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STATE CLEARINGHOUSE

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Subject: Comments on the Notice of Preparation of a Draft Environmental Impact Report for Malibu Coastal Access Public Works Plan, SCH # 2019120324, Los Angeles County

Dear Ms. Nguyen:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Notice of Preparation (NOP) for Malibu Coastal Access Public Works Plan (Project).

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's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" (see Fish & Game Code, § 2050) of any species protected under the California Endangered Species Act (CESA; Fish & Game Code, § 2050 et seq.) or the Native Plant Protection Act (NPPA; Fish & Game Code, § 1900 et seq.), CDFW recommends the Project proponent obtain appropriate authorization under the Fish and Game Code.

Project Location: The proposed Project includes 17 publicly-owned sites along the coast in the City of Malibu. All but three of the sites (M7, M8, and M10) are bounded by the Pacific Coast

Highway (PCH) to the north and the Pacific Ocean to the south. Site M7 is bounded by a large coastal bluff formation to the north topped with residential and park developments, the Pacific Ocean to the south, and residential developments to the west and to the east. Site M8 is bounded by Latigo Shore Drive (also known as Seagull Drive) to the north, residential developments to the west, Dan Blocker County Beach to the east, and the Pacific Ocean to the south. Site M10 is bounded by Broad Beach Road to the north, West Sea Level Drive and East Sea Level Drive at either end, and the Pacific Ocean to the south.

Project Description/Objectives: The proposed Project consists of development plans for up to seven public beach accessways and management policies for those accessways. The Project also includes ten accessways that are currently open and managed by Mountains Recreation Conservation Authority (MRCA) or are in the process of being developed by MRCA for public beach access.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the MRCA 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) LSA: CDFW conducted a site visit on January 24, 2020 to all seven public beach accessways to be developed (sites D1-D7). This site visit and visual inspection, in addition to the United States Geological Survey (USGS) National Map Viewer, indicate that Project activities at sites D6 could impact an ephemeral drainage. In addition, activities at D7 could impact an ephemeral stream in the lower portion of the site. As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. 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 an LSA Agreement (Agreement) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of an Agreement for a project that is subject to CEQA will require related environmental compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document prepared by the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the Draft Environmental Impact Report (DEIR) should fully identify the potential impacts to the ephemeral stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA (available at www.wildlife.ca.gov/habcon/1600).
- a) The Initial Study states that the habitats surrounding the streams running through sites D6 and D7 are identified as freshwater forested/shrub wetland. The Project area supports aquatic, riparian, and wetland habitats; therefore, a preliminary jurisdictional delineation of the streams and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service (USFWS) wetland definition adopted by the CDFW (Cowardin et al. 1970). Some wetland and riparian habitats subject to CDFW's

authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' section 404 permit and Regional Water Quality Control Board section 401 Certification.

- b) In areas of the Project site which may support ephemeral streams (e.g., sites D6 and D7), herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of ephemeral channels and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately-sized vegetated buffer areas adjoining ephemeral drainages.
 - c) Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.
 - d) As part of the LSA Notification process, CDFW requests the 100, 50, 25, 10, 5, and 2-year frequency storm event for existing and proposed conditions. CDFW recommends the DEIR evaluate the results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts. Project alternatives, such as altering accessway designs, should be identified that could avoid alterations to the bed, bank, or channel of ephemeral streams to the greatest extent possible.
- 2) Marine Biological Significance and Potential Marine Life Impacts: The regional waters offshore of the southern California Bight is generally considered an impaired water body due to runoff, sedimentation, aerial deposition, and point source discharges, (Pondella et. al., 2019). The Malibu coastline has two Marine Protected Areas (MPAs) Point Dume State Marine Conservation Area (SMCA) and Point Dume State Marine Reserve (SMR). The Malibu coastline also has one marine water Area of Special Biological Significance (ASBS). The marine resources and habitats within the MPAs and the ASBS are protected pursuant to the Marine Life Protection Act and the Porter-Cologne Water Quality Control Act respectively. The Malibu coastline in general is protected from Project-related pollution and run-off pursuant to Fish & Game Code section 5650 where it is unlawful to allow or permit to pass into or place where it could pass into the water of the state any substance or materials that are deleterious to fish and wildlife unless otherwise permitted by a waste discharge permit. The beach accessways M10, M9, M8, D5, D6, and D7 are adjacent and landward of the MPA and ASBS boundaries. The Malibu coastline, MPAs and the ASBS supports an unusual variety of sensitive and/or unique marine life and ecosystems that are critically important to the local and regional marine ecological systems, recreational and commercial fishery species, and the general biodiversity. California Endangered Species Act (CESA) and federal Endangered Species Act (ESA) listed marine species and their sensitive habitats currently exist or have the potential to be found in the nearshore and sandy beach areas directly seaward of all beach accessways. Extra care should be taken to avoid marine water contamination, and habitat degradation impacts along the Malibu coastline.
- a) The CEQA impact analysis should include potentially significant project and cumulative ocean water quality impacts that may include nearshore marine water and habitat degradation from surface or drain system run-off, erosion, scouring and sedimentation of marine habitats. The analysis should focus on Project-related changes of drainage patterns on and downstream of the project site; the volume, velocity, and frequency of existing and post-project surface flows; and polluted runoff

that may impact ocean water quality and other habitats. Additional adverse impacts to marine species and their habitats may include human activity such as lighting, noise, human activity (e.g. trampling habitats, increased garbage), and introduction exotic species.

- b) CESA-listed species, ESA-listed species, and other protected, rare or vulnerable species that could be impacted by the Project from degraded nearshore water and habitats should be identified and addressed in detail. This should include, but not limited to, Pacific green sea turtles (*Chelonia mydas*), marine mammals, Giant kelp beds, seagrasses, sensitive and/or protected fish, managed fishery species, abalone spp., seabirds/shorebirds, Pismo clam beds, and spawning California grunion all of which are vulnerable to upland run-off, contaminated water and human activity. Run-off and additional human activity seaward of the beach accessways can ultimately cause ongoing local impacts to protected species populations and degrade their habitats. Avoidance of ocean water adverse or temporary impacts should be emphasized within or adjacent to all sensitive marine habitats, and the ASBS or MPAs. A resource agency approved long-term mitigation, maintenance and monitoring plan is advisable if significant impacts are unavoidable.
- c) In addition, feasible mitigation measures and project alternatives should be identified that could avoid and/or minimize long term biological resources impacts to a level of insignificance. CDFW requests consideration of the following alternatives and designs in addition to general best management practices:
 - i. specifically, this may include an array of project alternatives that could locate the new accessways for M10, M9 and M8 such that they are not directly adjacent to the MPA and ASBS boundary lines, and/or they have a sufficiently designed accessway set back or a significant buffer zone to avoid long term marine related impacts;
 - ii. alternative designs that could include water filtration fields (e.g. filter strips- areas of grass or other permanent vegetation used to reduce sediment, organics, nutrients, pesticides, and other contaminants in run-off and to maintain or improve water quality); and
 - iii. alternative stormwater flow designs that would not allow deleterious water run-off or materials to reach marine waters and open coast beaches.
- 3) Regional Setting: CEQA Guidelines section 15125(c) require the Lead Agency to include information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis placed on resources that are rare or unique to the region. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Such measures may include fencing or setting exclusion zones surrounding Sensitive Natural Communities. Project implementation may result in impacts to rare or endangered plants or plant communities that have been historically recorded within the Project vicinity. Parry's spineflower (*Chorizanthe parryi* var *parryi*), a California Rare Plant Rank of 1B.1 designated rare, threatened, or endangered in CA, has been historically recorded in the vicinity of site D6. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a state-wide ranking of S1, S2, S3 and S4

should be considered sensitive and declining at the local and regional level. These ranks can be obtained by visiting <https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>.

- 4) Landscaping: The Initial Study indicates that landscaping will occur in various locations of the Project site, including D2, D3, and D7. The site visit also revealed that open and vegetated space exist at sites D2, D4, D6, and D7 which provides the opportunity for landscaping in these areas. CDFW recommends using native, locally appropriate plant species for landscaping on the Project site. CDFW recommends invasive/exotic plants, including pepper trees (*Schinus* genus) and fountain grasses (*Pennisetum* genus), be restricted from use in landscape plans for this Project. A list of invasive/exotic plants that should be avoided as well as suggestions for better landscape plants can be found at <https://www.cal-ipc.org/solutions/prevention/landscaping/>.
- 5) Tree Replacement: The Initial Study states “the presence of protected native trees [are located] within five to ten feet of Site D6” and “construction activities could cause indirect impacts to these trees due to their proximity to the proposed work areas.” In addition, the site visit conducted by CDFW indicates the presence of trees on various other locations of the Project site, including site D7, D4, and D3. To compensate for any loss of trees, CDFW recommends replacing all non-native trees removed as a result of the proposed work activities at least a 1:1 ratio with native trees. CDFW recommends replacing native trees at least a 3:1 ratio with a combination of native trees and/or appropriate understory and lower canopy plantings. CDFW recommends that any loss of oaks shall be replanted at a minimum 10:1 ratio. Replacement oaks shall come from nursery stock grown from locally sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they were planted.
- 6) Monarch Butterfly Winter Roosts and Overwintering Population: A review of California Natural Diversity Database (CNDDB) indicates sites D5, M9, D6, and D7 are located within or in the vicinity of recorded monarch butterfly (*Danaus plexippus*) overwintering locations. monarch butterfly is designated as a California Species of Special Concern. CDFW recommends that the DEIR include a full evaluation of potential impacts to monarch butterfly roosting habitat (both direct and indirect) from construction and operation of the Project (Fish & Game Code, § 1021).
- 7) Biological Baseline Assessment: Based on the CDFW site visit, sites D2 and D4 are located on vacant/undeveloped land and sites D6 and D7 are developed with significant vegetation cover. CDFW recommends providing a complete assessment of the flora and fauna within and adjacent to the entire Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species, and sensitive habitats, 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)];
 - 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 Natural Communities* (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>);

- c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment (Sawyer, 2008). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
 - d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the Project. CDFW's CNDDDB in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp;
 - e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California SSC and California Fully Protected Species (Fish & Game 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 area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the USFWS; and,
 - f) A recent, wildlife and rare plant survey. 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 build out could occur over a protracted time frame, or in phases.
- 8) Nesting Birds: Based on the CDFW site visit, trees and vegetation in close proximity to or on sites D3, D5, and D7 may provide suitable nesting habitat for bird species. In addition, the Initial Study states, "Site D6 may be suitable for nesting or roosting for avian species." CDFW recommends that measures be taken to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 1 through September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of

the disturbance area (within 500-feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. 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.

General Comments

- 1) Project Description and Alternatives: To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:
 - a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
 - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated. The alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources and wildlife movement areas.
- 2) CESA: CDFW considers adverse impacts to a species protected by CESA to be significant without mitigation under CEQA. As to CESA, take of any endangered, threatened, candidate species, or State-listed rare plant species that results from the Project is prohibited, except as authorized by state law (Fish and Game Code, §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an Incidental Take Permit (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 a Project and mitigation measures may be required in order to obtain a CESA Permit. 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 unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of an ITP. For these reasons, biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.
- 3) Biological Direct, Indirect, and Cumulative Impacts: To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:
 - a) A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage. The latter subject should address Project-related changes on drainage patterns and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the Project site. The discussion should also address the proximity of the

extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;

- b) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & Game Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;
 - c) An analysis of impacts from land use designations 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; and,
 - d) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 4) Compensatory Mitigation: The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code section 65967, the lead agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.
- 5) Long-term Management of Mitigation Lands: For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity. The objective should be to offset the Project-induced qualitative and quantitative losses of wildlife habitat values. 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 non-wasting endowment should be set aside to provide for long-term management of mitigation lands.
- 6) Translocation/Salvage of Plants and Animal Species: Translocation and transplantation is the process of moving an individual from the Project site 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 rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the

outcome 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 sensitive plants and animals and their habitats.

- 7) Moving out of Harm's Way: The proposed Project is anticipated to result in clearing of natural habitats that may support many species of indigenous wildlife. To avoid direct mortality, we recommend that a qualified biological monitor approved by CDFW be on-site prior to and during ground and habitat disturbing activities to move out of harm's way special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity shall obtain all appropriate state and federal permits.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist MRCA in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Felicia Silva, Environmental Scientist, at (562) 430-0098 or by email at Felicia.Silva@wildlife.ca.gov.

Sincerely,



FOR

Erinn Wilson
Environmental Program Manager I

cc: CDFW

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References

Cowardin, Lewis M., et al. 1970. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, Fish and Wildlife Service.
Sawyer, J. O., Keeler-Wolf, T., and Evens J.M. 2008. A manual of California Vegetation, 2nd ed. ISBN 978-0-943460-49-9.
Pondella, D.L. II, et al., 2019. Assessing drivers of rocky reef fish biomass density from the Southern California Bight. Mar Ecol Prog Ser, Vol. 628: 125–140. Pg. 137.