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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

February 6, 2023

FEB 6 2023

STATE CLEARING HOUSE

Nick Koutoufidis
 City of Encinitas
 505 South Vulcan Ave.
 Encinitas, CA 92024
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**Subject: Piraeus Point (PROJECT), Draft Environmental Impact Report (DEIR),
 SCH #2022050516**

Dear Mr. Koutoufidis:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of Encinitas 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 Piraeus 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, 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 oversees the Natural Community Conservation Planning (NCCP) program. The City prepared a draft NCCP Subarea Plan under the Subregional Multiple Habitat Conservation Program (MHCP) addressing the cities in north San Diego County; however, the Encinitas Subarea Plan was never finalized, and

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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applicable permits have not been issued by CDFW nor the U.S. Fish and Wildlife Service (USFWS; collectively, the Wildlife Agencies).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Encinitas (City)

Objective: The objective of the Project is to construct a 149-home residential community on an 11.8-acre site in Encinitas.

Location: The Project site is located on the northeast corner of Piraeus Street and Plato Place in Encinitas, CA. The Project site runs parallel to Interstate 5, bounded by La Costa Avenue to the north, extending southward beyond Sky Loft Road, and bounded by Plato Place to the south. Batiquitos Lagoon is located just north of the Project site, across La Costa Avenue.

Biological Setting: The Project site is currently undeveloped. Vegetation on the Project site includes coastal sage scrub, chaparral, and grassland communities. Additional vegetation communities in the off-site preserve area include Diegan coastal sage scrub, California brittle bush scrub, and annual brome grassland. Several northern California black walnut trees and Mexican fan palms are present within the preserve area as well. Four special-status plants were identified on the Project site during reconnaissance and focused rare plant surveys: California adolphia (*Adolphia californica*; California Rare Plant Rank (CRPR) 2B.1), wart-stemmed ceanothus (*Ceanothus verrucosus*; CRPR 2B.2), Engelmann oak (*Quercus engelmannii*; CRPR 4.2), and ashy spike-moss (*Selaginella cinerascens*; CRPR 4.1). Special-status wildlife species observed or considered to have a high or moderate potential to occur within the project site include coastal California gnatcatcher (*Polioptila californica californica*; federal Endangered Species Act (ESA)-threatened, California Species of Special Concern (SSC)), Cooper's hawk (*Accipiter cooperii*; CDFW Watch List), monarch (*Danaus plexippus*; ESA-candidate species), San Diego desert woodrat (*Neotoma lepida intermedia*; SSC), and orange-throated whiptail (*Aspidoscelis hyperythra*; WL). The site is within USFWS-designated critical habitat for coastal California gnatcatcher.

Vegetation impacts and mitigation ratios are summarized in Table 3.3-2 below, and illustrated in Figure 3.3-3 (Attachment A):

Table 3.3-2: Impact Acreages of Vegetation Communities and Land Cover Types within the Project Site

Oberbauer Vegetation Communities	MCV Vegetation Communities	Development Area (Impact) (Acres)			Development Area (Impact) Total (Acres)	Required Mitigation Ratio	Total (Acres)
		Site	Off-site Improvements	FMZ			
Diegan Coastal Sage Scrub (32500)	California Sagebrush – California Buckwheat Scrub	0.77	0.16	-	0.93	2:1	1.86
Southern Mixed Chaparral (37120)	Chamise-Mission Manzanita Chaparral ¹	0.65	<0.01	0.48	1.13	1:1	1.13
Coastal Scrub (32000)	Deerweed Scrub	1.38	0.06	-	1.44	2:1	2.88
Disturbed	Disturbed	2.96	0.27	0.05	3.28	-	3.28
Total					6.78	-	9.15

¹Sensitive vegetation community

²Excludes San Diego Gas and Electric (SDG&E) easement

Notes: MCV = Manual of California Vegetation; FMZ = Fuel Modification Zone

Source: ECORP 2022 (see Appendix D).

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COMMENTS AND RECOMMENDATIONS

On November 23, 2022, CDFW provided informal comments on the Project prior to the public review period (attached). CDFW offers those comments and recommendations below for the public record, 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: Conservation Easement

Mitigation Measure BIO-1 (MM BIO-1) states that the majority of mitigation for impacted vegetation communities will be met through establishment of an on- and off-site adjacent Preserve Area; 5.51 acres will be preserved in place, including 100% (0.71 acre) of Diegan coastal sage scrub/lemonade berry scrub and 72% (0.81 acre) of southern mixed chaparral/chamise-mission manzanita chaparral. MM BIO-1 indicates that the Preserve Area will be set aside as an open space conservation easement in favor of the City of Encinitas and that, prior to grading, a long-term management plan (LTMP) will be prepared to the satisfaction of the City and Wildlife Agencies. MM BIO-1 states that a preserve management plan will provide an entity and endowment funding to maintain the biological open space in perpetuity.

Recommendation #1: While CDFW appreciates the inclusion of a land protection instrument over the Preservation Area, an open space easement is not sufficient to ensure preservation for the purposes of conservation in perpetuity. We strongly recommend that a conservation easement be placed over the property, particularly considering that the site is within USFWS-designated gnatcatcher critical habitat and near Batiquitos lagoon. Conservation easements are a unique property interest created by statute for the purpose of retaining land "...predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition" (Civ. Code, § 815.1). Conservation easements are permanent, legally binding, and enforceable on all future landowners; as such, they are the strongest land protection instrument to guarantee conservation of mitigation land in perpetuity. We recommend that the City coordinate with the Wildlife Agencies to establish a conservation easement over the Preservation Area.

Comment #2: Scientific Collecting Permits

Mitigation Measure BIO-2 (MM BIO-2) indicates that a biological monitor will be on site during vegetation clearing and ground disturbance activities and will ensure that wildlife species are relocated out of the impact areas. The biological monitor will also deconstruct woodrat middens prior to vegetation clearing within the Development area. Middens within the Fire Management Zone (FMZ) will be protected in place to the extent practicable but may be deconstructed if deemed a fire hazard.

Recommendation #2: If wildlife is to be relocated, the on-site biologists should be required to obtain, as applicable, a Scientific Collecting Permit (SCP). A Species Relocation Plan may also be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release found species in appropriate habitat an adequate distance from the project site, unless they are a Federally and/or State-listed species in which coordination and direction from USFWS and/or CDFW, respectively, shall be required.

Comment #3: Rare Plant Salvage and Avoidance

Mitigation Measure BIO-3 (MM BIO-3) indicates that 103 California adolphia will be avoided and preserved in place at the off-site Preserve Area. Nine California adolphia individuals within the FMZ will be flagged and avoided in place. The Project will directly impact 145 California adolphia individuals, and 0.02 acre of California adolphia habitat. The Project will mitigate for

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the impacts by salvaging seed for donation to a City refuge or preserve, donation to a local plant nursery, or propagation within an off-site mitigation area to the satisfaction of the City.

Recommendation #3: CDFW recommends that any propagation of California adolphia occur specifically to the Project's off-site Preserve Area, which shall be protected in perpetuity. The Wildlife Agencies request the opportunity to review and comment on seed salvage and/or propagation plans proposed for this species.

Comment #4: Off-site Mitigation

Mitigation Measure BIO-7 (MM BIO-7) indicates that off-site mitigation shall be required prior to grading, for an additional 1.92 acres of impacts to sensitive and/or mitigated habitats not achieved within the Preserve Area, including: 1.60 acres of coastal sage scrub within the Coastal Zone and 0.32 acre of southern mixed chaparral/chamise-mission manzanita chaparral. Mitigation will be achieved through purchase of mitigation credits or acquisition of land within the Coastal Zone. MM BIO-7 goes on to state that, “[b]ecause available land and established mitigation banks within the Coastal Zone are not available, and because the City of Encinitas Subarea Plan is still in draft form, purchasing of mitigation credits within a North County Multiple Habitat Planning Area mitigation bank (<https://www.sandiegocounty.gov/content/sdc/pds/mitbnks.html>) or at another City-approved preserve area in the process of being established shall be negotiated to the satisfaction of the City, CDFW, and USFWS.”

Recommendation #4: We appreciate that the Wildlife Agencies will be consulted regarding mitigation bank credit purchase. Any credits purchased need to be commensurate with Project impacts, at a mitigation bank with an executed Banking Enabling Instrument, and within the designated service area of that bank.

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

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

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

Sincerely,

DocuSigned by:

David Mayer
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South Coast Region

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Attachment A: Biological Survey Results

