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May 5, 2021

Governor's Office of Planning & Research

May 05 2021

STATE CLEARINGHOUSE

Rachael Ferrell
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 City of San Diego
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Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for Towne Centre View (Project), SCH #2021040044

Dear Ms. Ferrell:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of San Diego (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, CDFW appreciates 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.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

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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CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP). The Multi-Habitat Preserve Area (MHPA) is the area from which a final hardline reserve becomes established in the City to adequately conserve covered species pursuant to the SAP.

PROJECT DESCRIPTION SUMMARY

Proponent: BRE-BMR Towne Centre Science Park LLC

Objective: The Project proposes a Community Plan Amendment, Planned Development Permit, Site Development Permit, Tentative Map, and Street Vacation for redevelopment of a 33.5-acre site, where 26.5 acres would be developed, and 7 acres would remain undeveloped open space. The Project will demolish 199,735 square feet of existing commercial buildings and construct a five-building campus (Buildings A-E) to include scientific research and development, laboratory, technology, and office uses. The Project will also include supporting parking structures and surface parking areas, recreational facilities, amenities, and landscaping. The Project will create approximately 2,500 parking spaces in the surface parking areas and parking structures. The Project will also remove the existing terminus to Towne Centre Drive and will modify the intersection of Towne Centre Drive and Westerra Court.

Location: The Project site is currently associated with the following addresses: 9855, 9865, 9875, and 9885 Towne Centre Drive. The Project is located south of the junction between Interstates 5 and 805 in the La Jolla area of the City of San Diego.

Biological Setting: The Project site is partially developed and is surrounded by MHPA and open space which is primarily composed of Diegan coastal sage scrub and chaparral. Special status wildlife species with the potential to occur near the Project include the coastal California gnatcatcher (*Polioptila californica californica*; MSCP-covered). Special status plant species with the potential to occur near the Project site include: variegated dudleya (*Dudleya variegata*; MSCP-covered and narrow endemic species), San Diego barrel cactus (*Ferocactus viridescens*; MSCP-covered), Nuttall's scrub oak (*Quercus dumosa*; California Native Plant Society (CNPS) rare plant rank 1B.1), Campbell's liverwort (*Geothallus tuberosus*; CNPS 1B.1), and wart-stemmed ceanothus (*Ceanothus verrucosus*; CNPS 2B.2).

Timeframe: A timeframe was not provided for the Project.

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. Based on the potential for the Project to have a significant impact on biological resources, CDFW agrees that a DEIR is appropriate for the Project.

Covered Species and California Species of Special Concern (SSC)

1. A review of the California Natural Diversity Database (CNDDDB) indicates historic presence of MSCP-covered and narrow endemic variegated dudleya approximately 0.5 mile from the Project area. CNDDDB also identifies MSCP-covered and California Rare Plant Rank 2B.1 San

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Diego barrel cactus near the Project area. Although the Project does not propose direct impacts to the species or suitable habitat, there is potential for indirect impacts to the MHPA from unauthorized entry. Appropriate fencing and signage should be included in the Project to prevent and discourage unauthorized access to the MHPA.

2. CNDDDB includes detection of coastal California gnatcatchers in coastal sage scrub habitat approximately 1,500 feet southeast of the Project area. Due to the proximity, and presence of suitable habitat, the DEIR should include a report of recent, seasonally appropriate, focused surveys for coastal California gnatcatcher in all areas of suitable habitat within and adjacent to the Project. 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 are detailed in the *Coastal California Gnatcatcher (Poliophtila californica californica) Presence/Absence Survey Guidelines* (United States Fish and Wildlife Service (USFWS) 1997). If the species is detected, the DEIR should disclose potential impacts to the species and propose avoidance and mitigation measures consistent with the City's MSCP. Acceptable mitigation measures can be found in the City's *Mitigation, Monitoring and Reporting Conditions for Potential Impacts to Habitats Occupied by Sensitive Avian Species* (2002) for all Project-related activities including mitigation and brush management. These measures require breeding season protocol surveys per the USFWS guidelines, and, if the habitat within the MHPA is occupied, avoidance of the breeding season (March 1 - August 15), including any impacts from construction noise. Also, if occupied, clearing is prohibited within the MHPA during the breeding season; this includes clearing for fuel modification.
3. CNDDDB also documents the presence of Nuttall's scrub oak (CNPS 1B.1), Campbell's liverwort (CNPS 1B.1), and wart-stemmed ceanothus (CNPS 2B.2) less than 40 feet from the Project site. The DEIR should include a report of seasonally appropriate surveys in all areas with suitable habitat for sensitive plants, conducted within the last three years. If present, the DEIR should disclose potential impacts to the species as well as proposed avoidance and mitigation measures.

Project Description and Alternatives

4. An NOP does not provide sufficient detail to conduct a comprehensive analysis of the potential impacts. To facilitate meaningful review of the Project from the standpoint of the protection of plants, fish, and wildlife, CDFW recommends the following information be included in the DEIR:
 - a. the document should contain a complete discussion of the purpose and description of the Project, including all staging areas and access routes to the construction and staging areas; and,
 - b. the DEIR should include a range of feasible alternatives to ensure that alternatives to the Project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources.

Biological Baseline Assessment

5. CDFW recommends the DEIR provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis on identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a

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complete species compendium of the entire Project site, undertaken at the appropriate time of year. The DEIR should include the following information:

- a. CEQA Guidelines, section 15125(c), specifies that knowledge of the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed 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>;
- b. 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. CNDDDB should be reviewed 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 <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>;
- c. an inventory of rare, threatened, endangered, and other sensitive species on site and within the area of potential effect. The species inventory should include all those that meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive invertebrate, fish, wildlife, reptile, and amphibian species. 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;
- d. 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 as long as there was not a prevailing drought during the time of the botanical survey. 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; and,
- e. adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts off site.

Biological Direct, Indirect, and Cumulative Impacts and Proposed Mitigation Measures

6. To facilitate meaningful review of the Project's potential impacts on biological resources, the DEIR should include a detailed discussion of potential impacts as well as specific measures to offset such impacts.
 - a) Indirect Impacts: a discussion of potential adverse impacts from lighting, noise, exotic species, and human activity and proposed mitigation measures to alleviate such impacts.

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- i) **Adjacent Resources:** the DEIR should include 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 the MHPA). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR. The Project description should include design features to minimize impacts to the MHPA and the DEIR should include a discussion of the Project's consistency with the Land Use Adjacency Guidelines described in section 1.4.3 of the City's SAP.
 - ii) **Fuel Modification:** all fuel modification zones should be clearly identified, and the impacts assessed consistent with the City's Environmentally Sensitive Lands Regulations (City of San Diego 2018).
 - iii) **Landscaping:** the Project includes landscaped areas. Habitat loss and invasive plants are a leading cause of native biodiversity loss. CDFW recommends that the DEIR stipulate that no invasive plant material shall be used. Furthermore, CDFW recommends 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 the California Invasive Plant Council (CALIPC) Responsible Landscaping website (<https://www.cal-ipc.org/solutions/prevention/landscaping/>).
 - iv) **Pesticides:** if the Project plans to include outside pesticide use, please be aware of a new California law, AB 1788, which bans the use of second-generation rodenticide.
- b) **Mitigation Measures:** 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, 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. Mitigation ratios should be consistent with the Land Development Code Biology Guidelines Table 3 *Upland Mitigation Ratios* (City of San Diego 2018).
- i) **Nesting Bird Protection:** to avoid impacts to nesting birds, the DEIR should require that, when biologically warranted, construction would 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 season, a qualified biologist with experience in conducting bird breeding surveys should conduct bird surveys for nesting birds, within three days prior to the work in the area, and ensure that no nesting birds in the Project area would be impacted by the Project. If an active nest is identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. CDFW generally recommends that the buffer should be a minimum width of 100 feet for most passerines, 300 feet for listed or otherwise sensitive avian species, and 500 feet for raptors. Buffers should be delineated by temporary fencing and remain in effect as long as construction is occurring or until the nest is no longer active. No Project construction shall 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

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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.

- ii) Nest Exclusion: open horizontal pipe ends can be attractive to birds for nesting. Areas that will require on-going operational maintenance, such as emergency generators, should not include open horizontal pipe ends. Ends should be capped with suitable screens to prevent wildlife access.
 - iii) Bird Safe Architecture: further avoidance of direct impacts to birds, particularly migratory species, can be achieved through incorporation of “bird safe” elements in architectural design. 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. CDFW recommends that the City follow as many of these guidelines as appropriate when considering structure design, as described in San Francisco’s Standards for Bird Safe Buildings (the document can be found online at: https://sfplanning.org/sites/default/files/documents/reports/bird_safe_bldgs/Standards%20for%20Bird%20Safe%20Buildings%20-%2011-30-11.pdf).
 - iv) Translocation: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.
- c) Cumulative Effects: a cumulative effects analysis should be developed 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 the DEIR impacts on similar wildlife habitats.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

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

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CONCLUSION

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

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

Sincerely,

DocuSigned by:



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