



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Rd.  
San Diego, CA 92123  
www.wildlife.ca.gov

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



September 14, 2022

Jennifer Gates  
City of Encinitas  
505 South Vulcan Ave.  
Encinitas, CA 92024  
[jgates@encinitasca.gov](mailto:jgates@encinitasca.gov)



Dear Ms. Gates:

EL CAMINO REAL SPECIFIC PLAN (PROJECT)  
NOTICE OF PREPARATION (NOP)  
SCH# 2022080302

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of an Environmental Impact Report (EIR) from the City of Encinitas for the Project pursuant 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 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.

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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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## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Encinitas (City)

**Objective:** The objective of the Project is to redevelop a corridor along El Camino Real with updated commercial, office, and public buildings, as well as additional housing. The Project will incorporate enhanced green space, street trees, and improved creek connections.

**Location:** The El Camino Real Specific Plan Area (SPA) encompasses approximately 384 acres of land along the El Camino Real corridor in Encinitas. The northern terminus of the Project extends just beyond Leucadia Boulevard, while the southern end extends beyond Encinitas Boulevard, to the edge of the residential housing along Crest Drive.

**Biological Setting:** The southern region of the Project area is largely developed; land uses include commercial buildings, shopping centers, utility easements, and residential buildings. The northern portion of the project site encompasses some open habitat, including several areas of Critical Habitat for coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher; Endangered Species Act (ESA)-listed threatened). Based on a search of the California Natural Diversity Database, additional sensitive wildlife with the potential to occur on the Project site includes least Bell's vireo (*Vireo bellii pusillus*; California Endangered Species Act (CESA)- and ESA-listed Endangered). Sensitive plants with the potential to occur on the Project site include Del Mar manzanita (*Arctostaphylos glandulosa* ssp. *crassifolia*; ESA-listed endangered; California Rare Plant Rank (CRPR) 1B.1), wart-stemmed ceanothus (*Ceanothus verrucosus*; CRPR 2B.2), and Nuttall's scrub oak (*Quercus dumosa*; CRPR 1B.1).

## 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. Editorial comments or other suggestions may also be included to improve the document.

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, wildlife, and natural habitats, we recommend the following information be included in the EIR:

### General Comments

- 1) **Biological Resource Inventory:** The document should contain a complete description of the Project, including purpose and need, that describes all habitats within or adjacent to the Project area, including all staging areas and access routes to the construction and staging areas. The Project area is described as the area in which potential effects may occur.

The document should also provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire Project site, undertaken at the appropriate time of year. Species to be addressed should include all those which meet the CEQA definition

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(see CEQA Guidelines, § 15380). This should include sensitive wildlife species. Seasonal variations in use of the Project area by wildlife 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 U.S. Fish and Wildlife Service (USFWS).

2) **Biological Impacts:** 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 EIR:

a) Please provide a discussion of potential adverse impacts from lighting, noise, human activity, exotic species, recreational uses, and drainage. Mitigation measures proposed to alleviate such impacts should be included.

b) Please provide a discussion 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.

c) CDFW also recommends that a habitat gain/loss table be included, which calculates the expected net habitat losses and gains of each type of habitat area lost, restored, enhanced, and created.

3) **Special-status Species:** The EIR should thoroughly analyze direct, indirect, and cumulative impacts to any special-status species likely to occur in the Project area. Impacts to species designated as Fully Protected (FPS) must be completely avoided; FPS may not be taken or possessed at any time per Section 3511 of the Fish and Game Code. Avoidance measures for avian species may include phasing construction to occur outside of the nesting season, conducting species-specific surveys when construction will occur within 500 feet of a nesting site, retaining a qualified biological monitor on-site during construction, and implementation of no-activity buffers around active nests.

CDFW also considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the Project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085).

Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the City seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation, monitoring, and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

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- 4) **Mitigation for Project-related Biological Impacts:** The EIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be discussed.
- 5) **Cumulative Effects Analysis:** 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.

### Specific Comments

- 6) **Coastal California Gnatcatcher:** Northern sections of the Project site encompass areas of designated Critical Habitat for the federally threatened coastal California gnatcatcher (*Polioptila californica californica*), particularly just south of Leucadia Blvd and west of North El Camino Real. Protocol-level surveys of gnatcatcher critical habitat areas should be conducted in accordance with protocols set forth by USFWS and the results included in the EIR.

### 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 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](mailto:Jessie.Lane@wildlife.ca.gov).

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Sincerely,

DocuSigned by:

*David Mayer*

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David Mayer

Environmental Program Manager  
South Coast Region

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## REFERENCES

California Natural Diversity Database (CNDDDB). 2022. RareFind 5 [Internet]. California Department of Fish and Wildlife, Government Version.

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