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Oct 07 2021

October 7, 2021

STATE CLEARINGHOUSE

Sergio Madera, Principal Planner
 City of Oceanside
 300 N Coast Highway
 Oceanside, CA 92054
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Subject: Ocean Kamp (Project) Draft Supplemental Environmental Impact Report (DSEIR), SCH #2006111033

Dear Mr. Madera:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DSEIR from the City of Oceanside for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the originally circulated draft EIR (DEIR) and the final EIR (FEIR) in letters dated 07-10-2008 and 09-26-2008, respectively.

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, we appreciate 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 Oceanside (City)

Objective: The objective of the redesigned Ocean KAMP Project (formerly Pavilion at Oceanside) is to develop a residential area containing 700 dwelling units, as well as a resort community that includes a 300-room hotel, beach club, 11 commercial buildings, and 20 acres of open space. Primary Project activities include clearing, grubbing, grading, vegetating open space areas, and construction.

The FEIR for the original Pavilion at Oceanside Project was certified by the City in 2008. The original Project proposal included construction of a 950,000-square-foot shopping center. The DSEIR indicates that ground-disturbance activities will be highly similar or identical to those described in the original Project and all proposed uses would occur within the graded impact footprint.

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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Location: The Project location is 3480 Mission Avenue, Oceanside, CA 92054, in San Diego County. The site is bounded to the north and west by the San Luis Rey River, to the east by Fireside Street, and to the south by Mission Avenue and State Route 76. A San Diego Gas & Electric transmission line easement traverses the property from north to south.

Biological Setting: The Project area hosts the following vegetation communities: southern willow scrub (0.12 acre), disturbed southern willow scrub (0.39 acre), disturbed wetland (0.22 acre), coyote brush scrub (including disturbed; 0.70 acre), non-native grassland (including disturbed; 41.50 acres), non-native vegetation (0.10 acre), disturbed habitat (21.9 acres), and developed land (27.40 acres). The Project site falls within the Wildlife Corridor Planning Zone of the City's draft Subarea Plan under the Multiple Habitat Conservation Program (MHCP) Subregional Plan. No sensitive species were observed on the Project site; however, seven sensitive species were observed adjacent to the project area along the San Luis Rey River during protocol bird surveys: least Bell's vireo (*Vireo bellii pusillus*; CESA and ESA-listed endangered), white-tailed kite (*Elanus leucurus*; California Fully Protected Species), yellow-breasted chat (*Icteria virens*; California Species of Special Concern (SSC)), yellow warbler (*Dendroica petechia brewsteri*; SSC), Cooper's hawk (*Accipiter cooperii*; CDFW Watch List), white-faced ibis (*Plegadis chihi*; CDFW Watch List), and San Diego black-tailed jackrabbit (*Lepus californicus bennettii*; SSC).

Timeframe: The DSEIR indicates that grading has commenced in compliance with the conditions established by the previously approved EIR for the Reduced Project/Draft Subarea Plan Alternative. The DSEIR states that mitigation measures established in the Mitigation Monitoring and Reporting Program for that project are being implemented. Although rough grading is currently occurring, the City will obtain wetland permits prior to precise grading of wetland areas.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Oceanside in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

I. CDFW Prior Project and Mitigation Comments

In 2007-2008, CDFW and U.S. Fish and Wildlife Service (collectively referred to as the Wildlife Agencies) issued several joint letters in response to the DEIR, FEIR, and associated mitigation, including the proposed wildlife corridor and non-native grassland mitigation, for the Pavilion at Oceanside Project (SCH# 2006111033). The Wildlife Agencies had concerns regarding the Pala Road Extension alternative; however, the DSEIR indicates that the 88.3-acre Reduced Project/Draft Subarea Plan Alternative was approved for implementation as the Environmentally Preferred Project during the City Council consideration of The Pavilion at Oceanside. The Reduced Project/Draft Subarea Plan Alternative does not extend Pala Road. The DSEIR indicates that there will be no additional biological resource impacts beyond those identified in the Pavilion FEIR.

Non-native Grassland Impacts and Mitigation:

The Pavilion FEIR indicates that upland habitat impacts will include the loss of 39.8 acres of non-native grassland, which shall be mitigated at a 0.5:1 ratio, totaling 19.9 acres. Since that time, the City has been coordinating with the Wildlife Agencies regarding its mitigation obligations. In July 2019, a provisional agreement was reached in that an off-site parcel would provide 14.06 acres of non-native grassland mitigation. The City confirmed on March 10, 2020 that the off-site parcel was purchased, and the restrictive covenant details are still being finalized. Additionally, the Wildlife Agencies agreed that the City will be credited with 5-6 acres of non-native grassland mitigation once the on-site "stepping stone" habitat is planted, preserved, and funded in perpetuity (Zoutendyk 2019). Details of the land protection instrument (e.g., conservation easement) were still under review as of March 2020. While non-native grassland mitigation is discussed in the FEIR, it is not included in the Applicable Pavilion EIR Avoidance, Minimization, and Mitigation Measures (Page 5.1-8) listed in the DSEIR. The DSEIR, however, notes that 41.5 acres of non-native grassland would be directly impacted. The DSEIR indicates that the entire upland area has been graded and that mitigation measures have been implemented pursuant to the Pavilion FEIR. The Final EIR for Ocean KAMP should clarify specific acreage of non-native grassland being impacted and include the accompanying mitigation measures. We look forward to additional coordination with the City regarding non-native grassland mitigation.

Wetland Impacts and Mitigation:

Prior analysis under the Pavilion FEIR: Wetland impacts outlined in the FEIR include 0.12 acre of southern willow scrub which will be mitigated at a 3:1 ratio (0.36 acre), as well as 0.39 acre of disturbed southern willow scrub and 0.22 acre of disturbed wetland to be mitigated at a 2:1 ratio

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(0.78 acre and 0.44 acre, respectively), for a total of 1.58 acres. The Pavilion FEIR indicates that wetland mitigation will include creation of 0.28 acre of wetland habitat (no net loss) with a 20-foot-wide Diegan coastal sage scrub buffer, as well as purchase of 0.40 acre of mitigation credits.

Current Analysis in DSEIR: Mitigation Measure BIO-2 in the DSEIR indicates that 0.57 acre of wetland will be impacted (0.22 acre of potentially Corps/RWQCB jurisdiction and 0.57 acre of CDFW jurisdiction), and that mitigation will be provided at a 3:1 ratio in the San Luis Rey Mitigation Bank for purchase of 1.71 acres. The DSEIR notes that wetland acreages have been updated to reflect the current permitting process outlined in Mitigation Measure BIO-13, which indicates that mitigation for the loss of jurisdictional waters would be conditions of the permits issued by USACE, RWQCB, and CDFW.

Table 2-6 (Page 2-21) in the SEIR indicates that a Section 1602 Streambed Alteration Agreement will be obtained from CDFW. As previously discussed in the Pavilion FEIR, review and approval of the compensatory mitigation ratios and wetland mitigation plan by CDFW will be determined during the wetland permitting process. We look forward to receiving the City's notification for the above-referenced wetland impact activities, including the wetland mitigation plan, prior to precise grading of wetland areas. More information about CDFW's Lake and Streambed Alteration Program can be found on CDFW's website at <https://wildlife.ca.gov/Conservation/LSA>.

II. Project Description and Related Impact Shortcoming

COMMENT #1: Potential Building Design Impacts on Migratory Birds

Issue: Design aspects of the newly proposed resort hotel appear to include features that pose a risk to migratory birds. Buildings containing large glass panels or windows pose the risk of bird strike, a direct impact to which migratory avian species are particularly susceptible. Although designs that include glass windows and night lighting can pose a risk to birds, impacts can be minimized by incorporating "bird safe" design elements.

Specific impact: Clear glass is invisible to birds and collisions are frequently fatal. The two primary hazards of glass for birds are reflectivity and transparency (San Francisco Planning Department 2011).

Why impact would occur: The San Luis Rey River provides high quality habitat along a riparian corridor. The habitat serves both as potential breeding habitat to least Bell's vireo and other avian species, as well foraging habitat and as a refugia for resident and migratory avian species. Avian species perceive reflective and transparent glass as clear airspace, leading to collisions with windows. Interior lighting elements can also contribute to window strikes at night.

Evidence impact would be significant: Annual bird mortality resulting from window collisions in the U.S. is estimated to be between 365-988 million birds (Loss et al. 2014).

Recommendation Regarding Project Description and Related Impact Shortcoming

Recommendation #1:

To minimize significant impacts: Bird strikes, a direct impact to which migratory avian species are particularly susceptible, can be minimized through incorporation of "bird safe" architectural design elements. Purpose-driven elements such as glazed windows, well-articulated building facades, and minimal nighttime lighting are encouraged to reduce collisions of migratory birds with buildings. Large flat windows, reflective glass, and transparent corners are strongly discouraged. The Project area is adjacent to the San Luis Rey River which hosts an abundance of sensitive avian species; CDFW therefore recommends that the City incorporate the guidelines described in Standards for Bird Safe Buildings (Ibid.) in the Project's structure designs (San Francisco Planning Department 2011).

III. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #2: Nesting Bird Impacts

Page 5.1-9

Issue: Mitigation Measure BIO-9 (MM BIO-9) does not adequately avoid or minimize impacts to nesting migratory birds.

Specific Impact: MM BIO-9 indicates, "[t]o ensure compliance with the Migratory Bird Treaty Act, clearing of any native vegetation shall be done outside the breeding season of most avian species

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(February 15 to July 31) unless pre-construction surveys are conducted to determine that no nesting birds are present immediately to clearing nor are in areas which could be impacted by noise." The mitigation measure does not provide any details of the pre-construction nesting bird surveys. To adequately identify nesting bird presence in the Project area, all vegetation within the Project footprint and a surrounding 100' buffer should be surveyed by a qualified biologist for nesting bird presence, no more than 3 days prior to ground disturbance, vegetation removal, or construction activities. Species-appropriate buffer zones of no activity should be established around any active nests and be monitored until the nest is no longer active.

Why impact would occur: Direct impacts to nesting birds may occur from vegetation removal; indirect impacts may occur from vibration, noise, dust, and increased human activity related to construction.

Evidence impact would be significant: In addition to the federal Migratory Bird Treaty Act, the California Fish and Game Code Sections 3503, 3503.5, and 3513 require the avoidance of the incidental loss of eggs or nestlings, or activities that lead to nest abandonment (Fish & G. Code, § 3503, 3503.5, and 3513 *et seq.*).

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

As discussed above, MM BIO-9 indicates that nesting bird surveys will be conducted if vegetation is removed during breeding season but does not provide any additional detail. To adequately mitigate for nesting bird impacts, we recommend that MM BIO-9 be amended to read as follows (Changes in bold):

Mitigation Measure #1:

*"To ensure compliance with the Migratory Bird Treaty Act **and the California Fish and Game Code**, clearing of any ~~native~~ vegetation shall be done outside **of the avian breeding season (raptor nesting season is January 15 through September 15; and migratory bird nesting season is February 15 through August 31)**, unless pre-construction surveys are conducted to determine that no nesting birds are present immediately to clearing, nor are in areas which could be impacted by noise. **Should vegetation removal take place during this period, a qualified biologist shall conduct a nesting bird survey no more than 3 days prior to construction activities to ensure that birds are not engaged in active nesting within 100 feet of the project site. If nesting birds are discovered during preconstruction surveys, then avoidance or minimization measures shall be undertaken in consultation with the California Department of Fish and Wildlife (CDFW) and prior to issuance of any grading or construction permits. Measures shall include establishment of an avoidance buffer until nesting has been completed. The width of the buffer will be determined by the project biologist. Typically, this is a minimum of 100 feet from the nest site in all directions (300 feet is typically recommended by CDFW for any state or federally listed passerine species and 500 feet for raptors), until the juveniles have fledged and there has been no evidence of a second attempt at nesting. The monitoring biologist will monitor the nest(s) during construction and document any findings. A report will be made available to CDFW upon request.**"*

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.

CONCLUSION

CDFW appreciates the opportunity to comment on the DSEIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jessie Lane, Environmental Scientist, at Jessie.Lane@wildlife.ca.gov.

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Sincerely,

DocuSigned by:



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South Coast Region

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Janet Stuckrath, USFWS – Janet.Stuckrath@fws.gov

REFERENCES

California Department of Fish and Wildlife, U.S. Fish and Wildlife Service. 2008. Comments on the Draft Environmental Impact Report (DEIR) for the Pavilion Project, City of Oceanside, CA. SCH #2006111033.

California Department of Fish and Wildlife, U.S. Fish and Wildlife Service. 2008. Comments on the Final Environmental Impact Report (FEIR) for the Pavilion Project, City of Oceanside, CA. SCH #2006111033.

City of Oceanside. 2008. Final Environmental Impact Report for the Pavilion at Oceanside. SCH #2006111033.

Loss, S.R., T. Will, S.S. Loss, and P.P. Marra. 2014. Bird-building collisions in the United States: estimates of annual mortality and species vulnerability. Condor 116: 8-23.

San Francisco Planning Department. 2011. Design Standards for Bird Safe Buildings. <https://sfplanning.org/standards-bird-safe-buildings#info>

Zoutendyk, David. USFWS. Dated July 12, 2019. Email with Mark McGuire regarding City of Oceanside mitigation obligations. On file, California Department of Fish and Wildlife R5 Office.

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Attachment A:

CDFW Draft Mitigation, Monitoring, and Reporting Plan and Associated Recommendations

	Mitigation Measures	Timing	Responsible Party
Recommendation #1	Bird strikes, a direct impact to which migratory avian species are particularly susceptible, can be minimized through incorporation of “bird safe” architectural design elements. Purpose-driven elements such as glazed windows, well-articulated building facades, and minimal nighttime lighting are encouraged to reduce collisions of migratory birds with buildings. Large flat windows, reflective glass, and transparent corners are strongly discouraged. The Project area is adjacent to the San Luis Rey River which hosts an abundance of sensitive avian species; CDFW therefore recommends that the City incorporate the guidelines described in Standards for Bird Safe Buildings (Ibid.) in the Project’s structure designs (San Francisco Planning Department 2011).	Prior to construction	City of Oceanside
Mitigation Measure #1	<i>To ensure compliance with the Migratory Bird Treaty Act and the California Fish and Game Code, clearing of any native vegetation shall be done outside of the avian breeding season (raptor nesting season is January 15 through September 15; and migratory bird nesting season is February 15 through August 31), unless pre-construction surveys are conducted to determine that no nesting birds are present immediately to clearing, nor are in areas which could be impacted by noise. Should vegetation removal take place during this period, a qualified biologist shall conduct a nesting bird survey no more than 3 days prior to construction activities to ensure that birds are not engaged in active nesting within 100 feet of the project site. If nesting birds are discovered during preconstruction surveys, then avoidance or minimization measures shall be undertaken in consultation with the California Department of Fish and Wildlife (CDFW) and prior to issuance of any grading or construction permits. Measures shall include establishment of an avoidance buffer until nesting has been completed. The width of the buffer will be determined by the project biologist. Typically, this is a minimum of 100 feet from the nest site in all directions (300 feet from state or federal listed passerine species and 500 feet for raptors are typically recommended by CDFW), until the juveniles have fledged and there has been no evidence of a second attempt at nesting. The monitoring biologist will monitor the nest(s) during construction and document any findings. A report will be made available to CDFW upon request.</i>	Prior to construction	City of Oceanside