



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 South Coast Region
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 San Diego, CA 92107
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 26, 2023

Governor's Office of Planning & Research

Amber Dobson
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Sep 26 2023

STATE CLEARINGHOUSE

**31451 South Coast Highway Project (Project) Mitigated Negative Declaration (MND)
 SCH# 2023080642**

Dear Amber Dobson,

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. CDFW also administers the Natural Community Conservation Planning program (NCCP). 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

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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Objective: The objective of the Project is to construct a single-family home on a vacant bluff-top parcel lot. The parcel has a total buildable area of approximately 0.56 acre. The Project consists of a new, three-level structure with a total of 7,584 square feet of living space with related retaining walls, driveway, deck, pool, and attached three-car garage. Project activities will include vegetation clearing, grading, utility connections, fuel modification zones, and landscaping.

Location: The Project site is located at 31451 Coast Highway in the City of Laguna Beach in south Orange County, just west of the intersection of Coast Highway and Bluff Drive, a private street. Regional access to the site includes California State Route 1 (Coast Highway), I-5, and I-405 via Laguna Canyon Road. The site is surrounded by residential uses to the north and south, Coast Highway to the east, and the Pacific Ocean to the west.

Biological Setting: The Project site is a lot on a coastal bluff, directly adjacent to Coast Royale Beach. The lot is undeveloped except for an electrical utility box and a three-foot high retaining wall along the northern edge of the site.

The existing habitats and land cover on site are coastal bluff scrub (0.27 acre, 0.09 acre permanently impacted), disturbed Encelia scrub (0.04 acre, all permanently impacted), disturbed sage scrub-grassland ecotone (0.02 acre, all permanently impacted), and ruderal (0.23 acre, 0.21 acre permanently impacted).

The only sensitive species found on site during surveys was cliff spurge (*Euphorbia miseria*, California Rare Plant Rank (CRPR) 2B.2). The MND states that cliff spurge individuals will be replaced on site at a 3:1 ratio. Big-leaved crownbeard (*Verbesina dissita*, CRPR 1B.1, CESA listed-threatened, Federal Endangered Species Act listed-threatened) was not detected during surveys in 2020, but per the Biological Resources Assessment, there are known big-leaved crownbeard occurrences within the vicinity of the Project site and some suitable habitat in the Project area. The City of Laguna Beach has the only known domestic population of big-leaved crownbeard.

Timing: Project construction is anticipated to begin in March 2024, and conclude in March 2026.

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.

COMMENT #1: Compensatory Mitigation

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: The Project will result in the permanent loss of 0.09 acre of coastal bluff scrub, but compensatory mitigation plans for this loss are unclear. The MND states that 0.14 acre of coastal bluff scrub will be preserved in place, and Mitigation Measure (MM) BIO-4 states that 0.06 acre of temporary impacts will be restored, enhanced, or improved on site. No preservation mechanism (e.g., a conservation easement (CE) or a deed restriction) or monitoring plan is proposed. Additionally, no monitoring plan is proposed for cliff spurge, which is to be replanted at a 3:1 ratio.

Why impact would occur: If land is to be used as compensatory mitigation for habitat, 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. 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

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cannot ascertain as to whether this mitigation is roughly proportional to the biological impacts it is intended to reduce.

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. 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 a land protection instrument be included in the MND. The MND should also provide detailed information on compensatory mitigation locations, protection, and other factors such as third-party beneficiaries for all mitigation areas. Plans for planting cliff spurge should include monitoring and success criteria. These 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 (USFWS) prior to implementation.

COMMENT #2: Big-leaved Crownbeard

Issue: The rare plant surveys were completed in April 2020, 3.5 years ago, and may not accurately represent the current population of rare plants, namely big-leaved crownbeard.

Specific impact: The Biological Resources Assessment states that there are known big-leaved crownbeard occurrences within the vicinity of the Project site and some suitable habitat for the species in the Project area. Big-leaved crownbeard is only found near Laguna Beach, where it is highly threatened by development. This species was not detected during surveys in 2020; however, the surveys provided are outdated, especially considering the increased rainfall in the past several years. Generally, CDFW accepts that survey results are representative of current on-site conditions if they are conducted no later than two years prior to the public review period.

Why impact would occur: Big-leaved crownbeard is a State and Federally listed threatened species with potential to occur on the Project site. Assuming absence based on surveys from over three years ago could result in take of this species, which would be a significant impact.

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

Recommendation #2:

To minimize significant impacts: CDFW strongly recommends that an updated rare plant survey be completed by a qualified biologist prior to initiation of Project activities. Results of this survey should be included in the MND, or if this is not feasible, shared with CDFW and USFWS for review.

COMMENT #3: Fuel Modification

Issue: The MND does not provide sufficient detail on fuel modification plans as they relate to biological resources.

Specific impact: The Project is located within a Very High Fire Hazard Severity Zone, which is the highest designation given by Cal Fire. The MND does not provide a map of where fuel modification areas will be or discuss impacts to biological resources due to fuel modification. The MND does state several times that all vegetation will be pruned to reduce fuel loads. Elsewhere, the MND states that habitat will be preserved on site.

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Why impact would occur: Without more information on fuel modification plans, CDFW cannot fully assess impacts to biological resources. If all vegetation will indeed be pruned on site, CDFW would not consider this on-site preservation of habitat.

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

Recommendation #3:

To minimize significant impacts: The MND should include a discussion of impacts to biological resources due to fuel modification. This should include a map of fuel modification buffer zones, if applicable. Areas that are part of fuel modification zones should be considered impacted and should not be included in compensatory mitigation or preservation acreages.

COMMENT #4: Impacts to Nesting Birds

Issue: The MND may not adequately minimize impacts to nesting birds.

Specific impact: MM BIO-3 states that if Project activities occur during nesting bird season, a qualified biologist should conduct a preconstruction nesting bird survey and set buffers if needed. The MM does not give details on buffer distances for nesting birds.

Why impact would occur: According to the construction schedule provided in the MND, Project activities are planned to occur during the active nesting bird season, and there is suitable habitat for nesting birds on site. Without appropriate buffers, 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)

Mitigation Measure #1

To minimize significant impacts: MM BIO-3 should be modified as follows: (suggestions in ~~strikethrough~~ and **bold**):

*If vegetation removal, construction, or grading activities are planned to occur within the active nesting bird season (February 15 through August 31), a qualified biologist should conduct a preconstruction nesting bird survey no more than 3 days prior to the start of such activities. The nesting bird survey should include the project site and areas immediately adjacent to the site that could potentially be affected by project-related activities such as noise, vibration, increased human activity, and dust. If active bird nests are found within areas that could be directly or indirectly impacted by project-related activities, the qualified biologist should establish an appropriate buffer zone around the active nest(s). The appropriate buffer should be determined by the qualified biologist based on species, location, and the nature of the proposed activities. **This buffer shall be a minimum of 100-300 feet from the nest site in all directions, species dependent, and 300-500 feet for raptors.** Project activities should be avoided within the buffer zone until the nest is deemed no longer active by the qualified biologist.*

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

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CNNDDB 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 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 at Brigid.Moran@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David A. 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)		
Mitigation Measure (MM) or Recommendation (REC) Description	Implementation Schedule	Responsible Party
<p>REC-1: Compensatory Mitigation: The MND should include detailed plans that address all impacts to biological resources. 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 a land protection instrument be included in the MND. The MND should also provide detailed information on compensatory mitigation locations, protection, and other factors such as third-party beneficiaries for all mitigation areas. Plans for planting cliff spurge should include monitoring and success criteria. These 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 (USFWS) prior to implementation.</p>	Prior to Project activities	City of Laguna Beach
<p>REC-2: Big-leaved Crownbeard: CDFW strongly recommends that an updated rare plant survey be completed by a qualified biologist prior to initiation of Project activities. Results of this survey should be included in the MND, or if this is not feasible, shared with CDFW and USFWS for review.</p>	Prior to Project activities	City of Laguna Beach
<p>REC-3: Fuel Modification: The MND should include a discussion of impacts to biological resources due to fuel modification. This should include a map of fuel modification buffer zones, if applicable. Areas that are part of fuel modification zones should be considered impacted and should not be included in compensatory mitigation or preservation acreages.</p>	Prior to Project activities	City of Laguna Beach
<p>MM-1: Impacts to Nesting Birds: MM BIO-3 should be modified as follows: (suggestions in strikethrough and bold):</p> <p><i>If vegetation removal, construction, or grading activities are planned to occur within the active nesting bird season (February 15 through August 31), a qualified biologist should conduct a preconstruction nesting bird survey no more than 3 days prior to the start of such activities. The nesting bird survey should include the project site and areas immediately adjacent to the site that could potentially be affected by project-related activities such as noise, vibration, increased human activity, and dust. If active bird nests are found within areas that could be directly or indirectly impacted by project-related activities, the qualified biologist should establish an appropriate buffer zone around the active nest(s). The appropriate buffer should be determined by the qualified biologist based on species, location, and the nature of the proposed activities. This buffer shall be a minimum of 100-300 feet from the nest site in all directions, species dependent, and 300-500 feet for raptors. Project activities should be avoided within the buffer zone until the nest is deemed no longer active by the qualified biologist.</i></p>	Prior to and during Project activities	City of Laguna Beach