



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
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*GAVIN NEWSOM, Governor*  
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September 12, 2024

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**SUBJECT: NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE OCEAN BLUFF WAY RESIDENTIAL PROJECT, SCH NO. 2024080571, SAN DIEGO COUNTY, CA**

Dear Esteban Danna:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation of an Environmental Impact Report (NOP) from the City of Encinitas (City) for the Ocean Bluff Way Residential Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>.

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 (Fish & G. Code, § 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.

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<sup>1</sup> 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.

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 2 of 15

CDFW also oversees the Natural Community Conservation Planning (NCCP) program. The City had prepared a draft Subarea Plan under the Subregional Multiple Habitat Conservation Program (MHCP), which addressed regional conservation planning across seven incorporated jurisdictions in northern San Diego County. Unfortunately, the Encinitas Subarea Plan was not finalized, and state and federal permits have not been issued to the City. To date, only the City of Carlsbad has received state and federal permits pursuant to the MHCP; however, the conservation principals remain relevant for development projects occurring in the other jurisdictions, and the draft Encinitas Subarea Plan provides an excellent measure for assessing the significance of potential impacts under CEQA.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Kevin L. Crook Architect Inc.

**Objective:** The objective of the Project is to subdivide the property into 27 lots and construct 27 single-family homes. Primary Project activities include grading; construction; and installation of amenities such as parking lots, sidewalks, landscaping, lighting, fencing, utilities, and storm drains.

**Location:** The Project is located in the City of Encinitas. The 7.19-acre site is bounded to the north by Encinitas Boulevard, to the east by a self-storage facility, to the south by single-family residences, and to the west by vacant land and a single-family residence.

**Biological Setting:** The site was previously developed with a commercial plant nursery, which was demolished in 2007. The site has been vacant since that time; however, several paved areas remain.

A general reconnaissance survey was conducted on March 23, 2023. Vegetation communities in the study area include Diegan coastal sage scrub, coastal sage-chaparral transition, and southern maritime chaparral. Non-native classifications include disturbed habitat and urban/developed land. There are no aquatic resources on the Project site. Implementation of the Project will result in direct impacts to 4.48 acres of disturbed habitat and developed land. Impacts to native vegetation communities will be avoided, and therefore no compensatory mitigation is proposed.

Focused rare plant surveys were conducted in May and July 2023. The Biological Technical Report (BTR; Dudek, 2024) indicates that three special-status plant species were observed in the study area, but outside of the Project footprint. Wart-stemmed ceanothus (*Ceanothus verrucosus*; California Rare Plant Rank (CRPR) 2B.2) and ashy spike-moss (*Selaginella cinerascens*; CRPR 4.1) were identified; however, the BTR does not identify the third rare plant species that was observed.

Special-status wildlife species determined to have a moderate potential to occur within the study area include southern California rufous-crowned sparrow (*Aimophila ruficeps*

Esteban Danna  
 City of Encinitas  
 September 12, 2024  
 Page 3 of 15

*canescens*; CDFW Watch List (WL)), Bell's sage sparrow (*Artemisiospiza belli belli*; WL), orange-throated whiptail (*Aspidoscelis hyperythra*; WL), and red diamondback rattlesnake (*Crotalus ruber*; State Species of Special Concern (SSC)). A focused coastal California gnatcatcher (*Polioptila californica californica*; federal Endangered Species Act-threatened; SSC) was conducted between March 31-May 12, 2023. A pair of adult gnatcatchers were observed on the eastern portion of the Project site during multiple surveys. Although gnatcatcher habitat will not be directly impacted, a nest avoidance and minimization measure is proposed to ensure that impacts are avoided.

## 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.

### Specific Comments

- 1) Crotch's Bumble Bee. The BTR (Dudek, 2024) indicates that Crotch's bumble bee (*Bombus crotchii*; candidate CESA listing) has a low potential to occur on the Project site. The BTR cites that the preferred habitat for the species is open grassland and scrub communities supporting floral resources, and that the disturbed lands that characterize the Project site sometimes support floral resources between mowing. Crotch's bumble bees often nest underground, sometimes occupying abandoned rodent burrows (Hatfield et al., 2015). Although the Project impacts will be limited to previously disturbed habitat, Crotch's bumble bee may occur in the native habitat on or adjacent to the Project site. If Crotch's bumble bees are using burrows on the Project site for nesting, direct impacts could result from ground-disturbing activities, which could lead to death or injury of adults, eggs, and larva, burrow collapse, nest abandonment, and reduced nest success.
  - a. Protection Status. 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. Crotch's bumble bee is granted full protection under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). In addition, Crotch's bumble bee has a State ranking of S1/S2. This means that the Crotch's bumble bee is considered critically imperiled or imperiled and is extremely rare (often five or fewer populations). Crotch's bumble bee is also listed as an invertebrate of conservation priority under the [Terrestrial and Vernal Pool Invertebrates of Conservation Priority](#) (CDFW 2017).

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 4 of 15

- b. Surveys and Disclosure<sup>2</sup>. CDFW recommends that the City retain a qualified biologist familiar with the species to survey the Project site for Crotch's bumble bee and habitat. Surveys for Crotch's bumble bee should be conducted during flying season when the species is most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). The DEIR should provide full disclosure of the presence of Crotch's bumble bee and the Project's potential impact on 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.
- c. Mitigation. The DEIR should include measures to first avoid impacts on Crotch's bumble bee. If Crotch's bumble bee is present, a qualified biologist should identify the location of all nests in or adjacent to the Project site. If nests are identified, 50-foot no-disturbance buffer zones should be established around nests to reduce the risk of disturbance or accidental take. If the Project cannot avoid impacts, the City should require the Project Applicant to consult CDFW to determine if a CESA Incidental Take Permit (ITP) is required. In addition, the City should require the Project Applicant to provide compensatory mitigation for removal or damage to any floral resource associated with Crotch's bumble bee. Floral resources should be replaced as close to their original location as is feasible.
- d. CESA ITP. Appropriate take authorization from CDFW under CESA may include an ITP or a Consistency Determination in certain circumstances, among other options (Fish & Game Code, §§ 2080.1, 2081, subs. (b) and (c)). Early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP for the Project unless the Project's CEQA document addresses all the Project's impact on CESA endangered, threatened, and/or candidate species. The Project's CEQA document should also specify a mitigation monitoring and reporting program that will meet the requirements of an ITP. It is important that the take proposed to be authorized by CDFW's ITP be described in detail in the Project's CEQA document. Also, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for an ITP. However, it is worth noting that mitigation for the Project's impact on a CESA endangered,

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<sup>2</sup> Please note that lack of records in the CNDDDB for Crotch bumble bee at the Project site does not mean that Crotch's bumble bee is not present. Reporting data to the CNDDDB is voluntary and it was only recently that entry of data became strongly recommended or required for candidate species like and Crotch's bumble bee. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review.

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 5 of 15

threatened, and/or candidate species proposed in the Project's CEQA document may not necessarily satisfy mitigation required to obtain an ITP.

- 2) Nesting Birds. The BTR (Dudek, 2024) proposes Mitigation Measure Bio 7 (MM-BIO-7) to avoid impacts to nesting birds. MM-BIO-7 indicates that, if grubbing or clearing of vegetation or construction adjacent to nesting habitat will occur within the breeding season, a nesting bird survey will be conducted within 10 calendar days prior to the start of construction. No-work buffers will be established if active nests are identified. A 10-day survey window may be insufficient to detect nest activity, as birds may locate onto the Project site and begin nesting during that large span of time. Per California Fish and Game Code Sections 3503, 3503.5, and 3513 the Proposed Project is required to avoid the incidental loss of fertile eggs or nestlings or activities that lead to nest abandonment. Nesting bird surveys should be conducted as close to the time of potential disruption as possible, no more than 3 days prior to ground disturbance, vegetation removal, or construction activities. CDFW recommends that the DEIR specify that nesting bird surveys will be conducted a maximum of 3 days prior to construction-related activities.
- 3) Editorial Comment. Section 3.2.4 of the BTR (Dudek 2024; Page 24) indicates that three special-status plant species were observed in the study area during focused rare plant surveys. Section 3.2.4.1 describes wart-stemmed ceanothus, but then indicates that a total of one Del Mar manzanita individual was observed in the study area. Section 3.2.4.2 discusses mesa spike moss. It is unclear from the document if both wart-stemmed ceanothus and Del Mar manzanita were observed in the study area, or if only two species were observed. CDFW recommends that the BTR be revised for clarity.

### **General Comments**

- 1) Disclosure. The DEIR should provide an adequate, complete, and detailed disclosure about the effects which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, § 15151). Such disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as assess the significance of the specific impact relative to plant and wildlife species impacted (e.g., current range, distribution, population trends, and connectivity).
- 2) Project Description and Alternatives. To enable adequate review and comment on the proposed Project from the standpoint of the protection of fish, wildlife, and plants, CDFW recommends the following information be included in the DEIR.
  - a. A complete discussion of the purpose and need for, and description of the proposed Project.
  - b. A range of feasible alternatives to the Project location to avoid or otherwise minimize direct and indirect impacts on sensitive biological resources and wildlife

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 6 of 15

movement areas. CDFW recommends the City select Project designs and alternatives that would avoid or otherwise minimize direct and indirect impacts on biological resources. CDFW also recommends the City consider establishing appropriate setbacks from sensitive and special status biological resources. Setbacks should not be impacted by ground disturbance or hydrological changes from any future Project-related construction, activities, maintenance, and development. As a general rule, CDFW recommends reducing or clustering a development footprint to retain unobstructed spaces for vegetation and wildlife and provide connections for wildlife between properties and minimize obstacles to open space.

Project alternatives should be thoroughly evaluated, even if an alternative would impede, to some degree, the attainment of the Project objectives or would be more costly (CEQA Guidelines, § 15126.6). The City shall include sufficient information about each alternative to allow meaningful evaluation, public participation, analysis, and comparison with the proposed Project (CEQA Guidelines, § 15126.6).

- c. Where the Project may impact aquatic and riparian resources, CDFW recommends the City select Project designs and alternatives that would fully avoid impacts to such resources. CDFW also recommends an alternative that would not impede, alter, or otherwise modify existing surface flow, watercourse and meander, and water-dependent ecosystems and natural communities. Project designs should consider elevated crossings to avoid channelizing or narrowing of watercourses. Any modifications to a river, creek, or stream may cause or magnify upstream bank erosion, channel incision, and drop in water level, which may cause the watercourse to alter its course of flow.

3) Biological Baseline Assessment. An adequate biological resources assessment should provide a complete assessment and impact analysis of the flora and fauna within and adjacent to the Project site and where the Project may result in ground disturbance. The assessment and analysis should place emphasis on identifying endangered, threatened, rare, and sensitive species; regionally and locally unique species; and sensitive habitats. An impact analysis will aid in determining the Project's potential direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts. CDFW also considers impacts to Species of Special Concern (SSC) a significant direct and cumulative adverse effect without implementing appropriate avoidance and/or mitigation measures. The DEIR 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 DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities. CDFW considers Sensitive Natural Communities as threatened habitats having

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 7 of 15

both regional and local significance. Natural communities, alliances, and associations with a State-wide rarity ranking of S1, S2, and S3 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by visiting the [Vegetation Classification and Mapping Program - Natural Communities webpage](#)<sup>3</sup>.

- b. 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 Sensitive Natural Communities](#)<sup>4</sup>. Botanical field surveys should be comprehensive over the entire Project site, including areas that will be directly or indirectly impacted by the Project. Adjoining properties should also be surveyed where direct or indirect Project effects could occur, such as those from fuel modification, herbicide application, invasive species, and altered hydrology. Botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable. Usually, this is during flowering or fruiting. Botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the Project site. This usually involves multiple visits to the Project site (e.g., in early, mid, and late season) to capture the floristic diversity at a level necessary to determine if special status plants are present.
- c. Floristic alliance- and/or association-based mapping and vegetation impact assessments conducted in the Project site and within adjacent areas. The [Manual of California Vegetation](#)<sup>5</sup>, second edition, (Sawyer, Keeler-Wolf, & Evens, 2009) should also be used to inform this mapping and assessment. Adjoining habitat areas should be included in this assessment where the Project's construction and activities could lead to direct or indirect impacts offsite.
- d. A complete and recent assessment of the biological resources associated with each habitat type in the Project site and within adjacent areas. A full literature review includes but is not limited to CDFW's [California Natural Diversity Database](#)<sup>6</sup> (CNDDDB). The CNDDDB should be accessed to obtain current information on any previously reported sensitive species and habitat. An assessment should include a minimum nine-quadrangle search of the CNDDDB to determine a list of species potentially present in the Project site. A nine-quadrangle search should be provided in the Project's CEQA document for adequate disclosure of the Project's potential impact on biological resources.
- e. A complete, recent, assessment of endangered, rare, or threatened species and other sensitive species within the Project site and adjacent areas, including SSC

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<sup>3</sup> <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

<sup>4</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

<sup>5</sup> <http://vegetation.cnps.org/>

<sup>6</sup> <https://wildlife.ca.gov/Data/CNDDDB>



Esteban Danna  
 City of Encinitas  
 September 12, 2024  
 Page 8 of 15

and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare, or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project site should also be addressed such as wintering, roosting, nesting, and foraging habitat. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, may be required if suitable habitat is present. See [CDFW's Survey and Monitoring Protocols and Guidelines](#)<sup>7</sup> for established survey protocol. Acceptable species-specific survey procedures may be developed in consultation with CDFW and USFWS.

- f. A recent wildlife and rare plant survey. A lack of records in the CNDDDB does not mean that rare, threatened, or endangered plants and wildlife do not occur. Field verification for the presence or absence of sensitive species is necessary to provide a complete biological assessment for adequate CEQA review (CEQA Guidelines, § 15003(i)). 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. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if Project implementation build out could occur over a protracted time frame or in phases.

4) Direct and Indirect Impacts on Biological Resources. The DEIR should provide a thorough discussion of direct and indirect impacts expected to affect biological resources with specific measures to offset such impacts. The DEIR should address the following.

- a. A discussion of potential impacts from lighting, noise, temporary and permanent human activity, and exotic species, and identification of any mitigation measures. A discussion regarding Project-related indirect impacts on biological resources. These include 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 Natural Community Conservation Plan (Fish & G. Code, § 2800 et. seq.)).
- b. A discussion of both the short-term and long-term effects of the Project on species population distribution and concentration, as well as alterations of the ecosystem supporting those species impacted (CEQA Guidelines, § 15126.2(a)).
- c. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in areas adjacent to the Project, should be fully analyzed and discussed in the DEIR.

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<sup>7</sup> <https://wildlife.ca.gov/conservation/survey-protocols>



Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 9 of 15

- d. A discussion of post-Project fate of drainage patterns, surface flows, and soil erosion and/or sedimentation in streams and water bodies. The discussion should also address the potential water extraction activities and the potential resulting impacts on habitat supported by the groundwater. Measures to mitigate such impacts should be included.
- e. An analysis of impacts from proposed changes to land use designations and zoning, and existing land use designation 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 DEIR.

5) Cumulative Impact. Cumulative impacts on biological resources can result from collectively significant projects which are individually insignificant. The Project, when considered collectively with prior, concurrent, and probable future projects, may have a significant cumulative effect on biological resources. The Project may have the potential to substantially reduce the number or restrict the range of endangered, rare, or threatened species. Species that may be impacted by the Project include, but are not limited to, the biological resources described in this letter.

Accordingly, CDFW recommends the DEIR evaluate the Project's potential cumulative impacts on biological resources. The Project may have a "significant effect on the environment" if the possible effects of the Project are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects (Pub. Resources Code, § 21083(b)). The City's conclusions regarding the significance of the Project's cumulative impact should be justified and supported by evidence to make those conclusions. Specifically, if the City concludes that the Project would not result in cumulative impacts on biological resources, the City, "shall identify facts and analysis supporting the Lead Agency's conclusion that the cumulative impact is less than significant" (CEQA Guidelines section § 15130(a)(2)).

6) Mitigation Measures. Public agencies have a duty under CEQA to prevent significant, avoidable damage to the environment by requiring changes in a project through the use of feasible alternatives or mitigation measures (CEQA Guidelines, §§ 15002(a)(3), 15021). Pursuant to CEQA Guidelines section 15126.4, an environmental document shall describe feasible measures which could mitigate impacts below a significant level under CEQA. Mitigation measures must be feasible, effective, implementable, and fully enforceable/imposed by the lead agency through permit conditions, agreements, or other legally binding instruments (Pub. Resources Code, § 21081.6(b); CEQA Guidelines, § 15126.4).

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 10 of 15

- a. The DEIR should provide mitigation measures that are specific and detailed (i.e., responsible party, timing, specific actions, location) in order for a mitigation measure to be fully enforceable and implemented successfully via a mitigation monitoring and/or reporting program (Pub. Resources Code, § 21081.6; CEQA Guidelines, § 15097).
  - b. If a proposed mitigation measure would cause one or more significant effects, in addition to impacts caused by the proposed Project, the DEIR should include a discussion of the effects of proposed mitigation measures (CEQA Guidelines, § 15126.4(a)(1)). In that regard, the DEIR should provide an adequate, complete, and detailed disclosure about the Project's proposed mitigation measure(s). Adequate disclosure is necessary so CDFW may assess the potential impacts of proposed mitigation measures.
- 7) Compensatory Mitigation. The DEIR should include compensatory mitigation measures for the Project's significant impacts (direct and/or through habitat modification) to sensitive and special status plants, animals, and habitats. Mitigation measures should emphasize avoidance and minimization of Project-related 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 inadequate to mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement and financial assurance and dedicated to a qualified entity for long-term management and monitoring.
- 8) Long-term Management of Mitigation Lands. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values in perpetuity. The mitigation should offset Project-induced qualitative and quantitative losses of biological resources. Issues that should be addressed include (but are not limited to) restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, and increased human intrusion. An appropriate endowment should be set aside to provide for long-term management of mitigation lands.
- 9) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of removing plants and wildlife from one location and permanently moving it to a new location. CDFW generally does not support the use of translocation or transplantation as the primary mitigation strategy for unavoidable impacts to endangered, rare, or threatened plants and animals. These efforts are experimental, and the outcome is unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving plants and animals and their habitats.

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 11 of 15

- 10) Scientific Collecting Permit. A scientific collecting permit would be necessary if there is a plan to capture and relocate wildlife. Pursuant to the California Code of Regulations, title 14, section 650, qualified biologist(s) must obtain appropriate handling permits to capture, temporarily possess, and relocated wildlife to avoid harm or mortality in connection with Project-related activities. CDFW has the authority to issue permits for the take or possession of wildlife, including mammals; birds, nests, and eggs; reptiles, amphibians, fish, plants; and invertebrates (Fish & G. Code, §§ 1002, 1002.5, 1003). A Scientific Collecting Permit is required to monitor project impacts on wildlife resources, as required by environmental documents, permits, or other legal authorizations; and, to capture, temporarily possess, and relocate wildlife to avoid harm or mortality in connection with otherwise lawful activities (Cal. Code Regs., tit. 14, § 650). For more information, please see CDFW's [Scientific Collecting Permit webpage](#)<sup>8</sup>.
- 11) Lake and Streambed Alteration. CDFW has regulatory authority over activities in streams 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 to 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. CDFW recommends that the City assess whether notification is appropriate. A Notification package for a LSAA may be obtained by accessing CDFW's [Lake and Streambed Alteration Program website](#)<sup>9</sup>.
- 12) Wetland Resources. CDFW, as described in Fish and Game Code section 703(a), is guided by the [Fish and Game Commission's \(Commission\) policies](#)<sup>10</sup>. Through its Wetlands Resources policy, the Commission "...seek[s] to provide for the protection, preservation, restoration, enhancement, and expansion of wetland habitat in California" (California Fish and Game Commission, 2005). It is the policy of the Fish and Game Commission to strongly discourage development in or conversion of wetlands. It opposes, consistent with its legal authority, any development or conversion that would result in a reduction of wetland acreage or wetland habitat values. To that end, the Commission opposes wetland development proposals unless, at a minimum, project mitigation assures there will be 'no net loss' of either wetland habitat values or acreage. The Commission strongly prefers mitigation which would achieve expansion of wetland acreage and enhancement of wetland habitat values."

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<sup>8</sup> <https://wildlife.ca.gov/Licensing/Scientific-Collecting>

<sup>9</sup> <http://www.wildlife.ca.gov/Conservation/LSA>

<sup>10</sup> <https://fgc.ca.gov/About/Policies/Miscellaneous>

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 12 of 15

- a. The Wetlands Resources policy provides a framework for maintaining wetland resources and establishes mitigation guidance. CDFW encourages avoidance of wetland resources as a primary mitigation measure and discourages the development or type conversion of wetlands to uplands. CDFW encourages activities that would avoid the reduction of wetland acreage, function, or habitat values. Once avoidance and minimization measures have been exhausted, a project should include mitigation measures to assure a “no net loss” of either wetland habitat values, or acreage, for unavoidable impacts to wetland resources. Conversions include, but are not limited to, conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks, which preserve the riparian and aquatic values and functions benefiting local and transient wildlife populations. CDFW recommends mitigation measures to compensate for unavoidable impacts be included in the DEIR and these measures should compensate for the loss of function and value.
  - b. The Fish and Game Commission’s Water policy guides CDFW on the quantity and quality of the waters of this State that should be apportioned and maintained respectively so as to produce and sustain maximum numbers of fish and wildlife; to provide maximum protection and enhancement of fish and wildlife and their habitat; encourage and support programs to maintain or restore a high quality of the waters of this State; prevent the degradation thereof caused by pollution and contamination; and, endeavor to keep as much water as possible open and accessible to the public for the use and enjoyment of fish and wildlife. CDFW recommends avoidance of water practices and structures that use excessive amounts of water, and minimization of impacts that negatively affect water quality, to the extent feasible (Fish & G. Code, § 5650).
- 13) Use of Native Plants and Trees. CDFW recommends the City require the Project Applicant to provide a native plant palette for the Project. The Project’s landscaping plan should be disclosed and evaluated in the DEIR for potential impacts on biological resources such as natural communities adjacent to the Project site (e.g., introducing non-native, invasive species). CDFW supports the use of native plants for the Project especially considering the Project’s location adjacent to protected open space and natural areas. CDFW strongly recommends avoiding non-native, invasive species for landscaping and restoration, particularly any species listed as ‘Moderate’ or ‘High’ by the [California Invasive Plant Council](#)<sup>11</sup> (California Invasive Plant Council, 2024) CDFW supports the use of native species found in naturally occurring plant communities within or adjacent to the Project site. In addition, CDFW supports planting species of trees, such as oaks (*Quercus* genus), and understory vegetation (e.g., ground cover, subshrubs, and shrubs) that create habitat and

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<sup>11</sup> <https://www.cal-ipc.org/plants/inventory/>

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 13 of 15

provide a food source for birds. CDFW recommends retaining any standing, dead, or dying tree (snags) where possible because snags provide perching and nesting habitat for birds and raptors. Finally, CDFW supports planting species of vegetation with high insect and pollinator value.

## **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 website](#)<sup>12</sup> provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](#)<sup>13</sup>.

The City should ensure data collected for the preparation of the DEIR is properly submitted.

## **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.

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<sup>12</sup> <https://wildlife.ca.gov/Data/CNDDDB>

<sup>13</sup> <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 14 of 15

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at (858) 354-4105 or [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Victoria Tang  
Environmental Program Manager  
South Coast Region

ec: California Department of Fish and Wildlife  
Victoria Tang  
Jennifer Turner  
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Steve Gibson  
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US Fish and Wildlife Service  
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Esteban Danna  
City of Encinitas  
September 12, 2024  
Page 15 of 15

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