



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY Gavin Newsom, Governor
DEPARTMENT OF FISH AND WILDLIFE Charlton H. Bonham, Director

South Coast Region
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July 26, 2023

Benjamin M. Zdeba, Principal Planner
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Subject: Notification of Preparation of a Program Environmental Impact Report for the City of Newport Beach Housing Element Implementation Program, SCH #2023060699, City of Newport Beach, Orange County

Dear Mr. Zdeba:

The California Department of Fish and Wildlife (CDFW) has reviewed a Notice of Preparation (NOP) of a Program Environmental Impact Report (PEIR) from the City of Newport Beach (City) for the City of Newport Beach Housing Element Implementation Program (Project). CDFW appreciates the opportunity to provide comments regarding aspects of the Project that could affect fish and wildlife resources and be subject to CDFW's 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.

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 2 of 9

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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Newport Beach (City)

Objective: The Project is proposing revisions to and the addition of additional General Plan Land Use Element policies to implement existing goals and policies to allow for the implementation of the 2021-2029 Housing Element. This proposal will implement housing programs to meet the City's housing needs for all income groups per the City's Regional Housing Needs Assessment (RHNA) allocation. Primary Project activities include a General Plan Amendment and Amendments to the Zoning Code and Zoning Map.

Location: The Project does not propose any site development at this time. Future housing development would occur over time depending upon numerous factors such as market conditions, and economic and planning considerations, and at the individual property owners' discretion. However, the Project does identify six focus areas within the City's boundary as potential housing sites to accommodate future housing needs. The six focus areas in the adopted Housing Element are: Airport Area, West Newport Mesa, Dover-Westcliff, Newport Center, Coyote Canyon, and Banning Ranch. The Banning Ranch Focus Area is included in the adopted 2021-2029 Housing Element's sites inventory. However, it is not assumed in order to accommodate the City's 2021-2029 RHNA growth need. Banning Ranch is considered as an additional dwelling unit opportunity, beyond those that accommodate the RHNA.

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.

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 3 of 9

CDFW looks forward to commenting on the PEIR when it is released. CDFW may have additional comments to the PEIR not addressed in this letter.

General Comments

1) Biological Baseline Assessment

CDFW recommends providing a complete assessment and impact analysis of the native/naturalized vegetation communities, flora, and fauna within and adjacent to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures (including provision for buffers between impacts and locations of sensitive species) necessary to avoid, minimize, or mitigate for significant impacts. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. The PEIR should include the following information:

- a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The PEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity;
- b) A complete floristic assessment 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 thorough, recent, floristic-based assessment of special status plants and natural communities;
- c) A complete, recent, assessment of the biological resources associated with each habitat type onsite and within adjacent areas that could also be affected by the Project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results.

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 4 of 9

Online forms can be obtained and submitted at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>; and,

- d) A recent wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years as long as there was not a prevailing drought during the time of the botanical survey. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if buildout could occur over a protracted time frame, or in phases.

2) Analyses of the Potential Project-Related Biological Direct, Indirect, and Cumulative Impacts

Due to the aim of providing capacity for the City's housing needs, rezoning will occur and thus have the potential to impact biological resources. Project activities may cause direct impacts if parcels are rezoned from open space to residential, resulting in direct take of habitat and the species therein. Project activities may also have indirect impacts resulting from increased noise, lighting, traffic, and human activity adjacent to open space or sensitive areas. Specific mitigation or avoidance measures may be necessary to offset such impacts. CDFW recommends providing 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 PEIR:

- a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address Project-related changes on drainage patterns on and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site. The discussions should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary, and the potential resulting impacts on the habitat, if any, supported by the groundwater. Mitigation measures proposed to alleviate such impacts should be included;

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 5 of 9

- b) Discussions 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 (e.g., preserve lands associated with a NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the PEIR;
- c) The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document;
- d) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the PEIR; and,
- e) 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.

3) Impacts to Bird Species

The Project plans identify six focus areas including some areas zoned as open space and/or adjacent to open space with existing shrubs and trees. These open spaces include, but are not limited to: Talbert Regional Park, Big Canyon Trailhead, Ecological Reserve of Upper Newport Bay, and Back Bay Golf Course. Project activities occurring during the avian breeding season could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. Some sites identified for the Project could also lead to the loss of foraging habitat for sensitive bird species. CNDDDB indicates the occurrence of several special status species within the Project vicinity, specifically least Bell's vireo (vireo; *Vireo bellii pusillus*; CESA- and ESA-listed endangered), coastal California gnatcatcher (gnatcatcher; *Polioptila californica californica*, ESA-listed threatened), California least tern (*Sternula antillarum browni*; CESA- and ESA-listed endangered), and

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 6 of 9

western snowy plover (*Charadrius nivosus nivosus*; ESA-listed threatened). CNDDDB also indicates the occurrence of a CDFW Species of Special Concern (SSC): yellow rail (*Coturnicops noveboracensis*). The following should be addressed in the PEIR:

- a) CDFW recommends that measures be taken, primarily, to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs; and,
- b) If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working onsite, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

5) Project Description and Alternatives

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, CDFW recommends the following information be included in the PEIR:

- a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 7 of 9

- b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.

6) Compensatory Mitigation

The PEIR 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, onsite habitat restoration or enhancement should be discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore would not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity. Under Government Code section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or non-profit organization to effectively manage and steward land, water, or natural resources on mitigation lands that it approves.

7) Wetland Permitting Obligations

CDFW has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency.

Figure 2B-2E of the NOP identifies opportunity sites adjacent to the Santa Ana River and San Diego Creek. The PEIR should include an analysis of the Project's direct, indirect, and cumulative impacts on hydrologic features, including a discussion of impacts as they pertain to Fish and Game Code section 1600 et seq. If impacts to the bed, bank, or channel of a stream may occur, we

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 8 of 9

encourage the City to consult further with CDFW regarding the possible submittal of a LSA Notification package. A Notification package for a LSA may be obtained by accessing CDFW's web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

8) Landscaping

Habitat loss and invasive plants are a leading cause of native biodiversity loss. CDFW recommends that the PEIR stipulate that no invasive plant material shall be used. Furthermore, we recommend using native, locally appropriate plant species for landscaping on the Project site. A list of invasive/exotic plants that should be avoided as well as suggestions for suitable landscape plants can be found at <https://www.cal-ipc.org/solutions/prevention/landscaping/>.

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 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

July 26, 2023
Benjamin M. Zdeba
City of Newport Beach
Page 9 of 9

regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at Jessie.Lane@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

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REFERENCES

California Department of Fish and Wildlife. 2022. California Natural Diversity Database. Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

California Department of Fish and Wildlife. 2022. Lake and Streambed Alteration Program. Available from: <https://wildlife.ca.gov/Conservation/LSA>.

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https://files.ceqanet.opr.ca.gov/289030-1/attachment/bVxsg9bKz-S_BrE9JqJz7Up_nY6JhC48CsmWGoBUiw_5A9_5ui9aVrjVs6Z97r9kN_uDQZeuAekuMHgM0.