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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

February 5, 2020

U.S. Army Corps of Engineers
Attention: Mike Padilla
231 S. LaSalle St., Suite 1500
Chicago, IL 60604

Subject: Westminster East Garden Grove Study (Project)
Draft Joint Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) SCH# 2017124001

Dear Mr. Padilla:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of an EIR/EIS from U.S. Army Corps of Engineers (USACE) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1] CDFW previously submitted comments in response to the Notice of Preparation of the Draft EIR/EIS.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: USACE

Objective: The draft EIR/EIS (Project) analyzes three alternatives to address flood risk within the Westminster watershed. Analysis includes two Action Alternatives: the Minimum Channel Modifications Plan and the Maximum Channel Modifications Plan. There is also a No Action

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.

Alternative. The Minimum Channel Modifications Plan would line existing drainage channels with concrete. The Maximum Channel Modifications Plan would alter the geometry of existing drainage channels by converting trapezoidal channels into rectangular concrete channels with vertical walls. Both Action Alternatives incorporate downstream measures, including increasing the span of the Warner Avenue Bridge and removing the tide gates on C05. Under the No Action Alternative, no channel modifications or management measures would be implemented. The draft EIR/EIS recommends adoption of the Maximum Channel Modifications Plan.

Location: The Westminster watershed encompasses an area of approximately 87 square miles in western Orange County. Four channels of interest flow through the watershed: Bolsa Chica Channel (C02), Westminster Channel (C04), Oceanview Channel (C06), and East Garden Grove-Wintersburg Channel (C05). Following adjacent to Naval Weapons Station Seal Beach, C02 is approximately 1.5 miles long and discharges at Huntington Harbor. C04 is approximately 7.8 miles long and begins at the confluence with C02, then extends northeast into the cities of Westminster and Garden Grove. C06 begins east of the City of Fountain Valley and extends 4.1 miles to the confluence of C05. Approximately 11.6 miles long, C05 begins in Garden Grove and discharges into Bolsa Chica Ecological Reserve (BCER) at Outer Bolsa Bay, which flows into Huntington Harbor, and out to the Pacific Ocean.

BCER is owned by the California State Lands Commission and is managed by CDFW. It is compo-sed of approximately 1,300 acres of coastal estuary that includes a multitude of habitats, such as eelgrass bed, salt marsh, coastal strand/sand dune, coastal sage scrub (CSS), freshwater wetland, and riparian woodland. BCER is an important migratory stop and nesting ground for a multitude of avian species, in addition to harboring many sensitive plant species. These species include but are not limited to: Belding's savanna sparrow (*Passerculus sandwichensis beldingi*; California Species of Special Concern (SSC)), burrowing owl (*Athene cunicularia*; SSC), light-footed Ridgway's rail (*Rallus obsoletus levipes*; CESA- and Endangered Species Act (ESA)- listed Endangered), California least tern (*Sternula antillarum browni;* ESA-listed Endangered), Western snowy plover (*Charadrius nivosus nivosus*; ESA-listed Threatened), salt marsh bird's beak (*Chloropyron maritimum* ssp. *maritimum*; CESA- and ESA-listed Endangered), Ventura marsh milk vetch (*Astragalus pycnostachys* var. *lanosissimus*; CESA- and ESA- listed Endangered), as well as special status plants (California Rare Plant Rank 1.B) such as coast woolly heads (*Nemacaulis denudata* var. *denudata*), Coulter's goldfields (*Lasthenia glabrata* spp. *coulteri*), estuary seablite (*Suaeda esteroa*), and southern tarplant (*Centromadia parryi* ssp. *australis*).

COMMENTS AND RECOMMENDATIONS

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

I. Project Description and Related Impact Shortcoming

COMMENT #1: Alternatives Analysis

Executive Summary, Page ES-viii

Issue: The draft EIR/EIS identifies the Maximum Channel Modifications Plan as the Recommended Plan. As in our comment letter on the Notice of Preparation for the Project, dated December 3, 2018, CDFW continues to support the adoption of the Minimum Channel Modifications Plan.

Specific impact: CDFW has ongoing concerns regarding how increased conveyance flow via C05 into Outer Bolsa Bay will contribute to type conversion of habitat and impact biological resources through changes in water quality and hydrology.

Why impact would occur: Analysis provided in Appendix A – Hydrology and Hydraulics indicates that flow rates will increase downstream of the C05 system as a result of decreased overbank flooding and attenuation.

To minimize significant impacts: We recommend that the final EIR/EIS adopt the Minimal Channel Modifications Plan, which proposes to line existing drainage channels with concrete to increase conveyance efficiency, as well as implement downstream measures to accommodate increased conveyance from flood flow as a result of channel modifications.

COMMENT #2: Pedestrian Bridge Replacement

Appendix M: Mitigation Strategy, Section 1.2

Issue: The downstream measure proposed in both Action Alternatives will widen Outer Bolsa Bay channel and will require reconstruction and/or extension of the pedestrian bridge. The bridge spans the channel, adjacent to the Warner Avenue bridge, at the Bolsa Chica Conservancy. These Project activities were not described in the draft EIR/EIS, to the extent that CDFW is able to fully assess impacts to biological resources.

Specific impact: The pedestrian bridge was constructed in 2009 to allow pedestrians to cross safely over the Outer Bolsa Bay channel and connect to trails on the mesa side of the BCER. Prior to bridge construction, visitors used the shoulder of the busy Warner Avenue bridge where no sidewalk or safe pedestrian crossing is available. Funding for construction of the pedestrian bridge totaled approximately $500,000. Section 1.2 of Appendix M – Mitigation Strategy acknowledges that widening of the Outer Bolsa Bay channel would require that the Warner Avenue bridge and the pedestrian bridge at the Bolsa Chica Conservancy be increased in span. It is unclear from the Mitigation Strategy how or where replacement or extension the pedestrian bridge will occur. Inclusion of a protected pedestrian access sidewalk along the Warner Avenue bridge may warrant removal of the pedestrian bridge without replacement, but it is unclear from the proposal if safe pedestrian access will be provided along the Warner Avenue bridge.

Why impact would occur: The proposed widening of the Outer Bolsa Bay channel extends beyond the western end of the existing pedestrian bridge and would require bridge replacement and/or extension.

To minimize significant impacts: In order to execute the Project, the pedestrian bridge adjacent to the Warner Avenue bridge will need to be replaced or extended to the appropriate length to allow for safe pedestrian access. Any pedestrian bridge expansion or replacement should be described in sufficient detail to the extent that possible impacts to biological resources can be analyzed.

II. Environmental Setting and Related Impact Shortcomings

COMMENT #3: Warner Avenue Bridge Lengthening / Channel Widening Impacts

Appendix M: Mitigation Strategy, Section 1.4

Issue: Impacts to upland habitat in the Project area associated with the Outer Bolsa Bay channel widening and Warner Avenue bridge lengthening/excavation are not sufficiently addressed in the draft EIR/EIS.

Specific impact: The Project area directly overlaps a large amount of upland habitat, primarily CSS, on BCER (Appendix M, Figure 8). Upland impacts as a result of the project are not analyzed, and mitigation measures which avoid, minimize, and mitigate for these impacts are not included in the draft EIR/EIS.

Why impact would occur: The Project area identified for the Warner Avenue excavation and bridge lengthening will excavate an area of upland habitat on BCER, primarily dominated by CSS (Figure 8).

To reduce impacts to less than significant: A detailed discussion of Project impacts to upland habitats on BCER should be included in the final EIR/EIS. This discussion should include analysis of associated species impacts and include figures. The CDFW recommends that mitigation measures be incorporated into the draft EIR/EIS in order to make temporary, permanent, and cumulative impacts of Project activities to upland habitat less than significant.

COMMENT #4: C05 Tide Gate Removal

Appendix M: Mitigation Strategy

Issue: The Project will remove the tide gates that are located at the downstream end of the C05 channel adjacent to Outer Bolsa Bay, in conjunction with construction of a new access bridge on the tide gate crossing. The existing tide gate crossing provides important access to emergency response and maintenance vehicles, as well as recreational access to BCER. It is unclear from the draft EIR/EIS whether the culverts between Outer Bolsa Bay and Inner Bolsa Bay, adjacent to the C05 tide gates, will also be removed. Detailed construction plans and materials for the proposed replacement emergency access bridge were not available for review.

Specific impact: The existing flap gates that were originally installed on the culverts between C05 and Outer Bolsa Bay have deteriorated and no longer function properly. Hydrological modeling referenced in Appendix A- Hydrology and Hydraulics indicates that the existing tide gates would be inadequate for stormwater conveyance from the proposed project improvements (Appendix A, page 23).

To minimize significant impacts: The CDFW supports removal of the tide gates between the C05 channel and Outer Bolsa Bay and construction of a new vehicle/recreational access bridge. In addition to removal of the tide gates, we recommend removing the culverts between the Outer Bolsa Bay and Inner Bolsa Bay and including the span from the Pacific Coast Highway to the southern edge of channel C05 in the new bridge construction. Biological benefits of culvert removal include increased tidal exchange between Inner Bolsa Bay and Outer Bolsa Bay and

improved water quality in Inner Bolsa Bay. This recommendation may provide potential mitigation opportunity based on the biological benefits of increased tidal exchange. Any bridge expansion or replacement should be described in detail to the extent that analysis can be made, so that associated impacts to biological resources can be assessed.

COMMENT #5: Sheet Pile in C05 Channel on BCER

Appendix M, Section 1.2

Issue: Habitat type conversion resulting from sheet pile installation at BCER is not adequately analyzed in the draft EIR/EIS.

Specific impact: Installation of sheet pile in Reach 1 of the C05 within BCER would likely result in biological impacts and habitat type conversion.

Why impact would occur: Installation of sheet pile in Reach 1 would widen the C05 channel, facilitating a loss of the existing shallow water triangle and creating a less dynamic aquatic habitat. The shallow water triangle provides important habitat that small fish and aquatic organisms need for breeding, feeding, and concealment from larger fish, and provides foraging habitat for birds, including California least tern. Transition from a diverse shoreline to a smooth vertical-sided sheet pile channel would decrease benthic prey and impact shoreline habitat used by wading birds, such as great blue heron (*Ardea herodias*) and snowy egret (*Egretta thula).*

To minimize significant impacts: The CDFW discourages the installation of sheet pile in the lower reaches of C05 on BCER. The impacts of sheet pile installation on biological resources in and adjacent to the Project area, specifically habitat type conversion, should be analyzed in the final EIR/EIS, and mitigation measures which minimize impacts associated with this Project activity (if the activity is not entirely avoided) should also be included.

COMMENT #6: C05 Channel Modification Downstream Pollution

Draft EIS/EIR, Section 5.4.4.2

Issue: Although the draft EIR/EIS indicates that upstream debris booms would be constructed to reduce the amount of polluted runoff, the document does not provide clarification on the details of installation or ongoing management.

Specific impact: CDFW has ongoing concerns about increased flow of trash and debris at the removed tide gates at the terminus of C05 in BCER, and associated impacts on water quality and biota.

Why impact would occur: The draft EIR/EIS indicates that Orange County Public Works (OCPW) already has programs in place for trash reduction, but does not specify if OCPW or another responsible party will routinely remove debris from the trash booms and provide ongoing maintenance in perpetuity (page 621).

To reduce impacts to less than significant: As in our comment letter on the Notice of Preparation for the Project, dated December 3, 2018, the CDFW recommends that a physical structure or mechanism be used to control the spread of unwanted debris (i.e. trash boom or

trash wheel) in conjunction with a trash management collection program. In order to assess whether trash and debris management strategies will be sufficient, the type of mechanisms being installed and a specific agreement as to who will be providing ongoing trash and waste management is necessary. Any pollution prevention structures should be implemented within the Project footprint and not in conserved habitat areas.

COMMENT #7: Bird Nesting Area Corrections

Appendix M: Mitigation Strategy, Figure 10

Issue: Survey data as presented in the draft EIR/EIS may not be sufficient to avoid significant impacts to CESA-listed species.

Specific impact: Appendix M, Figure 10 inaccurately depicts nesting areas for CESA-listed avian species.

Why impact would occur: Figure 10 in Appendix M is inconsistent with other survey data available for the Project footprint. Please refer to the following attached figures (Attachments B-D) for additional information on special-status avian species in BCER: Belding's Territories March 2013 (Merkel and Associates 2013); Snowy Plover Habitat Map Bolsa Chica 2015 (Knapp 2015); and, BCER: California Least Tern Nesting Colonies Bolsa Chica 2020 (CDFW 2020).

To reduce impacts to less than significant: Figure 10 of the Mitigation Strategy should be updated as follows:

a. the pink shaded area is currently depicted as western snowy plover nesting; however, snowy plovers do not nest in that area. Instead, Ridgway's rail and Belding's savannah sparrow establish nests in that polygon. The following species also nest along the edges or just outside the edges of the pink shaded area: great blue heron, great-horned owl (*Bubo virginianus*).
b. the light blue shaded area is currently depicted as California least tern nesting; however, California least terns do not nest in that area. Instead, Ridgeway's rail and Belding's savannah sparrow use that area for nesting; and,
c. the purple shaded area is currently depicted as western snowy plover nesting. In addition to snowy plover, Belding's savannah sparrow and California least tern also nest in this polygon.

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #8: Tern Islands Mitigation

Appendix M: Mitigation Strategy, Page 49-53

Issue: There is already an existing grant unrelated to the Project to analyze repairs and fortify North and South Tern Island in Inner Bolsa Bay to improve sea level rise resiliency; planning and permitting are scheduled to begin in 2020. The Bolsa Chica Land Trust (BCLT) has partnered with the CDFW to restore the Tern Islands and has been awarded a $135,000 grant from the Wildlife Conservation Board to fund Phase I of the project.

Specific impact: The draft EIR/EIS describes temporary impacts to 2 acres of estuarine foraging habitat for California least tern during construction activities. There were no areas identified as suitable for additional foraging habitat within the project area and no mitigation banks are currently online to compensate for these impacts. Proposed mitigation established in Appendix M for impacts to California least tern include enhancement to two existing human-made tern islands located in Inner Bolsa Bay, totaling 3.3 acres. Grant-funded restoration includes a sand addendum to North Tern Island and South Tern Island to increase the resiliency of the existing nesting habitat and combat erosion due to sea level rise (page 53).

Why impact would occur: CDFW anticipates that the grant-funded restoration of North and South Tern Island will be completed within two years. Due to existing grant funding for North and South Tern Island, the mitigation measures proposed by USACE may not be appropriate for mitigation credit.

To reduce impacts to less than significant: Restoration of North and South Tern Island to satisfy the Project's mitigation obligations as described the draft EIR/EIS should be closely coordinated with CDFW and the U.S. Fish and Wildlife Service (the Wildlife Agencies). A mitigation measure which describes timely coordination with the Wildlife Agencies should be included in the final EIR/EIS.

COMMENT #9: Warner Avenue Bridge Prior Mitigation Area

Appendix M: Mitigation Strategy

Issue: Existing mitigation may be impacted by Project activities.

Specific impact: In review of CDFW records, it appears that the upland habitat directly adjacent to the Warner Avenue bridge may contain prior mitigation from the 2012 Warner Avenue Bridge Preventative Maintenance Project (SCH# 2013101070). Attachment 2 in the Draft Conceptual Habitat Mitigation and Monitoring Plan (UltraSystems 2013) from that project shows areas of CSS restoration that may overlap with the Project area.

Why impact would occur: CDFW considers impacts to mitigation areas distinct and separate from other project impacts. As indicated in our comment letter on the Notice of Preparation for the Project, dated December 3, 2018, "[r]eplacement mitigation for impacts to areas where mitigation has already occurred should be considered separate from and in addition to compensation for other biological resources impacted within the project site and/or associated with the project. In such cases, appropriate and in-kind mitigation at no less than a 10:1 mitigation ratio should be considered."

To reduce impacts to less than significant: The CDFW recommends providing clarification on what areas of prior mitigation around the Warner Avenue bridge will be impacted by the Project. Mitigation measures which compensate for permanent habitat loss at appropriate ratios (e.g., 10:1 for any prior mitigation areas that are affected) should be incorporated into the final EIR/EIS.

COMMENT #10: Habitat Restoration and Monitoring Plan (HRMP) Coordination

Issue: A full HRMP was not provided with the draft EIR/EIS.

Specific impact: Without review of a full HRMP during the CEQA review process, the CDFW cannot ascertain as to whether mitigation strategies and proposed ongoing management will be sufficient to reduce impacts of Project activities on biological resources to less than significant.

Why impact would occur: A conceptual Mitigation Strategy was provided with the draft EIR/EIS.

To reduce impacts to less than significant: Intent to implement a full HRMP that has first been approved by the Wildlife Agencies should be codified in the final EIR/EIS as a mitigation measure.

Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.

IV. Marine Ecosystems Analysis

COMMENT #11: Impacts to Marine Protected Areas 1. Bolsa Chica Basin State Marine Conservation Area (Bolsa Chica Basin SMCA) (No Take), 2. Bolsa Bay State Marine Conservation Area (Bolsa Bay SMCA)

Issue: The Project is located within the Bolsa Bay SMCA and the Bolsa Chica Basin SMCA (No Take). CDFW manages the State's Marine Protected Area (MPA) Network under authority established by the Marine Life Protection Act (MLPA). In most SMCAs it is unlawful to injure, damage, take, or possess any living, geological, or cultural marine resource for commercial or recreational purposes, or a combination of commercial and recreational purposes, that the designating entity or managing agency determines would compromise protection of the species of interest, natural community, habitat, or geological features. The designating entity or managing agency may permit research, education, and recreational activities, and certain commercial and recreational harvest of marine resources (PRC Section 36710(c)). In the Bolsa Chica Basin SMCA no take is allowed. Additional information for the Bolsa Bay SMCA and the Bolsa Chica Basin SMCA (No Take) can be found on the CDFW's website (https://wildlife.ca.gov/Conservation/Marine/MPAs/Network/Southern-California#27150493-bolsa-bay-state-marine-conservation-area).

Issue: The USACE determined that Bolsa Bay SMCA impacts would be temporary and may be adverse but would be considered less than significant with incorporation of mitigation measures MM-BIO-1 through MM-BIO-10. Additionally, the USACE determined there may instead be a significant benefit with the change in hydrology by increasing the circulation in the bay such that eelgrass (*Zostera marina*) could begin to grow and establish itself permanently. CDFW disagrees that the mitigation measures will reduce the impacts to less than significant and has determined that a significant beneficial increase in the Bolsa Bay SMCA circulation is speculative. Bolsa Bay SMCA may be indirectly and directly impacted significantly with the

preferred LPP Project (maximum 4-channel modification) alternative. Additionally, the speculative benefit of increased Bolsa Bay SMCA circulation is the basis for locating an eelgrass mitigation site in the bay to compensate for eelgrass impacts that may occur in the C02 channel.

Issue: The USACE determined that Bolsa Chica Basin SMCA would have no significant habitat or species impacts, because there would be no construction inside the basin. However, the Bolsa Chica Basin SMCA within channel 05, reach 1 was not described as being a part of the Marine Protected Area (MPA). The CDFW has determined that the Bolsa Chica Basin SMCA channel 05 reach 1 may have potentially significant direct and/or indirect impacts that were not described within the draft EIR/EIS.

Issue: The draft EIR/EIS does not propose long term habitat monitoring or contingent mitigation for impacts for the Bolsa Chica Basin channel 05, reach 1 or for Bolsa Bay SMCAs to confirm that no significant impacts will occur and will be accounted for should they occur. Monitoring of any potential impacts within the SMCAs is important, because these habitats are vital to the regional marine ecology and are managed by CDFW.

Specific impacts: Bolsa Bay SMCA habitat impacts may include altered soft bottom shorelines, mudflats, and bank slopes in the vicinity of the Warner Avenue bridge. Channel widening and sediment removal at the Warner Avenue bridge may also result in modifications to the boundary of the SMCA that may require consideration by the Fish and Game Commission. Based on the hydrology study that was conducted for the LPP Project alternative, there may be significant changes to the Bolsa Bay SMCA such as scouring or sedimentation of mudflats, wetland plants, and plant substrates. There may also be erosional changes to the Bolsa Bay shoreline slopes precluding some plants or fish species from being able to use the modified habitats.

The draft EIR/EIS states that leveed areas in the downstream reach 1 of C05 channel would be improved to reduce the risk of levee failure. Modifications in C05, reach 1 could have potentially significant habitat impacts to existing soft bottom from scouring, but removal of the tide gates may improve tidal exchange between the channel and Bolsa Bay SMCA. The tide gates that are located at the end of channel 05 would be removed, but the CDFW does not agree with the draft EIR/EIS that the water velocities in Bolsa Bay and Bolsa Chica Basin C05 reach 1 are going to be the same as existing velocity with no significant scour impacts to habitats.

Why impacts would occur: The habitat impacts would occur due to the widening of the channel area underneath the Warner Avenue bridge, removal of sediment, and increased stormwater velocity flows. The CDFW also believes that significant long-term habitat impacts may occur within the Bolsa Chica Basin SMCA because there will likely be direct and indirect impacts from the installation of the steel sheet piles and tidal gate removal at channel O5.

Evidence impacts would be significant: Any significant loss or degradation of marine habitat within either the Bolsa Chica Basin SMCA or Bolsa Bay SMCA would be a significant impact.

COMMENT #12: Impacts to Eelgrass Habitat, Vegetated and Potential Unvegetated Eelgrass Habitat

Issue: The Project will modify the upstream C02 such that 1.7 acres of eelgrass habitat within the downstream channel outlet outside of the Project may be indirectly impacted by an increase in water velocity. The draft EIR/EIS concluded that this increased water velocity may preclude eelgrass from growing at that location. The 1.7 acres of eelgrass was calculated based on a detailed 2013 eelgrass survey of the area. The 2013 survey is not up-to-date enough to accurately estimate a total impact area, nor is the 2019 Project reconnaissance survey that was conducted. Per the California Eelgrass Mitigation Policy (CEMP), preconstruction surveys to determine impacts to eelgrass should be done within 60 days before start of construction.

Issue: The 2013 survey report map shows that eelgrass losses may occur within Huntington Harbor (adjacent to the channel C02 eelgrass area that will be impacted) due to scouring impacts from increased flood water flows. Additionally, the Warner Avenue bridge habitat map shows an adjacent eelgrass bed on the north side of the bridge that may be impacted by the proposed excavation during or after construction. The draft EIR/EIS only discusses potential impacts to eelgrass within the C02 channel outlet and does not analyze potential impacts to other eelgrass beds, including the bed on the north side of the Warner Avenue bridge.

Issue: The Mitigation Strategy (Appendix M) provides a Selected Mitigation Plan that includes in-kind and out-of-kind mitigation to offset the potential eelgrass habitat losses at the downstream end of C02 in Huntington Harbor. The Selected Mitigation Plan includes 0.5 acres of in-kind mitigation within Bolsa Bay SMCA and 4.1 acres of out-of-kind mitigation at Palos Verdes. CDFW prefers in-kind mitigation for all marine habitat and species level impacts. Additionally, mitigation within the Bolsa Bay SMCA for impacts outside of the SMCA is not listed as an allowable use under *Title 14, Section 630(a)(10)*.

Issue: CDFW recognizes the use of the CEMP in determining the appropriate amount of mitigation for impacts to eelgrass and eelgrass habitat. The use of the Habitat Suitability Index (HSI), Habitat Units (HU), Annual Habitat Units (AAHU) is not used in California to calculate eelgrass habitat impacts in conjunction with the California Eelgrass Mitigation Policy (CEMP). Although CDFW is not opposed to the total eelgrass mitigation acreage calculation used for this specific Project, we would not approve of using this method without our prior consultation.

Specific impacts: The draft EIR/EIS indicated that the Project may substantially and adversely affect 1.7 acres of existing eelgrass and eelgrass substrate, which will also impact associated fish and wildlife that utilize this habitat for spawning, shelter, and foraging. The indirect impacts are associated with an increase in water velocity flow within the channel downstream of Edinger Bridge. Additional impacts may include sedimentation, turbidity, and scouring to additional eelgrass growing downstream of the channel outlet in Huntington Harbor.

Direct eelgrass habitat impacts from the Project may include excavation adjacent and on the north side of the Warner Avenue bridge resulting in permanent loss of areas of eelgrass habitat (vegetated), and eelgrass potential habitat (unvegetated). This is a potentially significant adverse impact to important marine habitats.

Why impacts would occur: Increased flood water velocities and land excavation may permanently degrade eelgrass habitats over time or directly cause losses of potential eelgrass habitat.

Evidence impacts would be significant: Eelgrass habitat (or vegetated shallows and unvegetated eelgrass habitat) are adjacent to and within the Bolsa Chica Ecological Reserve, Bolsa Bay SMCA, and Bolsa Chica Basin SMCA, an important protected area that needs eelgrass habitat to support fish and wildlife. CDFW manages these protected areas and is responsible for ensuring habitat within or adjacent is not lost. Eelgrass habitat can be considered rare under CEQA (State CEQA Guidelines, § 15380) and is recognized by other state and federal statutes as both highly valuable and sensitive habitat. Eelgrass has been designated as Essential Fish Habitat (EFH) and a Habitat Area of Particular Concern (HAPC) for various fish species under the Magnuson-Stevens Act. Eelgrass is a critical part of the marine ecology and helps to support commercial and recreational fisheries.

Per CEQA Guidelines Section 21081.6(a)(1), CDFW has provided the USACE with a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation and Monitoring Reporting Plan (MMRP; 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 (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

CONCLUSION

We appreciate the opportunity to comment on the Project in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that USACE has to our comments and to receive notification of any forthcoming comment opportunity or hearing date(s) for the Project [CEQA Guidelines; § 15073(e)]. If you have any questions or comments regarding this letter, please contact either Jessie Lane, Environmental Scientist at Jessie.Lane@wildlife.ca.gov or (858) 627-3985 or Loni Adams, Marine Environmental Scientist at Loni.Adams@wildlife.ca.gov or (858) 627-3985.

Sincerely,

Gail Sevrens
Environmental Program Manager
South Coast Region

ec: Christine Medak (U.S. Fish and Wildlife Service)
Becky Ota, Marine Region
Richard Burg, South Coast Region
Scott Morgan, Office of Planning and Research, State Clearinghouse, Sacramento

Attachments:
A. Draft MMRP (CDFW 2020)
B. Belding's Territories March 2013
C. Snowy Plover Habitat Map Bolsa Chica 2015
D. BCER: California Least Tern Nesting Colonies Bolsa Chica 2020

REFERENCES

California Department of Fish and Wildlife. 2012. Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration (MND) for the Warner Avenue Bridge Preventative Maintenance Project, Huntington Beach, CA (SCH# 2012091007).

California Department of Fish and Wildlife. 2018. Comments on the Notice of Preparation of a Draft Integrated Feasibility Report, Environmental Impact Statement / Environmental Impact Report for the Westminster East Garden Grove Study, Orange County, CA (SCH# 2017124001).

California Department of Fish and Wildlife. 2020. Google Image: BCER: California Least Tern Nesting Colonies Bolsa Chica 2020.

Knapp, Peter. 2015. California Department of Fish and Wildlife. Snowy Plover Habitat Map Bolsa Chica 2015.

Merkel and Associates. 2013. Belding's Territories March 2013.

UltraSystems Environmental Inc. 2013. Draft Conceptual Habitat Mitigation and Monitoring Plan: Warner Avenue Bridge Preventative Maintenance Project, BPMPL-5181 (169).

United States Army Corps of Engineers. 2019. Westminster, East Garden Grove Flood Risk Management Study. Integrated Feasibility Report Environmental Impact Statement Draft Environmental Impact Report. Orange County, California. U.S. Army Corps of Engineers, Chicago District, 231 S. LaSalle Street, Suite 1500, Chicago, Illinois 60604. December 2019.

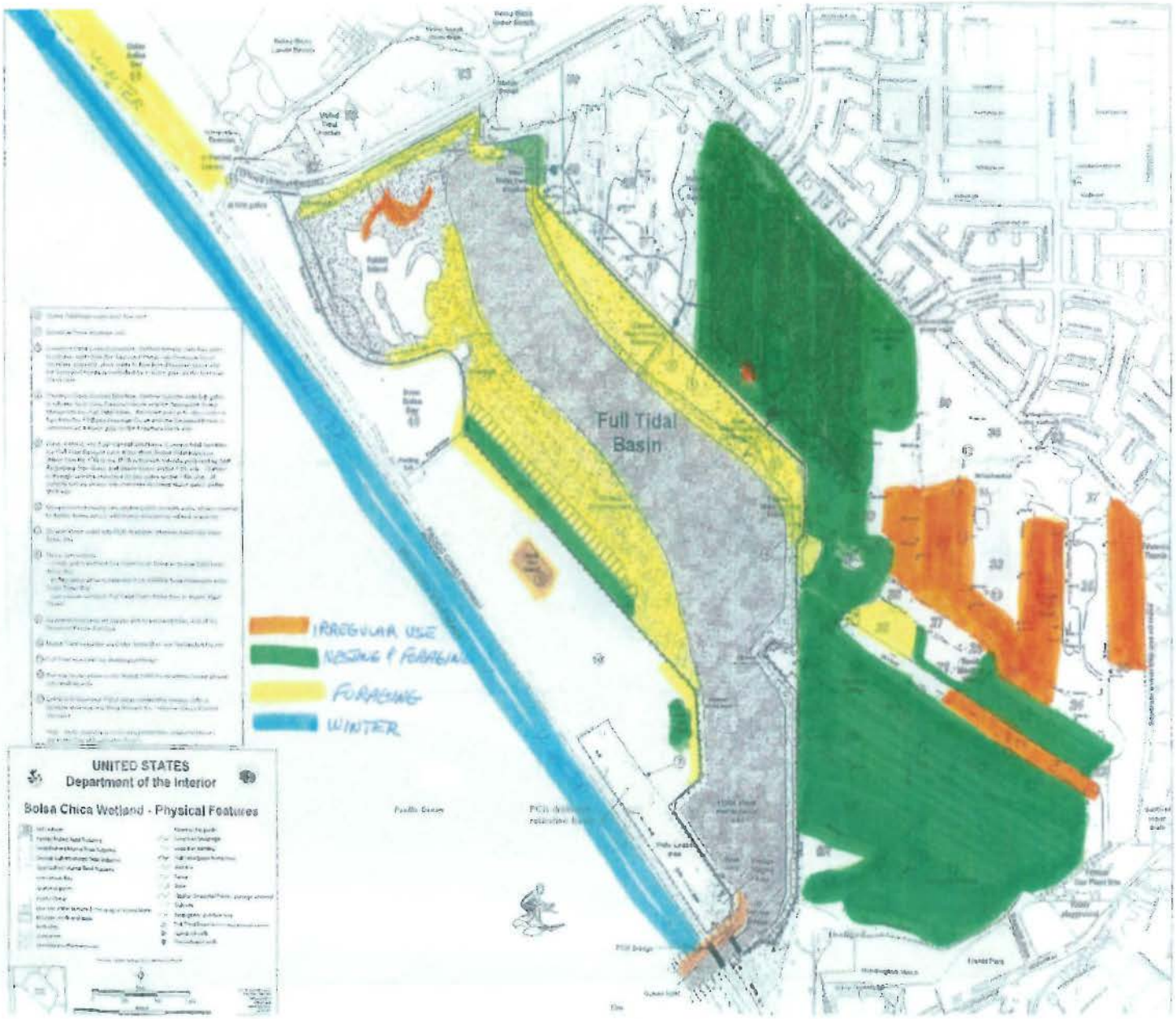
Attachment A:

CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

Biological Resources			
	Mitigation Measures	**Timing**	**Responsible Party**
MM-BIO-1	In order to avoid habitat type conversion, sheet pile will not be installed as part of the Project. If total avoidance of sheet pile installation is not feasible: a. avoidance of sound impacts to nesting birds will be achieved through sheet pile installation outside of the avian breeding season (February 15 through September 15); b. a qualified biologist shall conduct a survey for nesting birds within one week prior to the activity and ensure no nesting birds will be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the activity; and, c. mitigation of permanent impacts as a result of type conversion will be included in the HRMP.	During construction	**USACE, in coordination with the construction contractor**
MM-BIO-2	A trash boom or wheel shall be installed to control flow of trash and debris as a result of C05 channel modification. Pollution prevention infrastructure shall be implemented within the Project footprint and not in conserved habitat areas.	Post Construction	USACE
MM-BIO-3	Project activities will not impact mitigation areas associated with prior projects. Should this be infeasible, USACE will calculate impacts to mitigation areas separate and distinct from other project impacts; such impacts will be mitigated at a 10:1 ratio.	During and Post Construction	**USACE, in coordination with the construction contractor**
MM-BIO-4	Prior to commencement of construction activities, a detailed HRMP will be provided to the Wildlife Agencies for review and approval. The HRMP will be prepared by a qualified biologist and will include: a. location of the mitigation sites; b. figures depicting the mitigation sites; c. plant pallet which will be used for each habitat type (including container sizes and seeding rates); d. planting schedule; e. a description of planting methodology; f. non-native vegetation removal/control strategy; g. specific success criteria; h. monitoring program; i. contingency measures should success criteria not be met; j. identification of the party responsible for meeting the success criteria; k. a designated in-perpetuity land manger; l. land protection instruments to be executed; m. detailed restoration plans for North and South Tern Islands; and, n. agreement with an entity such as OCPW to ensure ongoing trash and waste management in perpetuity.	Prior to Construction	USACE
MM-BIO-5	Pre-construction surveys to determine eelgrass impacts shall be conducted within 60 days prior to construction for eelgrass habitat losses expected in channel 02 outlet. A pre-construction baseline survey for monitoring potential unexpected impacts to Huntington Harbor eelgrass and eelgrass north of the Warner Avenue bridge shall also be conducted.	Prior to Construction	USACE
	Recommendations	Timing	Responsible Party

REC-BIO-1	The Minimal Channel Modifications Plan, as outlined, shall be adopted as the Recommended Plan in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-2	A detailed description and analysis of the reconstruction and/or extension plans for the pedestrian bridge post-widening will be incorporated for public review in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-3	Analysis of upland habitats and the associated impacts to biological resources will be incorporated for public review in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-4	In addition to removal of the tide gates between the C05 channel and Outer Bolsa Bay, the associated culverts will also be removed. In conjunction with this action, the vehicle and recreational access bridge will be lengthened. Impacts of these activities on biological resources will be analyzed and will be incorporated for public review in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-5	Appendix M, Figure 10 shall incorporate survey data provided by CDFW in order to accurately depict nesting sites and roosting colonies for CESA-listed avian species. This new figure shall be analyzed and incorporated for public review in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-6	Impacts to biological resources as a result of trash boom or wheel installation shall be analyzed and will be incorporated for public review in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-7	The CDFW recommends that more detailed information be included in the final EIS/EIR on methods for excavation and construction activities that may occur within or adjacent to the Bolsa Bay SMCA and Bolsa Chica Basin SMCA. This information is needed by the CDFW to determine how the excavation, construction work, tide gate removal, and the eelgrass mitigation site proposal may or may not be in compliance with the Bolsa Bay SMCA and Bolsa Chica Basin SMCA allowable uses described in the California Code of Regulations Title 14 Section 632. The CDFW also recommends the USACE consult with the CDFW regarding potential impacts and allowable uses within the SMCAs.	Prior to, During, and Post Construction	USACE
REC-BIO-8	CDFW recommends that all marine habitats described in the EIS/EIR for the Bolsa Bay SMCA and Bolsa Chica Basin SMCAs include habitat monitoring with adaptive management and mitigation measures to address any identified impacts. A tentative Marine Protected Area mitigation, monitoring, and reporting plan should be developed in collaboration with the CDFW.	Prior to the public review period for the final EIR/EIS, and Prior to Construction	USACE
REC-BIO 9	In order to have accurate estimates of eelgrass impacts, updated eelgrass surveys conducted in compliance with the CEMP should be incorporated for public review in the final EIR/EIS.	Prior to the public review period for the final EIR/EIS	USACE
REC-BIO-10	The CDFW prefers in-kind compensation for eelgrass losses and habitat degradation impacts. Mitigation activities conducted within Bolsa Bay SMCA boundaries for impacts outside the SMCA is not listed as an allowable use under Title 14, Section 630(a)(10). CDFW recommends that the final EIR/EIS include a review of other potential eelgrass mitigation sites and consultation with CDFW. Should mitigation within the Bolsa Bay SMCA be pursued, the CDFW recommends the final EIS/EIR include contingency plans and alternative locations for any activities within the SMCA should the mitigation activity not be successful.	Post Construction	USACE

Attachment B: Belding's Territories March 2013
Attachment C: Snowy Plover Habitat Map Bolsa Chica 2015


Full Tidal Basin
IRREGULAR USE
FORAGING
WINTER
UNITED STATES
Department of the Interior
Bolsa Chica Wetland - Physical Features

Attachment D: BCER: California Least Tern Nesting Colonies Bolsa Chica 2020