



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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July 19, 2021

Governor's Office of Planning & Research

July 19 2021

STATE CLEARINGHOUSE

Kevin Canning
Orange County Public Works
601 North Ross Street, Suite 300
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RanchHills@ocpw.ocgov.com

**Subject: Ranch Hills Planned Development (Project), Notice of Preparation (NOP),
SCH #2021060400**

Dear Mr. Canning:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from Orange County Public Works (County) for the Project pursuant to 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, 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.*) 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.*), the Project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Natural Community Conservation Planning (NCCP) program. Orange County (County) is a participating landowner under the Central/Coastal Orange County NCCP/Habitat Conservation Plan (HCP).

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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PROJECT DESCRIPTION SUMMARY

Proponent: Orange County Public Works (County)

Objective: The objective of the Project is to construct a Planned Unit Development consisting of 34 townhomes and 3 single family detached units.

Location: The Project site is located in unincorporated Orange County at 11782 Simon Ranch Road, Tustin. The site consists of 5.88 acres, currently developed with a racquet club and tennis courts, and surrounded by residential properties on all sides.

Biological Setting: The Project site is developed; on-site vegetation consists primarily of mature ornamental trees. There are two concrete drainages on the southwestern and southeastern portions of the site that convey stormwater approximately 200 feet to a City of Tustin storm drain system. Special-status species with the potential to occur in the region identified using the California Natural Diversity Database (CNDDB) include: the state threatened California black rail (*Laterallus jamaicensis coturniculus*), and the federally threatened coastal California gnatcatcher (*Polioptila californica californica*). Occurrences of both species have been recorded within approximately 0.3 mile of the Project site.

COMMENTS AND RECOMMENDATIONS

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

Comment #1: Nesting Bird Surveys

Per California Fish and Game Code Sections 3503, 3503.5, and 3513 the proposed Project is required to avoid the incidental loss of fertile eggs or nestlings or activities that lead to nest abandonment. In order to avoid impacts to nesting birds, the DEIR should require that clearing of vegetation, and when biologically warranted construction, 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 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 shall be established between the construction activities and the nest so that nesting activities are not interrupted. The buffer should be a minimum width of 100 feet (300 feet for raptors), 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 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.

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Comment #2: Analyses of the Potential Project-Related Impacts on Biological Resources

To provide 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 of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address: Project-related changes on drainage patterns on and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
- b. Discussions regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR.
- c. The zoning of areas for development Projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.
- d. 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 their impacts on similar plant communities and wildlife habitats.

Comment #3: Hydrological Impacts

CDFW has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency.

Whether a LSAA is required to satisfy requirements of FCG section 1600 *et seq.* can only be determined at the time a formal notification package is submitted to CDFW. The DEIR should fully analyze all hydrological aspects of the project, including but not limited to, any impacts to the concrete drainages on the Project site, and changes in conveyance of stormwater discharge into the Tustin drain system. If the DEIR determines that hydrological features on or off the Project site will be affected by Project activities, LSAA notification may be appropriate.

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

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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.

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 County in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:



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David Mayer
Environmental Program Manager I
South Coast Region

ec: CDFW

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