



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 82123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

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Claudia Reyes
City of Burbank, Burbank Water and Power
164 W. Magnolia Blvd
Burbank, CA 91502
CSReyes@burbankca.gov

STATE CLEARINGHOUSE

Subject: Burbank Water and Power Campus Stormwater Improvement Project, SCH # 2019129091, Los Angeles County

Dear Ms. Reyes:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Burbank Water and Power Campus Stormwater Improvement Project (Project). The Project's supporting documentation includes a Draft Initial Study/Mitigated Negative Declaration (Initial Study) including a Biological Resources Assessment (Assessment). 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'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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game 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 & Game Code, § 2050 et seq.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, § 1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

Project Description and Summary

Objective: The Project seeks to divert storm water from adjacent properties to the north into a new 36-inch diameter storm drain before it runs on to the Burbank Water and Power Campus (BWPC). The new storm drain would be constructed within the right-of-way of North Varney Street and would terminate in a new drainage outfall into the Burbank Western Channel (BWC), approximately 950 feet north of the current outfall.

The stormwater drainage on BWPC will collect discharge as it currently does without receiving additional run-off from the adjacent property. Onsite drainage improvements would consist of diverting flow from an existing 36-inch diameter pipe into an on-site filter, then into an underground vault within the northeast portion of the BWPC. The proposed vault location is presently paved with an asphalt concrete surface that would be removed and replaced after construction of the vault. Following completion of the above improvements, drainage from the BWPC would flow through the filters and into the vault and not the existing BWC outfall. The treated storm water would either be used for cooling tower make-up water or infiltrated into the ground, or a combination of the two. The Project would involve adding a new storage facility, pump and control housing, pretreatment system, and catch basin to the existing storm drain outfall that discharges into the BWC.

Location: The Project site is located within downtown Burbank in Los Angeles, California (Assessor Parcel Numbers [APN] 2451-011-900, 2451-009-900, 2451-009-902, and 2451-009-901). The approximately 24-acre Project site is comprised of a series of buildings and associated parking lots utilized by the BWPC. Much of the proposed changes occur along the northwestern border and northeastern corner of the Project site.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the City of Burbank (City) in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

Project Description and Related Impact Shortcoming

Comment #1: Impacts to Streams

Issue: The Initial Study states, "The Project includes installation of a reinforced concrete pipe outflow to divert discharge from the adjacent property into the BWC instead of the stormwater system of the BWPC". Project activities may result in loss of stream flow and the deposition or disposal of materials into BWC during construction, therefore, may be subject to notification under Fish & Game Code section 1600 *et seq.*

Specific impacts: The Project activities may require notification prior to conducting activities that may change the bank, bed, or channel. In addition, the Project has potential to impact BWC function and biological diversity.

Why impacts would occur: Installation of a culvert and construction activities related to the installation of this new outflow could potentially impact the BWC and be considered significant. Downstream streams and associated biological resources beyond the Project development footprint may also be impacted by Project related releases of sediment and altered watershed effects resulting from Project activities.

Evidence impacts would be significant: The Project may substantially adversely affect the existing stream pattern through the alteration or diversion of BWC, as well as during construction activities. These impacts, absent specific mitigation, could result in siltation on site or off site of the Project. Undersized culverts and other stream crossings can also cause downstream channel erosion and tributary head-cutting, reduced magnitude and frequency of high flows, and channel narrowing (Poff et al. 1997). Additionally, these structures can degrade water quality and associated wildlife habitats (Santucci, Jr. et al. 2005). Sediment in streams can also make the water cloudy which decreases the ability of organisms to photosynthesize (Mallery 2010). Which may substantially adversely affect the existing habitats downstream and associated habitats from the Project site.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: The Project may result in the alteration of streams. For any such activities, the Project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish & Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSA) with the applicant is required prior to conducting the proposed activities. A notification package for a LSA may be obtained by accessing CDFW’s web site at www.wildlife.ca.gov/habcon/1600.

CDFW’s issuance of an LSA for a Project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream, or riparian resources, or biological resources beyond the Project development footprint and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.

Mitigation Measure #2: Any LSA Agreement issued for the Project by CDFW may include additional measures protective of streambeds on and downstream of the Project. The LSA may include further erosion and pollution control measures. To compensate for any on-site and off-site impacts to riparian resources, additional mitigation conditioned in any LSA may include the following: avoidance of resources, on-site or off-site creation, enhancement or restoration, and/or protection and management of mitigation lands in perpetuity.

Mitigation Measure #3: CDFW recommends the Project proponent actively implement Best Management Practices (BMPs) to prevent erosion and the discharge of sediment and pollutants into BWC during Project activities. BMPs should be monitored and repaired if necessary, to ensure maximum erosion, sediment, and pollution control. The Project proponent should

prohibit the use of erosion control materials potentially harmful to fish and wildlife species, such as mono-filament netting (erosion control matting) or similar material, within stream areas. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the Project site should be free of nonnative plant materials. Fiber rolls or erosion control mesh should be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.

Comment #2: Impacts to nesting birds

Issue: The Initial Study states, “the Project has the potential to impact special-status and non-special-status native nesting birds protected by California Fish and Game Code and guidelines for protection provided by the Migratory Bird Treaty Act (MBTA). Project activities such as vegetation removal and ground disturbance associated with Project activities would have the potential to affect these species by causing direct mortality of eggs or young, or by causing auditory, vibratory, and/ or visual disturbance of a sufficient level to cause abandonment of an active nest.”

Specific impacts: Construction during the breeding season of nesting birds could result in the incidental loss of fertile eggs or nestlings or otherwise lead to nest abandonment in trees on the Project boundary. The Project could also lead to the loss of foraging habitat for bird species.

Why impact would occur: Impacts to nesting birds could result from vegetation clearing and other ground disturbing activities. Project disturbance activities could result in mortality or injury to nestlings, as well temporary or long-term loss of suitable foraging habitats. Construction during the breeding season of nesting birds could result in the incidental loss of breeding success or otherwise lead to nest abandonment.

Evidence impact would be significant: The loss of occupied habitat or reductions in the number of rare bird species, either directly or indirectly through nest abandonment or reproductive suppression, would constitute a significant impact absent appropriate mitigation. Furthermore, nests of all native bird species are protected under state laws and regulations, including Fish & Game Code sections 3503, and 3503.5.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure: To protect nesting birds that may occur on-site, CDFW recommends that the final environmental document include a measure that no construction shall occur from February 15 through August 31. If construction during this period must occur, a qualified biologist shall complete a survey for nesting bird activity within a 500-foot radius of the construction site. The nesting bird surveys shall be conducted at appropriate nesting times and concentrate on potential roosting or perch sites. If any nests of birds of prey are observed, they shall be designated an ecologically sensitive area and protected (while occupied) by a minimum 500-foot radius during Project construction.

Comment #3: Impacts to Bat Species

Issue: The Project includes activities that will result in the removal of trees that may provide habitat for bats. In addition, according to the California Natural Diversity Database (CNDDB)

and Figure 4 in the Assessment, there are historical occurrences of big free-tailed bat (*Nyctinomops macrotis*) and hoary bat (*Lasiurus cinereus*) within the Project vicinity.

Specific impacts: Project activities include the removal of trees and/or structures that may provide maternity roost habitat (e.g., in cavities or under loose bark), and therefore has the potential for the direct loss of bats.

Why impacts would occur: The removal of trees, buildings or other adequate structures will potentially result in the loss of habitat for bats.

Evidence impacts would be significant: Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish & Game Code, § 4150; California Code of Regulations, § 251.1). Bat species, such as the western yellow bat, can be found year-round in urban areas throughout the south coast region (Miner & Stokes, 2005). Several bat species are considered California Species of Special Concern and meet the CEQA definition of rare, threatened or endangered species (CEQA Guidelines, § 15065). Take of California Species of Special Concern could require a mandatory finding of significance by the Lead Agency (CEQA Guidelines, § 15065).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure: To the extent feasible, tree removal or relocation should be scheduled between October 1 and February 28, outside of the maternity roosting season. Maternity season lasts from March 1 to September 30. Trees and/or structures determined to be maternity roosts should be left in place until the end of the maternity season.

If trees and/or structures must be removed during the maternity season (March 1 to September 30), a qualified bat specialist should conduct a pre-construction survey to identify those trees and/or structures proposed for disturbance that could provide hibernacula or nursery colony roosting habitat for bats. CDFW recommends the use of acoustic recognition technology to maximize detection of bat species to minimize impacts to sensitive bat species. Each tree and/or structure identified as potentially supporting an active maternity roost should be closely inspected by the bat specialist no greater than 7 days prior to tree disturbance to more precisely determine the presence or absence of roosting bats.

If bats are not detected, but the bat specialist determines that roosting bats may be present at any time of year, it is preferable to push any tree down using heavy machinery rather than felling it with a chainsaw. In order to ensure the optimum warning for any roosting bats that may still be present, the tree should be pushed lightly two to three times, with a pause of approximately 30 seconds between each nudge to allow bats to become active. The tree should then be pushed to the ground slowly and should remain in place until it is inspected by a bat specialist. Trees that are known to be bat roosts should not be sawn up or mulched immediately. A period of at least 24 hours, and preferably 48 hours, should elapse prior to such operations to allow bats to escape. Bats should be allowed to escape prior to demolition of buildings. This may be accomplished by placing one-way exclusionary devices into areas where bats are entering a building that allow bats to exit but not enter the building.

The bat specialist should document all demolition monitoring activities and prepare a summary report to the City upon completion of tree disturbance and/or building demolition activities.

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 in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

Conclusion

We appreciate the opportunity to comment on the Project to assist the City in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project. Questions regarding this letter and further coordination on these issues should be directed to Felicia Silva, Environmental Scientist, at Felicia.Silva@wildlife.ca.gov or (562) 430-0098.

Sincerely,



Erin Wilson
Environmental Program Manager I

cc: CDFW

Victoria Tang – Los Alamitos
Felicia Silva – Los Alamitos
Andrew Valand – Los Alamitos
Audrey Kelly – Los Alamitos
Malinda Santonil – Los Alamitos
Dolores Duarte – San Diego
CEQA Program Coordinator – Sacramento

Scott Morgan (State Clearinghouse)

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