



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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February 13, 2023

Governor's Office of Planning & Research

Chris Dominguez
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FEB 13 2023

STATE CLEARING HOUSE

**Subject: 749 Marlin Drive Road Extension (Project), Negative Declaration,
 SCH #2023010232**

Dear Mr. Dominguez:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Negative Declaration from the City of Laguna Beach (City) for the Project pursuant 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 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 administers the Natural Community Conservation Planning program (NCCP). Although the City of Laguna Beach (City) is not a permitted jurisdiction or a participating entity, the City owns lands that are within the County of Orange Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Laguna Beach

Objective: The objective of the Project is to extend the north end of Marlin Drive approximately one foot by 37 feet in order to provide access for the potential future development of a single-family residence. The Negative Declaration states that no development is proposed at this time.

Location: The Project is located in the City of Laguna Beach, near 749 Marlin Drive. The one-foot by 37-foot impact area is at the edge of a cul-de-sac at the north end of Marlin Drive. The Project site is adjacent to single-family residences to the east, south, and west. Open space, primarily canyons, is directly to the north and, beyond the residential areas, to the east, south, and west.

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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Biological Setting: The Project site is located approximately 1,000 feet east of the Aliso-Wood Canyons Wilderness area, which consists of approximately 4,500 acres of open space. The Project impact area is a portion of a 1.96-acre parcel, which is located in an undeveloped canyon. The parcel is partially within an area designated by the City of Laguna Beach as high value habitat. The parcel contains coastal sage scrub, chaparral, non-native grasses, and disturbed areas. The Negative Declaration does not provide acreages for these habitat types. According to the Biological Technical Report, the canyon supports limited wildlife movement.

According to the Negative Declaration, the Project impact area (i.e., the 37-square foot road extension) consists of flat terrain and no vegetation or biological resources. The Negative Declaration states that no impacts to biological resources will occur due to the Project, and therefore proposes no mitigation.

Special-status wildlife with potential to occur within the 1.96-acre parcel include coastal California gnatcatcher (*Poliophtila californica californica*; Federal Endangered Species Act (ESA) listed-threatened, CDFW Species of Special Concern (SSC)), orange-throated whiptail (*Aspidoscelis hyperythra*; CDFW Watch List), red-diamond rattlesnake (*Crotalus ruber*; SSC), western mastiff bat (*Eumops perotis californicus*; SSC), and Blainville's horned lizard (*Phrynosoma blainvillii*; SSC).

Special-status plants with potential to occur within the parcel include big-leaved crownbeard (*Verbesina dissita*; ESA listed-threatened, CESA listed-threatened, California Rare Plant Rank (CRPR) 1B.1), Coulter's matilija poppy (*Romneya coulteri*; CRPR 4.2), intermediate mariposa lily (*Calochortus weedii* var. *intermedius*; CRPR 1B.2), and many-stemmed dudleya (*Dudleya multicaulis*; CRPR 1B.2).

COMMENTS AND RECOMMENDATIONS

We offer 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.

COMMENT #1: Analysis of the Whole of the Action

Issue: The Negative Declaration does not consider the whole of the action of the Project, in that it does not assess impacts from construction of the future single-family residence. There appears to be no other purpose of the road other than to facilitate construction of a future dwelling, and the road extension is required in order to build and access a future residence.

Specific impact: The Negative Declaration states that the purpose of the road extension is to provide access for a potential future single-family residence and that no home construction is currently proposed; however, it also states that completion of the road extension will be contingent on future design review and a coastal development permit for a single-family residence. The road extension would only occur if linked to the construction of a single-family residence and impacts due to the construction of a single-family residence are not included in this environmental document.

Why impact would occur: Although the 37-square foot road extension portion of the Project may not directly impact biological resources, the remainder of the parcel contains valuable habitat, and has potential to support sensitive species. The construction of a single-family residence on this parcel could also lead to indirect impacts due to habitat loss, or disturbances due to light or noise.

Evidence impact would be significant: CDFW has been contacted by members of the public that have expressed concern regarding the City's use of categorical exemptions under CEQA, and the lack of impact analysis associated with the construction of single-family residences and other developments. CEQA's policies are intended to provide the fullest possible protection of the environment within a reasonable scope of statutory language and must consider the whole of the action, not just its constituent parts (CEQA Guidelines § 15003). Therefore, regarding this Project, CDFW advises that the impacts of the single-family residence should be included in the road extension's environmental document for public review and comment.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Recommendation #1: CDFW recommends that an analysis of potential impacts due to the construction of the referenced single-family residence be included in the environmental document. This analysis should include but not be limited to the following:

- a. up-to-date focused surveys for sensitive species with potential to occur within the 1.96-acre parcel, including coastal California gnatcatcher and big-leaved crownbeard;

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- b. mitigation measures to bring direct and indirect impacts to sensitive species to less than significant;
- c. acreages of impacted habitat types, and detailed plans for compensatory mitigation;
- d. plans for utilities, fencing, and fuel modification; and,
- e. impacts to wildlife movement.

COMMENT #2: Possible Impacts to CESA-listed Species

Issue: The Negative Declaration does not describe the presence or absence of big-leaved crownbeard within the expanded Project site.

Specific Impact: Given that impacts to big-leaved crownbeard may occur within the expanded Project area, it is possible that permitting will be required under CESA for “take” of the species, if impacts cannot be completely avoided.

Why impact would occur: According to the 2014 Biological Technical Report, big-leaved crownbeard occurs within the canyon, approximately 1,000 feet east of the Project site. Direct or indirect impacts to big-leaved crownbeard could occur from construction of the single-family residence referenced in the Negative Declaration. These impacts are not analyzed in the environmental document.

Evidence impact would be significant: CDFW considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant without mitigation. Should big-leaved crownbeard be detected within the footprint of the proposed single-family residence, the City would need to consider take authorization. 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 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 Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required in order to obtain a CESA Permit.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #2: 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. Should a CESA ITP be required, impacts of the authorized take shall be minimized and fully mitigated to the extent of the impact of the authorized taking on the species. The applicant must also ensure adequate dedicated funding (e.g., a non-wasting endowment) to implement and monitor the success criteria of the measures (Fish and G. Code § 2081).

Given possible impacts to a CESA-listed species, the Project may result in significant impacts even with mitigation, and a Negative Declaration is not the appropriate environmental document for the Project (CEQA Guidelines § 15064). CDFW strongly recommends a complete draft Environmental Impact Report (EIR) be circulated for public review and comment. The additional information and analyses identified in this letter should be included in the draft EIR.

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:
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: 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.

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

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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 Negative Declaration to assist the City of Laguna Beach in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

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REFERENCES

California Environmental Quality Act (CEQA). 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.
California Office of Planning and Research. 2009 or current version. CEQA: California Environmental Quality Act. Statutes and Guidelines, § 21081.6 and CEQA Guidelines, § 15097, §15126.4(2).

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ATTACHMENT A: Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project:

Biological Resources (BIO)		
Recommendation (REC) Description	Implementation Schedule	Responsible Party
<p>REC-1: Analysis of Impacts: CDFW recommends that an analysis of potential impacts due to the construction of the referenced single-family residence be included in the environmental document. This analysis should include but not be limited to the following:</p> <ul style="list-style-type: none"> a. up-to-date surveys for sensitive species with potential to occur within the 1.96-acre parcel, including coastal California gnatcatcher and big-leaved crownbeard; b. mitigation measures to bring impacts to sensitive species to less than significant; c. acreages of impacted habitat types, and detailed plans for compensatory mitigation; d. plans for utilities, fencing, and fuel modification; and, e. impacts to wildlife movement. 	<p>Prior to Project activities</p>	<p>City of Laguna Beach</p>
<p>REC-2: Possible Impacts to CESA-listed Species: 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. Should a CESA ITP be required, impacts of the authorized take shall be minimized and fully mitigated to the extent of the impact of the authorized taking on the species. The applicant must also ensure adequate dedicated funding (e.g., a non-wasting endowment) to implement and monitor the success criteria of the measures (Fish and G. Code § 2081).</p> <p>Given possible impacts to a CESA-listed species, the Project may result in significant impacts even with mitigation, and a Negative Declaration is not the appropriate environmental document for the Project (CEQA Guidelines § 15064). CDFW strongly recommends a complete draft Environmental Impact Report (EIR) be circulated for public review and comment. The additional information and analyses identified in this letter should be included in the draft EIR.</p>	<p>Prior to Project activities</p>	<p>City of Laguna Beach</p>