

NATIVE AMERICAN HERITAGE COMMISSION

November 12, 2021

Governor's Office of Planning & Research

Nov 12 2021

STATE CLEARINGHOUSE

Amber Gregg
The City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677

Re: 2021110122, The Cove at El Niguel Project, Orange County

Dear Ms. Gregg:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a.** A brief description of the project.
 - b.** The lead agency contact information.
 - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a.** Alternatives to the project.
 - b.** Recommended mitigation measures.
 - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:
 - a.** Type of environmental review necessary.
 - b.** Significance of the tribal cultural resources.
 - c.** Significance of the project's impacts on tribal cultural resources.
 - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Andrew.Green@nahc.ca.gov.

Sincerely,



Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse

From: [Amber Gregg](#)
To: [Peter Carlson](#)
Cc: [Brianna Bernard](#)
Subject: FW: Comments Regarding The Cove at El Niguel
Date: Thursday, December 2, 2021 3:03:55 PM

Hello Peter,

We received this comment letter today.

Thank you,
Amber

From: MARCELLO <mdworzak@earthlink.net>
Sent: Thursday, December 2, 2021 12:49 PM
To: Amber Gregg <AGregg@cityoflagunaniguel.org>
Subject: Comments Regarding The Cove at El Niguel

Dear Amber Gregg:

Thank you for the notification regarding The Cove at El Niguel proposed to be developed in the canyon lot adjacent to our property (please see attached "Map and Property Location" image). We are writing to submit our comments prior to the December 2nd deadline, as per your instructions.

Charter Terrace is a quiet and friendly neighborhood of 40 homes located immediately north of the proposed development. My wife and I purchased the property at 30585 N Hampton Rd 15 years ago and continue to enjoy living there with our 2 young boys. We have made significant investments in upgrading our home and are grateful to have found the perfect lot in a well-managed and safe city. We enjoy our private canyon-view backyard frequently and year-round. Our windows and doors facing the proposed development on the south side of our home are constantly open to allow the daily afternoon ocean breeze into our home – something an air conditioning unit couldn't replace. We walk to stores, ride our bikes to Crown Valley Park and are excited that City Center would be located just 2 blocks from our front door. Our home is perfectly located and provides the private, peaceful and unique quality of life we envisioned when making the purchase. It would be challenging and costly to duplicate our situation elsewhere.

Developing The Cove at El Niguel as proposed would unfortunately have a negative impact on our quality of life and on the value and appeal of our property. As can be seen from the attached image (Map and Property Location), The Cove at El Niguel would be adjacent to our southern property line along Playa Blanca. The new development would result in the following:

- Our canyon view would change to driveways, windows and rooftops. Please see attached images showing various views from our home of the proposed development site.
- Proximity and design of The Cove would give direct view into our home and reduce privacy in our bathroom, bedroom and backyard. Especially from the proposed

neighborhood park and from the decks of units 1 and 22.

- Noise pollution would increase significantly. The current road sound from Crown Valley Pkwy is monotonous and disguised as background noise. The developer's plan however, proposes that the only entrance/exit to The Cove community be located at our property line along Playa Blanca. This would require cars to accelerate just a few feet away from our home as they enter onto Crown Valley Pkwy. The sharp noise of revving engines would be felt and heard throughout our home.
- The proposed neighborhood park with picnic tables, bbq and open play lawn area would be adjacent to our property line. New residents using the park area would be within earshot of our bedroom, office and living room windows which are frequently open for the breeze. The collective noise from the condos and park area would make it feel as if we have uninvited guests all the time and would impede on the peaceful enjoyment of our home.
- The Cove would be on the windward side of our property so smoke and smell of grilling food from the condos and park area would replace our ocean breeze and fill our home.

We support our neighbor's opposition to the proposed development. However, if the City decides to move forward and approve the plans, we would like to see efforts made to minimize the negative impact of the development. The following are a few possible solutions that would help:

- Move the entrance/exit and park area to the other side (south side) of the new development to connect with Vallarta Dr. This would help reduce noise to existing homes and give better visibility for vehicles exiting The Cove and entering onto Crown Valley Pkwy.
- Create a retaining wall of approximately 35' in height along Playa Blanca and Charter Terrace community, like the wall on the south side of the development along Vallarta Dr. This would create a barrier to help block noise pollution. It would also help maintain privacy and salvage some of the view by extending useable backyard area for 2-3 of the most affected Charter Terrace homes.

Thank you again,

Marcello & Kelly Dworzak
30585 N Hampton Rd

DEPARTMENT OF TRANSPORTATION

DISTRICT 12

1750 EAST FOURTH STREET, SUITE 100

SANTA ANA, CA 92705

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FAX (657) 328-6522

TTY 711

www.dot.ca.gov/caltrans-near-me/district12*Making Conservation
a California Way of Life.*

Governor's Office of Planning & Research

Dec 08 2021

December 7, 2021

STATE CLEARINGHOUSE

Ms. Amber Gregg
Contract Planner
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677

File: IGR/CEQA
SCH#2021110122
12-ORA-2021-01827
SR 1, PM 5.898

Dear Ms. Gregg,

Thank you for including the California Department of Transportation (Caltrans) in the review of The Cove at El Niguel project Notice of Preparation for the City of Laguna Niguel. The mission of Caltrans is to provide a safe and reliable transportation network that serves all people and respects the environment.

The project proposes the construction of 22 three-story condominium style homes configured in 6 triplex and 2 duplex buildings on approximately 2 acres and preservation of approximately 2.2 acres of open space. Regional access to the project area is provided by State Route 1 (SR 1) and State Route 73 (SR 73). Caltrans is a responsible agency for this project and upon review, we have the following comments:

Transportation Planning

1. To provide a better understanding of the project size, please consider including scales in Figures 1 and 2 in the Notice of Preparation document.
2. The Department firmly embraces racial equity, inclusion, and diversity. These values are foundational to achieving our vision of a cleaner, safer, and more accessible and more connected transportation system.

Caltrans recognizes our responsibility to assist communities of color and under-served communities by removing barriers to provide a more equitable transportation system for all.

Please consider including a discussion on equity in the Environmental Impact Report.

3. Caltrans supports projects which provide a diversity of housing choices and destinations accessible by Active Transportation (i.e. bicycle and pedestrian) and transit users. New development projects should incorporate opportunities to support sustainable and multimodal transportation options, including, but not limited to transit, walking and biking, and electric cars and bicycles.

"Provide a safe and reliable transportation network that serves all people and respects the environment"

Encroachment Permit

4. Any project work proposed in the vicinity of the State Right-of-Way (ROW) would require an encroachment permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet Caltrans's requirements for work done within State ROW, additional documentation would be required before approval of the encroachment permit. Please coordinate with Caltrans to meet requirements for any work within or near State ROW. For specific details for Encroachment Permits procedure, please refer to the Caltrans's Encroachment Permits Manual at:
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Please continue to keep us informed of this project and any future developments that could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to contact Joseph Jamoralin at (657) 328-6276 or Joseph.Jamoralin@dot.ca.gov

Sincerely,



SCOTT SHELLEY
Branch Chief, Regional-LDR-Transit Planning
District 12



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

December 7, 2021

Dec 07 2021

STATE CLEARINGHOUSE

Amber Gregg
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677
RanchHills@ocpw.ocgov.com

Subject: The Cove at El Niguel (PROJECT), Notice of Preparation (NOP), SCH #2021110122

Dear Ms. Gregg:

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 Laguna Niguel (City) 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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Laguna Niguel (City)

Objective: The objective of the Project is to construct 22 three-story condominium style homes.

Location: The Project site is located at 30667 Crown Valley Parkway in the City of Laguna Niguel, Orange County. The 4.2-acre Project site is currently undeveloped, primarily consisting of vegetation and several graded roads. The site was previously developed with 41 homes, which were demolished following the Via Estoril Landslide in 1998.

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.

Ms. Amber Gregg
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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.

Comment #1: Open Space

The NOP indicates that 2.2 acres of the Project site will be preserved as designated open space. The DEIR should 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 complete floral and faunal species compendium of the project site, undertaken at the appropriate time of year.

Comment #2: 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.

Comment #3: 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.

Ms. Amber Gregg
City of Laguna Niguel
December 7, 2021
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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.

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.

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 Jessie Lane, Environmental Scientist at Jessie.Lane@wildlife.ca.gov.

Sincerely,

DocuSigned by:



D700B4520375406...

David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW

Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov

Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov

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FEB 17 2022

COMMUNITY DEVELOPMENT

February 18, 2022

Ms. Amber Gregg
Contract Planner
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677
agregg@cityoflagunaniguel.org

HAND DELIVERED AND SENT VIA ELECTRONIC MAIL

Dear Ms. Gregg,

We are the Presidents of two homeowners' associations adjacent to and above the proposed Cove at El Niguel Project. This letter is to convey our concern with the **Cove at El Niguel Environmental Impact Report Notice of Preparation**, as originally issued in November, 2021 with a Public Scoping Period extended to February 22, 2022 ("Report").

Several of our homeowners were present in 1998 when a landslide occurred in this area and 41 homes were demolished. As such, we are keenly interested in this proposed project because it directly impacts the welfare of our communities and residents.

Reserving our rights to make further requests and comments, we respectfully request that the following sections of the Report be removed:

1. Alternative Development Standards – The proposed project is located at 'ground zero' of the most devastating slope failure in Orange County history. What is the basis for allowing 'alternative development standards' by the City of Laguna Niguel ("City")?

We interpret this as an indication that the City is intending to reduce its standards instead of requiring developers to meet, and hopefully exceed, current development standards.

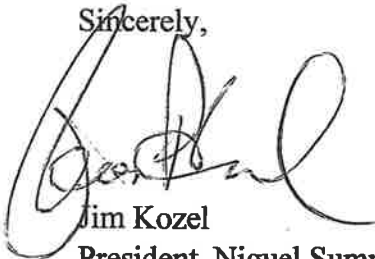
Based on the inherent risk of building in this area, it would appear that any project should be required to strictly adhere to existing development standards. Moreover, the proponent of the project has a lengthy and well documented record of slope failures within Laguna Niguel and elsewhere in Orange County. Therefore, the burden should be on the developer to establish compliance with the requirements of the City Code.

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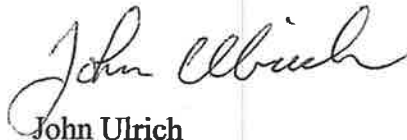
COMMUNITY DEVELOPMENT

2. Minor Adjustment – A 15.5 foot retaining wall that exceeds the Zoning Code’s height limit is objectively not a “minor adjustment” and is inappropriate for this site.

Sincerely,



Jim Kozel
President, Niguel Summit HOA



John Ulrich
President, Charter Terrace HOA