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June 13, 2022

Governor's Office of Planning & Research

Jun 13 2022

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STATE CLEARINGHOUSE

Subject: Paseo Montril (Project), Draft Environmental Report (DEIR), SCH #2021030038

Dear Ms. Shearer-Nguyen:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of San Diego for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the 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 ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City of San Diego participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP).

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Diego (City)

Objective: The Project consists of a General Plan Amendment to rezone an area currently designated for Park, Open Space, and Recreation to Residential. It also consists of a Community Plan Amendment to redesignate an area of Open Space to medium density Residential. The proposed Project will split 15.2 acres into two lots. Lot 1 will designate 4.9 acres to 55 multi-family residential units consisting of structures that will be up to 40 feet in height. The development will also include areas for outdoor use including a dog park, picnic area, and landscaped seating areas. The Project will include internal infrastructure composed of hardscape, landscaping, utilities, and retaining walls. The Project will conserve the area that is directly outside the boundary of the grading footprint that contains Environmentally Sensitive Lands (steep slopes or biologically sensitive habitat). The Covenant of Easement (COE) will include land use restrictions preventing future development to preserve the area. This includes 1.30 acres within Lot 1 and the entirety of the 10.30-acre Lot 2. Lot 2 will be a 10.3-acre open space lot that will not be developed. The COE would be provided to the City pursuant to the City's Environmentally Sensitive Lands Regulation requirements and would be maintained by the City in

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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perpetuity pursuant to the City's Biology Guidelines. The COE would include land use restrictions. No public access to the open space preserve would be permitted.

Location: The Project site is located east of Rancho Peñasquitos Boulevard at the terminus of Paseo Montril in the community of Rancho Peñasquitos. The site is generally bounded by Interstate 15 on the east and State Route 56 to the north, with a retirement residential community and commercial property to the west.

Biological Setting: The Project area is comprised of two native vegetation communities, one non-native vegetation community, and two land cover types: Diegan coastal sage scrub (CSS, 7.78 acres), disturbed Diegan coastal sage scrub (5.37 acres), eucalyptus woodland, disturbed habitat, and developed land. CSS is the dominant vegetation community within the Project area. The undeveloped site is in the City's Subarea Plan but is outside of the City's Multi-Habitat Planning Area (MHPA). Mitigation for impacts to 3.24 acres of CSS (including disturbed) would be accomplished onsite at a 1.5:1 mitigation ratio by the preservation of 4.86 acres of Tier II habitat, which is also outside of the MHPA. Ultimately, the Project would preserve 11.6 acres of the 15.2-acre site as open space within a COE and would focus the development area closest to the adjacent existing homes to the west and commercial area to the south. While the Project would develop within a hillside area, the proposed development would be designed to integrate into the hillside with terracing and use of walls that minimize the grading footprint as well as the preservation of approximately 75% of the site as onsite open space.

Focused rare plant surveys were conducted in April and May 2021. Sensitive plants detected onsite include San Diego County viguiera (San Diego sunflower; *Bahiopsis laciniata*; California Rare Plant Rank [CRPR] 4.3) and coast barrel cactus (*Ferocactus viridescens*; CRPR 2B.1 and MSCP Covered Species). Coast barrel cactus is located within the proposed open space area and would not be directly impacted by the Project.

Two special status species and MSCP Covered Species with the potential to occur on the Project sites include coastal California gnatcatcher (gnatcatcher; *Polioptila californica californica*; ESA-listed threatened) and western bluebird (*Sialia mexicana*; MSCP Covered Species). These species were observed during the biological reconnaissance survey in January 2020. Five gnatcatcher individuals were observed in CSS habitat, including one individual located in the western portion, and two pairs located in the southwestern portion of the Project area. Western bluebird was observed within disturbed CSS along the southern boundary of the Project area. According to the DEIR, suitable nesting conditions are not present within the survey area and the species is not expected to nest on the site.

The following additional sensitive wildlife species were determined to have moderate potential to occur within the Project area: Southern California legless lizard (*Anniella stebbinsi*; CDFW Species of Special Concern (SSC)), San Diegan tiger whiptail (whiptail; *Aspidoscelis tigris stejnegeri*; SSC), red diamondback rattlesnake (*Crotalus ruber*; CDFW SSC), Blainville's horned lizard (*Phrynosoma blainvillii*; SSC), Coronado skink (*Plestiodon skiltonianus interparietalis*; SSC), and coast patch-nosed snake (*Salvadora hexalepis virgultea*; SSC). Northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*; SSC) has a low to moderate potential to occur.

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 document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Nesting Birds

According to the Biological Technical Report, the Project area supports habitat primarily for upland species within CSS and disturbed CSS habitats. These upland habitats provide foraging and nesting habitat for migratory and resident bird species and other wildlife species (Dudek 2022). Per Fish and Game Code section 3503, it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.

To avoid impacts to nesting birds, CDFW recommends that clearing of vegetation occur outside of the peak avian breeding season, which generally runs from February 1 through September 1 (as early as January 1 for some raptors). If Project construction is necessary during the bird breeding

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season, a qualified biologist with experience in conducting bird breeding surveys should conduct weekly bird surveys for nesting birds, within three days prior to the work in the area, and ensure no nesting birds in the Project area would be impacted by the Project. If an active nest is identified, a buffer should be established between the construction activities and the nest so that nesting activities are not disturbed. For the given Project site, CDFW generally recommends a 100-foot buffer for common avian species, 300 feet for listed or highly sensitive species (that are otherwise not addressed by the MSCP), and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect as long as construction is occurring. No Project construction should occur within the fenced nest zone until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project. 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.

COMMENT 2: Lighting Impacts During and Post Project

The Project proposes installation of additional lighting for reasons including, but not limited to, pedestrian circulation, visibility, bicycle safety, comfort, and vehicular traffic. Construction and post-construction activities may increase night-time lighting pollution impacts to the 10.30-acre lot designated as open space adjacent to the Project footprint. This lot includes Environmentally Sensitive Lands and these activities could potentially affect the behavior of the wildlife species utilizing the Project site. Permanent and temporary artificial lighting installed along the edge of the construction area adjacent to the open space may negatively impact nesting bird success by altering their timing of laying eggs. Streetlamps and other artificial lighting may cause birds to perceive days as longer than they are and cue nesting timing that is not consistent with their natural history and behavior. Typical nesting behaviors are timed to meet peak conditions for food availability; therefore, disruption of this process could result in nest abandonment or reduced reproductive success for nesting species within the Project and open space boundary. CDFW recommends all Project-related artificial lighting be low level, anti-glare, shielded, and directed downward to minimize impacts to avian species as well as other species that inhabit or utilize the open space area.

COMMENT 3: Fuel Modification and Brush Management

The proposed Project is within a Very High Fire Hazard Severity Zone. The DEIR states that the Project will include brush management zones, vegetation management, and a fuel modification area. Maintenance and operation of the Project would be financed through an established Home Owner's Association (HOA). The HOA would be required to contract with qualified professionals for the long-term care and maintenance of the bioretention basins and fuel modification zones. Because the fuel modification and brush management would equate to a permanent impact to existing open space, CDFW recommends that all fuel modification zones be included within the development footprint to avoid any further impacts to the open space area. These zones should be considered a permanent impact and mitigated as such.

COMMENT 4: Covenant of Easement

The DEIR indicates that the Project includes 11.6 acres (1.3 acres on Lot 1 and 10.30 acres on Lot 2) of open space which would be placed within a COE. The COE would be provided to the City pursuant to the City's Environmentally Sensitive Lands Regulation requirements and would be maintained by the City in perpetuity pursuant to the City's Biology Guidelines. The COE would include land use restrictions and no public access to the open space preserve would be permitted (City of San Diego, 2020).

CDFW appreciates the City's commitment to manage the preserve and recommends the final EIR provide an assured funding source and long-term habitat management plan for the maintenance of the preserve in perpetuity.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations 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 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 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 in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

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REFERENCES

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