



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 South Coast Region
 3883 Ruffin Road
 San Diego, CA 92123
 www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 24, 2020

Elizabeth Shearer-Nguyen
 Senior Environmental Planner
 City of San Diego
 1222 First Avenue, MS 501
 San Diego, CA 92101

Governor's Office of Planning & Research

Jun 26 2020

Dear Ms. Shearer-Nguyen:

STATE CLEARINGHOUSE

Riverwalk (PROJECT)
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
 SCH# 2018041028

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of San Diego (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation (NOP) of the DEIR.

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.

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.), the project proponent may seek related take authorization as provided by the Fish and Game Code. 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Riverwalk

Objective: The 195-acre Project will replace the existing 27-hole Riverwalk golf course with a mixed-use neighborhood that features a Regional River Park along the San Diego River (River). The scope of work includes 4,300 multi-family residential dwelling units; 152,000 square feet of commercial retail space; 1,000,000 square feet of office and non-retail commercial space; approximately 97 acres of park, open space, and trails; adaptive

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.

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reuse of the existing golf clubhouse into a community amenity; and a new Green Line Trolley stop within the development. Modifications to Fashion Valley Road, a street that traverses the River on the east side of the Project site, are expected to provide expanded storm water flow volume, improved emergency response times during storm events with increased north-south vehicular access, and expanded active transportation circulation.

Biological Setting: The Project footprint supports 4.45 acres of southern cottonwood-willow riparian forest, 1.37 acres of disturbed southern cottonwood-willow riparian forest, 3.37 acres of southern willow scrub, 0.17-acre of disturbed southern willow scrub, 3.08 acres of coastal and valley freshwater marsh, 0.14-acre of emergent wetland, 0.89-acre of open water, 6.95 acres of disturbed land, and 174.62 acres of urban/developed land. As a result of the modifications to Fashion Valley Road, the Project will directly impact 0.57-acre of southern cottonwood-willow riparian forest, 0.01-acre of coastal and valley freshwater marsh, and 0.06-acre of open water within the City's Multi-Habitat Planning Area (MHPA). Outside of the MHPA, 0.05-acre of disturbed southern willow scrub will be impacted. These impacts will be mitigated through the creation of 0.21-acre of freshwater marsh, 0.57-acre of southern cottonwood-willow riparian forest, and enhancement of 1.14 acres of southern cottonwood-willow riparian forest in the Riverwalk Project Wetland Mitigation area. Though not mitigation, the Wetland Restoration Plan describes enhancing 11.54 acres of wetland habitat, creating 13.32 acres of new wetland habitat, and restoring 0.30-acre of wetland habitat along the River channel in order to comply with Guideline B15 in the City's SAP. This guideline states that, "*Native vegetation shall be restored as a condition of future development proposals along this portion of the San Diego River corridor.*"

The Project supports the Endangered Species Act (ESA)-listed, CESA-listed, and MSCP-covered species: light-footed clapper rail (*Rallus obsoletus levipes*); MSCP-covered, State Watch List: Cooper's hawk (*Accipiter cooperii*); California Species of Special Concern (SSC): Vaux's swift (*Chaetura vauxi*), Clark's marsh wren (*Cistothorus palustris clarkae*), and yellow-breasted chat (*Icteria virens*); CSS, Federal Bird of Conservation Concern (FBCC): yellow warbler (*Setophaga petechia*); CESA-listed, FBCC, and MSCP Covered Species: willow flycatcher (*Empidonax traillii*); MSCP covered: western bluebird (*Sialia mexicana*), and State Watch List species: osprey (*Pandion haliaetus*), and the double-crested cormorant (*Phalacrocorax auritus*). The ESA-listed, CESA-listed, and MSCP covered least Bell's vireo (*Vireo bellii pusillus*), was observed approximately 350 meters to the west of the Project footprint. No sensitive plant species were observed on site.

Location: The 195-acre Project is located at 1150 Fashion Valley Road in Mission Valley and is currently developed with the 27-hole Riverwalk golf course. Regional access is provided by Interstate 8 directly south, State Route 163 located approximately one mile east, and Interstate 5 located less than two miles west. Locally, the site is bordered by Friars Road to the north, Fashion Valley Road to the east, and Hotel Circle to the south. The Project is located within the City's MSCP. A portion of the MHPA occurs within the central portion of the site over portions of the River.

Timeframe: The development of Riverwalk is set to occur in three phases over a period of approximately 10 to 15 years. The full buildout of the Project is expected by 2035.

COMMENTS AND RECOMMENDATIONS

CDFW provided prior comments to the City on the NOP on May 8, 2018. CDFW recommended an increase of the buffer width along the River channel and associated riparian habitat to protect the biological resources found within and to maintain the functionality of the River corridor for wildlife movement between core resource areas. Additional recommendations included orienting development away from the River to reduce avian collisions with reflective windows, strict adherence to the MHPA adjacency guidelines required by the MSCP (Section 1.4.3), and demonstrating how the City's underlying planning documents and discretionary approvals will be amended as a result of the Project scope.

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CDFW offers the comments and recommendations below to assist City 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: Wetland Buffer

Issue: The DEIR identifies mixed-use development adjacent to the 50-foot no-use buffer on the north side of the River channel. CDFW advocated for the widening of this buffer in the May 8, 2018 NOP comment letter to the City. While the Project is consistent with the San Diego River Park Master Plan (no development within the 100-foot River floodway and a minimum of a 35-foot no-use buffer adjacent to the floodway), CDFW continues to support widening the buffer along the northern reach of the River between sensitive habitat and development.

Specific impact: CDFW is concerned about the potential Project-related direct and indirect effects on the River, the sensitive habitat it supports, and on the adjacent transitional/upland habitat (including sensitive species that occur in both the riparian and transitional/upland habitats). Specific concerns include possible conflicts resulting from wildlife-human interactions at the interface between the proposed development and the northern wetland buffer. These conflicts include encroachment by humans, domestic animals, line-of-sight disturbances, noise, light, glare, and shading.

Wetland buffers are crucial for the protection of riparian habitat in urban areas and maintaining biodiversity (Semlitsch and Bodie 2003). They provide numerous functions, including: (a) expansion of the habitat's biological values; (b) protection from direct disturbance by humans and domestic animals; and (c) reduction of edge effects from, for example, artificial noise and light, line-of-sight disturbances, invasive species, and anthropogenic nutrients and sediments. Determining an adequate buffer width requires considering that edge effects can penetrate up to 650 feet into habitat (CBI 2000). In order to fulfill their primary function of protecting wetlands and the faunal species they support, buffers to wetland habitats are primarily comprised of upland vegetation. They should be adjacent to and not include any of the wetlands they are trying to protect.

Edge effects are defined as undesirable anthropogenic disturbances beyond urban boundaries into potential reserve habitat (Kelly and Rotenberry 1993). Edge effects, such as disturbance by humans and non-native predators (pets), exotic ants, trampling, noise, and lighting, and decreases in avian productivity (Andren and Angelstam 1988), are all documented effects that have negative impacts on sensitive biological resources in southern California. Surrounding natural habitat could be permanently destroyed by human or domestic animal encroachment, trampling, bushwacking, and frequent fires; therefore, development and open space configurations should minimize adverse edge effects (Soule 1991).

Recommendation #1:

To minimize significant impacts: CDFW recommends the final EIR adopt the Reduced Development Intensity – Operational Air Quality Impact Avoidance and Minimized Historical/Tribal Cultural Resources Impacts Alternative, which removes development that is currently proposed directly north and adjacent to the 50-foot no-use buffer and River channel. This alternative would still require wetland creation mitigation for 0.64-acre of direct impacts to wetland habitat, along with wetland restoration following Guideline B15 in the City's SAP, in association with improvements to Fashion Valley Road; however, the buffer between development and the northern reach of the River would be increased. With a larger buffer surrounding the River, the entire riparian corridor and upland habitat is less likely to be negatively impacted by edge effects and function more successfully as a wildlife corridor.

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COMMENT #2: Bird Collisions with Windows

Issue: The northern area of the Project adjacent to the 50-foot no-use buffer is zoned for mixed-use residential and commercial. Table 5.3-1 Riverwalk Application of Mission Valley Community Plan Applicable Design Guidelines states that, *“For building facades facing the San Diego River on buildings within the River Influence Area, oversized windows or balconies shall be provided for each residential unit.”* Windows oriented towards the River corridor and are highly reflective and transparent create a lethal illusion of clear airspace that birds do not see as a barrier. As birds are foraging during the day, they see reflections of the landscape in the glass and perceive it as habitat, leading to avian mortality through collisions with the windows.

Specific impact: The specific impact is the take of bird species through fatal window collisions.

Recommendation #2:

To minimize significant impacts: While the DEIR does mention the City will consult with the American Bird Conservancy Bird-Friendly Design guidelines, CDFW recommends the City also review Reducing Bird Collisions with Buildings and Building Glass Best Practices written by the U.S. Fish and Wildlife Service (2016). There are several different measures that can be used to minimize the potential for bird collisions. These include using ultraviolet patterned glass, incorporating some type of visual signal or cue to help birds detect and avoid glass, adding screens, or installing an external film on the glass.

COMMENT #3: Development of the Active Park

Issue: The DEIR identifies a 45.6-acre active park that would surround the passive park area (riparian restoration area along the River channel and a 50-foot no-use wetland buffer). The active park is anticipated to include walking trails, a sports court, soccer field, softball field, dog park, and an amphitheater. Figure 3-5 in the DEIR mentions that the design of the active park is still under development and will be finalized per a Future Development Plan. The active park will be within 50 to 550 feet from the MHPA, which has Land Use Adjacency Guidelines (Section 1.4.3 MSCP SAP). These Guidelines state that *“Land uses adjacent to the MHPA will be managed to ensure minimal impacts to the MHPA.”* Indirect effects include those from drainage, toxics, lighting, noise, barriers, invasive species, and brush management. All these effects can be detrimental to the natural environment and ecosystem processes within the MHPA. For example, studies have documented that avian species nest further away from light sources. With a reduction in available nesting habitat and the potential selection of suboptimal nest sites, these species can become more vulnerable to predation, weather, or cowbird parasitism (de Molenaar et al 2000).

Specific impact: While the active park will only be open from dawn until dusk, the proposed uses for the active park still need to be configured in such a way as to minimize impacts from noise, lighting, and human and domestic animal encroachment into the MHPA and River channel.

Mitigation Measure #1:

To minimize significant impacts: While the draft EIR states that, *“Active park uses would not occur adjacent to the MHPA, including the dog parks that would be fenced,”* CDFW reiterates how important it is to locate the dog parks the furthest distance away possible from the MHPA. In reference to the amphitheater, the draft EIR states that, *“Of the above, the amphitheater has the highest potential to produce excessive noise that could have an adverse effect on wildlife within the MHPA. Because the facility location and design are unknown, this is regarded as a potentially significant secondary land use impact to biological resources associated with noise.”* The removal of the amphitheater as a current design element of the active park would remove several potentially significant impacts to the MHPA (lighting and noise). CDFW would

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appreciate the opportunity to provide feedback on biological issues once the design for the active park has been fully developed.

CDFW recommends that a mitigation measure be included that reads as follows:

To minimize disturbance to sensitive bird species, the amphitheater should be removed from the active park design and the dog parks located the furthest distance away possible from the MHPA within the active park. CDFW will have the opportunity to provide feedback on biological resources issues once the design for the active park has been fully developed.

COMMENT #4: Brush Management

Issue: In 2009, a fire risk zone map was established for San Diego County in coordination between the San Diego Fire Department and Cal-Fire. A portion of the Project is mapped as a Very High Fire Hazard Severity Zone (VHFHSZ). Per Chapter 14: General Regulations, Division 4: Landscape Regulations of the San Diego Municipal Code, standard brush management zones consist of a 35-foot Zone One with a corresponding 65-foot Zone Two measured from the façade of habitable structures. There can be modifications to these two zones where Zone One is expanded to 79 feet and Zone Two reduced to zero feet. In the DEIR on page 5.16-16 it states that, *“Development within Lots 36 through 40 would be separated from the native and naturalized condition by a brush management Zone One varying from 25 feet to 79 feet with no Zone Two, and therefore subject to alternative compliance.”* The DEIR does not specify what the alternative compliance measures are, and a brush management Zone One less than 79 feet is inconsistent with the City’s Municipal Code.

Specific impact: There is the potential for destruction of sensitive habitat along the River corridor if a fire occurs in the developed areas of Riverwalk without a sufficient brush management zone to contain the spread.

Mitigation Measure #2:

To minimize significant impacts: CDFW recommends that a mitigation measure be included that reads as follows:

Zone One should be no less than a minimum of 79 feet to be consistent with the City’s Municipal Code.

II. Mitigation Measure and Related Impact Shortcoming

COMMENT #5: Bird Nesting Avoidance Measures

Issue: Section 5.4. Biological Resources, I. Prior to Construction, E. Avian Protection Requirements in the DEIR states that, *“the pre-construction survey shall be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation).”* There is no mention of the size of the area to be surveyed. Section 5.4 continues to state that, *“If nesting Clark’s marsh wren, Cooper’s hawk, double-crested cormorant, yellow warbler, yellow breasted chat, western bluebird, least Bell’s vireo, southwestern willow flycatcher, and the light-footed Ridgway’s rail are detected, a letter report or mitigation plan in conformance with the City’s Biology Guidelines and applicable State and Federal Law...shall be prepared and include proposed measures to be implemented to ensure that take of birds or eggs or disturbance of breeding activities in avoided. The report or mitigation plan shall be submitted to the City for review and approval and implemented to the satisfaction of the City.”* It is important that CDFW review the report or mitigation plan and provide approval in coordination with the City as these avian species are considered sensitive per the City’s Municipal Code (Chapter 11, Article 3, Division 1). Species are considered sensitive that are ESA and/or CESA-listed, a Covered Species under the MSCP, a Narrow Endemic as listed in the City’s Biology Guidelines, on CDFW’s Special Animals List, or a FBCC.

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Specific impact: The specific impact would be the potential take of birds or eggs or disturbance of breeding activities.

Mitigation Measure #3:

To minimize significant impacts: CDFW recommends that a mitigation measure be included that reads as follows:

To avoid impacts to nesting birds, preconstruction nesting surveys should be conducted by a qualified biologist no more than three days prior to the initiation of construction activities. The survey area shall cover the limits of disturbance and 300 feet (500 feet for raptors) from the area of disturbance.

Per CEQA Guidelines Section 21081.6(a)(1), CDFW has provided the City 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 (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would 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 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 DEIR to assist the City of San Diego in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Melissa Stepek, Senior Environmental Scientist at (858) 637-5510 or Melissa.Stepek@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erinn Wilson-Olgin

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Erinn Wilson

Environmental Program Manager

Attachment A: Draft MMRP (CDFW 2020)

cc: Office of Planning and Research, State Clearinghouse, Sacramento
David Zoutendyk, U.S. Fish and Wildlife Service, Carlsbad

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REFERENCES

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Attachment A:

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

Biological Resources			
	Mitigation Measures	Timing	Responsible Party
REC-BIO-1	The Reduced Development Intensity – Operational Air Quality Impact Avoidance and Minimized Historical/Tribal Cultural Resources Impacts Alternative shall be adopted as the Recommended Plan in the final EIR.	Prior to the public review period for the final EIR	City of San Diego
REC-BIO-2	To reduce the likelihood of bird collisions with windows, CDFW recommends using ultraviolet patterned glass, incorporating some type of visual signal or cue to help birds detect and avoid glass, adding screens, or installing an external film on the glass.	During construction	City of San Diego
MM-BIO-1	To minimize disturbance to sensitive bird species, the amphitheater should be removed from the active park design and the dog parks located the furthest distance away possible from the MHPA within the active park. CDFW will have the opportunity to provide feedback on biological resources issues once the design for the active park has been fully developed.	Before construction	City of San Diego
MM-BIO-2	To be consistent with the City's Municipal Code, Zone One around the northern development areas that border the River corridor should be increased to a minimum of 79 feet.	Before construction	City of San Diego
MM-BIO-3	To avoid impacts to nesting birds, preconstruction nesting surveys should be conducted no more than three days prior to the initiation of project activities. The survey area shall cover the limits of disturbance and 300 feet (500 feet for raptors) from the area of disturbance.	Before construction	City of San Diego in coordination with the qualified biologist