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In Reply Refer to:
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November 1, 2019
Sent by Email

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Mr. Scott Vurbef
 Environmental Project Manager
 Encinitas Planning Division
 505 South Vulcan Avenue
 Encinitas, CA 92024
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Subject: Comments on the Notice of Preparation of an Environmental Impact Report for the Belmont Village Encinitas-by-the-Sea Project

Dear Mr. Vurbef:

The U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department), hereafter collectively referred to as the Wildlife Agencies, have reviewed the above-referenced Notice of Preparation (NOP) dated October 3, 2019. The Wildlife Agencies have identified potential effects of this project on wildlife and sensitive habitats. The project details provided herein are based on the information provided in the NOP and associated documents. The comments and recommendations provided are based on our knowledge of sensitive and declining vegetation communities in the County of San Diego and our participation in regional conservation planning efforts.

The primary concern and mandate of the Service is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States. The Service is also responsible for administering the Federal Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), including habitat conservation plans (HCP) developed under section 10(a)(1)(B) of the Act. The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; §§ 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to 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 (NCCP) program, a California regional habitat conservation planning program. Although the City of Encinitas (City) prepared a draft Multiple Habitat Conservation Program Subarea Plan (SAP) it is no longer participating in the NCCP/HCP program.

The project proposes to subdivide a 19.027-acre parcel into 9 lots to accommodate the development of a senior care facility and 16 residential units and associated parking. Two additional open space lots (5.049 acres and 0.211 acre) and a 1.24-acre private street lot would be provided. Primary access to the site would be provided from a new Caltrans spine road off Manchester Avenue. Emergency access would be provided from Manchester Avenue via a secondary access road at the southeast corner of the site.

The project site includes 1.81 acres of high-quality Diegan coastal sage scrub (CSS) located on the northern portion of the site on and adjacent to coastal bluffs and habitat designated as hardline conservation area under the draft SAP. Freshwater marsh, totaling 0.13 acres, occurs within the northernmost parcel located on the south side of Manchester Avenue and is within the San Elijo Lagoon. An unvegetated ephemeral channel in the form of a managed and maintained soft bottom channel, totaling 0.08 acre, follows the general historical course of a natural drainage feature. There are 15.17 acres of agricultural use on the site comprised of fields, roads, and irrigation infrastructure, in addition to 0.68 acre of disturbed habitat and 1.81 acres of developed land that includes pavement, paths, and business structures. The entire site is located within a softline conservation area under the draft SAP.

We offer our comments and recommendations in the Appendix to assist the City in avoiding, minimizing, and adequately mitigating project-related impacts to biological resources, and to ensure that the project is consistent with ongoing regional habitat conservation planning efforts. In summary, our comments address the following issues: (1) potential impacts to wetland and riparian habitats; (2) compliance with CEQA and the Act; (3) potential project-related impacts to the reserve under the draft SAP; (4) updated protocol-level species surveys for listed species with potential to occur in the project area; (5) the use of native plants in landscaped areas adjacent to native habitats; and (6) information to be included in the draft Environmental Impact Report (DEIR).

We appreciate the opportunity to comment on this NOP. We are hopeful that further consultation between you and us will ensure the protection we find necessary for the biological resources that would be affected by this project. If you have questions or comments regarding this letter, please contact Janet Stuckrath of the Service 760-431-9440 or Eric Hollenbeck of the Department at 858-467-2720.

Sincerely,

DAVID
ZOUTENDYK
Digitally signed by
DAVID ZOUTENDYK
Date: 2019.11.01
08:58:16 -07'00'

for Jonathan D. Snyder
Acting Assistant Field Supervisor
U.S. Fish and Wildlife Service



Gail K. Sevrens
Environmental Program Manager
California Department of Fish and Wildlife

Appendix

cc:
State Clearinghouse

APPENDIX

Wildlife Agency Comments and Recommendations on the Notice of Preparation of a Draft Environmental Impact Report for the Belmont Village Encinitas-By-The-Sea Project

SPECIFIC COMMENTS

1. The Wildlife Agencies have responsibility for the conservation of wetland and riparian habitats. It is the policy of the Wildlife Agencies to strongly encourage avoidance of impacts to wetlands. We also recommend that any unavoidable wetland impacts be mitigated so that, at a minimum, there will be “no net loss” of either wetland habitat values or acreage. Development and conversion include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks to preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife and plant populations. Mitigation measures to compensate for impacts to mature riparian corridors should be included in the DEIR and must compensate for the loss of function and value as a wildlife corridor.
 - a. The project area supports freshwater marsh and unvegetated channel habitats; therefore, the DEIR should include a jurisdictional delineation of the creeks/drainages and their associated riparian habitats. The delineation should be conducted pursuant to the Service wetland definition adopted by the Department (Cowardin *et al.* 1979¹). Please note that some wetland and riparian habitats subject to the Department’s authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers.
 - b. The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource. For any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river, stream, or lake, or use material from a river, stream, or lake, the project applicant (or “entity”) must provide written notification to the Department pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, the Department then determines whether a Lake and Streambed Alteration Agreement (LSAA) is required. The Department’s issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. As a Responsible Agency under CEQA, the Department may consider the lead agency’s CEQA documentation for the project. To minimize additional requirements by the Department pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream

¹ Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.

or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for issuance of an LSAA.²

2. The DEIR should include an analysis of potential impacts to the Focused Planning Area (FPA) and project consistency with the draft SAP; section 4.3.1.1 (wetland/wetland buffer policies), including the No Net Loss Policy and Mitigation for Unavoidable Impacts and Conservation and Buffer Requirements; section 4.3.1.5, including prioritizing mitigation sites firstly on site, secondly within the FPA inside the City, and lastly within the FPA outside the City.
3. All firebreaks and fuel modification zones should be located within the development footprint (i.e., included in the impact analysis as loss of habitat) per section 4.3.1.7 of the draft SAP. The DEIR should include a figure depicting the location of the fuel management zones in relation the development footprint and any adjacent conservation area boundary.
4. Any agricultural land proposed for conversion to residential/urban uses should be evaluated for potential benefits to the preserve and analyzed for meeting softline conservation standards prior to development approval as specified in section 4.3.1.10 of the draft SAP. Development of agricultural lands should include setbacks from wetland vegetation and restoration of upland vegetation in the buffer thus created.
5. The Wildlife Agencies are concerned about the potential direct and indirect effects to biological resources associated with the construction of a public recreation trail in designated open space on site. The following information should be included in the DEIR regarding the proposed pedestrian trail: an aerial photograph with an overlay of the proposed alignment of the trail in relation to designated or proposed open space; specifications of the trail design; specification that the trail would be for hiking only; measures to avoid/minimize impacts related to hikers straying off-trail and/or trail use by unauthorized vehicles; and a discussion of how the proposed location and use of the trail would be consistent with the City's draft SAP.
6. The DEIR should address the cumulative effects to sensitive species and habitats resulting from the proposed project and known proposed developments on adjacent properties and hardline preserve, as well as other cumulative impacts to and effects on regional conservation planning (i.e., the draft SAP).
7. To guide project planning and avoid/minimize impacts to ESA and/or CESA-listed species, such as the coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) and least Bell's vireo (*Vireo bellii pusillus*; vireo), we recommend that protocol-level surveys be conducted for any listed species with the potential to occur within the project site. Surveys should be performed no more than one year prior to an application for a permit from the Wildlife Agencies, and the DEIR should include the survey results.

² A notification package for a LSAA may be obtained by accessing the Department's [website](#).

8. To facilitate wildlife movement through the project site and minimize effects to on-site wetland function and quality after project construction, we recommend that bridges be used for all proposed riparian crossings.
9. Native plants should be used to the greatest extent feasible in landscaped areas adjacent to and/or near mitigation/open space areas and/or wetland/riparian areas. The applicant should not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas adjacent and/or near native habitat areas. Exotic plant species not to be used include those species listed on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory. This list includes such species as: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom.³ In addition, landscaping adjacent to native habitat areas should not use plants that require intensive irrigation, fertilizers, or pesticides. Water runoff from landscaped areas should be directed away from mitigation/open space and/or wetland/riparian areas and contained and/or treated within the development footprint.

GENERAL COMMENTS

To enable the Wildlife Agencies to adequately review and comment on the proposed project from the standpoint of the protection of plants, fish, wildlife, and other biological resources, we recommend the following information be included in the DEIR.

1. A complete discussion of the purpose and need for, and description of, the proposed project, including all staging areas and access routes to the construction and staging areas.
2. A range of feasible alternatives to ensure that alternatives to the proposed project are fully considered and evaluated; the analyses should avoid or otherwise minimize impacts to sensitive biological resources, particularly wetlands. Specific alternative locations should be evaluated in areas with lower resource sensitivity, where appropriate.
3. To provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying state and federally listed endangered, threatened, rare, or proposed candidate species, California Species of Special Concern and/or Protected or Fully Protected species, and locally unique species and sensitive habitats, the DEIR should include the following information:
 - a. Per CEQA Guidelines, section 15125(c), information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region that would be affected by the project.

³ A copy of the complete list can be obtained by contacting the California Invasive Plant Council at 1442-A Walnut Street, Suite #462, Berkeley, California 94709, or by accessing their [website](#).

- b. A thorough, recent floristic-based assessment of special status plants and natural communities, following the [Department's Protocols](#) for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. The Department recommends that floristic, alliance- and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer *et al.* 2008⁴). Alternately, for assessing vegetation communities located in western San Diego County, the Vegetation Classification Manual for Western San Diego County (Sproul *et al.* 2011⁵) may be used. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts off site. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
 - c. A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. The Department's [California Natural Diversity Database](#) in Sacramento should be contacted at to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.
 - d. An inventory of rare, threatened, endangered and other sensitive species on site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife, reptile, and amphibian species. Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Wildlife Agencies.
4. To provide a thorough discussion of direct, indirect, and cumulative project-related impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR.
 - a. A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address: project-related changes on drainage patterns on and downstream of the project site; the volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would

⁴ Sawyer, J.O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

⁵ Sproul, F., T. Keeler-Wolf, P. Gordon-Reedy, J. Dunn, A. Klein and K. Harper. 2011. Vegetation Classification Manual for Western San Diego County. First Edition. Prepared by AECOM, California Department of Fish and Game Vegetation Classification and Mapping Program and Conservation Biology Institute for San Diego Association of Governments

- be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included.
- b. Discussions regarding indirect project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR.
 - c. A cumulative effects analysis should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
5. The DEIR should include measures for adverse project-related impacts on sensitive plants, animals, and habitats. Specifically, the DEIR should include/address:
- a. Measures to fully avoid and otherwise protect Rare Natural Communities from project-related impacts. The Wildlife Agencies consider these communities as threatened habitats having both regional and local significance.
 - b. Where avoidance is infeasible, mitigation measures that emphasize minimization of project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable (e.g., it would not adequately mitigate the loss of biological functions and values), off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. The Wildlife Agencies generally do not encourage the use of relocation, salvage, and/or transplantation as mitigation for impacts on rare, threatened, or endangered species. Studies have shown these efforts are experimental in nature and do not provide for the long-term viability of the target species.
 - c. Mitigation measures to alleviate indirect project-related impacts on biological resources, including measures to minimize changes in the hydrologic regimes on site, and means to convey runoff without damaging biological resources, including the morphology of on-site and downstream habitats.
 - d. Where proposed grading or clearing is within 100 feet of proposed biological open space, or otherwise preserved sensitive habitats, a requirement for temporary fencing. Fencing should be placed on the impact side and should result in no vegetation loss within open space. All temporary fencing should be removed only after the conclusion of all grading, clearing, and construction activities.

- e. A requirement that a Wildlife Agency-approved biological monitor to be present during initial clearing, grading, and construction in sensitive habitat areas and/or in the vicinity of biological open space areas to ensure that conservation measures associated with resource agency permits and construction documents are performed. The biological monitor should have the authority to halt construction to prevent or avoid take of any listed species and/or to ensure compliance with all avoidance, minimization, and mitigation measures. Any unauthorized impacts or actions not in compliance with the permits and construction documents should be immediately brought to the attention of the Lead Agency and the Wildlife Agencies.
- f. Plans for restoration and revegetation, to be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria (e.g., percent cover of native and non-native species; species richness); (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.
- g. Measures to protect, in perpetuity, the targeted habitat values of proposed preservation and/or restoration areas from direct and indirect negative impacts. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Permanent fencing should be installed between the impact area and biological open space and be designed to minimize intrusion into the sensitive habitats from humans and domestic animals, particularly cats. There should be no gates that would allow access between the development and biological open space. Additional issues that should be addressed include proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, etc.
- h. Development and implementation of a management and monitoring plan (MMP), including a funding commitment, for any on- and/or off-site biological open space easements, if applicable. An appropriate natural lands management organization, subject to approval by the Wildlife Agencies, should be identified. The MMP should outline biological resources on the site, provide for monitoring of biological resources, address potential impacts to biological resources, and identify actions to be taken to eliminate or minimize those impacts. A Property Analysis Record (PAR), or PAR-equivalent analysis, should be completed to determine the amount of funding needed for the perpetual management, maintenance, and monitoring of the biological conservation easement areas by the natural lands management organization. It should be demonstrated that the proposed funding mechanism would ensure that adequate funds would be available on an annual basis to implement the MMP. The natural lands management organization should submit a draft MMP, PAR results, and proposed funding mechanism to the Wildlife Agencies for review and approval prior

to initiating construction activities; the final plan should be submitted to the Wildlife Agencies and the funds for implementing the MMP transferred within 90 days of receiving approval of the draft plan.

- i. The Department recommends that measures be taken to avoid project impacts to nesting birds. Sections 3503.5 and 3513 of the California Fish and Game Code prohibit take of all raptors and other migratory nongame birds and section 3503 prohibits take of the nests and eggs of all birds. Proposed project activities (including, but not limited to, staging and disturbances to native and nonnative vegetation, structures, and substrates) should occur outside of the avian breeding season which generally runs from February 1 to September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs.

If avoidance of the avian breeding season is not feasible, the Department recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.