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Ms. Julie Yom
 Los Angeles County
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STATE CLEARINGHOUSE

Subject: Mitigated Negative Declaration for the Descanso Gardens Master Plan, County of Los Angeles Department of Park and Recreation, County of Los Angeles

Dear Ms. Yom:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Mitigated Negative Declaration (MND) for the Descanso Gardens Master Plan (Project). 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 CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Project Description and Summary

Objective: The County of Los Angeles Department of Parks and Recreation's (County) proposed Project includes a 15-year framework to guide new development and recommend improvements to Descanso Gardens. The capacity of the existing gardens is limited by the size of the property, which would remain the same. The Project proposes to restructure existing paths and provide additional paths throughout the Descanso Gardens property. It proposes two new gardens (plus a new nursery and storage yard), one new temporary overflow parking area, major improvements to 11 existing gardens, and improvements to the entrance complex and the two existing parking lots. The Project will result in an increase the existing number of available parking stalls to better accommodate existing and projected visitor use within the county property.

The proposed Project and supporting materials are intended for a 15-year Master Plan for Descanso Gardens. Therefore, the plans that have been provided may not contain the finalized plans for each of the components contained within.

Location: Descanso Gardens. 1418 Descanso Dr., La Canada Flintridge, CA 91011.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the County in adequately identifying, avoiding and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Additional comments or suggestions are also included to improve the document.

Project Description and Related Impact Shortcoming

Comment #1: Impacts to reptiles

Issue: Page 2.4-10 of the MND states "[d]uring site surveys, the only special-status species observed were coastal whiptail, Cooper's hawk, and California black walnut."

*Table 5-2: Sensitive wildlife species with the potential to occur in the master plan area of the supplemental Biological Technical Report (Sapphos 2019) indicate that there are multiple historic observations of coastal whiptail (*Aspidoscelis tigris stejnegeri*), a Species of Special Concern (SSC), in the Project site. It states that "records document this species four times within the Master Plan area, as recently as September 2018."*

A review of the California Natural Diversity Data Base indicates that there are historical records of Southern California legless lizard (*Anniella stebbinsi*), a SSC, in the Northwestern portion of the Project site.

Specific impacts: Ground clearing and construction activities could potentially lead to mortality of individual lizards found on the Project site.

Why impact would occur: These SSC reptiles are cryptic species that often evade threats from predators by remaining still and blending into the surrounding landscape. Therefore, untrained workers may not recognize the presence of this species.

Evidence impact would be significant: Ground clearing and construction activities could lead to the direct mortality of a SSC. The loss of occupied habitat could yield a loss of foraging potential, basking sites, or egg-laying sites and would constitute a significant impact absent appropriate mitigation. CDFW considers impacts to SSC, including coastal whiptail and coast horned lizard, a significant direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: To mitigate impacts to SSC, CDFW recommends focused surveys for the species. Surveys should typically be scheduled when these animals are most likely to be encountered, usually conducted between June and July. To achieve 100 percent visual coverage, CDFW recommends surveys be conducted with parallel transects at approximately 20 feet apart and walked on site in appropriate habitat suitable for each of these species. Suitable habitat consists of areas of sandy, loose and moist soils, typically under the sparse vegetation of scrub, chaparral, and within the duff of oak woodlands.

Mitigation Measure #2: In consultation with qualified biologist familiar with the life history of each of the SSC, a relocation plan (Plan) should be developed. The Plan should include, but not be limited to, the timing and location of the surveys that will be conducted for this species, identify the locations where more intensive survey efforts will be conducted (based on high habitat suitability); identify the habitat and conditions in any proposed relocation site(s); the methods that will be utilized for trapping and relocating the individuals of this species; and the documentation/recording of the number of animals relocated. CDFW recommends the Plan be submitted to the County for approval 60 days prior to any ground disturbing activities within potentially occupied habitat.

Mitigation Measure #3: The Plan should include specific survey and relocation efforts that occur during construction activities for the activity period of these reptiles (generally March to November) and for periods when the species may be present in the work area but difficult to detect due to weather conditions (generally December through February). Thirty days prior to construction activities in coastal scrub, chaparral, oak woodland, riparian habitats, or other areas supporting this species, qualified biologists should conduct surveys to capture and relocate individual reptiles to avoid or minimize take of these special-status species. The Plan should require a minimum of three surveys conducted during the time of year/day when these species most likely to be observed. Individuals should be relocated to nearby undisturbed areas with suitable habitat.

Mitigation Measure #4: If construction is to occur during the low activity period (generally December through February), surveys should be conducted prior to this period if possible. Exclusion fencing should be placed to limit the potential for re-colonization of the site prior to construction. CDFW further recommends a qualified biologist be present during ground-disturbing activities immediately adjacent to or within habitat, which supports populations of this species.

Comment #2: Impacts to raptors

Issue: According to the MND, there have been observations and historic records of Swainson's

hawk (*Buteo swainsoni*), a CESA-listed species on the Project site. Page 2.4-10/20 states that "[D]uring fall site surveys in 2018, one adult Swainson's hawk was observed flying over the Master Plan Area, which contains suitable nesting and foraging habitat for this species."

Specific impacts: The Project will likely result in the loss of foraging habitat for a CESA-listed raptor species. In addition, Project-related activities, such as grading, road construction, or housing construction could lead to the direct or indirect mortality of the species.

Why impact would occur: Vegetation removal and ground clearing activities will potentially result in the loss of foraging habitat for listed raptor species. Take of special status plant species, including Endangered Species Act (ESA) and CESA-listed species, may occur without adequate detection, avoidance, and mitigation measures.

Evidence impact would be significant: Consistent with CEQA Guidelines, Section 15380, the status of the Swainson's hawk as a threatened species under CESA qualifies it as an endangered, rare, or threatened species under CEQA. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016). CDFW considers a Swainson's hawk nest site to be active if it was used at least once within the past five years and impacts to suitable habitat or individual birds within a five-mile radius of an active nest as significant. Based on the foregoing, Project impacts would potentially substantially reduce the number and/or restrict the range of Swainson's hawk or contribute to the abandonment of an active nest and/or the loss of significant foraging habitat for a given nest territory and thus result in "take" as defined under CESA.

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW released guidance for this species entitled *Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California* (2010). CDFW recommends conducting focused surveys for Swainson's hawk following the 2010 guidance and disclosing the results in the Project's environmental documentation. If "take" of Swainson's hawk would occur from Project construction or operation, CESA authorization [(i.e., incidental take permit (ITP))] would be required for the Project. CDFW may consider the County's CEQA documentation for its CESA-related actions if it adequately analyzes/discloses impacts and mitigation to CESA-listed species. Additional documentation may be required as part of an ITP application for the Project in order for CDFW to adequately develop an accurate take analysis and identify measures that would fully mitigate for take of CESA-listed species.

Mitigation Measure #2: Permanent impacts to foraging habitat for Swainson's hawk should be offset by setting aside replacement acreage to be protected in perpetuity under a conservation easement dedicated to a local land conservancy or other appropriate entity.

Mitigation Measure #3: If the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a plant or animal species designated as rare,

endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an ITP or a consistency determination in certain circumstances, among other options (Fish and Game 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 CESA authorization. Revisions to the Fish and Game Code, effective January 1998, may require CDFW 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 fully mitigated requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an ITP.

Comment #3: Impacts to Special-Status Plant Species

Issue: Page 2.4-10/20 of the MND states that “[t]he Wilds Loop trail beyond the developed garden area could result in the direct removal of up to 0.14 acre of scrub oak chaparral, which is considered suitable habitat for listed plant species.” The Wilds Loop trail is described as a 0.5 mile of 5-foot-wide natural trail. With these dimensions, the acreage of potential impact is estimated to be 0.3 acres ($5,280/2 \times 5 \text{ ft} = 13,200 \text{ sq. ft} = 0.3 \text{ acres}$). This underestimate of Project impacts could lead to loss of sensitive habitat.

Specific impact: CDFW considers plant communities, alliances, and associations with a statewide ranking of S1, S2, S3, and S4 as sensitive and declining at the local and regional level (Sawyer et al. 2008). An S3 ranking indicates there are 21-80 occurrences of this community in existence in California, S2 has 6 to 20 occurrences, and S1 has less than 6 occurrences. The Project may have direct or indirect effects to these sensitive species.

Why impact would occur: Project implementation includes grading, vegetation clearing for construction, road maintenance, and other activities that may result in direct mortality, population declines, or local extirpation of sensitive plant species.

Evidence impact would be significant: Impacts to special status plant species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. Inadequate avoidance, minimization, and mitigation measures for impacts to these sensitive plant species will result in the Project continuing to have a substantial adverse direct, indirect, and cumulative effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or US Fish and Wildlife Service (USFWS).

Recommended Potentially Feasible Mitigation Measure(s):

Mitigation Measure #1: CDFW recommends conducting focused surveys for sensitive/rare plants on site and disclosing the results in an environmental document. Based on the *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018), a qualified biologist should “conduct surveys in the field at the time of year when species are both evident and identifiable. Usually this is during flowering or fruiting.” The final CEQA documentation should provide a thorough discussion on the

presence/absence of sensitive plants on site and identify measures to protect sensitive plant communities from Project-related direct and indirect impacts.

Mitigation Measure #2: In 2007, the State Legislature required CDFW to develop and maintain a vegetation mapping standard for the State (Fish & Game Code, § 1940). This standard complies with the National Vegetation Classification System, which utilizes alliance and association-based classification of unique vegetation stands. CDFW utilizes vegetation descriptions found in the Manual of California Vegetation (MCV), found online at <http://vegetation.cnps.org/>. To determine the rarity ranking of vegetation communities on the Project site, the MCV alliance/association community names should be provided as CDFW only tracks rare natural communities using this classification system.

Mitigation Measure #3: CDFW recommends avoiding any sensitive natural communities found on the Project. If avoidance is not feasible, mitigating at a ratio of no less than 5:1 for impacts to S3 ranked communities and 7:1 for S2 communities should be implemented. This ratio is for the acreage and the individual plants that comprise each unique community. All revegetation/restoration areas that will serve as mitigation should include preparation of a restoration plan, to be approved by USFWS and CDFW prior to any ground disturbance. The restoration plan should include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and, a funding mechanism to assure for in perpetuity management and reporting. Areas proposed as mitigation should have a recorded conservation easement and be dedicated to an entity which has been approved to hold/manage lands (Assembly Bill 1094; Government Code, §§ 65965-65968).

Comment #4: Impacts to Streams

Issue: Mitigation Measures BIO-2 and BIO-3 state that Project-related activities will be subject to notification a Lake and Streambed Alteration Agreement with CDFW per Fish and Game Code, Section 1600 et seq. but did not include all activities that may impact riparian resources. The Wilds Loop trail is described in the Initial Study as 0.5 miles of new trail on the southern portion of the Project site. The layout of the proposed trail, as shown in Figure 1.10.1-2, appears to follow the topography of two drainages, L30 and C15 in Hydrology Technical Report, in the southern open space. The construction and maintenance of new trails along or crossing the bottoms of these drainages will also be subject to notification for a Lake and Streambed Alteration Agreement with CDFW.

Specific impacts: The Project may result in the loss of streams and associated watershed function and biological diversity. Grading and construction activities will likely alter the topography, and thus the hydrology, of the Project site.

Why impacts would occur: Ground disturbing activities from grading and filling, water diversions and dewatering would physically remove or otherwise alter existing streams or their function and associated riparian habitat on the Project site. 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 of the Project site through the alteration or diversion of a stream, which absent specific mitigation, could result in substantial erosion or siltation on site or off site of the Project.

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 and 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. However, the environmental document does not meet CDFW's standard at this time. To minimize additional requirements by CDFW pursuant to Fish and Game Code, Section 1600 *et seq.* and/or under CEQA, the CEQA document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA.

Mitigation Measure #2: Any LSA permit 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.

General Comments

As stated on page 1-1 of the MND, CEQA "requires that the environmental implications of an action requiring discretionary approval by a local agency be estimated and evaluated before project approval." Given the programmatic nature of the Descanso Gardens Master Plan, CDFW acknowledges that detailed plans for some Project components do not currently exist and/or have not been submitted for this review. However, prior to implementation of site-specific Project activities, a subsequent CEQA document should be prepared to address effects of any activity not included in the scope of the analysis of this programmatic document. At that time, to address site specific impacts, the Master Plan may be incorporated by reference while the subsequent CEQA document can address site-specific impacts.

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 County 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 County of Los Angeles and Descanso Gardens in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the County has to our comments and to receive notification of any forthcoming hearing date(s) for the Project [CEQA Guidelines; § 15073(e)]. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist, at Andrew.Valand@wildlife.ca.gov or (562) 342-2142.

Sincerely,



Erinn Wilson
Environmental Program Manager I

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

State Clearinghouse

References:

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