recent guidance. If an occupied burrow or western burrowing owl is found within the Project site, the Project proponent shall coordinate with CDFW and obtain appropriate take authorization from CDFW. The Project proponent shall comply with the mitigation measures detailed in the take authorization issued by CDFW. The Project proponent shall provide a copy of a fully executed take authorization to</p>	<p>Prior to Project Initiation</p>	<p>Project Proponent/Qualified Biologist</p>

<sup>10</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 20 of 21

Mitigation Measure	Timing	Responsible Party
<p>the County prior to implementing Project ground-disturbing activities and vegetation removal.</p>		
<p><b>Mitigation Measure #6: Pre-Construction Nesting Bird Survey</b> - The County should revise BIO-2 to incorporate the <u>underlined</u> language and omit language in strikethrough:</p> <p>To the extent possible, vegetation removal will be conducted during the non-breeding season (<del>September 1 to February 28</del>) (<u>September 2 to January 31</u>) in order to minimize direct impacts on nesting birds and raptors. If construction activities would be initiated during the breeding season for nesting birds/raptors (<del>March 1 - August 31</del>) (<u>February 1 - September 1</u>), a pre-construction survey will be conducted by a qualified Biologist within three days prior to the initiation of construction (including demolition of structures). The area will be surveyed for 2 hours between dawn and 10:00 a.m. on five occasions with at least one week between surveys. <del>If there is appropriate habitat for owls on site, at least three of the surveys, surveys will also be conducted during the period immediately before nightfall. The nesting bird/raptor survey area will include a buffer of 300 feet around the work area for nesting birds and a buffer of 500 feet around the work area for nesting raptors (including burrowing owl). If the Biologist does not find any active nests in or immediately adjacent to the impact area, construction activities can proceed.</del></p> <p>If the Biologist detects an active nest within or immediately adjacent to the construction area and determines that the nest may be impacted or breeding activities substantially disrupted by increased activity around the nest, the Biologist will determine an appropriate protective buffer around the nest depending on the sensitivity of the species and the nature of the construction activity. The protective buffer shall be <del>between 25 to</del> 300 feet for nesting birds;</p>	<p>Prior to Project Initiation</p>	<p>Lead Agency</p>

Eduardo Maguino  
 Los Angeles County Department of Public Works  
 December 5, 2024  
 Page 21 of 21

<b>Mitigation Measure</b>	<b>Timing</b>	<b>Responsible Party</b>
<p>300 to 500 feet for nesting raptors. The active nest will be protected within the designated buffer until nesting activity has ended. Any protective buffers will be mapped on construction plans and designated as “Environmentally Sensitive Areas”. Construction can proceed within the protective buffer when the qualified Biologist has determined that the nest is no longer active (i.e., fledglings have left the nest or the nest has failed).</p> <p><u>During the nesting bird season (February 1 through September 1), all heavy equipment shall have installed and maintain mufflers or other noise-reducing features when working adjacent to ESHA. If an increase in sound level from baseline to post-construction initiation is observed (greater than 10 dB) and active nests are observed in close proximity to the work, then sound barriers may be determined necessary to prevent negative effects to nesting birds. The necessity or usefulness of sound barriers will be considered within each construction area within or adjacent to ESHA habitat, and will be based on vegetation density, actual or likely nesting location of birds (high in trees or low in dense cover), species tolerance, and the pre-existing sound levels measured.</u></p>		