



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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October 12, 2020

Governor's Office of Planning & Research

Mr. Scott Vurbef
City of Encinitas
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Encinitas, CA 92024
Svurbef@encinitasca.gov

Oct 12 2020

STATE CLEARINGHOUSE

Subject: Comments on the Draft Environmental Impact Report for Fox Point Farms, City of Encinitas, San Diego County (SCH #2020039079)

Dear Mr. Vurbef:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) for Fox Point Farms. The Project's supporting documentation includes a Biological Technical Report (BTR) (ECORP 2020). 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 2020).

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 & 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 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.), related authorization as provided by the Fish and Game Code will be required.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of Encinitas (City) prepared

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a draft Subarea Plan (SAP) under the Subregional Multiple Habitat Conservation Program (MHCP), an effort among the cities of Carlsbad, Encinitas, Oceanside, Vista, San Marcos, Vista, and Solana Beach in conjunction with the San Diego Association of Governments; however, the City did not complete their SAP and is not presently pursuing its completion. A County of San Diego (County) Open Space Preserve area abuts the Project to the north. The County of San Diego participates in the NCCP program through their approved subregional Multiple Species Conservation Program (MSCP) in southwestern San Diego County (County of San Diego 1998). The County has also prepared draft NCCP plans for northern San Diego County but one has not been completed or permitted by CDFW.

PROJECT DESCRIPTION AND SUMMARY

Proponent: City of Encinitas

Location and Objective: Nolen Communities, LLC (applicant) proposes the redevelopment of an existing greenhouse area into a 250-unit residential “agrihood” community on a 21.48-acre site at 1150 Quail Gardens Drive in the City of Encinitas (City). The Project proposes 210 market-rate units and 40 very low-income units (affordable to households earning no more than 50 percent of area median income). Units would range from two to three stories in height and would comply with the development requirements of the City’s General Plan Housing Element Update as adopted in 2019. The Project must obtain a Density Bonus Tentative Map Approval, a Coastal Development Permit, and a Design Review Permit from the City.

The property would be subdivided into four lots. Lot 1 would consist of 197 apartments, edible landscaping, community gardens and recreation areas, and trails. Lot 2 would consist of a shared public/private agricultural amenity area including a retail and event space. Lot 3 would consist of an organic farm operation. Lot 4 would consist of 53 for-sale cottages/carriage units/townhomes.

Timeframe: March 27, 2020 submitted, estimated completion March 2022.

Biological Setting: The Project site abuts the Draft North County Multiple Species Conservation Program (NC MSCP) Planning Area and the County-owned, 30-acre Magdalena Ecke Open Space Preserve (MEOSP). The City is not party to the Draft NC MSCP or any other NCCP/HCP and is acting as the CEQA lead agency. The property also was not identified as part of the Focused Planning Area (FPA) during development of the MHCP and the draft Encinitas SAP; therefore, this site was not viewed as having high biological resource values of importance to regional planning purposes. The site is nearly all developed with existing greenhouses except for a small portion in the northwest corner, which appears to support Diegan coastal sage scrub (DCSS) or southern maritime chaparral (SMC) and continues off-site to the north and east (City of Encinitas 2016). The habitat to the north is within the MEOSP and is contiguous with Indian Canyon open space to the west and other open space that runs northwest parallel to Saxony Road, and eventually leads to Batiquitos Lagoon (Lagoon) (both these areas are respectively identified as hardline and Softline FPA areas). The habitat to the east is in an open space easement associated with a single-family development located along Quail Gardens Drive (Vurbeff, pers. comm. 2020). East of Quail Gardens Drive is the Encinitas Golf Course which connects to Encinitas Ranch Open Space and provides a natural habitat link to the Lagoon. According to the BTR, the habitat in the area is reported to support three CDFW

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Species of Special Concern: California gnatcatcher (*Poliophtila californica californica*, CAGN), San Diego cactus wren (*Campylorhynchus brunneicapillus sandiegensis*), and San Diego desert woodrat (*Neotoma lepida intermedia*). No jurisdictional wetlands or waters have been identified on or near the site (ECORP 2020).

Although the site abuts areas of connected and nearly contiguous habitat (bisected by roads) which lead to the Lagoon, the site itself does not contribute to wildlife linkages or corridors due to existing on-site development and developed areas to the west, east, and south. The Project will provide the use of an agricultural buffer of over 100 feet adjacent to MEOSP, but overall will intensify use on site over current conditions. The DEIR proposes two biological mitigation measures; BIO-1 (pre-grading general nesting birds surveys for work occurring during the standard breeding season), and BIO-2 (protocol CAGN surveys within 300 feet of habitat that could support CAGN). Both DEIR measures include additional mitigating measures should survey results be positive. CDFW offers additional recommendations and mitigation measures to reduce direct and indirect impacts from the Project to below a level of significance.

RECOMMENDATIONS

Per CEQA Section 15126.4(a)(2) which requires that “mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” CDFW provides the following to assist the City in adequately identifying, avoiding, and/or mitigating the Project’s potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Recommendation 1 – Identify, quantify, avoid and/or minimize and mitigate any potential biological resources at the northeast corner of the site. If direct impacts are proposed, appropriate mitigation consistent with the Draft Encinitas SAP and NC MSCP or similar regional planning effort should be included in the FEIR (i.e. provide appropriate species and habitat mitigation with on-site preservation, an off-site location or approved conservation bank, or a combination of these methods) as follows.

BIO-3 – Any direct impacts proposed to sensitive species or habitats shall be mitigated to below a level of significance using appropriate methods developed by a qualified biologist. Such methods shall include mitigating direct impacts to SMC or DCSS on site with respective ratios of 2:1 or 1:1 by purchase of SMC or DCSS credits from an approved conservation bank, or purchase of suitable off-site land supporting appropriate habitat combined with sufficient funding to ensure protection and management in-perpetuity.

Recommendation 2 – Noise impacts will be adequately covered by the DEIR’s BIO-1 and 2. CDFW recommends additional construction, and post-construction land use adjacency mitigation measures to minimize the impact of the Project on native open space. Such measures should address limits of work, bio-hygiene, grading and brush management, lighting, drainage and toxins, invasive species, and access as follows.

BIO-4 – Native habitats and sensitive species protection shall be ensured through all or a combination of the following: natural resource avoidance and minimization education for construction staff (including bio-hygiene for equipment), delimitation of work and staging limits (i.e. with orange fencing) by a qualified biologist, and/or construction monitoring by a qualified biologist.

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BIO-5 – Grading of manufactured slopes associated with site development shall be included within the development footprint and brush management shall be accommodated on site rather than in adjacent open space. Any impacts to off-site areas for construction or clearing of fire-fuels shall be mitigated consistent with measure BIO-3 above.

BIO-6 – Lighting adjacent to native open space shall be directed away and/or shielded from native open space.

BIO-7 – Developed and paved areas shall not drain directly into native open space without filtration and dissipation and must be prevented from releasing toxins, chemicals, petroleum products, and exotic plant and pest materials. Approved permanent methods/features shall be used such as planted swales and/or planted detention/desiltation basins.

The use of pesticides, herbicides, fertilizers and other substances that are potentially toxic or impactive to native habitats/flora/fauna (including water) shall be avoided, or limited and used correctly to reduce unintended primary or secondary application impacts and/or drainage of such materials into native open space.

BIO-8 – Project landscaping/restoration/revegetation materials shall be obtained from known reputable or certified suppliers, and not include: plants identified as an invasive species by the California Invasive Plant Council at <http://www.cal-ipc.org/paf/> or similar organizations; pest species in landscape soil or material, including but not limited to Argentine and fire ants, or oak borer beetles; diseased specimens; or biologically harmful materials such as non-biodegradable plastics or unintended biocidal chemicals, as determined by the qualified biologist or restoration ecologist.

BIO-9 – Native habitats and biologically sensitive resource boundaries shall be protected with appropriate barriers (e.g., non-invasive vegetation; rocks/boulders; 6-foot high, vinyl-coated chain link or equivalent fences/walls; and/or signage) to direct public access to appropriate locations, reduce domestic animal predation, protect wildlife, and provide adequate noise reduction where needed.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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). The CNDDDB field survey form can be found at the following link:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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

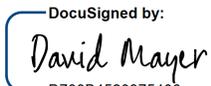
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Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. 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 documents and hearing date(s) for the Project. Questions regarding this letter and further coordination on these issues should be directed to Holly Smit Kicklighter, Senior Environmental Scientist (Specialist), at Holly.Smitkicklighter@wildlife.ca.gov or (858) 637-7188.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager

Ec: CDFW: Susan Howell, San Diego – Susan.Howell@wildlife.ca.gov
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USFWS: Jonathan Snyder, Carlsbad Field Office – Jonathon_D_Snyder@fws.gov

REFERENCES

California Department of Fish and Wildlife (CDFW). 2020. California Fish and Game Code, 2020 Edition.

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Vurbef, Scott. 2020. Personal communication with Holly Smit Kicklighter. September 11, 2020.