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Dec 18 2020

STATE CLEARINGHOUSE

December 18, 2020

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Subject: Notice of Preparation of a Draft Environmental Impact Report for the Berggruen Institute Project, SCH #2020110343, City of Los Angeles, Los Angeles County

Dear Mr. Como:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Los Angeles (City; Lead Agency) for the Berggruen Institute Project (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 & G. Code, §§ 711.7, subdivision (a) & 1802; Pub. 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 (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, including 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.*), or CESA-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 *et seq.*), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

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Project Description and Summary

Objective: The City proposes the development and operation of the Project through the Berggruen Institute Specific Plan (Plan). In accordance with the proposed Plan, development would be concentrated on approximately 28 acres of the 447-acre Project site, which would be divided into three Sub Areas:

- Ridge I – Ridge I would include a primary Institute Building comprising approximately 39,880 square feet of Research Institute uses, including meeting rooms, lounge/study areas, offices, an auditorium/lecture hall, a library, storage space and support areas, as well as dining and kitchen facilities; 30 Scholar Units serving as limited-term living quarters for resident scholars, visiting scholars, guests, and limited staff, with supporting uses and amenities such as a Gatehouse and recreational facilities; as well as landscaped outdoor spaces including gardens and courtyards.
- Ridge II – Ridge II would include three Scholar Pavilions of up to 10,000 square feet each with a combination of Research Institute uses and/or limited-term scholar living quarters.
- Open Space – This area would allow for hillside preservation, restoration, and protection of native habitat; fuel modification zones for fire risk management; and public trails and recreational opportunities in an area comprising 424.4 acres. Within the Open Space Sub-Area, portions of two existing trails that pass through the Project site would be improved and available for public use. This use would be consistent with an existing, recorded, open space easement agreement and trail easement agreements (Instrument Nos. 06 2284769, 06 2284768, and 06 2284767, respectively).

Location: The Project site is located at 1901 North Sepulveda Boulevard and 2100-2187 North Canyonback Road, Los Angeles, CA 90049. The proposed Project activities will take place on an approximately 447-acre site located just west of Interstate 405 (I-405) and south of the existing Mountain Gate Country Club and associated residential community. Los Angeles County Assessor Parcel Numbers (APNs) associated with the Project include: 4493-014, 4493-014-037, 4493-014-038, 4493-014-039, 4493-036-001 through 4493-036-011, 4493-037-001 through 4493-037-013, and 4493-038-001 through 4493-038-007.

Comments and Recommendations

CDFW offers the comments and recommendations below to assist the 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 looks forward to commenting on the DEIR when it is released. CDFW may have additional comments to the DEIR not addressed in this letter.

Specific Comments

- 1) Potential Impacts from Recreational Trail Usage. The proposed Project includes plans to expand and improve the series of trails found on the Project site and make them available for public use. Project activities, such as trail widening and the installation of benches or

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shade structures, are likely to accommodate (and subsequently lead to) increased hiker frequency and duration on trails found on-site. Elevated hiker usage is likely to create direct and indirect impacts to local wildlife species through the loss of potential habitat. An increase in the number of hikers has potential to impact sensitive wildlife species and their habitat through a variety of ways:

- Increased numbers of people and dogs using the trail system
- Loss of habitat due to erosion from footpaths
- Increased noise levels
- Increased trash or pet waste
- Introduction of unnatural food sources via trash and trash receptacles
- Introduction of invasive species from other sites

The area of influence that the trail has upon the surrounding habitat is being increased.

Outdoor recreation has the potential to disturb wildlife, resulting in energetic costs, impacts to animals' behavior and fitness, and avoidance of otherwise suitable habitat. Studies have shown that outdoor recreation is the second leading cause of the decline of federally threatened and endangered species on public lands (Losos et al. 1995), and fourth leading cause on all lands (Czech et al. 2000). As a result, natural resource managers are becoming increasingly concerned about impacts of recreation on wildlife (Knight and Gutzwiller 1995).

Recreational trails can fragment the habitat that they pass through. Clearing additional vegetation to widen a thin (0.5-2 m) trail may have further negative impacts on wildlife (Holmes and Geupel 2005). These negative impacts generally result from the expansion of the area of influence that a trail has on its surrounding open space. Trails can create artificial boundaries or areas of avoidance for wildlife as they bring outsiders into areas that would otherwise be unvisited. Along with these perceived outsiders, in this case hikers, comes a new set of perceived threats to local wildlife in the form of visual, auditory, and olfactory cues that remain along the trail well after recreational usage.

If habitat is available, wildlife may move to areas farther from trails, beyond the areas of influence, to avoid recreation-related disturbance (Reed et al. 2019). However, the greater the proportion of a protected area occupied by trails, the fewer options there are for wildlife to move outside of those areas of influence. There are simply fewer opportunities for wildlife to retreat from nearby recreational users in an already shrinking habitat.

The higher the level of recreation in protected areas, the greater the potential there is for the effects of trails and their use to extend beyond habitat loss and individual-level effects (behavioral and physiological) on wildlife. This may transition into population- and community-level effects, including depletion of floral and faunal populations, alteration of the trophic community structures, and reduction of biodiversity (CDFW 2015).

- a) Conservation of Undisturbed Open Space. CDFW recommends setting aside conserved acreage of sensitive vegetation communities in a manner that is isolated and free from influence by recreational usage. These conserved areas should be oriented to provide refugia for species that may be flushed or relocated by the presence of trails.

For proposed preservation and/or restoration, the environmental document should

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include measures to protect the targeted habitat values in perpetuity from direct and indirect negative impacts. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include, but are not limited to, restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be provided for the long-term monitoring and management of mitigation lands. CDFW recommends that mitigation occur at a CDFW-approved bank or via an entity that has been approved to hold and manage mitigation lands pursuant to Assembly Bill 1094 (2012), which amended [Government Code sections 65965-65968](#). Under Government Code section 65967(c), the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

- b) Analysis of Recreational Usage. Understanding wildlife responses to recreation and the area of influence of human activities may help managers judge whether wildlife populations are experiencing stress due to interactions with humans and may aid in tailoring recreation plans to minimize long-term effects to wildlife from disturbance. In an environmental document, CDFW recommends including an analysis of recreational usage of the trail system in which current levels of traffic (hiker, biker, and dog) is compared to the expected increase in traffic as a result of trail improvements.
- c) Educational Materials and Signage. Educational materials and signage should be made available to trail users to keep aware of the impacts that human disturbance brings to open spaces. Hikers should be made aware of the impacts that they have on surrounding habitat (such as noise or smells), particularly during breeding seasons.

CDFW recommends the City install appropriate public information signage at trailheads to 1) educate and inform the public about wildlife present in the area; 2) advise on proper avoidance measures to reduce human-wildlife conflicts; 3) advise on proper use of open space trails in a manner respectful to wildlife; and, 4) provide local contact information to report injured or dead wildlife. Signage should be written in the language(s) understandable to all those likely to recreate and use the trails. Signage should not be made of materials harmful to wildlife such as spikes or glass. The City should provide a long-term maintenance plan to repair and replace the signs.

- d) Trail Restrictions. Restrictions on types of activities allowed in some areas, such as prohibiting dogs or restricting use to trails near active breeding habitat, will aid in minimizing disturbance. Pets should be kept on leash and on trails at all times. Hikers should be encouraged to clean up after their dogs and discourage animal waste as it tends to lead to wildlife avoidance.
 - e) Trash Receptacles. Trash receptacles should be placed only at trailheads to avoid creating an unnatural food source that may attract nuisance wildlife and to minimize waste in core habitat areas.
- 2) Wildlife Corridor and Mountain Lions. The Project site may impact wildlife corridor and movement of large mammals between natural habitat areas/open space. The Project site is

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surrounded by natural areas that provide essential habitat connectivity throughout the Santa Monica Mountains and potentially across I-405 to the east. Mountain lions occur within the Project footprint or in areas immediate adjacent to the Project (Elbroch 2020). Habitat loss and fragmentation due to roads and development has driven the southern California mountain lion population towards extinction (Yap et al. 2019). Maintaining wildlife corridors and habitat continuity is essential for wildlife survival and is increasingly important considering habitat loss and climate change. In preparation of the DEIR, CDFW recommends the City conduct studies to document wildlife activity and movement through the Project site. The results, including mapped data, and a discussion of how the Project may affect wildlife movement and dispersal should be provided. The DEIR should also include mitigation measures that would address the reduction of wildlife corridor and impacts to wildlife movement.

- 3) Potential Impacts to Aquatic and Riparian Resources. The Initial Study (IS) indicates that the “Project site includes both native and non-vegetation, and several drainage features that fall under the jurisdiction of the California Department of Fish and Wildlife (CDFW) and/or USFWS.” Project construction and activities may occur adjacent to and potentially impact streams. Therefore, the Project may be subject to notification pursuant to Fish and Game Code section 1600 *et seq.*
 - a) Lake and Streambed Alteration (LSA) Agreement. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream, or use material from a streambed. For any such activities, the project applicant (or “entity”) must provide written notification to CDFW pursuant to Fish and Game Code section 1600 *et seq.* CDFW’s issuance of an LSA Agreement 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 EIR of the Lead Agency for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the 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 Agreement.
 - i. Hydrological Evaluation. As part of the LSA Notification process, CDFW requests a hydrological evaluation of the 200, 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. CDFW recommends the DEIR discuss the results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.
 - b) Delineation. A preliminary jurisdictional delineation of the streams and their associated riparian habitats should be included in the DEIR. The DEIR should evaluate all rivers, streams, and lakes, including culverts, ditches, storm channels that may transport water, sediment, pollutants, and discharge into rivers, streams, and lakes. Be advised that some wetland and riparian habitats subject to CDFW’s authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers’ Section 404 permit and Regional Water Quality Control Board Section 401 Certification.
 - c) Changes to Drainage Patterns. Where Project activities would impact a stream, CDFW

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recommends that the City consult with a hydrologist to determine whether additional indirect impacts or modifications to the stream channel may occur. CDFW recommends that an appropriate stream reach, both upstream and downstream, be studied for potential Project-related indirect impacts. CDFW recommends preparation of a hydrological report to discuss and identify the potential, magnitude, and location of impacts related to stream geomorphology, water sources, and discharge.

- d) Setbacks. In areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes. Therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.
- 4) Impacts to Oak Trees and Oak woodlands. The IS states that a subsequent “EIR will evaluate whether the Project would significantly impact oak woodlands or affect oak or other unique native trees.” Oak trees provide nesting and perching habitat for approximately 170 species of birds (Griffin and Muick 1990). Oak woodlands serve several important ecological functions such as protecting soils from erosion and land sliding; regulating water flow in watersheds; and maintaining water quality in streams and rivers. Oak woodlands also have higher levels of biodiversity than any other terrestrial ecosystem in California (Block et al. 1990). Due to the historic and on-going loss of this ecologically important vegetation community, oak trees and woodlands are protected by local and State regulations. CDFW considers oak woodlands a sensitive vegetation community.
- a) Oak woodlands. CDFW recommends a qualified botanist identify impacts to oak woodlands. The DEIR should provide a vegetation community map showing where oak woodlands occur in the Project site (also see General Comment #3); where impacts to oak woodlands would occur; and, total acreage of oak woodlands impacted in each separate area. Oak woodlands are structurally diverse vegetation communities. Accordingly, for each area of oak woodland impacted, provide a list of both native and non-native understory plants present. A list should be organized by layer and/or life form such as vine, groundcover, forb, subshrub, shrub, and tree. For each area, also provide the abundance, density, and cover of each plant species and vegetation layer impacted.
- b) Avoidance and Disclosure of Potential Impacts. CDFW recommends the DEIR provide measures to avoid impacts to oak trees and oak woodlands during and after Project construction to the extent feasible. Avoidance measures should be effective, specific, enforceable, and feasible. During the Project, the City should provide measures to fully protect the Critical Root Zone of all oak trees not targeted for removal from ground disturbance activities. The City should also provide measures to protect the outer edge of oak woodlands with appropriate setbacks. After the Project, CDFW recommends oak trees and woodlands be protected by including into the final project design appropriate setbacks between the Berggruen Institute facilities (including buildings, landscaping, and trails) and protected oak woodlands.

For unavoidable Project impacts, adequate disclosure includes providing the following information at a minimum: 1) location of each tree and area of oak woodland impacted shown as a point feature or polygon on a map; 2) scientific (Genus, species, subspecies, or variety) and common name of each tree and understory plant species impacted; 3)

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the size (diameter at breast height, inches) of each tree impacted; 4) a clear identifier to distinguish heritage trees; 5) acres of oak woodlands impacted; 6) mitigation ratio for individual trees and acres of oak woodlands; 7) total number of replacement trees and acres of oak woodlands; and, 8) total number of replacement trees and appropriate understory species, to occur in suitable on- and/or off-site mitigation lands.

- c) Mitigation. CDFW recommends creating or restoring on- or off-site oak woodland habitat at a ratio comparable to the Project's level of impacts to individual oak trees and acres of oak woodland habitat. CDFW recommends the City consider phased removal of oak trees (i.e., phased Project approach) in order to minimize impacts resulting from the temporal loss of oak trees and to provide structurally diverse oak woodland habitat while mitigation for impacts to oak woodland habitat occurs.
 - d) On- or Off-Site Mitigation. CDFW recommends the DEIR provide an on- or off-site mitigation plan and discuss the suitability of selected location(s) for mitigating impacts to oak trees and oak woodlands. The DEIR should provide information about reference sites, with similar species and habitat as being mitigated and the suitability of selected reference site(s) to inform the Project's mitigation plan. Lastly, a mitigation plan should provide specific mitigation goals and actions to achieve those goals to establish self-sustaining oak trees and oak woodlands.
- 5) Rare Plants. A review of California Natural Diversity Database (CNDDDB) indicates that Plummer's mariposa lily (*Calochortus plummerae*), given a rarity ranking of 4.2 by California Native Plant Society's (CNPS), has historic records of being found in the immediate vicinity of the Project site. Based on an expanded search of CNDDDB, there appears to be only six occurrences of Plummer's mariposa lily in the Santa Monica Mountains. This is considered moderately threatened in California and thus a locally rare plant species. Please see CNPS' [Rare Plant Ranks](#) page for additional rank definitions (CNPS 2020a). Impacts to these species and their habitat must be analyzed during preparation of environmental documents relating to CEQA as they meet the definition of rare or endangered (CEQA Guidelines, § 15380). Project activities, such as grading and construction, are likely to have direct or indirect effects to this sensitive species.
- a) Field Survey. CDFW recommends a thorough assessment of rare and special status plants. An adequate rare plant assessment should include multiple spring-time surveys performed for at least two growing seasons (i.e., years).
 - b) Data. CDFW recommends the DEIR include a map showing the location of individual plants or populations. CDFW recommends the rare plant map show surveyor(s) track lines to document that the entire site was covered during field surveys.
 - c) Avoidance and Disclosure of Potential Impacts. For potential impacts to rare plants, CDFW recommends the DEIR provide species-specific, effective, enforceable, and feasible avoidance measures. Avoidance measures should include appropriate setbacks to protect plants/populations and habitat.

For unavoidable Project impacts, the DEIR should fully disclose impacts by species, number of individuals, and habitat acres. A map should clearly show which plants or populations may be impacted. Impacts to habitat should describe the plant composition

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(e.g., density, cover, abundance) within impacted habitat, and a list of individual plants impacted separated by vegetation class (i.e., groundcover, forb, subshrub, shrub, tree).

Please note that CDFW does not consider transplanting or salvaging rare plants within a development as appropriate mitigation for rare plants.

- d) Mitigation. CDFW recommends the DEIR provide species-specific on- or off-site mitigation for impacts to individual plants and habitat acreage. Rare plants are habitat specialists that require specific conditions to persist. Such conditions may include vegetation composition (species abundance, diversity, cover), soils, mycorrhizal fungi, substrate, slope, hydrology, and pollinators. Accordingly, the DEIR should identify physical and biological factors for mitigation habitat that support rare plants. Mitigation should be comparable to the Project's level of impacts to individual plants and total habitat acreage. In considering the appropriate level of mitigation, CDFW recommends the DEIR consider factors that include (but not limited to) the rarity, endemism, and/or special status of the plant impacted; impacts to or loss of the seed bank; propagation viability from vegetative material; and, risk of failure (e.g., high level of attrition, low survivorship) of field plantings for creating or restoring self-sustaining stable populations of rare plants and habitat.
 - e) On- or Off-Site Mitigation. CDFW recommends the DEIR provide information about an on- or off-site mitigation plan and discuss the suitability of selected location(s) for mitigating impacts to rare plants and habitat (e.g., slope, soil, vegetation composition, pollinators). The DEIR should provide information about reference sites, with similar species and habitat as being mitigated, and the suitability of selected reference site(s) for informing the Project's on- or off-site mitigation plan. Lastly, an on- or off-site mitigation plan should provide specific goals and actions to achieve those goals to establish self-sustaining populations.
- 6) Impacts to reptiles. According to a review of CNDDDB, there are recorded observations of coastal whiptail (*Aspidoscelis tigris stejnegeri*), a Species of Special Concern (SSC), immediately south of the Project site. Project ground disturbing activities such as grading and grubbing may result in habitat destruction, causing the death or injury of adults, juveniles, eggs, or hatchlings. In addition, the Project may remove habitat by eliminating vegetation that may support foraging and breeding habitat. CEQA provides protection not only for CESA- and Endangered Species Act (ESA) listed species, but for any species including but not limited to SSC that can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened or endangered species (CEQA Guidelines, § 15065). Take of SSC could require a mandatory finding of significance by the Lead Agency (CEQA Guidelines, § 15065).
- a) Due to potentially suitable habitat within the Project site, prior to vegetation removal and/or grading, qualified biologists familiar with the reptile species behavior and life history should conduct specialized surveys to determine the presence/absence of SSC. Surveys should be conducted during active season when the reptiles are most likely to be detected.
 - b) To further avoid direct mortality, CDFW recommends that a qualified biological monitor approved by CDFW be on-site during ground and habitat disturbing activities to move

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out of harm's way special status species that would be injured or killed by grubbing or Project-related grading activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.

- c) If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the Project clearly identify that the designated entity should obtain all appropriate State and federal permits.
- 7) Nesting Birds. The Project will require removal or disturbance of trees, shrubs, and grasslands that could support nesting birds and raptors. Accordingly, Project construction and activities may impact nesting birds and raptors. Project activities occurring during the bird and raptor breeding and nesting season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. The Project may also lead to the temporal or permanent loss of nesting habitat for birds and raptors.
- a) Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). It is unlawful to take, possess, or needlessly destroy the nest or eggs of any raptor.
 - b) CDFW recommends that measures be taken to fully avoid Project impacts to nesting birds and raptors. Proposed Project-related ground-disturbing activities (e.g., mobilizing, staging, drilling, and excavating) and vegetation removal should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds, raptors, or their eggs.
 - c) If impacts to nesting birds and raptors cannot be avoided, CDFW recommends the DEIR include measures to mitigate for impacts. CDFW recommends surveys by a qualified biologist with experience conducting breeding bird and raptor surveys. Surveys are needed to detect protected native birds and raptors occurring in suitable nesting habitat that may be disturbed and any other such habitat within 300 feet of the Project disturbance area, to the extent allowable and accessible. For raptors, this radius should be expanded to 500 feet and 0.5 mile for special status species. 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.
 - d) CDFW recommends the DEIR provide an analysis of the expected increase in human presence and any subsequent change in traffic, noise level and frequency, and artificial lighting relative to a no build alternative. Using these expected elevated levels of human-driven disturbances, further consideration should be given to potential impacts to birds and raptors nesting within and adjacent to the Project site.

General Comments

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- 1) Disclosure. A DEIR should provide an adequate, complete, and detailed disclosure about the effect which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, §15151). Adequate disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).
- 2) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures [CEQA Guidelines, §§ 15002(a)(3), 15021]. Pursuant to CEQA Guidelines section 15126.4, an environmental impact report should describe feasible measures which could mitigate for impacts below a significant level under CEQA.
 - a) Level of Detail. Mitigation measures must be feasible, effective, implemented, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, §§ 15126.4, 15041). A public agency should provide the measures that are fully enforceable through permit conditions, agreements, or other measures (Pub. Resources Code, § 21081.6). CDFW recommends that the City prepare mitigation measures that are specific, detailed (i.e., responsible party, timing, specific actions, location), and clear in order for a measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). Adequate disclosure is necessary so CDFW may provide comments on the adequacy and feasibility of proposed mitigation measures.
 - b) Disclosure of Impacts. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the Project as proposed, the environmental document should include a discussion of the effects of proposed mitigation measures [CEQA Guidelines, § 15126.4(a)(1)]. In that regard, the environmental document should provide an adequate, complete, and detailed disclosure about a project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.
- 3) Biological Baseline Assessment. In preparation of the DEIR, CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project site and where the Project may result in ground disturbance. The assessment and analysis should place emphasis upon identifying endangered, threatened, sensitive, regionally, and locally unique species, and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. CDFW also considers impacts to SSC a significant direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures. The DEIR should include the following information:
 - a) 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 [CEQA

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Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a State-wide ranking of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by visiting [Vegetation Classification and Mapping Program - Natural Communities](#) webpage (CDFW 2020a).

- b) A thorough, recent, floristic-based assessment of special status plants and natural communities following CDFW's [Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities](#) (CDFW 2018). Adjoining habitat areas should be included where Project construction and activities could lead to direct or indirect impacts off site.
- c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. The [Manual of California Vegetation](#) (MCV), second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2009). 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.
- d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the Project. CDFW's [California Natural Diversity Database](#) (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat (CDFW 2020b). The DEIR should include a nine-quadrangle search of the CNDDDB to determine a list of species potentially present at the Project site. A lack of records in the CNDDDB does not mean that rare, threatened, or endangered plants and wildlife do not occur in the Project site. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review [CEQA Guidelines, § 15003(i)].
- e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including SSC, and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project site should also be addressed such as wintering, roosting, nesting, and foraging habitat. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, may be required if suitable habitat is present. See CDFW's [Survey and Monitoring Protocols and Guidelines](#) for established survey protocol for select species (CDFW 2018). Acceptable species-specific survey procedures may be developed in consultation with CDFW and the USFWS.
- f) A recent wildlife and rare plant survey. CDFW generally considers biological field

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assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame or in phases.

- 4) Data. CEQA requires that information developed in environmental impact reports 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 by completing and submitting [CNDDDB Field Survey Forms](#) (CDFW 2020c). The City should ensure the data has been properly submitted, with all data fields applicable filled out. The data entry should also list pending development as a threat and then update this occurrence after impacts have occurred.
- 5) Biological Direct, Indirect, and Cumulative Impacts. CDFW recommends providing a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. The DEIR should address the following:
 - a) A discussion 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 Natural Community Conservation Plan (NCCP, Fish & G. Code, § 2800 et. seq.)]. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR.
 - b) A discussion of both the short-term and long-term effects to species population distribution and concentration and alterations of the ecosystem supporting the species impacted [CEQA Guidelines, § 15126.2(a)].
 - c) A discussion of potential adverse impacts from lighting, noise, temporary and permanent human activity, and exotic species and identification of any mitigation measures.
 - d) A discussion on Project-related changes on drainage patterns; 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 sites. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included.
 - e) An analysis of impacts from proposed changes to land use designations and zoning, and existing land use designation and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR.
 - f) A cumulative effects analysis, as described under CEQA Guidelines section 15130.

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General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant and wildlife species, habitat, and vegetation communities. If the City determines that the Project would not have a cumulative impact, the environmental document should indicate why the cumulative impact is not significant. The City's conclusion should be supported by facts and analyses [CEQA Guidelines, § 15130(a)(2)].

- 6) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:
- a) 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.
 - b) CEQA Guidelines section 15126.6(a) states that an environmental document should describe a reasonable range of potentially feasible alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. CEQA Guidelines section 15126.6(f)(2) states if the Lead Agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion and should include reasons in the environmental document.
 - c) A range of feasible alternatives to Project component location and design features to avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas. CDFW recommends the City consider configuring Project construction and activities, as well as the development footprint, in such a way as to fully avoid impacts to sensitive and special status plants and wildlife species, habitat, and sensitive vegetation communities. CDFW also recommends the City consider establishing appropriate setbacks from sensitive and special status biological resources. Setbacks should not be impacted by ground disturbance or hydrological changes for the duration of the Project and from any future development. As a general rule, CDFW recommends reducing or clustering the development footprint to retain unobstructed spaces for vegetation and wildlife and provide connections for wildlife between properties and minimize obstacles to open space.

Project alternatives should be thoroughly evaluated, even if an alternative would impede, to some degree, the attainment of the Project objectives or would be more costly (CEQA Guidelines, § 15126.6).

- d) Where the Project may impact aquatic and riparian resources, CDFW recommends the City consider alternatives that would fully avoid impacts to such resources. CDFW also recommends alternatives that would allow not impede, alter, or otherwise modify existing surface flow; watercourse and meander; and water-dependent ecosystems and vegetation communities. Project-related designs should consider elevated crossings to avoid channelizing or narrowing of streams. Any modifications to a river, creek, or stream may cause or magnify upstream bank erosion, channel incision, and drop in water level and cause the stream to alter its course of flow.

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- 7) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of moving an individual from a project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 8) Moving out of Harm's Way. To avoid direct mortality, we recommend that a qualified biological monitor, approved by CDFW, be on-site prior to and during ground and habitat disturbing activities. The biological monitor may need to move any special status species or other wildlife of low mobility out of harm's way that would likely be injured or killed by Project-related construction activities, such as grubbing or grading. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity should obtain all appropriate state and federal permits.

CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). Effective October 1, 2018, a Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). Please visit CDFW's [Scientific Collection Permits webpage](#) for information (CDFW 2020c).

- 9) Non-Native Plants and Landscaping. The Project may involve significant landscaping for aesthetic purposes. Invasive plant species spread quickly and can displace native plants, prevent native plant growth, and create monocultures. CDFW recommends using native, locally appropriate plant species for landscaping on the Project site, similar to species found in adjacent natural habitats.
- a) If the Project may involve landscaping, CDFW recommends the Draft Environmental Impact Report (DEIR) provide the landscaping plant palette and restrict use of species listed as 'Moderate' or 'High' by the [California Invasive Plant Council](#) (Cal-IPC 2020). These species are documented to have substantial and severe ecological impacts on physical processes, plant and animal communities, and vegetation structure.
- b) If non-native invasive plants are on site, CDFW recommends the DEIR provide measures to reduce the spread of non-natives during Project construction and activities. Spreading non-native plants during Project activities may have the potential to impact areas not currently exposed to non-native plants. This could result in expediting the loss of natural habitats in and adjacent to the Project site and should be prevented.
- 10) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project related direct or indirect impacts to sensitive plants, animals, and habitats. Mitigation

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measures should emphasize avoidance and reduction 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 and therefore 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. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code, section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

- 11) Long-term Management of Mitigation Lands. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands.
- 12) Wetland Resources. CDFW, as described in Fish and Game Code section 703(a), is guided by the Fish and Game Commission's (Commission) policies. The [Wetlands Resources](#) policy the Commission "...seek[s] to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California (CFGC 2020). Further, it is the policy of the Fish and Game Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."
 - a) The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, the Project must include mitigation measures to assure a "no net loss" of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions 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, which preserve the riparian and aquatic values and functions for the benefit to on-site and off-site wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DEIR and these measures should compensate for the loss of function and value.

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- b) The Fish and Game Commission's Water policy guides CDFW on the quantity and quality of the waters of this State that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage and support programs to maintain or restore a high quality of the waters of this State; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish & G. Code, § 5650).

Conclusion

We appreciate the opportunity to comment on the NOP for the Berggruen Institute Project to assist the City of Los Angeles in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist, at Andrew.Valand@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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