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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



July 14, 2022

Governor's Office of Planning & Research

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Jul 14 2022

## STATE CLEARINGHOUSE

**Subject: Comments on the Notice of Preparation of an Environmental Impact Report for the Nakano Project, City of Chula Vista (SCH #2022060260)**

Dear Mr. Donn:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) for the Nakano (Project) Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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; California Environmental Quality Act [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 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.*). CDFW also administers the Natural Community Conservation Planning (NCCP) program (Fish and Game Code 2800 *et seq.*). Both the City of Chula Vista and the City of San Diego participate in the NCCP program by implementing approved Multiple Species Conservation Program (MSCP) Subarea Plans (SAP) and Implementing Agreements (IA). The Draft EIR (DEIR) for the proposed Project must ensure that all requirements and conditions of the applicable SAP and IA are met. The DEIR should also address any biological issues that are not

<sup>1</sup> 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 1500.

Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 2 of 8

addressed in the SAP and IA, such as specific impacts to and mitigation requirements for sensitive species that are not covered by the SAP and IA.

## **PROJECT DESCRIPTION SUMMARY**

**CEQA Lead Agency:** City of Chula Vista

**Responsible Agency:** City of San Diego

**Project Description/Objective:** The proposed Project involves a residential development of 221 units with supporting amenities (including a trail connection to the Otay Valley Regional Park) and associated off-site improvements. Off-site improvements would occur both in the City of Chula Vista (remedial grading north of the site) and City of San Diego (street and utilities connections). As proposed, the DEIR will analyze two scenarios: (1) an “Annexation Scenario” where the project site would be annexed into the City of San Diego, and (2) a “No Annexation Scenario” where the project site would remain in the City of Chula Vista. Both scenarios include the same project footprint and physical project design, but the discretionary actions would differ. For purposes of CEQA the City of Chula Vista and City of San Diego have entered into a cooperative memorandum of understanding designating the City of Chula Vista as Lead Agency with City of San Diego as a Responsible Agency. Per the NOP, both Cities’ regulations will be utilized to inform impact thresholds and analyzed for consistency in the DEIR.

**Project Location:** The 23.77-acre proposed Project site is located east of Interstate 805 (I-805), northwest of Dennery Road, and south of the Otay River in the City of Chula Vista. The site is directly adjacent to the City of San Diego to the west, south, and east. It was historically used for agricultural purposes and is currently vacant. Most of the site is flat and consists of disturbed habitat and nonnative grassland. An unimproved drainage with riparian vegetation occurs along the eastern boundary. Surrounding land uses include I-805 to the west, residential and medical development to the south and east, and open space associated with the Otay River and Otay Valley Regional Park to the north.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City of Chula Vista in adequately identifying and/or mitigating Project impacts on biological resources and maintaining consistency with the MSCP. Comments are based on information provided in the NOP, as well as during the City of Chula Vista and Wildlife Agency coordination meeting on April 13, 2022.

### **Specific Comments**

- 1) MSCP Consistency. The DEIR should discuss and analyze the Annexation scenario in terms of consistency with annexation policies and guidelines (including processing requirements) contained within the City of Chula Vista and City of San Diego MSCP Subarea Plans, as well as the MSCP Subregional Plan. The DEIR should also demonstrate how the Project’s MSCP obligations would be implemented.
- 2) Narrow Endemics. The DEIR should discuss and analyze any variation in mitigation requirements for impacts to MSCP Narrow Endemic species under the No Annexation and Annexation scenarios where differences exist between Narrow Endemics identified under the City of Chula Vista and City of San Diego MSCP Subarea Plans.

Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 3 of 8

- 3) Preserve build-out. The DEIR should discuss and analyze any potential impacts to either jurisdiction's MSCP Preserve commitments per their respective MSCP Subarea Plans under the Annexation scenario. For example, the DEIR should address if annexation of the Project and its associated mitigation would create a shortfall in the City of Chula Vista's preserve build-out if moved to the City of San Diego.

### General Comments

- 4) Biological Baseline Assessment. Undisturbed land may provide suitable habitat for special status or regionally and locally unique species. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project area, with emphasis 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. CDFW also considers impacts to Species of Special Concern a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. The DEIR should include the following:
  - 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)]. 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 [Natural Communities \(ca.gov\)](#);
  - b. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see [Information on Rare, Threatened, and Endangered Plants \(ca.gov\)](#));
  - c. Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. The Draft Vegetation Communities of San Diego County (Oberbauer et al. 2008), should also be used to inform this mapping and assessment. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;

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. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted 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 [Submitting Data to the CNDDDB \(ca.gov\)](#).

A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site 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

Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 4 of 8

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 USFWS; and,

- d. 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. 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) Biological Direct, Indirect, and Cumulative Impacts. Due to the proximity of the Project site to open space, it is essential to understand how these open spaces and the biological diversity within them may be impacted by Project activities. This should aid in identifying specific mitigation or avoidance measures necessary to offset those impacts and ensure consistency with the requirements of the MSCP. 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. 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, 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 CEQA document;
  - b. Potential adverse impacts from lighting, noise, temporary and permanent human activity, and exotic species and identification of any mitigation measures;
  - c. Project-related changes on drainage patterns; 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. The discussion should also address any water extraction activities, whether dewatering would be necessary, and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
  - d. Potential 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 CEQA document; 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.
- 6) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:

Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 5 of 8

- a. A complete discussion of the purpose and need for, and description of, the proposed 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.
- 7) Compensatory Mitigation. The DEIR should include mitigation measures per MSCP requirements for adverse Project-related impacts to sensitive plants, animals, and habitats. 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 nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.
- 8) Nesting Birds. To avoid impacts to nesting birds, CDFW recommends that clearing of vegetation 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. For the given Project site, CDFW generally recommends a 100-foot buffer from common avian species, 300 feet for listed or highly sensitive species (that are otherwise not addressed by the MSCP), and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect as long as construction is occurring. 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.
- 9) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of moving an individual from the Project site and permanently moving it to a new location. CDFW generally does not support the use of translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 10) Landscaping. CDFW recommends that the DEIR require that no invasive plant material be used for landscaping. A list of invasive/exotic plants that should be avoided can be found online at [Cal-IPC Invasive Plant Inventory](#).
- 11) Jurisdictional Streams. 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")

Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 6 of 8

must provide written notification to CDFW pursuant to Fish and Game Code Section 1600 *et seq.*

CDFW's issuance of a Lake and Streambed Alteration Agreement (LSAA) 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 LSAA. Please visit CDFW's [Lake and Streambed Alteration Program webpage](#) to for information about LSA notification and online submittal through the [Environmental Permit Information Management System \(EPIMS\) Permitting Portal](#).

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 USFWS 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.

- a. 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 vegetated buffer areas adjoining ephemeral drainages.
- b. Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.
- c. 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.

## **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: [Submitting Data to the CNDDDB \(ca.gov\)](#). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [CNDDDB - Plants and Animals \(ca.gov\)](#).

Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 7 of 8

## 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 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 Heather Schmalbach, Environmental Scientist, at [Heather.Schmalbach@wildlife.ca.gov](mailto:Heather.Schmalbach@wildlife.ca.gov).

Sincerely,

DocuSigned by:

  
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Stan Donn  
City of Chula Vista  
July 14, 2022  
Page 8 of 8

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