



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



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Ms. Cindy Krimmel, Environmental Planner  
San Diego Coast District  
California Department of Parks and Recreation  
4477 Pacific Highway  
San Diego, CA 92110  
[SDCD.CEQA@parks.ca.gov](mailto:SDCD.CEQA@parks.ca.gov)

**Comments on the Draft Program Environmental Impact Report for the Los Peñasquitos Lagoon Enhancement Plan, San Diego County (SCH #2017121036)**

Dear Ms. Krimmel:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft Program Environmental Impact Report (DPEIR) for the Los Peñasquitos Lagoon Enhancement Plan (Project).

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 2020).

**CDFW's 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; California Environmental Quality Act (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.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of San Diego (City) participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP) and Environmental Sensitive Lands Ordinance (ESL). A majority of the Proposed Project lies within the City of San Diego.

### **Project Description and Summary**

**Objective:** Proposed Projects outlined in the Los Peñasquitos Lagoon Enhancement Plan (Project/Plan) and environmentally assessed in the DPEIR would enhance the Los Peñasquitos Lagoon (Lagoon). Proposed Projects include reconfiguration of the channel network providing enhanced freshwater management and tidal exchange/influence which would restore salt marsh and transitional habitats (currently dominated by invasive grass), allow for upslope migration of salt marsh, and provide long-term resiliency to sea level rise. Proposed Project objectives also identify vector management (specifically to reduce mosquitos), trail improvements (including new trails and enhancements to existing trails), and wildlife corridor monitoring and enhancement. The updated Plan was developed to provide guidance on restoring the Lagoon's habitats, protecting listed species, and reducing threats to public health while involving stakeholder groups in coastal resource stewardship.

**Project Location:** The Lagoon lies primarily within the jurisdictional boundary of the City of San Diego (City), with a small portion within the boundaries of the City of Del Mar to the north. To the east, the City of Poway and the County of San Diego are part of upland areas in the Lagoon watershed. The Project site is part of the Torrey Pines State Natural Reserve located in northern coastal San Diego County. Los Peñasquitos Lagoon is a 565-acre coastal estuary. The Lagoon is surrounded by urban uses and requires ongoing management to protect native habitats and sensitive species. The Lagoon receives drainage from an approximately 59,212-acre watershed comprising three primary sub-drainages: Carmel Valley, Los Peñasquitos Canyon, and Carroll Canyon. The Lagoon is subject to the City of San Diego's MSCP SAP.

**Proponent:** California Department of Parks and Recreation (State Parks)

**Timeframe:** The Plan and Project are anticipated to be implemented over the next 50 years, generally broken into three phases. Phase 1 would occur from 0–5 years, Phase 2 at 5–25 years, and Phase 3 at 25–50 years. These phases include various restoration and enhancement components, followed up with monitoring, maintenance, and adaptive management tasks.

**Biological Setting:** The Lagoon is a core biological area in the Northern Area described in the City of San Diego's MSCP SAP (City SAP). The Lagoon and its associated uplands provide habitat for many sensitive plant and animal species. Additionally, the Lagoon is almost entirely within the City SAP's Multi-Habitat Planning Area (MHPA). The MHPA is the area of the City's SAP from which the final Preserve would be assembled; roughly 90% of the MHPA is expected to be conserved at final build-out of the City.

The City's SAP covers the entire City of San Diego (approximately 206,000 acres). The DPEIR lists sensitive species in Tables 2-6 through 2-8 including species which are listed as endangered by the California Endangered Species act (CESA) and/or federal Endangered Species Act (ESA) (SE and FE, respectively), California Species of Special Concern (SSC), and

MSCP covered species (MSCP). The following state, federal, or MSCP covered special status species are identified in the DPEIR: Shaw's agave (*Agave shawii*, MSCP); Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*, MSCP, FE); short-leaved dudleya (*Dudleya brevifolia*, MSCP, SE); dudleya variegata (*Dudleya variegata*, MSCP); coast wallflower (*Erysimum ammophilum*, MSCP); San Diego goldenstar (*Muilla clevelandii*, MSCP); Torrey pine (*Pinus torreyana*, MSCP), San Diego barrel cactus (*Ferocactus viridescens*, MSCP); wart-stemmed ceanothus (*Ceanothus verrucosus*, MSCP); Blainville's horned lizard (*Phrynosoma blainvillii* MSCP, SSC); southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*, MSCP, SSC); coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*, MSCP, SSC); western snowy plover (*Charadrius alexandrinus nivosus*, MSCP, SSC, Federal Threatened (FT)); Belding's savannah sparrow (*Passerculus sandwichensis beldingi*, MSCP, SE); coastal California gnatcatcher (*Polioptila californica*, MSCP, SSC, FT); light-footed Ridgway's rail (*Rallus longirostris levipes*, MSCP, SE and California Fully Protected (FP), FE); California least tern (*Sterna antillarum browni*, MSCP, SE and FP, FE); and least Bell's vireo (*Vireo bellii pusillus*, MSCP, SE, FE).

The City's SAP Section 1.5.8 (Specific Management Policies and Directives for the Northern Area) states that "Torrey Pines State Park and Los Peñasquitos Lagoon are both managed by state park rangers and ecologists according to their general plans and management plans." The Lagoon is also an important refuge along the Pacific Flyway for migratory birds and is the closest coastal estuary to the La Jolla State Marine Conservation Area and the San Diego-Scripps State Marine Conservation Area. Per the DPEIR, the Lagoon is afforded the highest level of protection by the State of California through three California Coastal Commission designations: Environmentally Sensitive Habitat Areas, Natural Preserve, and Critical Coastal Area (DPEIR, page ES-2).

### Comments and Recommendations

CDFW offers the following comments and recommendations to assist State Parks in adequately identifying, avoiding, minimizing, and mitigating Project-related impacts to biological resources (including direct and indirect impacts to fish and wildlife), and ensuring that the Proposed Project/DPEIR is consistent with the City's adopted MSCP. Per Section 1.2.4 of the LPEP DPEIR, areas of known controversy include addressing programmatic components of enhancement proposed for both short-term and long-term timeframes, and addressing biological impacts associated with Project implementation.

#### **Comment 1: Enforceable Mitigation Monitoring and Reporting Program (MMRP)**

The Los Peñasquitos Enhancement Plan (LPEP) DPEIR will govern the type and location of actions within the Lagoon and may lead to significant changes in the environment. In addition, according to the State Office of Public Resources (OPR), there are no term limits for the use of a DPEIR. In the DPEIR Biology Mitigation Section 4.6.4, only two potentially significant impacts are identified: unmitigable temporal impacts to sensitive species and impacts to mitigable habitat. The DPEIR requires only two biological mitigation measures. One measure is that potentially impacted habitat, species, and appropriate buffers be identified, and the other measure that there be no net loss of Tier I, II, IIIA, or IIIB habitat. Other impacts to habitat and species are considered avoided through the proposed use of proactive incorporation of "Project Design Features" to limit impacts to resources whenever possible. Notably, the biology mitigation measures seem to address impacts only at the construction activity level. Missing from the DPEIR are requirements to conduct subsequent, project specific surveys with impact

analysis and mitigation that is consistent with the City's SAP (i.e., use adopted habitat tiers and ratios, rather than "no net loss" standards for MSCP Tier I, II, or III or wetland habitat types).

Chapter 10 (MMRP) of the DPEIR also cites CEQA section 21081.6. Section 21081.6 (b) which requires that a public agency shall provide mitigation measures that are fully enforceable through permit conditions, agreements, or other measures. Furthermore, this section of CEQA provides that conditions of project approval may be set forth in referenced documents which address mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulations, or project design. CDFW notes that instead of utilizing enforceable mitigation measures to protect MSCP Covered and other State special status species and their habitats, many meaningful measures are contained in the "Project Design Features" (PDFs) (namely 1-3, 14-39, and 42) and "Standard Construction Procedures" (SCPs) (namely 1 and 13 on the list). Chapter 10 refers to PDFs as "commitments" rather than mitigation measures. Therefore, CDFW recommends the Final PEIR needs to require that mitigation must be consistent with recognized standards, such as those in the City's SAP and ESL regulations. These mitigation measures should be in the final PEIR MMRP. Without this, subsequent projects may provide lesser protections and conservation benefits to the species and habitats being impacted.

**Recommendation 1:**

The DPEIR MMRP should include enforceable measure(s) stating that each project (regardless of future lead agency) implemented in accordance with the DPEIR, will conduct a project specific impact consistency analysis and necessary species-specific studies as indicated to protect sensitive species from increased recreation impacts or other subsequent project impacts. The DPEIR should include clearly what metrics future project consistency would follow (i.e., City's SAP/ESL ratios, additional local agency's guidelines such as the Coastal Commission, etc.), other agreements, significance thresholds, and appropriate mitigation to ensure impacts are reduced to below a level of significance

**Comment 2: Explain and Justify Mitigation Approach**

The PEIR MMRP BIO-2 uses a "no net loss" standard and the use of "temporary" impacts to identify and mitigate direct habitat impacts; however, the City of San Diego's standard under the MSCP is regulated by the ESL which does not recognize temporary impacts. Temporary impacts should be short term temporal loss of habitat. If habitat is removed, restoration may include a minimum 5-years of maintenance and monitoring to mitigate for temporary loss. Per the MSCP, impacts also require tier categories be identified and mitigation to be carried out according to the habitat/tier specified ratios (i.e., inside or outside the MHPA, uplands and wetlands, etc.). Other projects in the region (i.e., Interstate-5 Widening and El Camino Real Bridge) have utilized combination mitigation strategies including City SAP/ESL and the no net loss standard after presenting definitions, justification, usage parameters, and reaching consensus with regulatory bodies.

CDFW does not believe the approach can work for projects with permanent upland impacts such as those associated with new trails, staging areas, underpasses/culverts, or elevated walkways/overpasses. In cases of permanent impacts, the underlying jurisdiction mitigation standards (i.e., City SAP/ESL standards) should apply. In addition, as further discussed below, tiering off the PEIR may be compromised if only the temporary, no net loss standard is included in the PEIR. CDFW understands that the no net loss standard has been used on other projects. For instance, type converting lesser quality habitat into higher quality habitat (such as non-native grassland replacement in-situ by salt marsh), and/or restoration efforts with reduced

temporal loss of habitats (such as cattail recovery in a riparian area which occurs within a year of impact) may be appropriate for this approach.

**Recommendation 2.** The Final PEIR should define terms such as “temporary” and further expand, explain, and justify mitigation standards incorporated in the PEIR. The Final PEIR should include both City SAP ESL standards and temporary, no net loss standards in greater detail as outlined above. The process to reach consensus on this issue with the regulatory agencies should also be included.

**Comment 3: Increase Tiering Opportunities**

CEQA Guidelines (Section 15168(h)) encourage the use of Program EIRs, citing advantages which include: focusing on cumulative impacts that might be slighted in a case-by-case analysis; avoidance of continual reconsideration of recurring policy issues, consideration of broad policy alternatives, and programmatic mitigation measures at an early stage when the agency has greater flexibility to deal with them; and reducing paperwork by encouraging reuse of data (through tiering).

Section 1.1 states that the DPEIR does not contain project-level analysis of Project components proposed in the plan and that future projects would undergo subsequent CEQA. Subsequent Project-specific environmental compliance documents may tier off the DPEIR but would need to ensure consistent mitigation measures are required to mitigate impacts to less than significant.

**Recommendation 3**

To provide more meaningful streamlining/tiering opportunities and ensure that enforceable mitigation measures will be enacted by future CEQA review, the DPEIR needs to require that items in Comments 1 and 2 are addressed and “Project Design Features” (PDFs) and “Standard Construction Procedures” (SCPs) become conditions of subsequent project approval(s) by whichever entity is carrying out the project. Mechanisms to achieve this outcome could include referencing the City SAP/ESL for permanent impact projects and including the PDFs and SCPs in a Framework Resource Management/Restoration Plan format and include it as an appendix to the FPEIR. Finally, add a MMRP requirement that subsequent projects will demonstrate consistency with/implement the FRMP/RP.

**Comment 4: Hilltop Trail Improvement and Staging Area and Marsh Trail Overpass (Alternative 3)**

The proposed Hilltop Trail improvements consist of establishing three new trail alignments along the ridge above the proposed Marsh Trail realignment, and a staging area at the southern trailhead where the three trails converge. According to the DPEIR (page 3-27), “The Hilltop Trail connections would require opening an undeveloped and steeply sloped area to public use and could present challenges to avoiding impacts to sensitive habitats.” In addition to opening a trail on a steep slope supporting relatively pristine native habitat, CDFW is concerned that the staging area to be located on the east side of Torrey Pines Road is in close proximity to the existing south parking lot which also serves as a staging area. An increase in human activities in this vicinity, particularly by new trails encroaching into otherwise undisturbed habitat, is of particular concern to larger animals such as mule deer and bobcat. The DPEIR data shows that the current population of mule deer is stable at about 30 individuals. Because of the already high number of trails throughout the State Park, and the highly constrained nature of available habitat for mule deer in and around the Lagoon, CDFW believes updated studies are needed to fully evaluate the proposed new trail segments.

Page 2-81 (functional and non-functional wildlife corridor graphic) of the DPEIR shows that that two major, functional wildlife corridors for mule deer (the Sorrento Valley Corridor and Torrey Pines Road Corridor) would be in close proximity to the proposed Hilltop Trail. CDFW is concerned an additional trail associated with the Hilltop Trail improvements could adversely affect wildlife movement.

**Recommendation 4a:**

CDFW recommends removal of the new Hilltop trail segments and staging area east of Highway 101 from the Plan and EIR. The combined effect of current and proposed trails and new staging and access areas in this portion of the Lagoon could have a negative impact on mule deer movement and viability in this portion of the Lagoon. At the very least, subsequent projects regarding these trail elements should require further study of deer bedding/fawning areas and use by other wildlife that may be affected.

**Recommendation 4b:**

This recommendation is related to potential accessibility scenarios shown on Figure 3-6. In lieu of the Hilltop trail elements, CDFW believes that both an underpass or overpass to the Marsh Trail would be acceptable alternatives to the Hilltop Trail and staging area. CDFW further recommends considering that an elevated bridge across Highway 101, or an elevated walkway along the west end of the Lagoon adjacent to the east side of Highway 101, could be potential replacements for the proposed Hilltop Trail vantage point. This could prevent encroachment and potential impacts from human activities in a currently pristine and undisturbed area.

**Comment 5: Recognize, Avoid and Mitigate Indirect Impacts including Noise**

While best management practices for water quality and other construction elements have been included in the DPEIR PDFs and MMRPs for other than biological impacts, CDFW recommends further acknowledging the potential for significant, indirect biological impacts from Project related construction and long-term use. These potential impacts include noise, night lighting, trash, dust, unwanted intrusion in native areas, and possibly other edge effects.

**Recommendation 5:**

Please specify a mitigation measure(s) that will ensure subsequent projects tiering off the DPEIR must be consistent with the City's SAP Section 1.4.3 Land Use Adjacency Guidelines (LUAGs), as they are intended to reduce edge effects to the MHPA. In particular, the DPEIR should include a measure(s) that ensures noise impacts to sensitive breeding animals will be avoided or reduced below a level of significance through the incorporation of noise berms, temporary walls, phasing, seasonal avoidance, alternative equipment, or other means.

**Recommendation 6:**

The Project may impact aquatic and riparian resources, which absent specific mitigation, could result in substantial erosion or siltation on site or downstream of the Project. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. 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. As a Responsible Agency, CDFW may consider the CEQA document prepared by the local jurisdiction (Lead Agency) for the Lake and Streambed Alteration (LSA) Program. To minimize additional requirements by CDFW pursuant to section 1600 et seq. and/or under CEQA, the DPEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation,

monitoring, and reporting commitments for issuance of the Lake and Streambed Application Agreement.

**Recommendation 7:**

CDFW recommends explaining the relationship between the Los Peñasquitos Lagoon Foundation (LPLF), the Los Peñasquitos Regulatory Advisory Committee (RAC), and the Southern California Wetlands Recovery Project (SCWRP) Scientific Technical Advisory Committee (TAC), and also include the entities in the list of acronyms.

CDFW also recommends adding a list of known programs or requirements potentially affecting the ecological integrity of the Lagoon to ensure surrounding jurisdictional obligations are factored into the final PEIR. Reference to relevant, recently certified documents that are applicable for the area can be made. For example, CDFW is aware of certified documents for the City of San Diego Municipal Waterways Maintenance Plan, as well the Jurisdictional Stormwater Municipal Permit Planning documents, which include but are not limited to: Jurisdictional Run Off Management Plans (JRMPS), Water Quality Improvement Plans (WQIPs), and Best Management Practices (BMPs). Additionally, Torrey Pines State Park and Los Peñasquitos Lagoon are both managed by state park rangers and ecologists according to their general plans and management plans, while the upstream Los Peñasquitos Canyon Preserve is managed by the City of San Diego Parks and Recreation Department. One example of watershed actions which may affect the Lagoon include the City of San Diego's yearly management, monitoring, and maintenance of the sedimentation basin in the Carmel Valley Restoration and Enhancement Project (CVREP) area (per the CVREP Master Plan and the Natural Resource Management Plan) to prevent sedimentation of the Los Peñasquitos Lagoon.

**Recommendation 8:**

The Lagoon supports numerous species recognized as sensitive by the U.S. Fish and Wildlife Service (USFWS) and/or CDFW including federal, state, and MSCP covered species; however, currently Tables 2-6 through 2-8 do not specify which species are MSCP covered. The inclusion of MSCP Covered Species and State Fully Protected status on Tables 2-6 through 2-8 would provide relevant information to the report and make it easier to use.

Please note, California Fish and Game Code FGC § 3511 regulates fully protected birds. At least two Fully Protected (FP) Species (light-footed Ridgway's rail and California least tern) are listed in the DPEIR as being present. CDFW recommends amending Tables 2-6 through 2-8 to identify California Fully Protected species and provide additional State Fully Protected species avoidance measures in the DPEIR.

**Recommendation 9:**

The DPEIR frequently mentions prior studies and observations of various wildlife species including raptors and mule deer (*Odocoileus hemionus fuliginata*). The site as serves as a stop along the Pacific flyway, as a foraging area, and has local wildlife corridors, yet a comprehensive list of species known to occur in the Lagoon is not included in the DPEIR. The inclusion of a comprehensive species list would make the DPEIR more consistent with the first paragraph of Section 1.2.4 of the City's SAP and further inform the DPEIR intentions to enhance the lagoon for these species.

CDFW recommends the inclusion of a comprehensive potential species list in the DPEIR body in a Table or as an Appendix to the DPEIR and additional attention to enhancing wildlife

corridors and sensitive species access and usage of the Lagoon to balance out the effect of potential increased recreational usage.

**Recommendation 10:**

For easier reference, CDFW recommends numbering items in the "Standard Construction Procedures" similar to the manner that items in the MMRP and PDF are numbered.

**Recommendation 11:**

In Figure 2-19, CDFW recommends that functional and non-functional wildlife corridors be identified in the legend.

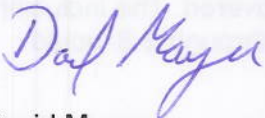
**Filing Fees**

The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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 DPEIR to assist State Parks in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Holly Smit Kicklighter, Senior Environmental Scientist, at [Holly.SmitKicklighter@wildlife.ca.gov](mailto:Holly.SmitKicklighter@wildlife.ca.gov).

Sincerely,



David Mayer  
Environmental Program Manager  
South Coast Region

ec: CDFW

Karen Drewe, San Diego – [Karen.Drewe@wildlife.ca.gov](mailto:Karen.Drewe@wildlife.ca.gov)  
Kelly Fisher, San Diego – [Kelly.Fisher@wildlife.ca.gov](mailto:Kelly.Fisher@wildlife.ca.gov)  
Jennifer Ludovissy, San Diego – [Jennifer.Ludovissy@Wildlife.ca.gov](mailto:Jennifer.Ludovissy@Wildlife.ca.gov)  
Susan Howell, San Diego – [Susan.Howell@wildlife.ca.gov](mailto:Susan.Howell@wildlife.ca.gov)  
CEQA Program Coordinator, Sacramento – [CEQACommentLetters@wildlife.ca.gov](mailto:CEQACommentLetters@wildlife.ca.gov)  
State Clearinghouse, Sacramento – [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)  
Jonathan Snyder, USFWS – [Jonathan.Snyder@fws.gov](mailto:Jonathan.Snyder@fws.gov)

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Fish & Game Code §1600, §2080, §3503, §3511.

