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Governor's Office of Planning & Research

APR 17 2020

STATE CLEARINGHOUSE

Laura Stokes
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 City of San Juan Capistrano
 32400 Paseo Adelanto
 San Juan Capistrano, CA 92675
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**Subject: Tirador Residential Development Project (PROJECT)
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
 SCH# 2019110154**

Dear Ms. Stokes:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the City of San Juan Capistrano for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Juan Capistrano (City)

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.

Objective: The Project will develop 132 residences, consisting of 43 single-family units and 89 townhomes, on 16.1 acres. A 20-foot wide multi-purpose (pedestrian, bicycle, and equestrian) trail is proposed along the southern boundary of the project. The Project would provide 44,131 square feet of common recreational open space. Most of the project site has a General Plan land use designation of Planned Community. Additionally, portions of the southernmost and easternmost segments of the project site are designated as General Open Space and Community Park, respectively. The land uses proposed by the project within each designated area are consistent with the applicable land use designations, and the proposed Project would not require a General Plan Amendment.

Location: The Project site is within the City of San Juan Capistrano, bounded by the Interstate 5 freeway to the west, San Juan Creek to the south, Calle Arroyo to the north, and Paseo Tirador to the east. The Project is also located within CDFW-designated Fishing District 4, in the County of Orange.

Biological Setting: The project site is mostly unvegetated ground, with some areas of non-native vegetation. The eastern portion of the project site is adjacent to San Juan Creek, El Horno Creek, associated riparian vegetation, and trails. Although no special-status species were observed in an initial general biological site survey in January 2019, numerous special-status species are known to occur in the San Juan Creek habitat adjacent to the Project site. Special-status species that occur in the vicinity include Southern California steelhead (steelhead; *Oncorhynchus mykiss*; federal Endangered Species Act (ESA) listed endangered), Pacific lamprey (*Lampetra tridentate*; California Species of Special Concern (SSC)), least Bell's vireo (*Vireo bellii pusillus*; California Endangered Species Act (CESA) and ESA listed endangered), white-tailed kite (*Elanus leucurus*; a state Fully Protected species), burrowing owl (*Athene cunicularia*; SSC), coastal California gnatcatcher (*Polioptila californica californica*; ESA listed threatened), western spadefoot toad (*Spea hammondi*; SSC), and arroyo toad (*Anaxyrus californicus*; ESA listed- endangered and SSC).

Timeframe: Construction of the proposed Project is anticipated to take approximately 20 months, concluding in May 2022.

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.

I. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

DEIR, Biological Resources Assessment

COMMENT #1: Species-specific surveys for least Bell's vireo, burrowing owl, and coastal California gnatcatcher

Issue: A general biological survey conducted in the winter and a literature review are inadequate to identify multiple sensitive species with the potential to occur on site. Focused species-specific surveys should be conducted for least Bell's vireo and coastal California gnatcatcher, and a Habitat Assessment should be conducted for burrowing owl (per the 2012 Department of Fish and Game Staff Report on Burrowing Owl Mitigation (Staff Report))

Specific Issue: In compiling data for the environmental baseline, the CNDDDB was utilized by the applicant as a primary source to identify previously reported occurrences of special species and sensitive habitats in the project vicinity. The CNDDDB is a statewide inventory, managed by CDFW, and is routinely updated with the location and condition of the state's rare and declining species and habitats. Although the CNDDDB is a valuable tool for tracking positive occurrences of special status species, it contains only those records that have been reported to the CDFW and does not replace the need for timely physical surveys. We consider general biological surveys such as those conducted in January 2019 insufficient to determine the fauna on site.

Why impact would occur: Table C-2 in the DEIR indicates that least Bell's vireo are "not expected" due to lack of suitable riparian nesting habitat on the project site; however, the DEIR indicates that suitable nesting habitat is present within San Juan Creek and the species is known to occur in the project vicinity (Biological Resources Report, p. C-12). Burrowing owl are identified to have a 'low probability of occurrence' due to marginal habitat on the Project site and no observed active burrows (Biological Resources Report, p. C-11). Coastal California gnatcatcher are identified as 'not expected' and the DEIR indicates that, while there are known occurrence records in the project vicinity, suitable nesting habitat is absent from the Project site and suitable foraging habitat is largely absent from the Project site (Biological Resources Report, p. C-11). Although habitat is described as marginal for these species, any potential to occur directly on the Project site or within 500 feet of the Project boundary can result in direct, indirect, or cumulative impacts to them. Focused, species-specific surveys need to be conducted to adequately analyze potential impacts. While this data is unavailable in the DEIR, CDFW cannot determine as to whether impacts to these species are less than significant with mitigation.

While CDFW agrees that preconstruction surveys, as required in Mitigation Measure BIO-5, are appropriate to supplement data collected through surveys whose results are disclosed, we consider the reliance upon future biological surveys inadequate to determine whether project impacts will be less than significant with mitigation. We therefore request that the Final EIR be amended to include seasonally appropriate surveys. Recent, focused, species-specific surveys, conducted at the appropriate time of year and time of day when sensitive species are active or otherwise identifiable, should be included in the impact analysis for least Bell's vireo, burrowing owl, and coastal California gnatcatcher. The Habitat Assessment and following pre-construction surveys for burrowing owl should adhere to the Staff Report. Surveys for least Bell's vireo and coastal California gnatcatcher should adhere to U.S. Fish and Wildlife Service protocols. Species-specific surveys, in combination with Mitigation Measure BIO-5, will minimize significant impacts to sensitive avian species with the potential to occur on site. CDFW requests copies of all biological surveys, including forthcoming focused or species-specific surveys.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure #1:

To minimize significant impact: Focused surveys shall be conducted for least Bell's vireo and coastal California gnatcatcher (per U.S. Fish and Wildlife Service protocols) prior to the start of construction. Results shall be shared with CDFW. If these species are observed within the project area and/or will be impacted by project activities, CDFW will be consulted as to appropriate next steps, which may include nest avoidance, visual screens and markers, establishment of buffers deemed appropriate by the qualified on-site biologist, or notification under CEQA Guidelines section 15381 (CESA; Fish & G. Code § 2050 *et seq.*).

Mitigation Measure #2

To minimize significant impact: A Habitat Assessment shall be conducted for burrowing owl (per the CDFW 2012 Staff Report). Results shall be shared with CDFW. If there was no potential for this species then full surveys will not be needed; however, if potential for burrowing owl presence is found, then full surveys per the Staff Report will be conducted. CDFW will be consulted as to appropriate next steps, which may include burrow avoidance, visual screens and markers, and establishment of buffers deemed appropriate by the qualified on-site biologist.

II. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #2: Compliance Measure Bio-1 Equestrian Trail Maintenance

DEIR Volume II, p. 471

Issue: Additional language is needed for Regulatory Compliance Measure Bio-1 regarding trail maintenance to sufficiently address concerns related to equestrian impact.

Specific impact: In 2019, CDFW issued a letter in response to the NOP of a DEIR for the Tirador Residential Development Project. Specific Comment #2 addressed the proposed 20-foot-wide equestrian trail, indicating that equestrian use is often associated with brown-headed cowbirds (*Molothrus ater*), a brood parasite (a species that lays its eggs in nests of other species). CDFW requested that the EIR incorporate appropriate mitigation measures including a manure management receptacle/ maintenance plan and a cowbird trapping plan, and that all mitigation measures should identify the entity that will be responsible for incorporating this guidance into any applicable homeowner's association Declaration of Covenants, Conditions, and Restrictions.

The DEIR states, "[g]iven that the site is adjacent to horse stables and existing equestrian uses, and pursuant to Section 9-4.505, Bicycle and Equestrian Trails, of the City's Municipal Code (as stated in Regulatory Compliance Measure BIO-1), requiring that the HOA provide regular maintenance of the proposed trail, including the removal of horse manure, pet waste, and debris, the proposed project is not expected to substantially increase the amount brown-headed cowbird in the area. Additionally, because there is already a high degree of equestrian use along San Juan Creek, impacts to water quality from fecal contamination greater than existing conditions in the community are not anticipated. Therefore, with implementation of Regulatory Compliance Measure BIO-1, potential impacts associated with brown-headed cowbirds would remain less than significant (Section 4.3, p. 16)."

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure #3:

To reduce impacts to less than significant: As required by Section 9-4.505, Bicycle and Equestrian Trails, of the [City] Municipal Code, the [HOA] (or equivalent body) associated with the proposed development on the site would be required to provide regular maintenance of the proposed trail, including the removal of horse manure, pet waste, and debris. Management of this waste will be codified by the HOA in its Declaration of Covenants, Conditions, and Restrictions.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address:

CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of San Juan Capistrano 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 (858) 636-3159 or Jessie.Lane@wildlife.ca.gov.

Sincerely,



David A. Mayer
Environmental Program Manager
South Coast Region

Attachments

- A. Draft MMRP (CDFW 2020)

ec: Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation.
(<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>)

California Department of Fish and Wildlife. 2019. Comments on the Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Tirador Residential Development Project, San Juan Capistrano, CA SCH# 2019110154.

Attachment A:

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

Biological Resources			
	Mitigation Measures	Timing	Responsible Party
MM BIO-1	Focused surveys shall be conducted for least Bell's vireo and coastal California gnatcatcher (per U.S. Fish and Wildlife Service protocols) prior to the start of construction. Results shall be shared with CDFW. If these species are observed within the project area and/or will be impacted by project activities, CDFW will be consulted as to	Prior to Construction	City of San Juan Capistrano

	appropriate next steps, which may include nest avoidance, visual screens and markers, establishment of buffers deemed appropriate by the qualified on-site biologist, or notification under CEQA Guidelines section 15381 (CESA; Fish & G. Code § 2050 <i>et seq.</i>).		
MM BIO-2	A Habitat Assessment shall be conducted for burrowing owl (per the CDFW 2012 Staff Report). Results shall be shared with CDFW. If there was no potential for this species then full surveys will not be needed; however, if potential for burrowing owl presence is found, then full surveys per the Staff Report will be conducted. CDFW will be consulted as to appropriate next steps, which may include burrow avoidance, visual screens and markers, and establishment of buffers deemed appropriate by the qualified on-site biologist.	Prior to Construction	City of San Juan Capistrano / HOA
MM BIO-3	As required by Section 9-4.505, Bicycle and Equestrian Trails, of the [City] Municipal Code, the [HOA] (or equivalent body) associated with the proposed development on the site would be required to provide regular maintenance of the proposed trail, including the removal of horse manure, pet waste, and debris. Management of this waste will be codified by the HOA in its Declaration of Covenants, Conditions, and Restrictions.	Post Construction	City of San Juan Capistrano / HOA