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January 17, 2025

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Subject: Notice of Preparation of a Draft Environmental Impact Report for the Preserve at Manchester Estates, LLC Project, SCH No. 2024120837, San Diego County, CA

Dear Esteban Danna:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the City of Encinitas (City) for the Preserve at Manchester Estates (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise

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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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 law² of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & G. Code, §1900 et seq.), the Project Applicant may seek related take authorization as provided by the Fish and Game Code.

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: The Preserve at Manchester Estates, LLC (Applicant)

Objective: The objective of the Project is to construct 35 single-family homes. Primary Project activities include: subdividing a 22.33-acre lot into 35 single-family lots, 10 common area lots, three storm drain lots, and one open space conservation lot; construction of 35 single-family homes; construction of recreational amenities such as a pool, club house, and walking trails; construction of private roads and utilities; and drainage improvements.

Location: The Project site is located west of the intersection of Manchester Avenue and Trabert Ranch Drive in the City of Encinitas. The triangular site is bounded to the north by the Manchester Preserve (formerly Manchester Avenue Conservation Bank), to the west by an existing SDG&E easement, and to the southeast by Manchester Avenue.

Biological Setting: The Project site is currently undeveloped. Habitats within the Project footprint include coastal sage-chaparral transition, Diegan coastal sage scrub, native grassland, non-native grassland, Nuttall’s scrub oak, and southern maritime chaparral. The Project will impact approximately 7.51 acres of habitat. Coastal California gnatcatcher (*Poliioptila californica californica*; federal Endangered Species Act-threatened; California Species of Special Concern) have been observed on the Project site. The Applicant confirmed that they will initiate consultation with the US Fish

² “Take” is defined in Section 86 of the Fish and Game Code as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

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and Wildlife Service to obtain a federal take permit for impacts to coastal California gnatcatcher.

Project History: CDFW and the US Fish and Wildlife Service (collectively, the Wildlife Agencies) met with the City and Project Applicant for an initial scoping meeting on December 13, 2024. The Applicant indicated that an original iteration of the Project proposed development on most of the property; however, the Project has been redesigned to have smaller footprint and minimize biological impacts. The new design avoids the southwestern portion of the property which contains wetlands. The Wildlife Agencies advised that the Project should be analyzed for consistency with the City's draft Subarea Plan.

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) **Draft Subarea Plan Consistency.** The DEIR should demonstrate Project consistency with the City's draft Subarea Plan and MHCP. Although the Plan was not finalized, the conservation principals are the best means of analyzing CEQA significance for the Project. The draft Subarea Plan identifies the Project site as the Tchang Parcel, depicted as Area J in Figure 4-3 (City 2001; Attachment A). The parcel is designated as Softline Focused Planning Area. Site-specific planning in this area must maximize preserve design by ensuring connectivity to adjacent open space in the Focused Planning Area (FPA). Site-specific planning must avoid grassland and coastal sage scrub; any impacts to native grassland must be mitigated in-kind. The draft Subarea Plan also indicates that the habitat adjacent to the SDG&E corridor along the western edge of the property should be preserved to increase the width of the existing wildlife corridor: "[t]he total corridor width (onsite corridor plus SDG&E corridor) shall be based on the needs of those species that require a corridor through this area, such as coyote, California gnatcatcher, and orange-throated whiptail" (City 2001). CDFW recommends that the City incorporate the above site-specific planning directives into the Project design, for consistency with the City's draft Subarea Plan.
- 2) **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

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and preservation in perpetuity should be addressed. Mitigation standards for any impacts to natural vegetation should be consistent with Table 4-4 in the Subarea Plan (City 2001; Attachment B). For instance, native grassland and southern maritime chaparral are identified in Habitat Group B: Rare Upland; for impacts within the FPA, in-kind mitigation of restoration or conservation shall occur at a 3:1 ratio, at a minimum. 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.

- 3) **Crotch's Bumble Bee.** The Project site contains habitat which may support nesting or foraging Crotch's bumble bee (*Bombus crotchii*; candidate CESA listing). Crotch's bumble bee often nests underground, sometimes occupying abandoned rodent burrows (Hatfield et al., 2015). Crotch's bumble bee may occur in the native habitat on or adjacent to the Project site. If Crotch's bumble bee 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. Indirect impacts may occur from loss of foraging resources.
 - 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).
 - b. Surveys and Disclosure³. 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

³ 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.

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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, subds. (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, threatened, and/or candidate species proposed in the Project's CEQA document may not necessarily satisfy mitigation required to obtain an ITP.
- 4) **Trails.** At the scoping meeting on December 13, 2024, the Applicant informed that they intend to incorporate an existing unsanctioned trail system on the property into the Project design. The trails will connect the newly constructed homes to the existing Manchester Preserve, which has public hiking trails. The unsanctioned trails currently exist in the area of the Property that will be conserved for mitigation and preserved under a conservation easement. At the meeting, the Wildlife Agencies recommended minimizing incorporation of trails through the conserved habitat and restoring the existing trails with native habitat. Any trails proposed as part of the Project, including existing unsanctioned trails, should be considered as permanent impacts and appropriate mitigation should be proposed based on surrounding habitat type.

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- 5) **Existing Open Space Easement.** The Project site currently has an open space easement recorded over the property, per the City of Encinitas [Mapped Open Space Easements](#)⁴ GIS layer. California Government Code defines an open space easement as, “a grant by an instrument whereby the owner relinquishes to the public, either in perpetuity or for a term of years, the right to construct improvement upon the land except as may be expressly reserved in the instrument and which contains a covenant with the city or county, running with the land, either in perpetuity or for a term of years, not to construct or permit the construction of any improvements, except as that right is expressly reserved in the instrument and except for public service facilities installed for the benefit of the land subject to any covenant or public service facilities installed pursuant to an authorization by the governing body of the city or county or the Public Utilities Commission” (CA Govt Code § 51051). The DEIR should disclose how the proposed Project complies with the terms of the existing open space easement, or how it plans to supersede the existing easement. It should also disclose the source of the open space easement (e.g., if the current easement is a result of prior mitigation efforts). If prior mitigation for biological resources would be impacted as a result of the Project, the compensatory mitigation presented in the DEIR should be commensurate with the loss of mitigation lands.

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 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

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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.

- c. 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 DEIR shall include sufficient information about each alternative to allow meaningful evaluation, public participation, analysis, and comparison with the proposed Project (CEQA Guidelines, § 15126.6).
 - d. 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 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

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can be obtained by visiting the [Vegetation Classification and Mapping Program - Natural Communities webpage](#)⁵.

- 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](#)⁶. 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](#)⁷, 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](#)⁸ (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 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, §

⁵ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities>

⁶ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

⁷ <https://vegetation.cnps.org/>

⁸ <https://wildlife.ca.gov/Data/CNDDDB>

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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](#)⁹ for established survey protocol. Acceptable species-specific survey procedures may be developed in consultation with CDFW and U.S. Fish and Wildlife Service.

- 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.
 - 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

⁹ <https://wildlife.ca.gov/conservation/survey-protocols>

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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) Nesting Birds. To avoid impacts to nesting birds, CDFW recommends that clearing of vegetation occur outside of the peak avian breeding season, which general runs from February 1 through September 1 (as early as January 1 for some raptors). If Project construction is necessary during the bird breeding season, a qualified biologist with experience in conducting breeding bird surveys should conduct a nesting bird survey within three days prior to work in the area. If an active nest is identified, a buffer shall be established between the construction activities and the nest so that nesting activities are not interrupted. For the given Project site, CDFW generally recommends a 100-foot buffer from common avian species, 300 feet for listed or highly sensitive, and 500 feet for raptors. The buffer should be delineated by temporary fencing and remain in effect as long as construction is occurring. No Project construction shall occur within the fenced nest zone until the young have

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fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the Project. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

- 7) 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).
 - 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.
- 8) Long-term Management of Mitigation Lands. For proposed mitigation lands, 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

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often a more effective long-term strategy for conserving plants and animals and their habitats.

- 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 relocate 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](#)¹⁰.
- 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](#)¹¹.
- 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](#)¹². 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 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

¹⁰ <https://wildlife.ca.gov/Licensing/Scientific-Collecting>

¹¹ <http://www.wildlife.ca.gov/Conservation/LSA>

¹² <https://fgc.ca.gov/About/Policies/Miscellaneous>

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which would achieve expansion of wetland acreage and enhancement of wetland habitat values.”

- 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](https://www.cal-ipc.org/plants/inventory/)¹³ CDFW supports the use of native species found in naturally occurring plant communities within or

¹³ <https://www.cal-ipc.org/plants/inventory/>

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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 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](#)¹⁴ 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](#)¹⁵.

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.


¹⁴ <https://wildlife.ca.gov/Data/CNDDDB>

¹⁵ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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Questions regarding this letter or further coordination should be directed to [Jessie Lane](#)¹⁶, Environmental Scientist, at (858) 354-4105.

Sincerely,

DocuSigned by:

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Victoria Tang
Environmental Program Manager
South Coast Region

ATTACHMENTS

Attachment A: City of Encinitas Draft Subarea Plan Figure 4-3

Attachment B: City of Encinitas Draft Subarea Plan Table 4-4

ec: California Department of Fish and Wildlife
Victoria Tang
Jennifer Turner
Jessie Lane

United States Fish and Wildlife Service
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State.Clearinghouse@opr.ca.gov

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¹⁶ Jessie.Lane@wildlife.ca.gov

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Attachment A: City of Encinitas Draft Subarea Plan Figure 4-3

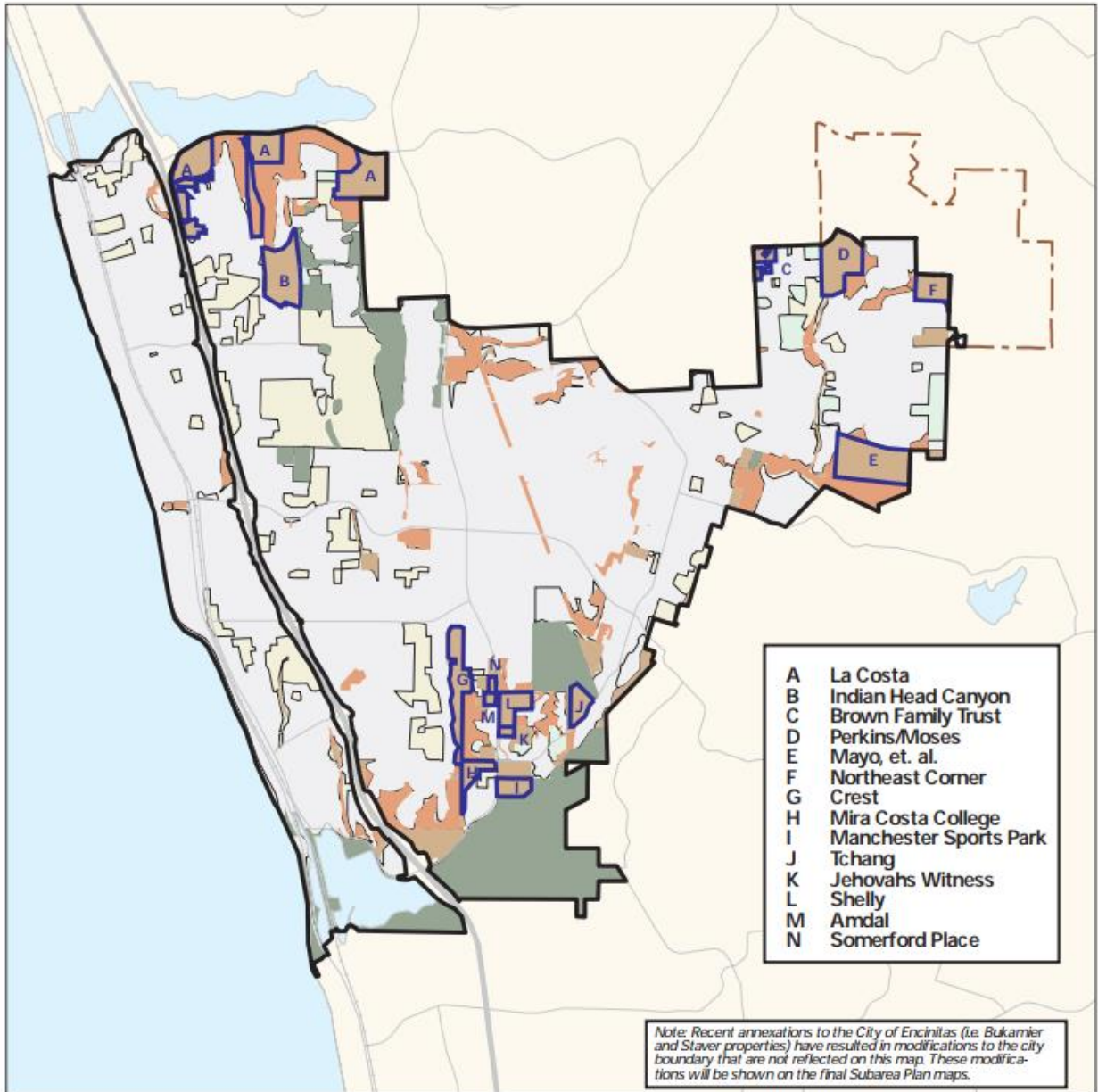


Figure 4-3
City of Encinitas Subarea Plan
Focused Planning Area and Softline Properties Requiring Site-Specific Standards

Natural Habitats
 Agricultural Land
 Developed and Disturbed Land
 Hardline Focused Planning Area
 Existing Homeowners' Association Open Space
 Softline Focused Planning Area
 Properties Requiring Site-Specific Standards
 Sphere of Influence

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Attachment B: City of Encinitas Draft Subarea Plan Table 4-4

Table 4-4

MITIGATION STANDARDS FOR IMPACTS TO NATURAL VEGETATION AND HABITAT¹

Habitat Group	Location of Impacted Habitat	
	Inside FPA ²	Outside FPA ³
A. Wetland/Riparian^{4,5} - Coastal salt marsh, alkali marsh, freshwater marsh, estuarine, salt pan/mudflats, riparian forest, riparian woodland, riparian scrub, vernal pool, disturbed wetland, flood channel, freshwater	No net loss goal [Replacement ratio between 1:1 and 3:1]	No net loss goal [Replacement ratio between 1:1 and 3:1]
B. Rare Upland⁵ - Beach, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, Engelmann oak woodland, coast live oak woodland, native grassland	3:1	2:1
C. Coastal Sage Scrub⁵ - Coastal sage scrub, coastal sage/chaparral mix	2:1	1:1
D. Chaparral⁵ - Chaparral, excluding southern maritime chaparral	1:1	0.5:1
E. Annual Grassland⁵ - Annual (nonnative) grassland	0.5:1	0.5:1
F. Other - Disturbed land (including ruderal), agricultural land, eucalyptus	None	None

Notes:

- ¹ This table describes standards for mitigation of impacts to vegetation communities (habitats), excluding narrow endemic species. Separate standards apply for impacts to narrow endemic or certain other species; see text for discussion of these species.
- ² Primary conservation actions for natural habitats inside the FPA are to avoid impact as much as possible, minimize any unavoidable impacts, and fully mitigate any unavoidable impacts. Upland habitat that is conserved and managed onsite may be used to satisfy mitigation obligations associated with impacts to other upland habitats located elsewhere onsite.
- ³ Upland habitat (groups B, C, D, or E) may be removed outside the FPA. All mitigation obligations associated with impacts to upland habitat outside the FPA must be located inside the FPA. Outside the FPA, conservation of upland habitat onsite cannot be used to satisfy mitigation obligations associated with impacts to other upland habitats.
- ⁴ All impacts to wetland habitats and mitigation for such impacts must be reviewed and approved by federal and state agencies with jurisdiction over wetlands.
- ⁵ For Habitat Group A, restored habitat areas shall be in-kind and located in an FPA, generally in the same watershed and in the relative vicinity of the impacted habitat. For Group B communities, restored or conserved habitat shall also be in-kind. For communities in Groups C, D, and E, conserved habitat could be out-of-kind, if the conserved habitat is located in an FPA, or outside an FPA, if it is shown to be a viable addition to the regional preserve system.