



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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November 8, 2021

Governor's Office of Planning & Research

Nov 08 2021

STATE CLEARINGHOUSE

Scott Vurbeff
 City of Encinitas
 505 S. Vulcan Avenue
 Encinitas, CA 92024
SVurbeff@encinitasca.gov

Subject: Marea Village Mixed use Development Project (PROJECT); Draft Environmental Impact Report (DEIR); SCH #2021020272

Dear Mr. Vurbeff:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of Encinitas (City) for the Marea Village Mixed Use Development Project (Project, SCH No. 2021020272) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. CDFW previously submitted comments to the City in response to the Notice of Preparation of the DEIR in a letter dated March 15, 2021.

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. Our comments contained herein are based upon information in the DEIR, the accompanying Terrestrial Biological Resources Assessment (Appendix C-1 of the DEIR) prepared by Michael Baker International (MBI 2021), and CDFW's knowledge of sensitive biological resources.

CDFW 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. (Sawyer et al. 2008, *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, 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

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recommends the Project proponent obtain appropriate authorization under the Fish and Game Code (COPR 2009).

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of Encinitas (City) 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 CDFW or the United States Fish and Wildlife Service (USFWS; collectively referred to as the Wildlife Agencies).

PROJECT DESCRIPTION SUMMARY

Proponent: Encinitas Beach Land Venture, LLC

Objective: The objective of the Project is to demolish the existing buildings on the property and construct 94 for-lease apartments (2.30 acres), a 30-room boutique hotel resort (0.80 acre), and 18,261 square feet of mixed-use commercial businesses (0.69 acre). The new buildings are proposed to be three stories in height (maximum 34 feet tall). The Project would also include construction of an underground parking garage, a walking paseo, pedestrian plaza, and an outdoor seating area. The two-level parking garage would be recessed into the adjacent hillside to obscure the height of the structure when combined with the apartment buildings. All proposed ornamental plantings, including landscaping for the on-site bioretention areas, would be a mix of City-approved native species; the use of non-native species is not proposed.

Project activities include major demolition and grading of the existing development including all surface parking areas, a small commercial center in the southeastern portion of the site, and the unoccupied former restaurant building in the northern portion, totaling approximately 10,681 square feet of clearance. Improvements to North Coast Highway 101 are also proposed to allow for adequate ingress/egress.

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. The Project site address is 1900 and 1950 North Coast Highway 101, and is currently partly developed with mixed commercial uses and partly undeveloped land. In the northern portion of the site, there is an unoccupied commercial building and associated parking lot and in the southern portion there is a restaurant, retail space, and associated parking lots. In the southwest portion of the site there is heavily disturbed land with ruderal vegetation. Areas surrounding the Project site consist of primarily undeveloped land with Batiquitos Lagoon in the north, residential to the west, commercial and residential in the south, and the 101 highway and mixed development to the east. On-site habitat consists of ornamental vegetation and disturbed areas intermixed with the commercial development (MBI 2021).

Biological Setting:

The Batiquitos Lagoon Ecological Reserve occurs 0.25 mile away from the northern border of the Project site. The 544-acre property is managed by CDFW, with the goal to preserve, protect, and maintain its improved coastal wetland habitat and associated species (CDFW 2021a). Per the 2021 Carlsbad Habitat Management Plan (HMP) Triennial Monitoring Summary Report, Batiquitos Lagoon has been identified as a critical location in the Multiple Habitat Conservation Plan (MHCP)

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for sensitive bird species including California least tern (*Sterna antillarum browni*; California Fully Protected species, CESA-listed Endangered and federal Endangered Species Act (ESA)-listed Endangered), Western snowy plover (*Charadrius alexandrinus nivosus*; ESA-listed Threatened), light-footed Ridgway's rail (*Rallus obsoletus levipes*; ESA-listed Endangered, CESA-listed Endangered and CDFW Fully Protected species), and Belding's savannah sparrow (*Passerculus sandwichensis beldingi*; CESA-listed Endangered). In addition, the Reserve at Batiquitos functions as part of the regional stepping-stone corridor that provides wildlife dispersal opportunities between south San Diego County and Camp Pendleton (and into Orange and Riverside counties). This general route may support the coastal California gnatcatcher (*Polioptila californica*, gnatcatcher; ESA-listed Threatened) (City of Carlsbad 2021). A review of California Natural Diversity Database (CNDDDB) indicates gnatcatcher has been observed within 0.80 mile of the Project vicinity and Ridgway's rail has been observed 0.47 mile away from the Project area at the Lagoon (CDFW 2020a). Sensitive plant species, such as San Diego ambrosia (*Ambrosia pumila*, ESA-listed Endangered), also have been observed within the Batiquitos Lagoon area (CDFW 2020b).

The DEIR's survey area was described as the Project area plus areas generally within 100 feet. According to MBI (2021), the southwest and eastern portions of Project area contained 1.82 acres of disturbed land with non-native vegetation including brome grasses (*Bromus spp.*), short-pod mustard (*Hirschfeldia incana*), puncture vine (*Tribulus terrestris*), Jersey cudweed (*Pseudognaphalium luteoalbum*), and Russian thistle (*Salsola tragus*). In the northern portion of the project site, 2.24 acres of ornamental vegetation was observed, including non-native pines (*Pinus sp.*), eucalyptus (*Eucalyptus sp.*), and queen palms (*Syagrus romanzoffianum*). Also, strawberry tree (*Arbutus unedo*) was detected in the median and eucalyptus also on the east side of the North Coast Highway 101. No special status plants were identified within the Project site (MBI 2021). Based on a review of specific habitat preferences, occurrence records, known distributions, and elevation ranges, the survey area has a low potential to support decumbent goldenbush (*Isocoma menziesii*; California Rare Plant Rank 1B.2) and no other special status plant species are expected to occur within the survey area due to a lack of suitable habitat (MBI 2021).

According to MBI (2021), special-status wildlife species were not observed within survey area during the field survey; however, the Project site has potential to support Cooper's hawk (*Accipiter cooperii*), a CDFW Watch List Species, and low potential for both California horned lark (*Eremophila alpestris actia*, CDFW Watch List species) and yellow warbler (*Setophaga petechia*, CDFW Species of Special Concern (SSC)). All remaining special-status wildlife species identified by the CNDDDB and IPaC are not expected to occur within the project site due to a lack of suitable habitat (MBI 2021). Regarding California least tern, MBI (2021) stated that, "[t]he California least tern nests in the nearby Batiquitos Lagoon...due to proximity to foraging habitat and the general nesting colony at Batiquitos Lagoon, any prolonged delay in construction between the months of April and September and after the project site has been graded could potentially result in terns investigating the site as a nesting or roosting location."

Migratory Corridors and Linkages: Due to the existing development and very limited amount of ruderal vegetation, the Project site itself is not considered a functional linkage between patches of native habitat. However, due to the proximity of Batiquitos Lagoon and because many avian species migrate along the coast, recommendations are offered to minimize potential bird strikes against reflective structures associated with the proposed development.

Timeframe: The DEIR did not provide start and end dates for Project activities. Construction is proposed to occur in one phase, estimated to last approximately 22 months.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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 (biological) resources. Editorial comments or other suggestions may also be included to improve the DEIR.

I. Project Description and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT #1: California Least Tern

Section 3.3, Page 3.3-19 to 3.3-20

Issue: Direct and indirect impacts to sensitive species may occur as a result of Project construction and subsequent operation. Specifically, California least tern (terns), a CESA-listed Endangered, a California Fully Protected species, and ESA-listed Endangered species, nests annually at Batiquitos Lagoon, less than 0.25 mile away from the Project site, from April to August (Unitt 1984).

Specific impact: Although considered extremely remote, based on information provided by MBI (2021), the possibility of nesting by least terns within the bare ground areas of the Project site should be monitored to ensure no terns may be directly impacted by project activities. Mitigation measure MM-1 may not be sufficient to reduce impacts to this species to below significant.

Additional indirect impacts to California least tern may occur following the completion of the development. Furthermore, predators such as raptors may use the completed development as a perch to hunt California least terns while the nesting colony is present.

Why impact would occur: The DEIR states that no candidate (for threatened or endangered), sensitive, or special-status species were observed on the Project site and concluded that the area has low (nesting) potential to support California least tern (MBI 2021). However, the species is known to occupy cleared lots, including construction sites, in close proximity to foraging habitat (i.e., Batiquitos Lagoon), so there is potential for terns to nest within the Project area once the site has been graded and if human activity remained very low on the site. In such a scenario, there would be potential for least tern nest abandonment resulting from construction activities/noise if nesting does occur on site. Adult abandonment of active nests may lead to starvation or increased predation of chicks, a decline in breeding success, and an overall population decline. As a Fully Protected species, take for California least tern cannot be authorized outside of a finalized NCCP with an Implementing Agreement.

Finally, the California least tern colony at Batiquitos Lagoon is subject annually to large amounts of predation from peregrine falcon (*Falco peregrinus*), red tailed hawk (*Buteo jamaicensis*), and several species of owls (B. Bonesteel, personal communication, December 5, 2016). These species hunt the tern chicks and adults from a high, perched position. CDFW

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is concerned that the final development will serve as a perch and enhance predation of the least tern colony.

Evidence impact would be significant: Appendix G of the CEQA Guidelines notes that an impact would be significant if it would have an effect on sensitive species. In addition to being both CESA- and ESA-listed Endangered, California least terns are also Fully Protected under FGC Section 3511(b)(6). A Fully Protected species may not be taken at any time and any impacts to California least terns would be considered significant.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #1:

To reduce impacts to less than significant: CDFW recommends the following amended language in MM1 to adequately survey and monitor for California least tern in the Project area:

“Impacts to California least tern shall be fully avoided. If the Project begins construction **occurs** during the nesting season (roughly April 1 to September 15), a qualified biologist with expertise monitoring least terns **and approved by the Wildlife Agencies**, shall conduct a preconstruction presence/absence survey for ~~migratory birds, raptors, and least terns for active nests on the project site~~ **and/or signs of least terns (e.g., nesting scrapes and/or nests) in the Project survey area. The qualified biologist shall be on-site during all construction activities** ~~shall monitor the project site at least twice weekly between April 1 and September 15 to verify that least terns are not flying to or over the site during the day or roosting on the site at night. If least terns are observed~~ ~~if it is determined that least terns are repeatedly flying over the site during construction hours~~ **or roosting on the site, or landing on the site outside of construction hours, an additional survey may be required and additional avoidance measures (e.g. changing construction hours, staging equipment throughout the site) may** ~~may~~ **shall** be implemented to deter terns from **flying over and** landing on the site and ensure the **Project’s** impacts on least terns remain less than significant. If California least terns occupy and nest on the site, construction within at least 500 feet ~~or a suitable distance as determined by the qualified least tern biologist will~~ **shall need to** be delayed until any tern nests have gone to completion and the young have fledged and are no longer dependent on the **Project** site for roosting.”

Mitigation Measure #2:

To reduce impacts to less than significant: CDFW recommends that Project features be designed in such a way as to reduce light and noise pollution in the area:

“Project design shall include: reduced, shielded, and/or lighting that is directed away from Batiquitos Lagoon; noise elements which do not exceed 60 A-weighted decibels (one hour weighted) at the nearest edge of Batiquitos Lagoon; signage, barriers or similar features that shall notify and/or preclude human intrusion and off-leash dogs into Batiquitos Lagoon; and avoidance and/or proper use of and minimization of toxic chemicals and wildlife entrapping/endangering products including petroleum products, pesticides, herbicides, rodenticides, plastic netting or net-covered fiber rolls, and similar. All Best Management

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Practices and landscaping elements shall also be removed after their useful life or function has ended.”

Mitigation Measure #3:

To reduce impacts to less than significant: If the Project is proposing height variances to increase the building heights, there was no discussion on how this might affect California least terns in the DEIR. CDFW recommends providing a thorough discussion as to whether the height of the new buildings will be less than the height of Marea Village. The discussion should include information on perches and roost height for tern predators and how this may impact tern populations. The following mitigation measure should be included in the final EIR:

“Project design shall include perching deterrents in order to reduce the amount of perching and roosting habitat for raptors.”

COMMENT #2: Bat Species

Section 3.3, Page 3.3-19 to 3.3-20

Issue: Bat species have potential to roost in trees and structures at or near the Project site (Evelyn et al. 2004) and may be impacted by Project activities.

Specific impact: Project construction activities such as demolition of building structures and removal of trees may have the potential to adversely impact bat populations in the Project area. According to the DEIR on page 82, “[a]ll existing structures on site would be removed. Approximately 10,681 square feet of building area would be demolished, including the small commercial center...and the unoccupied former restaurant building in the northern portion.” Based on the biological survey, the DEIR states that, “...no evidence was observed of bats roosting within the trees in the survey area.” However, bat presence/absence in the unoccupied building structure was not addressed in their DEIR biological survey results (MBI 2021).

Why impact would occur: The DEIR does not provide a thorough discussion of potential impacts to bats and roosts from Project construction. Measures to avoid, reduce, or mitigate impacts to these species are not present in the DEIR.

Evidence impact would be significant: Construction and operation of the Project has the potential to impact bats, which are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & Game Code § 4150, California Code of Regulations § 251.1).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #4:

To reduce impacts to less than significant: CDFW recommends that the following measure be added to the Mitigation, Monitoring, and Reporting Program (MMRP) of the DEIR:

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“Within 72 hours of the commencement of construction activities, a bat survey shall be conducted within all suitable habitat, including building structures proposed to be demolished, in the Project survey area, by a bat biologist that is approved by the Wildlife Agencies. If any California Bat Species of Special Concern are at the site or within the vicinity, then appropriate measures shall be implemented to avoid the bats, including but not limited to: readjusting the work hours, cessation of work, and noise and light reduction.”

COMMENT #3: Sensitive Bird Species Impacts

Issue: The DEIR does not have a mitigation measure which adequately avoids or minimizes impacts to nesting migratory birds.

Specific Impact: Batiquitos Lagoon, which lies adjacent to the Project boundary, has the potential to support migratory species in addition to sensitive species. Additional species include California horned lark and yellow warbler. Occurrences of these species have been documented in proximity to the Project site and have the potential to occur within the Project area (CDFW 2020b).

Why impact would occur: Direct impacts to nesting birds may occur from vegetation removal; indirect impacts may occur from vibration, noise, dust, and increased human activity related to construction.

Evidence impact would be significant: In addition to the federal Migratory Bird Treaty Act, the California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq.*).

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #5:

To reduce the level of significance: CDFW recommends an additional mitigation measure be taken to avoid Project impacts to nesting birds other than California least tern. To adequately mitigate for nesting bird impacts, we recommend that the following mitigation measure be incorporated into the MMRP of the DEIR:

“To ensure compliance with the Migratory Bird Treaty Act and the California Fish and Game Code, clearing of any vegetation shall be done outside of the avian breeding season (raptor nesting season is January 15 through September 15; and migratory bird nesting season is February 15 through August 31), unless pre-construction surveys are conducted to determine that no nesting birds are present immediately to clearing, nor are in areas which could be impacted by noise. Should vegetation removal take place during this period, a qualified biologist shall conduct a nesting bird survey no more than 3 days prior to construction activities to ensure that birds are not engaged in active nesting within 100 feet of the project site. If nesting birds are discovered during preconstruction surveys, then avoidance or minimization measures shall be undertaken in consultation with the California Department of Fish and Wildlife (CDFW) and prior to issuance of any grading or construction permits. Measures shall include establishment of an avoidance buffer until

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nesting has been completed. The width of the buffer will be determined by the Project biologist and should consider the ambient levels of development and human activity. Generally buffers should be a minimum of 100 feet from the nest site in all directions for common passerine species, 300 feet from any listed species (e.g., California gnatcatcher), and 500 feet for raptors, until the juveniles have fledged and there has been no evidence of a second attempt at nesting. The monitoring biologist will monitor the nest(s) during construction and document any findings. A report will be made available to CDFW upon request.”

COMMENT #5: Potential Building Design Impacts on Migratory Birds

Issue: Design aspects of the newly proposed apartments and resort hotel appear to include features that pose a risk to migratory birds. Buildings containing large glass panels or windows pose the risk of bird strike, a direct impact to which migratory avian species are particularly susceptible. Although designs that include glass windows and night lighting can pose a risk to birds, impacts can be minimized by incorporating “bird safe” design elements.

Specific impact: Clear glass is invisible to birds and collisions are frequently fatal. The two primary hazards of glass for birds are reflectivity and transparency (San Francisco Planning Department 2011).

Why impact would occur: Batiquitos Lagoon provides high quality habitat along a corridor. The habitat serves both as potential breeding habitat to sensitive avian species, as well foraging habitat and as a refugia for resident and migratory avian species. Avian species perceive reflective and transparent glass as clear airspace, leading to collisions with windows. Interior lighting elements can also contribute to window strikes at night.

Evidence impact would be significant: Annual bird mortality resulting from window collisions in the U.S. is estimated to be between 365-988 million birds (Loss et al. 2014).

Recommendation Regarding Project Description and Related Impact Shortcoming

Recommendation #1:

To minimize significant impacts: Bird strikes, a direct impact to which migratory avian species are particularly susceptible, can be minimized through incorporation of “bird safe” architectural design elements. Purpose-driven elements such as glazed windows, well-articulated building facades, and minimal nighttime lighting are encouraged to reduce collisions of migratory birds with buildings. Large flat windows, reflective glass, and transparent corners are strongly discouraged. The Project area is adjacent to Batiquitos Lagoon which hosts an abundance of sensitive avian species; CDFW therefore recommends that the City incorporate the guidelines described in Standards for Bird Safe Buildings (Ibid.) in the Project’s structure designs (San Francisco Planning Department 2011).

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COMMENT #6: Cumulative Impacts

Section 3.3, Page 3.3-6 to 3.3-12

Issue: The DEIR as written does not account for indirect impacts of major construction on the sensitive habitat of nearby public lands, open spaces, adjacent natural habitats, and riparian ecosystems as requested in CDFW's prior comments.

Specific impact: In our Comments on the Notice of Preparation of the Marea Village Mixed Use Development Project Draft EIR to the City of Encinitas (March 15, 2021), CDFW recommended that the DEIR address (1) a discussion regarding indirect Project impacts on biological resources in nearby public lands, open spaces, adjacent natural habitats, and riparian ecosystems; (2) a discussion of potential adverse impacts from lighting, noise, temporary or permanent human activity, and exotic species and identification of any mitigation measures to address these issues; and (3) wetland permitting obligations under Section 1600 *et seq.* of the Fish & G. Code.

Why impact would occur: Construction associated with the Project may indirectly, directly, or cumulatively impact nearby public lands, open spaces, adjacent natural habitats and riparian ecosystems unless mitigation measures are included in the DEIR to avoid, minimize, or mitigate Project impacts.

Evidence impact would be significant: There is not enough discussion present in the DEIR to determine whether indirect, direct, or cumulative impacts would be significant. Additionally, CEQA Guidelines state that cumulative effects must be discussed in the EIR when the Project's incremental effect is cumulatively considerable in light of past, present, and future projects that produce related effects (§15130).

Recommendation Regarding Project Description and Related Impact Shortcoming

Recommendation #2: CDFW recommends that the EIR incorporate discussions as requested in our NOP Comments letter earlier this year, including a discussion of wetland permitting obligations under Section 1600 *et seq.* of the Fish & Game Code.

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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Encinitas in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alison Kalinowski, Environmental Scientist at Alison.Kalinowski@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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David Mayer
Environmental Program Manager
South Coast Region

Attachments

- A. CDFW Comments and Recommendations

ec: CDFW

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Attachment A:

CDFW Draft Mitigation Measures and Associated Recommendations

	Mitigation Measure	Timing	Responsible Party
Mitigation Measure # 1	<p><i>“Impacts to California least tern shall be fully avoided. If the Project begins construction occurs during the nesting season (roughly April 1 to September 15), a qualified biologist with expertise monitoring least terns and approved by the Wildlife Agencies, shall conduct a preconstruction presence/absence survey for migratory birds, raptors, and least terns for active nests on the project site and/or signs of least terns (e.g., nesting scrapes and/or nests) in the Project survey area. The qualified biologist shall be on-site during all construction activities shall monitor the project site at least twice weekly between April 1 and September 15 to verify that least terns are not flying to or over the site during the day or roosting on the site at night. If least terns are observed if it is determined that least terns are repeatedly flying over the site during construction hours or roosting on the site, or landing on the site outside of</i></p>	Prior to and during construction activities.	Encinitas Beach Land Venture, LLC

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	<p>construction hours, an additional survey may be required and additional avoidance measures (e.g. changing construction hours, staging equipment throughout the site) may shall be implemented to deter terns from flying over and landing on the site and ensure the Project's impacts on least terns remain less than significant. If California least terns occupy and nest on the site, construction within at least 500 feet <u>or a suitable distance as determined by the qualified least tern biologist</u> shall need to be delayed until any tern nests have gone to completion and the young have fledged and are no longer dependent on the Project site for roosting."</p>		
<p>Mitigation Measure # 2</p>	<p>Project design shall include: reduced, shielded, and/or lighting that is directed away from the riparian corridor; noise elements which do not exceed 60 A-weighted decibels (one hour weighted) at the nearest edge of Batiquitos Lagoon; signage, barriers or similar features that shall notify and/or preclude human intrusion and off-leash dogs into Batiquitos Lagoon; and avoidance and/or proper use of and minimization of toxic chemicals and wildlife entrapping/endangering</p>	<p>Prior to and during construction activities.</p>	<p>Encinitas Beach Land Venture, LLC</p>

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	products including petroleum products, pesticides, herbicides, rodenticides, plastic netting or net-covered fiber rolls, and similar. All Best Management Practices and landscaping elements shall also be removed after their useful life or function has ended		
Mitigation Measure # 3	Project design shall include perching deterrents in order to reduce the amount of perching and roosting habitat for raptors.	Prior to and during construction activities.	Encinitas Beach Land Venture, LLC
Mitigation Measure # 4	Within 72 hours of the commencement of construction activities, a bat survey shall be conducted within all suitable habitat in the Project survey area, by a bat biologist that is approved by the Wildlife Agencies. If any California Bat Species of Special Concern are at the site or within the vicinity, then appropriate measures shall be implemented to avoid the bats, including but not limited to: readjusting the work hours, cessation of work, and noise and light reduction.	Prior to and during construction activities.	Encinitas Beach Land Venture, LLC
Mitigation Measure # 5	To ensure compliance with the Migratory Bird Treaty Act and the California Fish and Game Code, clearing of any vegetation shall be done outside of the avian breeding season (raptor nesting season is January 15 through September 15; and migratory bird nesting season is February 15 through August 31), unless pre-construction surveys are conducted to determine that no nesting birds are present immediately to clearing, nor are in areas which could be impacted by noise. Should vegetation removal take place during this period, a qualified	Prior to and during construction activities.	Encinitas Beach Land Venture, LLC

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	<p>biologist shall conduct a nesting bird survey no more than 3 days prior to construction activities to ensure that birds are not engaged in active nesting within 100 feet of the Project site. If nesting birds are discovered during preconstruction surveys, then avoidance or minimization measures shall be undertaken in consultation with the California Department of Fish and Wildlife (CDFW) and prior to issuance of any grading or construction permits. Measures shall include establishment of an avoidance buffer until nesting has been completed. The width of the buffer will be determined by the Project biologist. Generally buffers should be a minimum of 100 feet from the nest site in all directions for common passerine species, 300 feet from any listed species (e.g., California gnatcatcher), and 500 feet for raptors, until the juveniles have fledged and there has been no evidence of a second attempt at nesting. The monitoring biologist will monitor the nest(s) during construction and document any findings. A report will be made available to CDFW upon request.</p>		
<p>Recommendation #1</p>	<p>Bird strikes, a direct impact to which migratory avian species are particularly susceptible, can be minimized through incorporation of “bird safe” architectural design elements. Purpose-driven elements such as glazed windows, well-articulated building facades, and minimal nighttime lighting</p>		

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	<p>are encouraged to reduce collisions of migratory birds with buildings. Large flat windows, reflective glass, and transparent corners are strongly discouraged. The Project area is adjacent to Batiquitos Lagoon which hosts an abundance of sensitive avian species; CDFW therefore recommends that the City incorporate the guidelines described in Standards for Bird Safe Buildings (Ibid.) in the Project's structure designs (San Francisco Planning Department 2011).</p>		
<p>Recommendation #2</p>	<p>CDFW recommends that the EIR incorporate discussions as requested in our NOP Comments letter earlier this year, including a discussion of wetland permitting obligations under Section 1600 <i>et seq.</i> of the Fish & Game Code.</p>		