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April 10, 2020

4/13/2020 NOP

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Governor's Office of Planning & Research

APR 10 2020

STATE CLEARINGHOUSE

**Subject: Doheny Village Zoning District Update Project (PROJECT)
 NOTICE OF PREPARATION (NOP) OF A DRAFT ENVIRONMENTAL IMPACT
 REPORT (DEIR) SCH# 2020030428**

Dear Ms. Deines:

The California Department of Fish and Wildlife (CDFW) received a received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from City of Dana Point for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 Dana Point (City)

Objective: The objective of the Project is to update the zoning districts in Doheny Village. The three new zoning districts specific to the Project area are: Village Commercial/ Industrial (V-C/I),

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.

Village Commercial/Residential (V-C/R), and Village Main Street (V-MS). In addition to a Zoning Code Amendment, implementation of the proposed project would require a General Plan Amendment to reflect the new zoning district classifications via appropriate land use designations, development intensity, and density standards. A Local Coastal Program Amendment would also be required to reflect the new land use and zoning district classifications.

Location: The Project site consists of approximately 80 acres bounded to the north by the City of San Juan Capistrano and Interstate 5 (I-5), to the east by the I-5 offramp to the Pacific Coast Highway (PCH), to the south by PCH, and to the west by the Southern California Regional Rail Authority/Orange County Transportation Authority railroad right-of-way. Further west, land uses include light industrial/manufacturing and storage uses as well as the San Juan Creek.

Biological Setting: The Project area is mostly developed, and landscaping primarily consists of ornamental trees. San Juan Creek, a historic steelhead stream, lies 0.2 mile from the Project area. Special status species with the potential to occur in the region identified using the California Natural Diversity Database (CNDDDB) include: least Bell's vireo (*Vireo bellii pusillus*; federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) listed endangered), coastal California gnatcatcher (*Poliioptila californica californica*; ESA listed threatened, California Species of Special Concern (SSC)), and coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*; SSC).

COMMENTS AND RECOMMENDATIONS

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

I. Vegetation Removal

COMMENT #1:

Issue: It is unclear from the NOP if development resulting from the zoning district updates will include vegetation removal. Although existing vegetation consists primarily of ornamental trees and landscaping, the Project site is near to the San Juan Creek and several special status species have the potential to occur within/adjacent to the Project site. Special status species with the potential to occur in the region include least Bell's vireo, coastal California gnatcatcher, and coastal cactus wren. Existing vegetation may provide nesting or foraging habitat for these special status avian species, as well as migratory birds. In consideration of the Project's proximity to the San Juan Creek and potential to impact nesting birds, the following measures should be implemented to minimize significant impacts to biological resources.

To minimize significant impacts: The DEIR should detail any impacts to vegetation or open space areas, focusing on minimizing impacts to biological resources.

1. CDFW considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species that results from the project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if any associated 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 and G. Code §§ 2080.1, 2081, subds. (b), (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 a project's 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 in the CEQA document should be of sufficient detail and resolution to satisfy the requirements for a CESA ITP.

2. In order to avoid impacts to nesting birds, the EIR should require that clearing of vegetation, and when biologically warranted construction, occur outside of the peak avian breeding season which generally 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 bird breeding surveys should conduct weekly bird surveys for nesting birds, within three days prior to the work in the area, and ensure no nesting birds in the project area would be impacted by the project. 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. The buffer should be a minimum width of 300 feet (500 feet for raptors), be delineated by temporary fencing, and remain in effect as long as construction is occurring or until the nest is no longer active. No project construction shall occur within the fenced nest zone until the young have 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.

3. CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful.

4. The EIR 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, onsite habitat restoration or enhancement should be discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

II. Hydrological Impacts

COMMENT #2:

Issue: The Project area is approximately 0.2 mile from San Juan Creek and 0.25 mile from the Pacific coast. Ground-disturbing activities related to any element of the Project could impact storm water quality, thus impacting surrounding hydrology.

To minimize significant impacts: The DEIR should analyze the efficacy of Low Impact Development (LID) options, including the use of pervious surfaces (crushed aggregate, turf block, unit pavers, pervious concrete and asphalt) as alternatives to impervious surfaces; and, structure roof spouts emptying over pervious surfaces. If it is anticipated that runoff cannot be dispersed through LIDs, the DEIR should consider directing runoff to facilities designed to detain and treat runoff, such as detention or bioretention basins. Storm water impacts should be explored throughout the project footprint as well as off-site native habitat.

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

If the proposed Project would have an impact on fish and/or wildlife, 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 of a DEIR to assist the City of Dana Point 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

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