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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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October 6, 2023

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
650 Canyon Del Rey
Monterey, California 93940
(831) 394-8511
KMinami@delreyoaks.org

**Subject: City of Del Rey Oaks Housing Element Update 2023 (Plan)
Draft Environmental Impact Report (DEIR)
SCH No.: 2023040680**

Dear Karen Minami:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (DEIR) from the City of Del Rey Oaks for the Plan pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Plan that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Plan 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 & Game Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 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., Section 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.

Conserving California's Wildlife Since 1870

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
Page 2

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, future project tiered from this Plan may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, Section 1600 et seq.). Likewise, to the extent implementation of future projects tiered from this Plan may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code may be required. While the comment period may have ended, CDFW would appreciate if you would still consider our comments.

PLAN DESCRIPTION SUMMARY

Proponent: City of Del Rey

Objective: The City of Del Rey Oaks (City) is located approximately 100 miles south of San Francisco and 300 miles north of Los Angeles, within the Monterey Peninsula. The City is bounded by the City of Seaside to the north, the former Fort Ord to the east, the Monterey Regional Airport to the south, and the Cities of Monterey and Seaside to the west. The City comprises 670 acres (or roughly one square mile). The City has prepared Draft Housing Element Updates for the 5th and 6th Planning Cycles, 2015-2023 and 2023-2031 planning periods.

The Draft Housing Element is a policy document rather than a proposal for a specific action. The Draft Housing Element includes an analysis of the City's housing needs; identifies various governmental and non-governmental constraints to meeting those needs; establishes reasonable goals, objectives and policies based on those needs; and sets forth a comprehensive list of programs to achieve the identified goals and objectives. The Draft EIR addresses the revisions to the 5th Cycle 2023 Draft Housing Element Update and considers the cumulative impacts of adoption and implementation of the 6th Cycle Housing Element Update.

Location: The Plan area is the City of Del Rey Oaks in Monterey County, California.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Del Rey Oaks in adequately identifying and/or mitigating the Plan'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 CEQA document prepared for this Plan. There are special-status species that have been observed in the vicinity of the planning area and may be present within the planning

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
Page 3

area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground disturbing activities or land use changes. CDFW is concerned regarding potential impacts to the State endangered and CRPR 1B.1 Seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), the State threatened, federally endangered, and California Rare Plant Ranked (CRPR) 1B.2 Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*), and the State candidate for listing as endangered Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*).

To adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified biologist and/or botanist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the vicinity of the planning area for all future projects tiered from this Plan. Properly conducted biological surveys, and the information assembled from them, are essential to identify necessary avoidance, minimization, and mitigation measures and/or the need for additional or protocol-level surveys, and to identify any project-related impacts under CESA and to other species of concern.

COMMENT 1: Crotch's Bumble Bee (*Bombus crotchii*) and Western Bumble Bee (*Bombus occidentalis*)

The DEIR states in Appendix C page 9 and 10, that the planning area has a low potential for these species due to lack of sightings recorded on the California Natural Diversity Database (CNDDDB) and low-quality habitat found within the vicinity. CDFW does not concur with this conclusion due to the CNDDDB being a positive occurrence database only, which can be reliable for determining presence of a species but unreliable as a primary source for concluding absence. For all future projects tiered from this Plan, CDFW recommends that protocol surveys for Crotch's Bumble Bee (CBB) and Western Bumble Bee (WBB) be performed following the "Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species" (CDFW 2023). This survey protocol recommends conducting three onsite surveys during biological studies to document the presence or absence of this species. "Each survey should ideally be spaced 2-4 weeks apart during the Colony Active Period to ensure that they cover a range of dates and account for variability in resource use by the candidate species and floral resource phenology within the site" (CDFW 2023).

CDFW recommends that a qualified biologist conduct protocol surveys for CBB, WBB, and their requisite habitat features using the CDFW survey protocol during their colony active period (highest detection probability), which is from April to August for CBB and April to September for WBB (CDFW 2023). CDFW recommends this survey work and subsequent analysis be completed as part of the biological technical studies conducted in support of the future CEQA documents for projects tiered from this Plan. CDFW recommends that the future CEQA documents then evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from any future project. If CBB or WBB needs to be captured or handled as part of the survey effort,

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
Page 4

please note that a 2081(a) Memorandum of Understanding (MOU) with CDFW will be needed (CDFW 2023). If CBB or WBB is found at any point during surveys for or during the construction of a project, consultation with CDFW is warranted to determine if the project can avoid take. If take cannot be avoided, take authorization is warranted prior to initiating or continuing with ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game section 2081 subdivision (b).

COMMENT 2: Monterey Gilia (*Gilia tenuiflora* ssp. *arenaria*) and Seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*)

Although the Plan area, City of Del Rey Oaks, is included in the Fort Ord Multi-Species Habitat Conservation Plan (HCP) as stated in the DEIR, the HCP, which includes minimization and mitigation measures for Monterey Gilia and Seaside bird's beak was never formally adopted and therefore does not provide take coverage under CESA or the federal Endangered Species Act. Further, the measures included in this Housing Element DEIR may not be adequate to avoid or reduce species impacts or comply with state laws. There is currently no Natural Communities Conservation Plan or CDFW-issued Incidental Take Permit for either of these species, therefore, any impacts to State-listed species resulting from future projects tiered from this Plan will require a project specific ITP to comply with CESA.

CDFW strongly recommends that protocol botanical surveys be undertaken for every project tiered from this Plan and that CDFW be contacted for early consultation for any future project that may have direct, indirect, or contribute to cumulative impacts to Monterey gilia. Early and close coordination with CDFW regarding Monterey gilia is critical to a project's success as CDFW can provide important expertise early in a project's development relative to avoidance measures, appropriate timed and conducted surveys by a qualified botanist, and minimization measures and permit requirements related to this threatened species.

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, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during any future project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
Page 5

Filing Fees

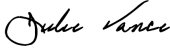
The Plan, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Plan approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Del Rey Oaks in identifying and mitigating this Plan's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
Page 6

REFERENCES

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA Candidate Bumble Bee Species, (available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>).

Karen Minami, Deputy City Clerk
City of Del Rey Oaks
Page 7

Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PLAN: (DEIR) City of Del Rey Oaks Housing Element Update City of Del Rey Oaks

SCH No.: 2023040680

| RECOMMENDED MITIGATION MEASURE | STATUS/DATE/INITIALS |
|---|-----------------------------|
| <i>Before Disturbing Soil or Vegetation</i> | |
| Mitigation measure: Crotch's bumble bee (CBB) and Western bumble bee (WBB) | |
| WBB and CBB Protocol Survey | |