



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 South Coast Region
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September 25, 2023

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Governor's Office of Planning & Research

Sep 25 2023

STATE CLEARINGHOUSE

Hills Preserve (Project) Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) SCH# 2023080600

Dear Nick Taylor:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced NOP 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: City of Anaheim (City)

Objective: The objective of the Project is to construct 14.5 acres of multi-family residential uses, 3.7 acres of single-family residential uses, and 9.2 acres of commercial development uses. These areas will include associated features such as parking structures, leasing offices, a pool, and a gym. The remaining 46 acres will be designated as open space. The

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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Project will involve right-of-way and off-site improvements including: a new four-way intersection at Deer Canyon Road and Santa Ana Canyon Road; a new eastbound deceleration lane on Santa Ana Canyon Road at Deer Canyon Road; a second vehicular access point to the Project on Santa Ana Canyon Road that would provide right-in and right-out only turning movements; and a new potable water line within the Santa Ana Canyon Road right-of-way that would extend from the Project site southwest to S. Eucalyptus Drive.

Location: The 76.2-acre Project site is located along the south side of Santa Ana Canyon Road, generally between Eucalyptus Drive to the west and Festival Drive to the east, in the City of Anaheim, County of Orange. To the north of the site, past Santa Ana Canyon Road, is State Route 91, followed by Yorba Regional Park. There are residences to the east and west of the site. Deer Canyon Park Preserve, a City-owned and managed Preserve, is to the south of the Project site.

Biological Setting: Based on aerial imagery, the Project site appears to be undeveloped, except for some roads and/or informal trails throughout the site. Directly to the south of the site is open space associated with Deer Canyon Park Preserve. The site has potential to support sensitive natural habitats, such as coastal sage scrub.

A query of the California Natural Diversity Database shows that the Project site has potential to support a variety of sensitive wildlife species, including coastal California gnatcatcher (*Poliophtila californica californica*, CDFW Species of Special Concern (SSC), Federal Endangered Species Act (ESA) listed-threatened), Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*, CDFW Watch List (WL)), coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*, SSC), Cooper's hawk (*Accipiter cooperii*, WL), orange-throated whiptail (*Aspidoscelis hyperythra*, WL), western mastiff bat (*Eumops perotis californicus*, SSC), and Crotch's bumble bee (*Bombus crotchii*, CDFW candidate species).

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: Crotch's Bumble Bee

There is potential for Crotch's bumble bee to occur on site. Crotch's bumble bees primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under-brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al., 2014; Hatfield et al., 2018). Overwintering sites utilized by Crotch's bumble bee queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al., 2014). The California Fish and Game Commission accepted a petition to list the Crotch's bumble bee as endangered under CESA, determining the listing "may be warranted" and advancing the species to the candidacy stage of the CESA listing process. CDFW considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant without mitigation.

CDFW recommends that a qualified entomologist familiar with the species' behavior and life history should conduct surveys within one year prior to vegetation removal and/or ground disturbance to determine the presence/absence of Crotch's bumble bee. CDFW has published a Survey Considerations document for CESA Candidate Bumble Bees, which can be found at the following link: <https://wildlife.ca.gov/Conservation/CESA>. This document describes factors such as evaluating potential for presence, habitat assessment, and survey methods.

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COMMENT #2: Mitigation and Avoidance of Project-Related Biological Impacts

The DEIR 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, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

COMMENT #3: Open Space Area

The NOP states that 46 of the total 76.2 acres will be dedicated as open space. The DEIR should clarify what uses, if any, will be permitted within the open space area, such as hiking or biking trails, roads, or utility easements. The DEIR should also clarify whether any land preservation mechanism, such as a conservation easement or deed restriction, is proposed for this area, and any plans for management of the land. CDFW strongly recommends that on-site open space be preserved in perpetuity through recordation of a conservation easement and be accompanied by a non-wasting endowment. Plans for on-site mitigation should also include a Mitigation, Monitoring, and Reporting Plan and a Long-Term Management Plan.

COMMENT #4: Biological Baseline Assessment

The DEIR should provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. The DEIR should include the following information:

- a. A thorough, recent floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <https://www.wildlife.ca.gov/Conservation/Plants/Info>). CDFW recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity, and at potential mitigation sites for the project. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
- b. A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. CDFW's California Natural Diversity Data Base (CNDDDB) in Sacramento should be consulted at <https://www.wildlife.ca.gov/Data/BIOS> to obtain current information on any previously reported sensitive species and habitat.
- c. An inventory of rare, threatened, endangered and other sensitive species on site and within the area of potential effect. CNDDDB indicates the occurrence of several special status species within the Project vicinity. Species to be addressed should include sensitive fish, wildlife, reptile, invertebrate, and amphibian species. Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service.

COMMENT #5: Biological Direct, Indirect, and Cumulative Impacts

To provide 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 DEIR:

- a. Specific acreages of habitat types that will be impacted due to Project-related activities.

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Details should be provided on whether impacts will be temporary or permanent.

b. Potential adverse impacts from lighting, noise, human activity, invasive species, and drainage. Mitigation measures proposed to alleviate such impacts in onsite undeveloped areas and onto adjacent lands should be included.

c. 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, especially Deer Canyon Park Preserve, should be fully evaluated in the DEIR.

d. Cumulative effects on biological resources. This 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.

COMMENT #5: Fire and Fuel Modification

The DEIR should include a discussion of fire risk and fuel modification areas, and associated impacts to biological resources. This should include a map of fuel modification buffer zones, as well as allowances for sensitive plant species, 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.

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 NOP to assist the City 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.

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Sincerely,

DocuSigned by:

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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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