



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 26, 2024

Desmond Corley
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
dcorley@chulavistaca.gov

SUBJECT: NAKANO PROJECT (EIR 22-001), DRAFT ENVIRONMENTAL IMPACT REPORT, SCH#2022060260; CITY OF CHULA VISTA, SAN DIEGO COUNTY, CALIFORNIA

Dear Desmond Corley:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability for a Draft Environmental Impact Report (DEIR) from the City of Chula (City) for the Nakano Project (Project) pursuant to 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 Project that may affect California fish and wildlife. 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.

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.

Desmond Corley
City of Chula Vista
June 26, 2024
Page 2 of 7

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.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning 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).

PROJECT HISTORY

The U.S. Fish and Wildlife Service (Service) and CDFW, collectively referred to as the Wildlife Agencies, have reviewed the DEIR and associated documents for the proposed Project received on April 26, 2024. The Project details referenced here are based on information provided in those documents and through prior meetings and correspondence between CDFW and the Service (Wildlife Agencies); City of Chula Vista; and City of San Diego; RECON Environmental, Inc., and representatives of Tri Pointe Homes (Applicant Team); from April 2022 to present; our knowledge of sensitive and declining species and their habitats in the region; and our participation in regional conservation planning efforts, including the City of Chula Vista’s and City of San Diego’s MSCP SAPs. Additionally, meetings were recently held in May and June of 2024 between all parties to provide further guidance and clarify the evolving wetland mitigation approach for the Project. We appreciate the extension the City of Chula Vista granted the Wildlife Agencies for comments on the DEIR.

CDFW previously provided comments on the Notice of Preparation for the Project in a letter dated July 14, 2022. 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 Responsible Agency. Both the City of Chula Vista and the City of San Diego participate in the NCCP and HCP programs by implementing their respective approved SAPs and IAs.

PROJECT LOCATION & DESCRIPTION

The 23.77-acre Project site is located in the City of Chula Vista, bordered by Interstate 805 (I-805) to the west, northwest of Dennery Road, and south of the Otay River. The

Desmond Corley
City of Chula Vista
June 26, 2024
Page 3 of 7

Project proposes a 221-unit residential development with supporting park amenities (including pocket parks, an overlook park, and a trail connection to the Otay Valley Regional Park) and associated off-site improvements. The Project site is planned to be annexed into the City of San Diego as the site is directly adjacent to the City of San Diego to the west, south, and east. Off-site improvements would occur both in the City of Chula Vista via remedial grading north of the site, and City of San Diego via street development and utilities connection. Surrounding land uses include I-805 to the west, residential and medical development to the east and south, and open space associated with the Otay River and Otay Valley Regional Park to the north. The Project will develop most of the site, which is designated as Development Area in the City of Chula Vista's SAP. The Otay River to the south of the Project site is designated as 75 to 100 percent Conservation Area in the City of Chula Vista's SAP. Impacts to areas within the City of San Diego are designated outside of the Multiple Habitat Planning Area.

BIOLOGICAL SETTING

The vacant Project site was historically used for agricultural purposes and now consists of upland vegetation communities and wetland and riparian habitat. An unimproved drainage with riparian vegetation occurs along the eastern boundary. According to the Biological Resources Technical Report (BRTR, RECON April 2024), under the Annexation Scenario, a total of 22.92 acres of impacts will occur in the City of San Diego resulting from both on-site and off-site impacts. An additional 0.45 acre of impacts will occur in the City of Chula Vista resulting from off-site area grading and trail improvements. Per Table 4 of the BRTR, a total of 23.37 acres will be impacted by the Project both on-site and off-site. Most impacts will occur to Diegan coastal sage scrub and non-native grassland. Per Table 5 of the BRTR, impacts will also occur to mule fat scrub, southern willow scrub, emergent wetlands, and disturbed wetlands, which may be subject to permitting from the Regional Water Quality Control Board, CDFW, and City of San Diego.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Chula Vista in avoiding, minimizing, and adequately mitigating Project-related impacts to biological resources and to ensure the Project is consistent with the City of Chula Vista's SAP and the City of San Diego's SAP.

The DEIR for the proposed Project must ensure all requirements and conditions of the applicable SAPs and IAs are met prior to Wildlife Agency concurrence with a City of San Diego Biologically Superior Option (BSO) Wetland Deviation and approval of a minor amendment for the Annexation Scenario.

Desmond Corley
City of Chula Vista
June 26, 2024
Page 4 of 7

1. Biologically Superior Option Concurrence: The Wildlife Agencies have reviewed, commented on the draft Wetland Mitigation Plan (WMP), and conditionally concurred on a BSO Wetland Deviation for the Project via an email dated November 9, 2023. A revised WMP was submitted by the City of San Diego on February 27, 2024. However, the Wildlife Agencies' previous comments were not adequately addressed in the revised WMP. The Service met with the Applicant Team and the City of San Diego on May 23, 2024, to provide additional guidance on outstanding wetland mitigation information. On June 6, 2024, the Applicant Team presented a summary of the updated WMP to the Wildlife Agencies; the City of San Diego; and City of Chula Vista. Submittal of a revised WMP was received via email from the Applicant Team on June 18, 2024; review by the Wildlife Agencies is forthcoming. A revised BRTR, and Long-term Management and Monitoring Plan for On-site Wetlands for the Nakano Project shall be submitted for review prior to the wildlife agencies granting final concurrence on the City of San Diego BSO Wetland Deviation. Without addressing the conditional concurrence comments, the Project may not adequately fulfill the requirements of the City of San Diego's SAP, IA, and associated Land Development Code Biology Guidelines. To ensure compliance with and proper implementation of the SAPs and IAs pursuant to CDFW's NCCP permit and USFWS' Section 10(a)(1)(b) HCP permit, CDFW recommends that the DEIR not be finalized until the City of San Diego BSO Wetland Deviation receives formal concurrence from the Wildlife Agencies.
2. Minor Amendment Approval for the Annexation Scenario: Prior to the annexation, formal written concurrence from the Wildlife Agencies is required for the minor amendment to the Subarea Plan. Attachment 11 (2011 MSCP Annual Report Excerpt with Helix Memo) and Attachment 12 (2022 MSCP Consistency Analysis for the Nakano Project) discusses and analyzes the Annexation Scenario for consistency with the annexation policies and guidelines (including processing requirements) in the City of Chula Vista and City of San Diego SAPs and the Subregional MSCP. However, the DEIR (Table S-2 Summary of Environmental Analysis Results –Annexation Scenario 2a) states, "A Subarea Plan amendment would be processed after annexation to include the project site as part of the City of San Diego MSCP Subarea Plan area." Further in the DEIR, (Section 3.5.3 Annexation Scenario 2b) lists discretionary actions for agencies, including the City of Chula Vista's approval of an Annexation Agreement, and the City of San Diego's approval of an MSCP SAP Amendment. To ensure consistency with the City of Chula Vista's SAP Section 5.3.1.1 (New Territory Added to the City from Jurisdiction with Approved Subarea Plan), the Wildlife Agencies shall be included as an approving entity for the MSCP Annexation Agreement. Furthermore, CDFW requests that the Wildlife Agencies review and approve of the minor amendment to City of San Diego's SAP before the proposed annexation is scheduled.

Desmond Corley
City of Chula Vista
June 26, 2024
Page 5 of 7

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database 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: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data> (CDFW 2024a). 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: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals> (CDFW2024b).

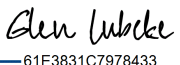
ENVIRONMENTAL DOCUMENT FILING FEES

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 efforts of all parties to coordinate with the Wildlife Agencies on the Project and the opportunity to comment on the DEIR to assist the City of Chula Vista in identifying and mitigating Project impacts on biological resources. We also look forward to our continued collaboration in implementing the City of Chula Vista's and City of San Diego's SAPs. If you have questions or comments regarding this letter, please contact Paola Perez via email at Paola.Perez@wildlife.ca.gov and via phone at (858) 354-2413.

Sincerely,

DocuSigned by:

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Glen M. Lubcke
Environmental Program Manager
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Desmond Corley
City of Chula Vista
June 26, 2024
Page 6 of 7

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Desmond Corley
City of Chula Vista
June 26, 2024
Page 7 of 7

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City of San Diego. March 1997. City of San Diego MSCP Subarea Plan.

Oberbauer et al. 2008. Draft Vegetation Communities of San Diego County. March. Based on “Preliminary Descriptions of the Terrestrial Natural Communities of California,” Robert F. Holland, Ph.D., October 1986.

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