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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

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Sent via email

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STATE CLEARINGHOUSE

Michael Perry
Supervising Planner
County of San Bernardino Department of Public Works
825 E. Third St
San Bernardino, CA, 92415

Subject: Initial Study and Mitigated Negative Declaration
Santa Ana River Trail Phase IV – Reach A
State Clearinghouse No. 2020019050

Dear Mr. Perry:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from County of San Bernardino Department of Public Works (County; Lead Agency) for the Santa Ana River Trail Phase IV – Reach A Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

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.

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.

PROJECT DESCRIPTION SUMMARY

The County of San Bernardino Regional Parks Department and the County of San Bernardino Department of Public Works (County) proposes to construct a 3.9-mile recreational trail as part of an extension to the Santa Ana River Trail (SART) within the City of Redlands and an unincorporated area of the County of San Bernardino. Development of the trail has been ongoing and has been divided into four phases with several reaches in each phase, this Project is phase IV, Reach A. The trail will begin on the west side of California Street and end at Orange Street in the City of Redlands. The trail will run on the southern bluffs of the Santa Ana River and local streets in the City of Redlands and unincorporated County areas. The trail segments along the river bluff will consist of 10-foot wide concrete/asphalt trail and 2-foot graded shoulder on each side of the trail. Existing roads will be widened to create a bicycle lane. Project activities will include excavation and grading; construction of embankments and/or retaining walls, storm drains, headwalls, slope protection, appurtenant features, asphalt concrete dike, curb and gutter; installation of fencing, railing, access gates, trail delineators, and signage; and painting of pavement striping and pavement markings.

COMMENTS AND RECOMMENDATIONS

The IS/MND recognizes the potential for several special status species, including threatened and endangered species, to occur within and surrounding the Project area. However, CDFW is concerned that surveys may have been inadequate to form a complete inventory of special status species within and surrounding the Project area for the following reasons: (1) botanical field surveys were conducted at times of year when plants are not generally evident and identifiable (i.e., October, December, and January), (2) a reference site was not visited to determine detectability of other sensitive plant species with the potential to occur onsite, (3) mammal trapping was not conducted to determine presence of San Bernardino kangaroo rat (SBKR), and (4) avian field surveys do not consider that some species of raptors (e.g., owls) may commence nesting activities in January, and passerines may nest later than August 31.

Absent these details, and supporting documentation, it is unclear whether the Project's impacts have been adequately identified, disclosed, or mitigated. CDFW offers the comments and recommendations below to assist the County in adequately identifying and mitigating, if necessary, fish and wildlife (biological) resources.

Special-status Plant Species

The IS/MND identifies the Project area as having either suitable or unsuitable habitat for special-status plant species, though the IS/MND does not provide information on how habitat suitability or habitat value was determined. Thus, CDFW does not have adequate information to determine whether a thorough analysis was completed and is unable to determine if the IS/MND has adequately disclosed and mitigated impacts.

Santa Ana River woollystar (*Eriastrum densifolium sanctorum*)

Page 21 of the Focused Biological Assessment states, "Our survey included searching for this species. No woolly star plants were observed within the footprint of Reach A." The IS/MND does not provide the details of the surveys, such as the methods used and whether reference sites were visited, and thus CDFW does not have adequate information to determine whether a thorough analysis was completed. Additionally, surveys were conducted at the time of year when plants are not generally evident or identifiable. Without demonstrating the surveys were completed according to standard, accepted protocols, and disclosing the level of impacts anticipated, CDFW believes the County is unable to substantiate the conclusions drawn by this document, and CDFW is unable to comment on the adequacy of the IS/MND.

Slender-horned spineflower (*Dodecahema leptoceras*)

Page 20 of the Focused Biological Assessment states, "None of the areas crossed by the alignment support habitat for the slender-horned spineflower. This species is not expected to be present and will not be impacted by trail construction or use" and "These sections are in ruderal habitat that has been highly disturbed." CDFW is unclear whether spineflower was determined to be absent based on the presence of ruderal species and/or the disturbed nature of the Project area, or because the Project site does not contain the appropriate habitat (e.g., soils, vegetation community, etc.) to support the plants. Relying simply on the "disturbed" nature of a site to determine absence of a rare plant is not sufficient. If there is the potential for spineflower to occur onsite, CDFW recommends that slender-horned spineflower surveys be conducted to determine absence/presence regardless of perceived habitat value.

Without demonstrating an appropriate analysis was completed according to standard, accepted protocols, and disclosing the level of impacts anticipated, CDFW believes the

County is unable to substantiate the conclusions drawn by this document, and CDFW is unable to comment on the adequacy of the IS/MND.

Additional Guidance for Rare Plant Surveys

Please note, according to *2018 Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* botanical field surveys should be conducted in a manner which maximizes the likelihood of locating special status plants and sensitive natural communities that may be present. Botanical field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. “Focused surveys” that are limited to habitats known to support special status plants or that are restricted to lists of likely potential special status plants are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special status plants. Botanical field surveys should be comprehensive over the entire project area, including areas that will be directly or indirectly impacted by the project, using systematic field techniques in all habitats of the project area to ensure thorough coverage. Botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting. Reference sites (nearby accessible occurrences of the plants) should be utilized to determine whether those special status plants are identifiable at the times of year the botanical field surveys take place and to obtain a visual image of the special status plants, associated habitat, and associated natural communities.

CDFW recommends that prior to adopting the IS/MND, the County complete focused surveys following accepted protocol/methods and update the IS/MND to reflect the survey results and any changes in mitigation to address Project impacts. Alternatively, the County may include an additional mitigation measure to ensure appropriate surveys are completed prior to the initiation of Project activities, though this approach would not provide the same level of disclosure. CDFW recommends any measure added to the IS/MND also include language to reflect the need for the County to apply for an Incidental Take Permit, where impacts to a State-listed species are unavoidable.

Special-status Wildlife

It is unclear how special-status wildlife species were determined to be present or absent based on habitat assessments, and how the County determined the level of significance to species without a more thorough analysis. As such, CDFW offers the following suggestions.

San Bernardino kangaroo rat (*Dipodomys merriami parvus*)

The IS/MND identified suitable habitat for SBKR, but focused surveys (i.e., trapping) were not conducted. Because trapping was not conducted prior to the preparation of the IS/MND, the level of impacts to SBKR cannot be disclosed. CDFW is concerned that

without this information, the analysis in the IS/MND is incomplete and the significance of these impacts cannot be determined, nor adequate mitigation identified, as required under CEQA. CDFW recommends that prior to the adoption of the IS/MND, focused trapping surveys for SBKR be completed using appropriate methodology, during the appropriate time of day and season, within all suitable or potentially suitable habitat. The results of the surveys, including a complete inventory of all species trapped and/or incidentally observed, should be included in the IS/MND and appropriate mitigation based on the trapping results should be identified. Please note, CDFW considers impacts to species of special concern to be potentially significant and strongly recommends mitigation measures be provided to offset losses, were they to be identified during trapping surveys. CDFW recognizes that the IS/MND conditions the completion of presence/absence surveys prior to the construction of the Project but reiterates that this does not provide the same level of disclosure to the public, were the survey results to be provided in the IS/MND. Finally, please note, the Endangered Habitats League submitted a petition (Petition) to the Fish and Game Commission (Commission) to list SBKR as endangered pursuant to the CESA, Fish and Game Code Section 2050 et seq. On August 7, 2019, the Commission accepted the Petition for consideration and SBKR was designated as a candidate species. On August 23, 2019, publication of the Commission's acceptance of the Petition for consideration and designation of the SBKR as a candidate species was posted; therefore, take of SBKR will be prohibited unless authorization pursuant to CESA is obtained. Therefore, CDFW recommends the County revise MM BIO-7 to include the following (edits are in **bold**):

Protocol SBKR presence-or-absence studies will be conducted prior to construction to determine whether SBKR occupy suitable habitat along the alignment. If the studies are positive the County will consult with the U.S. Fish and Wildlife Service and **CDFW**. Construction will not proceed until the appropriate authorization from U.S Fish and Wildlife Service and **CDFW** is received.

Lake and Streambed Alteration

The IS/MND identifies a small channel on the east side of Texas Street as potentially under the jurisdiction of the ACOE and RWQCB. CDFW is unclear whether the County considers this area to be subject to Fish and Game Code section 1602. CDFW recommends the County notify CDFW before beginning any activity that will substantially modify a river, stream, or lake.

CDFW requires notification for work undertaken in or near any river, stream, or lake that flows at least episodically, including ephemeral streams, desert washes, and watercourses with a subsurface flow. Fish and Game Code section 1602 states, "An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the

following occur....” Upon receipt of a complete notification, CDFW determines if the activities may substantially adversely affect existing fish and wildlife resources.

Edge effects and Wildlife Movement

Page 41 of the ISMND states, “Implementation of the Project would not result in a substantial physical change to the existing environment that would impact regional wildlife corridors or the non-specific movement patterns of wildlife adapted to urban environments.” CDFW disagrees with the Project’s assumption that construction impacts on movement of wildlife and corridors are less than significant, and suggests the County provide appropriate mitigation to offset the potential construction- related impacts as well as the operation-related impacts. Although certain species may be adapted to urban environments, additional impacts or increase in human use may exacerbate otherwise insubstantial impacts. For instance, SBKR is known to forage 10 feet from paved roadway and may use dirt roads for movement (Farrell, 1990; O’Farrell and Uptain, 1989; Price et al., 1994), but increased traffic, lighting, or litter on a road as a result of the Project could cause an adverse effect. Similarly, breeding habitat for burrowing owls can be found close to roads (Dechant et al. 1999) and burrowing owls forage and perch along roads at night (Bent 1938), but construction- and operation-related effects could affect use and movement. Thus, given the adjacency of the Project to sensitive species, CDFW considers the impacts to wildlife movement and corridors to be significant and suggests the County include appropriate measures to mitigate the anticipated impacts.

Noise

Noise generated by construction equipment can reach high levels. Anthropogenic noise has a strong, negative impact on ecological communities (Barber et al. 2010; Kight and Swaddle 2011; Francis and Barber 2013; Shannon et al. 2016). Introducing or increasing anthropogenic noise influences wildlife’s ability to avoid predators, disperse, reproduce successfully, forage efficiently, and alters population dynamics and physiology (Rich 2019). Absent a thorough impact analysis and mitigation strategy, it is unclear whether this component of the Project can be adequately identified, disclosed, or mitigated. CDFW is concerned that without this information, the analysis in the IS/MND is incomplete and the significance of these impacts cannot be determined as required under CEQA.

Staging Areas

The IS/MND lacks discussion and impact analysis of potential contaminants to biological resources from staging and maintaining equipment. These potential indirect impacts to biological resources and adjacent habitat should be analyzed and disclosed in the IS/MND. According to Exhibit 4, equipment staging will occur on the river bluff. CDFW is concerned with the lack of information and impact analysis regarding potential impacts due to equipment maintenance and the potential for rain, soil erosion, and leaks

to introduce contaminants to the adjacent watercourse and downstream habitat. CDFW recommends the IS/MND identifies best management practices to ensure compliance with Fish and Game Code section 1602.

Trespass and Degradation of habitat

CDFW is concerned measures are lacking focused on deterring human entry or activities in adjacent conserved habitat. Habitat degradation due to unauthorized trespass, littering, and illegal dumping should be considered an impact and disclosed in the IS/MND. CDFW believes the IS/MND does not provide a thorough impact analysis of this potential, foreseeable Project impact, and is concerned the potential impacts have not been adequately identified, disclosed, or mitigated. CDFW recommends the County add a mitigation measure to ensure the installation and maintenance of barriers to separate the trail from adjacent habitat, along with a monitoring plan to ensure the barriers are effective and preclude egress to the adjacent habitat.

Additional Mitigation Measure Recommendations

CDFW recommends that the County revise Mitigation Measure (MM) BIO-6 to ensure compliance with all applicable laws related to nesting birds and birds of prey.

Mitigation Measure BIO-6 states, "If construction takes place during the California gnatcatcher breeding season, burrowing owl nesting period, during nesting bird season (February 1 through August 31)..." Please note that some species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in December or January, and passerines may nest later than August 31. CDFW encourages the Lead Agency to revise the measure to survey for nesting bird regardless of time of year.

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). Information can be submitted online or via completion of the CNDDDB field survey form at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 stresses the importance of the IS/MND including all supporting documents used to identify or analyze impacts be included as part of the IS/MND to assist CDFW, and the public, in its review. This includes any jurisdictional delineations, biological survey reports, and habitat assessments. In addition, CDFW recommends that the IS/MND fully analyze potential impacts to all special-status species and include specific, enforceable avoidance, minimization and mitigation measures to reduce project impacts. Absent a thorough impact analysis, including supporting documentation, it is unclear whether the Project impacts can be adequately identified, disclosed, or mitigated, which limits CDFW's ability to adequately assess the information provided in the IS/MND.

CDFW appreciates the opportunity to comment on the IS/MND for the Santa Ana River Trail Phase IV – Reach A Project (SCH No. 2020019050) and hopes our comments assist the County in identifying and mitigating Project impacts on biological resources. If you should have any questions pertaining to the comments provided in this letter, please contact Cindy Castaneda, Environmental Scientist, at 909-484-3979 or at cindy.castaneda@wildlife.ca.gov.

Sincerely,



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