



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
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 San Diego, CA 92107
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

Sep 13 2023

September 13, 2023

STATE CLEARINGHOUSE

John Oquendo
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 Ventura County Resource Management Agency, Planning Division
 800 South Victoria Avenue
 Ventura, CA 93009
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Subject: Coastal Planned Development (PD); Permit Case No. PL22-0082 (Project); Mitigated Negative Declaration (MND); SCH #2023080411

Dear John Oquendo:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced MND 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, CDFW appreciates 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Ventura County

Objective: The objective of the Project is to construct a 4,880-square-foot (sq. ft.), one-story single-family home with an attached 1,046-sq.-ft. garage, and a 452-sq.ft. covered patio and swimming pool area. Brush will be cleared in a 100-foot buffer zone around the residence, in an area totaling 67,808 sq. ft. An area of approximately 52,707 sq. ft is proposed to be graded for the residence and driveway, including new widened turnout

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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areas along the existing access road. Two 5,000-gallon water tanks are proposed to provide water access to the residence.

Location: The Project site is located within the Santa Monica Mountains, in an unincorporated area of Ventura County. The site is four parcels north of 10715 Yerba Buena Road and is surrounded by rural and open space.

Biological Setting: Parts of the Project site were graded in the 1980s for construction pads and a road. The Woolsey Fire of 2018 burned the entire Project parcel and the land surrounding the access road. No new structure building or grading has occurred since the fire.

The existing habitats and land cover on site are described in the Biological Assessment as follows: *Adenostoma fasciculatum* Shrubland Alliance, *Artemisia californica*- *Salvia* Shrubland Alliance, *Heteromeles arbutifolia* Shrubland Alliance, *Malacothamnus fasciculatus* Shrubland Alliance, *Malosma laurina* Shrubland Alliance, *Opuntia oricola* Shrubland Alliance), ornamental landscaping, ruderal, and road. The project will permanently remove approximately 2.795 acres of sensitive habitat. Additionally, 0.25 acre was previously cleared and graded, for a total of 3.045 acres that will be mitigated at a 2:1 ratio (6.09 acres). Restoration of 0.25 acres will occur on site, and the remaining 5.84 acres are planned to be mitigated through the acquisition of offsite parcels to be dedicated to Mountains Recreation and Conservation Authority (MRCA).

Sensitive plant species on site include Catalina mariposa lily (*Calochortus catalinae*; California Rare Plant Rank (CRPR) 4.2), Plummer's mariposa lily (*Calochortus plummerae*; CRPR 4.2), and western dichondra (*Dichondra occidentalis*; CRPR 4.2). Seed/bulb salvage and relocation is planned for sensitive plants that cannot be avoided.

Sensitive wildlife species likely to occur on site include: San Diego desert woodrat (*Neotoma lepida intermedia*; CDFW Species of Special Concern (SSC)), coast horned lizard (*Phrynosoma blainvillii*; SSC), and Southern California rufous crowned sparrow (*Aimophila ruficeps canescens*; CDFW Watch List). Woodrat middens were observed on site prior to the 2018 fire but were burned and no new middens have been detected thus far.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Ventura County 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: Mitigation Measures

Issue: The MND does not describe plans for mitigation in sufficient detail, and CDFW is not included in future reviews of mitigation and restoration plans.

Specific impact: Several Mitigation Measures (MM) state that plans for mitigation will be made, but do not provide adequate details on such plans. For example, MM BIO-1 does not provide a Rare Plant Mitigation Plan (RPMP), although it does state that one will be created. Similarly, MM BIO-9 states that a Fuel Modification Plan will be prepared but does not provide the plan for review. MM BIO-10 states that plans for fencing will be submitted to the Ventura County Planning Division for review and approval but does not provide the plans for public review. Furthermore, CDFW is not designated as an entity to review and approve any of these plans prior to implementation.

Why impact would occur: CEQA Guidelines section 15126.4 states that mitigation cannot be deferred and must have a nexus to and be roughly proportional to the impacts. Without a comprehensive plan for compensatory mitigation available during the MND's public review period, CDFW cannot ascertain as to whether this mitigation is roughly proportional to the biological impacts it is intended to reduce.

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Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Recommendation #1:

To minimize significant impacts: The MND should include detailed plans that address all impacts to biological resources. These plans (e.g., RPMP, Fuel Modification, and Fencing Plans) should be provided for public review. If this is not feasible, the MND should state that all plans for mitigation and restoration shall be reviewed and approved by CDFW as well as the United States Fish and Wildlife Service prior to implementation.

COMMENT #2: In-Perpetuity Protection of Compensatory Mitigation Lands

Issue: The MND does not provide sufficient detail on the long-term preservation of land to be used for compensatory mitigation.

Specific impact: It is unclear whether all land to be used as compensatory mitigation, whether on or off site, will be protected and managed in perpetuity with a legal protection such as a conservation easement (CE). MM BIO-1 states that land used for translocating rare plants will be protected by a CE or other instrument such as a deed restriction, but no specific parcel of land is designated for this purpose. MM BIO-8 describes a location and endowment for 5.84 acres of mitigation land, but does not provide information on a CE or deed restriction.

Why impact would occur: If land is to be used as compensatory mitigation for habitat and rare plant loss, it must be conserved in perpetuity. Without more information on compensatory mitigation locations and legal protections, CDFW cannot determine whether these measures bring impacts to habitats and plant species to below significant.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Recommendation #2:

To minimize significant impacts: All land to be used as mitigation must be protected in perpetuity, both physically and financially (e.g., a non-wasting endowment). CDFW strongly recommends that this land specifically be protected by CEs. The MND should provide detailed information on compensatory mitigation locations, protection, and other factors such as third-party beneficiaries for all mitigation areas, both on and off site. Again, if this information is not available at the time the MND is adopted, CDFW requests that we have the opportunity to review and approve the compensatory mitigation plans prior to implementation of the Project.

COMMENT #3: Impacts to Nesting Birds

Issue: The MND does not address impacts to nesting birds.

Specific impact: The MND does not include a MM for impacts to nesting birds, although one is recommended in the Biological Assessment.

Why impact would occur: Per the Biological Assessment, suitable habitat for nesting birds protected under the Migratory Bird Treaty Act is located within the Project site. In addition to direct removal of habitat, construction noise, vibration, dust, or human disturbance could result in temporary or long-term disturbance of nesting birds on the Project site.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

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Mitigation Measure #1

To minimize significant impacts: The MM provided in the Biological Assessment shall be included in the MND, and shall be modified as follows: (suggestions in ~~strikethrough~~ and **bold**):

Mitigation Action: Avoid violating the Migratory Bird Treaty Act or California Fish and Game Code §3503.

Supplemental Surveys. A qualified biologist shall survey the construction site prior to nesting season to identify any nests of birds that would be directly or indirectly affected by the construction activities. If nests were found prior to nesting season within 300 feet of the construction footprint, including the driveway/access road, then an additional survey ~~two weeks~~ **within three days** prior to initiation of site disturbance would be required to further identify any nests that would be directly or indirectly affected by the construction activities. Bird nesting typically occurs from February through August. Some bird species nest outside this period.

Active Nests. To protect any active nest sites, the following restrictions on construction are required between February and August (or until nests are no longer active as determined by a qualified biologist). **A qualified biologist shall conduct a nesting bird survey within three days prior to initiation of any site disturbance.** Clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest (or as otherwise deemed appropriate by the monitoring biologist). Access and land surveying shall not be allowed within 100 feet of any occupied nest (or as otherwise deemed appropriate by the monitoring wildlife biologist). Onsite nests shall be avoided until vacated. Any encroachment into the 300/100-foot-buffer area around the known nest shall only be allowed if it is determined by a qualified wildlife biologist that the proposed activity would not disturb the nest occupants. Construction during the non-nesting season shall occur at the sites only if a qualified wildlife biologist has determined that fledglings have left the nest. Occupied nests adjacent to the construction site(s) may need to be avoided for short durations to ensure nesting success. Any nest permanently vacated for the season need not be protected.

COMMENT #4: Sensitive Plant Mitigation

Issue: The plan provided for Catalina and Plummer's mariposa lily seed/bulb salvage may not result in appropriate mitigation for loss of these plants. No mitigation is proposed for loss of western dichondra as a result of the Project.

Specific impact: MM BIO-1 states that a RPMP will be prepared, which will describe methods of translocating Catalina and Plummer's mariposa lily seeds and bulbs that will be impacted by Project activities. Figure 13 in the Biological Assessment shows a proposed mitigation site for planting these species. MM BIO-1 states that the RPMP shall require that monitoring be conducted for five years or until the success criteria and performance standards are met, whichever occurs sooner. CDFW is aware of numerous mariposa lily transplantation efforts over the past 15 years and has not received demonstrated success of this methodology.

Why impact would occur: Transplanting mariposa lily bulbs has a high failure rate and is unlikely to result in successful plant growth long-term. Disturbing soil near existing mariposa lilies to plant more individuals can overburden the soil and encourage wildlife such as rats to find and consume the bulbs. Short term monitoring of bulbs does not truly represent long-term outcome of the plant due to nutrients stored in the bulb.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

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Recommendation #3:

To minimize significant impacts: CDFW recommends avoidance and minimization of impacts to sensitive plants on site, and strongly recommends against transplantation as a mitigation method for mariposa lilies. If Ventura County chooses to move forward with seed/bulb salvage, any replanting effort should be moved away from areas with existing mariposa lilies to preserve remaining plants. If bulbs are planted, monitoring should be conducted for a minimum of 10 years and should show a steady or positive trend. Any RPMP developed should describe, in detail, a contingency plan in the likely event that the transplanting effort is unsuccessful, and the pursuit of a contingency should be added to mitigation measure MM BIO-1. Additionally, the RPMP should include plans for mitigation for western dichondra. Mitigation for this species should also be incorporated into a mitigation measure in the MND.

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 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 MND to assist to assist Ventura County in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

Jennifer Turner

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Jennifer Turner, acting for:
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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)		
Mitigation Measure (MM) or Recommendation (REC) Description	Implementation Schedule	Responsible Party
<p>REC-1: Mitigation Measures: The MND should include detailed plans that address all impacts to biological resources. These plans (e.g. RPMP, Fuel Modification, and Fencing Plans) should be provided for public review. If this is not feasible, the MND should state that all plans for mitigation and restoration shall be reviewed and approved by CDFW as well as the US Fish and Wildlife Service prior to implementation.</p>	Prior to Project activities	Ventura County
<p>REC-2: In-Perpetuity Protection of Compensatory Mitigation Lands: All land to be used as mitigation must be protected in perpetuity, both physically and financially. CDFW strongly recommends that this land specifically be protected by CEs. The MND should provide detailed information on compensatory mitigation locations, protection, and other factors such as third-party beneficiaries for all mitigation areas, both on and off site.</p>	Prior to Project activities	Ventura County
<p>MM-1: Impacts to Nesting Birds: <i>The MM provided in the Biological Assessment shall be included in the MND, and shall be modified as follows: (suggestions in strikethrough and bold):</i></p> <p><u>Mitigation Action:</u> <i>Avoid violating the Migratory Bird Treaty Act or California Fish and Game Code §3503.</i></p> <p><u>Supplemental Surveys.</u> <i>A qualified biologist shall survey the construction site prior to nesting season to identify any nests of birds that would be directly or indirectly affected by the construction activities. If nests were found prior to nesting season within 300 feet of the construction footprint, including the driveway/access road, then an additional survey two weeks within three days prior to initiation of site disturbance would be required to further identify any nests that would be directly or indirectly affected by the construction activities. Bird nesting typically occurs from February through August. Some bird species nest outside this period.</i></p> <p><u>Active Nests.</u> <i>To protect any active nest sites, the following restrictions on construction are required between February and August (or until nests are no longer active as determined by a qualified biologist). A qualified biologist shall conduct a nesting bird survey within three days prior to initiation of any site disturbance. Clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest (or as otherwise deemed appropriate by the monitoring biologist). Access and land surveying shall not be allowed within 100 feet of any occupied nest (or as otherwise deemed appropriate by the monitoring wildlife biologist). Onsite nests shall be avoided until vacated. Any encroachment into the 300/100-foot-buffer area around the known nest shall only be allowed if it is determined by a qualified wildlife biologist that the proposed activity would</i></p>	Prior to and during Project activities	Ventura County

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<p><i>not disturb the nest occupants. Construction during the non-nesting season shall occur at the sites only if a qualified wildlife biologist has determined that fledglings have left the nest. Occupied nests adjacent to the construction site(s) may need to be avoided for short durations to ensure nesting success. Any nest permanently vacated for the season need not be protected.</i></p>		
<p>REC-3: Sensitive Plant Mitigation: CDFW recommends avoidance and minimization of impacts to sensitive plants on site. CDFW does not recommend transplantation as a mitigation method for mariposa lilies. If Ventura County chooses to go ahead with seed/bulb salvage, any replanting effort should be moved away from areas with existing mariposa lilies to preserve remaining plants. If bulbs are planted, monitoring should be conducted for a minimum of 10 years and should show a steady or positive trend. Additionally, the RPMP should include plans for mitigation for western dichondra.</p>	<p>Prior to, during, and after Project activities</p>	<p>Ventura County</p>