



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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Governor's Office of Planning & Research

Mar 16 2021**STATE CLEARINGHOUSE**

March 15, 2021

Scott Vurbef
City of Encinitas
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Subject: Comments on the Notice of Preparation of the Marea Village Mixed Use Development Project Draft EIR, SCH #2021020272

Dear Mr. Vurbef:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) for the Marea Village Mixed Use Development Project (Project) Draft Environmental Impact Report (DEIR).

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" (see Fish & G. Code, § 2050) of any species protected under the California Endangered Species Act (CESA; Fish & G. Code, § 2050 et seq.) or 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.

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

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participated in the NCCP program by preparing a draft Subarea Plan (SAP) under the San Diego County Multiple Habitat Conservation Plan (MHCP). However, the SAP has not been finalized and has not been adopted by the City or received permits from the Wildlife Agencies (jointly, CDFW and the U.S. Fish and Wildlife Service (USFWS)).

Project Location: The 3.8-acre Project site is located at the southwest corner of La Costa Avenue and North Coast Highway 101 in the City of Encinitas. The Project site address is 1900 and 1950 N. Coast Highway 101. The Project site is surrounded by residential to the west, commercial to the south, the 101 highway and residential and commercial to the east, and commercial and the Batiquitos Lagoon to the north. The Project site is partly developed with mixed commercial uses and is partly undeveloped land.

Project Description and Summary: The proposed Project encompasses approximately 3.8 acres that includes 94 for-lease apartments, a 30-room boutique resort hotel, and 18,262 square feet of mixed-use commercial. The Project would include a subterranean parking garage, a walking paseo, pedestrian plaza, and an outdoor seating area. The Project site is currently partly developed; construction of the Project would involve demolition, clearing and grading of the existing development.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (i.e., biological) resources.

Specific Comments

- 1) Biological Baseline Assessment. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project area, with 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 Species of Special Concern 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 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 <https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>;

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- 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 Natural Communities* (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>);
 - c) A complete, recent, assessment of the biological resources associated with each habitat type onsite and within adjacent areas that could also be affected by the Project. CDFW's CNDDDB in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp;
 - d) CNDDDB indicates the occurrence of several special status species within the Project vicinity, these include California least tern, light-footed Ridgway's rail (*Rallus obsoletus levipes*), and western snowy plover (*Charadrius nivosus nivosus*). The DEIR should have a complete, recent, assessment of rare, threatened, and endangered, and other sensitive species onsite and within the area of potential effect, including California Species of Special Concern 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 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 CDFW and the USFWS; and,
 - e) A recent, wildlife and rare plant survey. CDFW generally considers biological field 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.
- 2) Biological Direct, Indirect, and Cumulative Impacts. Due to the proximity of the Project site to the Batiquitos Lagoon, it is essential to understand how the open space and the biological diversity within it may be impacted by Project activities. This should aid in identifying specific mitigation or avoidance measures necessary to offset those 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 following should be addressed in the DEIR:
- 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;

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- b) A discussion of potential adverse impacts from lighting, noise, temporary and permanent human activity, and exotic species and identification of any mitigation measures;
 - c) A discussion on Project-related changes on drainage patterns 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 Project includes plans for an underground parking structure; therefore, 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;
 - d) An analysis of impacts from land use designations 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; and,
 - e) A cumulative effects analysis, 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.
- 3) Sensitive Bird Species. The Project plans indicate that existing shrubs and trees will be removed, and a significant portion of the site will be demolished and graded. A review of California Natural Diversity Database (CNDDDB) indicates occurrences of special status bird species, including California gnatcatcher (*Polioptila californica*; gnatcatcher) within 0.80 mile of the Project vicinity. California least tern (*Sternula antillarum browni*; terns) also nests at the Batiquitos Lagoon, 0.22 mile away from the northern border of the Project site. The California least tern nests in open areas free of vegetation and has been known to occur on construction sites due to the cleared habitat. Project activities occurring during the breeding season of nesting birds could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species.
- a) CDFW recommends that measures be taken, primarily, to avoid Project impacts to nesting birds. 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).
 - b) 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 15 through August 31 (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, CDFW 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

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(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 onsite, 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.

- 4) California Least Tern. Due to the Project's proximity to the coast and the known California least tern nesting site at the Batiquitos Lagoon, CDFW recommends that the DEIR stipulate that a biologist with expertise in monitoring California least tern conduct surveys for presence or absence before the start of construction and monitor for California least tern throughout the construction phase. Furthermore, the DEIR should include an evaluation of impacts to the nearby tern colony and other sensitive lagoon species from project construction or from the final project as constructed.
- 5) Bat Species. Bat species may occur within the Project vicinity, the pallid bat (*Antrozous pallidus*) and the western mastiff bat (*Eumops perotis*) are both California Species of Special Concern. Despite the high diversity and sensitivity of bats in Southern California, numerous bat species are known to roost in trees and structures throughout San Diego County. Project activities may have the potential to adversely impact bat populations within the vicinity.
 - a. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish and Game Code § 4150, California Code of Regulations § 251.1). The DEIR should provide a thorough discussion of potential impacts to bats from construction and operation of the Project to adequately disclose potential impacts and to identify appropriate avoidance and mitigation measures. The DEIR shall describe feasible measures which could minimize significant adverse impacts (CEQA Guidelines §15126.4[a][1]).
 - b. CDFW recommends the DEIR provide a thorough discussion and adequate disclosure of potential impacts to bats and roosts from Project construction including (but not limited to) disturbances to vegetation, trees, and structures; demolition; grading; and excavating. If necessary, to reduce impacts to less than significant, the DEIR should provide bat-specific avoidance and/or mitigation measures [CEQA Guidelines, § 15126.4(a)(1)].
- 6) Tree Removal: Sheet L-1 of the Project plan document indicates the existing tree inventory to be removed. Although most of the current tree inventory is nonnative, these mature trees can still serve as habitat for native fauna. Habitat loss is one of the leading causes of native biodiversity loss. To compensate for any loss of trees, CDFW recommends replacing all non-native trees removed as a result of the proposed work activities at least a 1:1 ratio with native trees.
 - a) Due to tree removal, Project activities have the potential to result in the spread of tree insect pests and disease into areas not currently exposed to these stressors. This could result in expediting the loss of oaks, alders, sycamore, and other trees in California which support a high biological diversity including special status species. To reduce impacts to less than significant the final environmental document should describe an infectious tree disease management plan and how it will be implemented

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in order to avoid significant impacts under CEQA. All trees identified for removal resulting from the Project should be inspected for contagious tree diseases including but not limited to: thousand canker fungus (*Geosmithia morbida*), see <http://www.thousandcankers.com/>; Polyphagous Shot Hole Borer (*Euwallacea spp.*), see <http://eskalenlab.ucr.edu/avocado.html>; and goldspotted oak borer (*Agrilus auroguttatus*), see <http://ipm.ucanr.edu/PMG/PESTNOTES/pn74163.html>. To avoid the spread of infectious tree diseases, diseased trees should not be transported from the Project site without first being treated using best available management practices relevant for each tree disease observed.

- 7) Landscaping. Sheet L-2 of the Project plan document includes a landscape plan, in which no invasive plant material is proposed. Habitat loss and invasive plants are a leading cause of native biodiversity loss. CDFW recommends that the DEIR also stipulate that no invasive plant material shall be used. Furthermore, we recommend using native, locally appropriate plant species for landscaping on the Project site. A list of invasive/exotic plants that should be avoided as well as suggestions for suitable landscape plants can be found at <https://www.cal-ipc.org/solutions/prevention/landscaping/>.

General Comments

- 1) 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; and,
 - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.
- 2) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration or enhancement should be discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore 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. 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 non-profit organization to effectively manage and steward land, water, or natural resources on mitigation lands that it approves.
- 3) 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

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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.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Encinitas in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Melanie Burlaza, Environmental Scientist, by email at Melanie.Burlaza@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager I
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