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June 1, 2021

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Governor's Office of Planning & Research

June 01 2021

STATE CLEARINGHOUSE

Subject: Cypress Point (Project), Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR), SCH #2021040691

Dear Mr. Greenbauer:

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 Oceanside (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 the activities involved in the Cypress Point 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, subdivision (a) & 1802; Pub. Resources Code, § 21070; 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.

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 of Oceanside (City) participated in the NCCP program by preparing a draft Subarea Plan (SAP) under the San Diego City Multiple Habitat Conservation Plan (MHCP). However, the SAP was not 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 DESCRIPTION SUMMARY

Proponent: Concordia Homes

Objective: A request for approval of Tentative Map (T21-00001), Development Plan (D21-00001), and a request for Density Bonus (DB21-00001) to allow the construction of 54 single-family homes ranging from about 1,200 to 1,700 square feet in size, located around a private loop road within the Project site. The site consists of a vacant parcel (Assessor's Parcel Number, APN, 158-301-48-00) of approximately 7.3 acres. Because of the City of Oceanside's Draft Subarea Plan (SAP) hardline preserve and to accommodate the existing San Luis Rey Trail located on the property, a portion in the northwest corner of the site will not include buildings. The proposed homes would be set back from existing residential homes on the east side by approximately 50 feet and borders the San Luis Rey River to the west. Primary site access is proposed to be taken from a westerly extension of Pala Road at the southern edge of the project site.

Location: The Project site is located west of Los Arbolitos Boulevard at the Aspen Street and Pala Road intersections in the City of Oceanside. The site consists of a vacant parcel (APN 158-301-48-00) of approximately 7.3 acres.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in adequately identifying and/or mitigating Project impacts on biological resources and maintaining consistency with the draft SAP.

Specific Comments

- 1) Wildlife Corridor Planning Zone (WCPZ). The Project map indicates that the Project footprint will encroach into the WCPZ. Avoidance and minimization measures should be taken to the maximum extent feasible to reduce impacts to the San Luis Rey River and avoid impacts to the WCPZ. The DEIR should include a discussion regarding Project activities that may adversely impact the San Luis Rey River and WCPZ with specific measures to offset such impacts. Any proposed Boundary Line Adjustments to the WCPZ should be determined with coordination with the Wildlife Agencies and approved by the City.
- 2) Fuel Modification. The draft SAP states that fuel modification activities shall not occur within the 100-foot biological buffer from the San Luis Rey River (Section 5, page 18). However,

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the Project activities may include fuel modification within around the Project boundary. The DEIR should include information as to how the Project or adjacent land may be affected by fuel modification requirements. Fuel modification should not adversely impact resources in the adjacent areas or mitigation lands. A discussion of any fuel modification requirements for this Project should be included in the DEIR to allow CDFW to assess potential impacts to biological resources. CDFW recommends all fuel modification requirements be met on the Project, and not in mitigation lands or habitat adjacent to the Project. Habitat being subjected to fuel modification (e.g., thinning, trimming, removal of mulch layer) should be considered an impact to these vegetation communities and mitigated accordingly. CDFW also recommends any irrigation proposed in fuel modification zones drain back into the development and away from natural habitat areas because perennial sources of water may have negative impacts such as the introduction of invasive Argentine ants.

- 3) Biological Direct, Indirect, and Cumulative Impacts. Due to the proximity of the Project site to the San Luis Rey River and the WCPZ, it is essential to understand how the open space and biological diversity within it may be impacted by Project activities. 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 an NCCP (NCCP, Fish & G. Code, § 2800 et. seq.)). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
 - b) A discussion of 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 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. 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.
- 4) Biological Baseline Assessment. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project site, with emphasis

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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. 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>;
- b) A complete floristic assessment within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a thorough, recent, floristic-based assessment of special status plants and natural communities.
- 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 California Natural Diversity Database (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 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 coastal California gnatcatcher (*Poliioptila californica*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax trailii extimus*), and thread-leaved brodiaea (*Brodiaea filifolia*). 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 United States Fish and Wildlife Service (USFWS); and,

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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 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.

- 5) Sensitive Bird Species. A review of the CNDDDB indicates occurrences of special status bird species including coastal California gnatcatcher, least Bell's vireo, and southwestern willow flycatcher. 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 habitat 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 MBTA).
 - b) 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 (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.
- 6) Coastal California Gnatcatcher. The DEIR should include a complete, recent habitat assessment for suitable coastal California gnatcatcher habitat. If suitable habitat for the coastal California gnatcatcher is present onsite or adjacent to the Project site, CDFW recommends protocol level surveys for gnatcatcher per the [1997 USFWS Coastal California Presence/Absence Survey Guidelines](#) to determine presence or absence of this species. Mitigation for direct, indirect and cumulative impacts to this species should be determined after the completion of these surveys. The protocol can be accessed here: https://www.fws.gov/ventura/docs/species/protocols/cagn/coastal-gnatcatcher_survey-guidelines.pdf.
- 7) Landscaping. 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

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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 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 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) Lake and Streambed Alteration Agreements. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream, or use material from a streambed. For any such activities, the project applicant (or "entity") must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 *et seq.*
 - a) CDFW's issuance of a Lake and Streambed Alteration (LSA) Agreement for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the Environmental Impact Report of the local jurisdiction (Lead Agency) for the project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA. Please visit CDFW's Lake and Streambed Alteration Program webpage for information about LSA and online submittal through the Environmental Permit Information Management System (EPIMS) Permitting Portal (CDFW 2020). The webpage can be accessed at: <https://wildlife.ca.gov/Conservation/LSA>.
 - b) In the event the project area may support aquatic, riparian, and wetland habitats; a preliminary delineation of the streams and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service wetland definition adopted by CDFW (Cowardin et al. 1979). Be advised that some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' Section 404 permit and Regional Water Quality Control Board Section 401 Certification.
 - c) In project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately-sized

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vegetated buffer areas adjoining ephemeral drainages.

- d) Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.
 - e) As part of the LSA Notification process, CDFW requests a hydrological evaluation of the 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. CDFW recommends the DEIR evaluate the results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.
- 3) 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. Because this project is located within the WCPZ, onsite mitigation is recommended. 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.
 - 4) Long-term Management of Mitigation Lands. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands. Project impacts should be mitigated within the City of Oceanside, to the maximum extent feasible to be consistent with the draft SAP.

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 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.

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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.)

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 Melanie Burlaza, Environmental Scientist, at Melanie.Burlaza@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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ec: CDFW

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