



State of California – Natural Resources Agency  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



September 19, 2022

Governor's Office of Planning & Research

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**Sep 20 2022**

**STATE CLEARINGHOUSE**

**Subject: Ocean Creek Mixed-Use Project Sustainable Communities Environmental Assessment (SCEA), SCH #2022080294**

Dear Ms. Cervantes:

The California Department of Fish and Wildlife (CDFW) has reviewed the City of Oceanside's SCEA for the Project 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; 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 also 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.

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<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 15000.

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CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City had been a local jurisdiction participant in the subregional planning effort known as the Multiple Habitat Planning Program (MHCP). However, a subarea plan (SAP) was not finalized or adopted by the City, nor were permits issued by the Wildlife Agencies (jointly, CDFW and the United States Fish and Wildlife Service (USFWS)). At this time the City is not pursuing completion of an NCCP, but CDFW encourages the City to reconsider that decision in the future.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Oceanside (City)

**Objective:** The proposed Project would include construction of 295 residential units, including 30 units of low-income affordable housing (10% of the total units), and 3,000 square feet of commercial/retail on approximately 12.87 acres within the 18.9-acre Project site. The mixed-use Project would be built within a previously graded area across from the North County Transit District (NCTD) Crouch Street Sprinter Station. The remaining approximately six acres, consisting of north-facing, vegetated slopes, would remain as undeveloped open space, consistent with the City's General Plan and Zoning Map designations.

The Project would include 476 parking spaces, including 466 parking spaces for residents and 10 parking spaces for the retail/commercial uses. Of the parking spaces, 70 would be reserved for electric vehicles, 35 of which would include electric vehicle chargers. The Project and associated impacts also include an extension of S. Oceanside Boulevard to Crouch Street and establishment of a trail adjacent to Loma Alta Creek on the south side of S. Oceanside Boulevard. Access to the site would be provided by two new driveways from the extension of S. Oceanside Boulevard, one across from the existing driveway to the NCTD Crouch Street Sprinter Station and one further west

**Location:** The City is located in northern San Diego County adjacent to the coast. The Project site is located approximately 0.4 mile east of Interstate 5, one mile north of Highway 78, and 1.5 miles south of Highway 76. The Project site is bounded by Loma Alta Creek and the NCTD Crouch Street Sprinter Station to the north, Crouch Street along the southeastern border with undeveloped and disturbed land to the east of Crouch Street, private residences off Rue de la Montagne to the south, and commercial properties off Union Plaza Court to the west.

**Biological Setting:** With regard to regional planning: the Project site is not located within the Coastal Zone or Oceanside Draft SAP's Pre-approved Mitigation Area, . A portion of the six acres of north-facing slopes with coastal sage scrub (CSS) are located within a Hardline Preserve Area. Additionally, the Project area is located approximately 4,000 feet east of the Wildlife Corridor Planning Zone (WCPZ) as identified in the Draft SAP.

On the site, four vegetation communities and two land covers were mapped within the biological study area (approximately 19 acres on-site and 1.66-acre off-site): Diegan coastal sage scrub (6.17 acres), non-native grassland (10.10 acres), eucalyptus woodland (0.10 acre), disturbed southern willow scrub (0.18 acre), disturbed habitat (2.91 acres dominated by dominated by Hottentot fig (*Carpobrotus edulis*)), and urban/developed (1.06 acres). Previously graded areas are currently vegetated mostly with non-native species. One feature

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mapped during the jurisdictional delineation is likely under CDFW jurisdiction: the southern slope of Loma Alta Creek.

Focused surveys for coastal California gnatcatcher (gnatcatcher; *Poliioptila californica californica*; Federal Endangered Species Act (ESA)-listed threatened, California Species of Special Concern (SSC)) confirmed the presence of two pairs on the site in separate locations within the biological study area. A portion of the site is designated as critical habitat by the U.S. Fish and Wildlife Service for coastal California gnatcatcher.

Protocol surveys were conducted in 2020 for least Bell's vireo (vireo; *Vireo bellii pusillus*; FESA-listed endangered and CESA-listed endangered). No vireo were detected. Additional special-status wildlife species that have high potential to occur within the biological study area but were not observed during site surveys include southern California legless lizard (*Anniella stebbinsi*; SSC), orange-throated whiptail (*Aspidoscelis hyperythra*; SSC), San Diegan tiger whiptail (*Aspidoscelis tigris stejnegeri*; SSC), and Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*; SSC). No special status plants were observed.

Grading and development of the proposed Project, including the extension of South Oceanside Boulevard, would result in 10.31 acres of permanent impacts consisting of 1.00 acre of disturbed habitat, 0.07 acre of eucalyptus woodlands, 0.59 acre of urban/developed land, and 8.65 acres of non-native grassland. Of the overall impacts, the permanent loss of 8.62 acres of non-native grassland is considered significant.

None of the CSS on site will be directly impacted by construction of the Project. As specified in the Draft SAP, significant impacts to 8.62 acres of non-native grassland (Habitat Group E) shall be mitigated at a 0.5:1 ratio for a total of 4.31 acres of City-approved native vegetation community of equal or higher value. The proposed Project would provide compensatory mitigation in the form of on-site conservation and enhancement of approximately 4.31 acres of CSS (Habitat Group C), in and around areas identified as MHCP Hardline Preserve in the City's Draft SAP: almost four of a total of six acres of coastal sage scrub on site is not within the designated hardline preserve; however, the overall conserved mitigation area will include contiguous areas of CSS, adding acreage to land already planned for preservation.

## **COMMENTS AND RECOMMENDATIONS**

### **Specific Comments**

CDFW provides the following comments regarding mitigation requirements that fall under CDFW's jurisdiction as a Trustee Agency and a Responsible Agency.

#### **Comment 1: On-site conservation of gnatcatcher habitat**

California gnatcatcher is a focal species under the NCCP program, including the MHCP. A crucial goal of the MHCP is to restore and enhance coastal sage scrub in critical locations to increase breeding habitat and improve functionality of a "stepping-stone" linkage through the MHCP plan area. Due to the high degree of urbanization and habitat fragmentation within the City, undeveloped areas of the City are critical to regional habitat connectivity and species conservation for gnatcatcher. Remaining habitat fragments in the

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City may serve as a functional gnatcatcher stepping-stone corridor, which allows for continued genetic and demographic connectivity for the species. Permanent conservation of 4.31 acres of CSS within and adjacent to the designated MHCP Hardline Preserve will benefit gnatcatcher and its critical habitat and result in a more cohesive preserve and functional wildlife corridor.

Because the conserved gnatcatcher habitat will be directly adjacent to the proposed Project construction, care must be taken to avoid direct and indirect impacts to gnatcatcher within the preserved CSS, both during construction and operation of the residential housing. Human activity from project construction and resultant noise, light, and dust may disrupt gnatcatcher breeding if done during the breeding season. Work during the breeding season should be avoided if possible. If project construction within 500 feet of avoided gnatcatcher habitat must occur during the gnatcatcher breeding season, focused protocol surveys will be conducted to determine the presence and location of gnatcatcher nests. Post-construction, human and pet activity, permanent lighting, or invasive species could also adversely affect the gnatcatcher and its critical habitat. Management of the Preserve should aim to avoid or greatly reduce these impacts.

### **Comment 2: In-perpetuity preservation of the mitigation lands**

The SCEA states that the habitat preservation mitigation site, also referred to in the document as the open space easement, shall be protected by a conservation easement or other City-approved mechanism that provides preservation in perpetuity. The areas proposed as mitigation lands should be protected in perpetuity with a perpetual biological conservation easement (CE), financial assurance, and dedication 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. The CE should name the Wildlife Agencies as Third-Party Beneficiaries and be approved by the Wildlife Agencies prior to its execution and should follow the Agency-approved template. This CE should include all habitat that is not a manufactured slope and/or not under an existing easement, potentially including the acreage between the two areas proposed for preservation that are shown in Figure 11 of the Biological Technical Report (BTR). There should be no active trails or fuel modification in the CE areas. The Project Applicant should submit the CE to the Wildlife Agencies for review and approval at least 60 days prior to initiating Project impacts. The Project Applicant should submit the final easements and evidence of their recordation to the Wildlife Agencies within 60 days of receiving approval of the draft CE.

### **Comment 3: In-perpetuity management and protection of the mitigation lands**

The Project Applicant should implement a Habitat Management Plan (HMP) to cover perpetual management, maintenance, and monitoring of the biological CE areas. The Applicant should also establish a non-wasting endowment for an amount approved by the City and the Wildlife Agencies based on a Property Analysis Record (PAR) (Center for Natural Lands Management ©1998) or similar cost estimation method to secure the ongoing funding for the perpetual management, maintenance, and monitoring of the biological conservation easement areas by an agency, non-profit organization, or other entity approved by the Wildlife Agencies. The Applicant should submit a draft HMP

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including a description of perpetual management, maintenance, and monitoring actions and the PAR or other cost estimation results for the non-wasting endowment to the City and Wildlife Agencies for approval at least 60 days prior to initiating Project impacts. The Applicant should submit the final plan to the Wildlife Agencies and transfer the funds for the non-wasting endowment to a non-profit conservation entity, within 60 days of receiving approval of the draft plan.

The HMP should include measures to protect the targeted habitat values of the mitigation areas in perpetuity from direct and indirect negative impacts. The HMP should outline biological resources on the site, provide for monitoring of biological resources, address potential impacts to biological resources, and identify actions to be taken to eliminate or minimize those impacts. Issues that should be addressed in the HMP include but are not limited to the following: protection from any future development and zone changes; fencing and restrictions on access; proposed land dedications; control of illegal dumping; spread of invasive plants; water pollution; and increased human or domestic pet intrusion. Adequate funding should be provided to allow for minimum monthly patrolling of the CE area to inspect for signs of human intrusion or damage. The PAR should include contingency funding that would provide for not only periodic fence repair, but complete replacement of the fencing should it become necessary.

#### **Comment 4: Discrepancy in stated acreage of non-native grassland to be impacted**

The acreage of non-native grassland to be impacted is stated as 8.65 acres in the Appendix B BTR but the SCEA states that 8.62 acres will be impacted. This conflict needs to be resolved.

#### **Comment 5: Wetland buffer encroachment**

The extension of Oceanside Boulevard and creation of a trail adjacent to Loma Alta Creek will encroach into the 50-foot wetland buffer and the additional 50-foot planning buffer. This encroachment requires approval from the City of Oceanside and the Wildlife Agencies for an alternative buffer configuration. According to the SCEA, based on pre-Project scoping meetings with the City and the Wildlife Agencies (March and May 2021), a reduced buffer configuration was agreed upon given the Project's enhancement activities along the southern slope of Loma Alta Creek and restoration of CSS adjacent to the creek. These areas should be included in the CE and managed for the benefit of biological resources in perpetuity.

### **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](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:

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[CNDDDB@wildlife.ca.gov](mailto: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](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 SCEA to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Meredith Osborne, Environmental Scientist, at [Meredith.Osborne@wildlife.ca.gov](mailto:Meredith.Osborne@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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