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GAVIN NEWSOM, Governor
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May 31, 2019

Governor's Office of Planning & Research

Mr. Hal Ghafari
 City of Laguna Niguel
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 Laguna Niguel, CA 92677
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May 31, 2019

STATE CLEARINGHOUSE

Subject: Comments on the Notice of Intent to Adopt a Mitigated Negative Declaration for the Laguna Niguel Wetlands Operations and Maintenance Project, Laguna Niguel, CA (SCH# 2019049141)

Dear Mr. Ghafari:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Laguna Niguel Wetlands Operations and Maintenance Project Mitigated Negative Declaration (MND), dated April 2019. The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA], Guidelines §15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning program.

The project describes Operations and Maintenance (O&M) activities at 13 wetland sites within the City of Laguna Niguel (City). These activities include: removing vegetation and accumulated sediment around outfalls, risers, culverts, and bridge crossings; establishing pilot channels to facilitate positive flow and maintain flood capacity; removing non-native vegetation; and trimming the understory of riparian vegetation below the tree canopy in order to prevent obstruction of flow.

Of the 13 wetland sites, 12 are located within the Sulphur Creek sub-watershed, which is part of the larger Aliso Creek watershed system in Orange County, while one site lies within the Salt Creek watershed to the south (site 13). Aliso and Wood Canyons Wilderness Park is located less than a mile to the southwest of the project area. The majority of habitat types at the sites are riparian in nature with surrounding upland vegetation communities. Five sensitive avian species were observed within the project area: least Bell's vireo (*Vireo bellii pusillus*; CESA and Endangered Species Act [ESA]-listed endangered), southwestern willow flycatcher (*Empidonax traillii extimus*; CESA and ESA-listed endangered), yellow warbler (*Setophaga petechial*; California Species of Special Concern [SSC]), yellow-breasted chat (*Icteria virens*; SSC), and coastal California gnatcatcher (*Polioptila californica*; ESA listed-threatened). According to the Biological Technical Report, potential exists for the following sensitive plant species to occur on site: California satintail (*Imperata brevifolia*; California Rare Plant Rank [CRPR] 2B.1), mud nama (*Nama stenocarpa*; CRPR 2B.2), and

thread-leaved brodiaea (*Brodiaea filifolia*; ESA listed-threatened, CESA listed-endangered; CRPR 1B.1).

Our primary concerns regarding the proposed project are potential impacts to sensitive species, the mitigation history of the project area, and the potential use of rodenticides in O&M activities. We offer the following comments and recommendations to assist the City of Laguna Niguel (City) in avoiding or minimizing potential project impacts on biological resources.

1. The Department considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the proposed project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). With respect to CESA, the MND states that the proposed project may result in permanent impacts, via vehicular collisions, with CESA-listed endangered least Bell's vireo and southwestern willow flycatcher: "[p]ermanent impacts on SWFLs may also occur because of vehicular collisions, which occur most frequently during the vegetation clearing and involve eggs, nestlings, and recently fledged young that cannot safely avoid equipment. Permanent impacts may also occur because of nest loss due to removal of the nesting substrate" (pp. 3-16 and 3-17).

As described in the MND, the proposed project is likely to result in take of CESA-listed species and/or their habitat. If the proposed project, project construction, or any project-related activity during the life of the proposed project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b), (c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, the MND, biological mitigation monitoring, and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

2. Appendix B of the Biological Technical Report describes southern steelhead (*Oncorhynchus mykiss irideus*; steelhead; ESA-listed endangered) as having no potential to occur within the project area because the wetland sites do not have suitable habitat for this species (Biological Technical Report, Appendix B, page B-1). On March 13, 2019, the Department and National Marine Fisheries made a probable observation of juvenile steelhead in Aliso Creek directly downstream of the Interstate 5 (I-5) bridge at Aliso Creek. They also observed suitable, restorable steelhead habitat upstream and downstream of the I-5 bridge. This is consistent with historic anecdotal evidence that previously identified steelhead presence downstream.

Given that sites 1 and 2 are unnamed tributaries to Aliso Creek, and sites 3-12 are within Sulphur Creek—also a tributary to Aliso Creek, we strongly encourage the City to revisit its analysis of steelhead's potential to occur within the project area, and request that the MND include an in-depth discussion of steelhead in the Biological Resources section of Chapter 3: Environmental Checklist.

3. According to the Section IV: Biological Resources of the draft MND, no focused sensitive plant surveys were conducted, despite suitable habitat for California satintail, mud nama, and thread-leaved brodiaea being "...present within the wetland sites, and these species have a moderate potential to occur based on distance from known population and quality of habitat (including surrounding development and disturbances)" (page 3-15). Based on the existing suitable habitat conditions and data provided from a general vegetation survey which occurred at the end of thread-leaved brodiaea's blooming period (Biological Technical Report, page 2-3), it is unclear that the project would result in less than significant impacts to sensitive plant species. In order to ensure that impacts to sensitive plant species will be less than significant, the Biological Technical Report should include recent, focused, Special Status Native Plant Populations and Natural Communities surveys (see <https://www.wildlife.ca.gov/Conservation/Plants/Info>), conducted at the appropriate time of year, when the species are identifiable.

The MND should also include a mitigation measure(s) which includes pre-construction surveys for sensitive plant species, conducted within the species' blooming period and prior to beginning O&M activities, to ensure no take of CESA-listed species (i.e., thread-leaved brodiaea) or any sensitive plant species will result from the project activities, except as authorized by state law (Fish and Game Code, §2080). Appropriate authorization from the Department may include an incidental take permit or a consistency determination (in certain circumstances) among other options (Fish and Game Code §§ 2080.1, 2081, subds. (b)(c)).

4. Mitigation Measure MM-BIO-2 describes the in-perpetuity preservation of 11 of the 13 wetland sites through a permanent protection mechanism, and commits to the rehabilitation of up to 2.37 acres of wetland and riparian habitat within site 13 (page 3-21). The MND should include a discussion of these elements in relationship to Table 4.1 and Table 4.3 provided in the Biological Technical Report (pages 4-2 and 4-3), which describe permanent impacts to the 13 wetland sites. For example, the MND's analysis should demonstrate how rehabilitating 2.37 acres of wetland and riparian habitats is appropriate to mitigate 4.26 acres of permanent impacts to riparian vegetation communities. The MND should also provide an analysis concerning the mitigation of 7.02 acres of upland vegetation communities, as described in Table 4-1, to a level below significance. While the preservation and restoration efforts in MM-BIO-2 may or may not be appropriate to offset temporary and permanent impacts, the Department will evaluate the adequacy of these at the time the project applicant formally submits a streambed notification package to the Lake and Streambed Alteration Program of the Department.

5. With regard to O&M activities, the Department has the following recommendations in order to avoid and minimize impacts to biological resources:
 - a. vegetation should only be removed immediately upstream and downstream of a structure and should not exceed five feet from the structure, as the presence of willows and other emergent vegetation adjacent to the openings of culverts and other structures protects banks from scour and erosion. Emergent vegetation also provides habitat and resting space for birds and aquatic animals;
 - b. removal of accumulated sediment should be limited to no lower than existing streambed elevation; and,

trees should only be trimmed up to the water surface elevation of a 2-year storm event in order for sufficient cover to remain to shade the creek and keep water temperatures down during summer months, and not all emergent vegetation should be removed under the canopy. At a minimum, vegetation along the toe of the banks should be left in place in order to prevent scour and erosion.

We recommend these limits on O&M activities be incorporated into the O&M Plan in Appendix A in the MND, and be included as a mitigation measure or measures in the MND, if appropriate.

6. Environmental Commitment EC-BIO-11 states that, “rodents and pests will be controlled as necessary to limit excessive damage to native areas or adjacent ornamental landscaping.” The environmental analysis does not disclose whether rodenticides and other chemicals will be used in this effort, nor does it analyze rodenticides as a potential significant impact to biological resources—particularly with regard to raptors and mammalian species. The Department discourages the use of rodenticides and encourages the use of non-chemical practices for rodent control, particularly given the project area is within the Aliso Creek watershed and its proximity to the Aliso and Wood Canyons Wilderness Park. We recommend that the MND identify the methods to be used to control rodents. If the project proposes to approve the use of rodenticides, the MND should also include a thorough discussion of the potential impact of rodenticides and other chemicals associated with O&M activities on biological resources, including indirect and cumulative impacts to wildlife in open space. The MND should also include a mitigation measure or measures that bring this impact below significant with mitigation (e.g., the use of non-chemical practices for rodent control), if applicable.
7. The Department thanks the City for their dedication to reestablishing historic habitat values and functions associated with riparian and wetland systems in Laguna Niguel. On page 2-7, the Project Description states that, “...the restoration project was not provided as compensatory mitigation for impacts on wetlands or riparian areas but was voluntarily undertaken.” Mitigation measure MM-BIO-2, however, states that wetland sites 3 and 4 are, “...either previous mitigation sites or will be affected fully.” The

Department requests clarification on the mitigation history of the 13 wetland sites within the project area in the MND, and we also request clarification on what is intended by the phrase, "affected fully." Please also describe which wetland site is a previous mitigation site (specifying which project it is mitigation for) and which wetland site will be "affected fully." Finally, the MND should clarify whether the City anticipates using the wetland sites for any advanced mitigation or for mitigation banking purposes. Any mitigation banking or advance mitigation proposals intended to meet Department mitigation goals or requirements should be discussed in advance with the Department's South Coast Region Banking Coordinator. Mitigation banking inquiries may be directed to the Department's South Coast Region Banking Coordinator at (858) 627-3997.

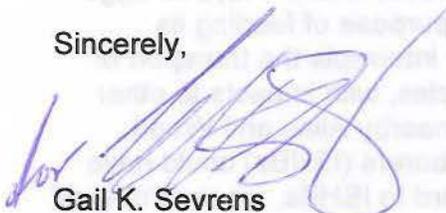
8. We encourage the City to analyze the potential for Polyphagous and Kuroshio shot hole borers (ISHBs) in the MND, and to require monitoring of vegetation which may be infested with ISHBs within the project area. ISHBs are invasive ambrosia beetles that introduce fungi and other pathogens into host trees. The adult female (1.8-2.5 mm long) tunnels galleries into the cambium of a wide variety of host trees, where it lays its eggs and propagates the *Fusarium* fungi species for the express purpose of feeding its young. These fungi cause *Fusarium* dieback disease, which interrupts the transport of water and nutrients in at least 58 reproductive host tree species, with impacts to other host tree species as well. With documented occurrences in nearby Aliso and Wood Canyons Wilderness Park, the spread of invasive shot hole borers (ISHBs) could have significant impacts in local ecosystems. Therefore, with regard to ISHBs, we recommend the MND include the following:
 - a. a thorough discussion of the direct, indirect, and cumulative impacts that could occur from the potential spread of ISHBs as a result of proposed activities in the MND;
 - b. an analysis of the likelihood of the spread of ISHBs as a result of the invasive species' proximity to above referenced activities;
 - c. figures that depict potentially sensitive or susceptible vegetation communities within the project area, the known occurrences of ISHB within the project area (if any), and ISHB's proximity to above referenced activities; and
 - d. a mitigation measure or measure(s) within the MND that describe Best Management Practices (BMPs) that bring impacts of the project on the spread of ISHB below a level of significance. Examples of such BMPs include:
 - i. education of on-site workers regarding ISHB and its spread;
 - ii. reporting sign of ISHB infestation, including sugary exudate ("weeping") on trunks or branches and ISHB entry/exit-holes (about the size of the tip of a ballpoint pen), to the Department and UCR's Eskalen Lab;
 - iii. equipment disinfection;
 - iv. pruning infected limbs in infested areas where project activities may occur;
 - v. avoidance and minimization of transport of potential host tree materials;
 - vi. chipping potential host materials to less than 1 inch and solarization, prior to delivering to a landfill;

- vii. chipping potential host materials to less than 1 inch, and solarization, prior to composting on-site;
- viii. solarization of cut logs; and/or
- ix. burning of potential host tree materials.

Please refer to UCR's Eskalen lab website for more information regarding ISHBs:
<http://eskalenlab.ucr.edu/pshb.html>.

We appreciate the opportunity to comment on the MND for this project and to assist the City in further minimizing and mitigating project impacts to biological resources. The Department requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of the forthcoming hearing date for the project (CEQA Guidelines; §15073(e)). If you have any questions or comments regarding this letter, please contact Jennifer Turner of the Department at (858) 467-2717 or via email at jennifer.turner@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager

cc: Christine Medak (U.S. Fish and Wildlife Service)
Scott Morgan (State Clearinghouse)

References

California Native Plant Society, Rare Plant Program. 2019. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org> [accessed 22 May 2019].

ICF. 2019. Laguna Niguel Wetlands Operations and Maintenance Project Draft Initial Study/Mitigated Negative Declaration. April. (ICF 357.16.) Irvine, CA. Prepared for the City of Laguna Niguel, Laguna Niguel, California.

ICF. 2017. Biological Technical Report for the Laguna Niguel Wetlands Operations and Maintenance Activities Project. Draft. November. (ICF 00357.16.) San Diego, CA. Prepared for the City of Laguna Niguel, CA