



STATE OF CALIFORNIA • NATURAL RESOURCES AGENCY Gavin Newsom, Governor
DEPARTMENT OF FISH AND WILDLIFE Charlton H. Bonham, Director

South Coast Region
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August 25, 2023

Scott Donnell, Senior Planner
City of Carlsbad Planning Division
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Subject: Housing Element Implementation and Public Safety Element Update, Draft Supplemental Environmental Impact Report (SEIR), SCH #2022090339

Dear Scott Donnell:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability (NOA) of a Supplemental Environmental Impact Report (SEIR) from the City of Carlsbad for the Housing Element Implementation and Public Safety Element Update (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW previously provided comments on the Notice of Preparation for the Project on October 24, 2022. 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 §

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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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.

1, cont.

The City of Carlsbad has an approved and permitted Subarea Plan (City of Carlsbad Habitat Management Plan (HMP)) under the subregional North County Multiple Habitat Conservation Program (MHCP). The City adopted their HMP in December 1999; CDFW and the U.S. Fish and Wildlife Service (USFWS) (jointly, the Wildlife Agencies) granted final approvals, including an Implementing Agreement (IA), in November 2004. The SEIR for the proposed Project must ensure and verify that all requirements and conditions of the HMP and IA are met. The SEIR should also address biological issues that are not addressed in the HMP and IA, such as specific impacts to and mitigation requirements for wetlands or sensitive species and habitats that are not covered by the HMP and IA.

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PROJECT DESCRIPTION SUMMARY

Proponent: City of Carlsbad (City)

Objective: The SEIR is a supplement to the Carlsbad General Plan and Climate Action Plan EIR (State Clearinghouse #2011011004), certified in 2015. The Project consists of updates to the City's General Plan, including the Land Use and Community Design Element and Public Safety Element, and updates to Carlsbad Municipal Code Title 21, the Zoning Ordinance. The updates are necessary to implement the programs of the City's Housing Element Update 2021-2029 (Housing Element), which was adopted by the Carlsbad City Council on April 6, 2021, and changes in State law.

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The Project proposes to change of land use and zoning designations on 18 sites (rezone sites) to facilitate residential development. The rezone sites consist of properties currently designated for low-density residential, commercial, industrial, or public land uses. As proposed, the rezone sites will be partially or entirely redesignated to medium or high-density residential land use

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designations. Based on the SEIR and our August 16, 2023, discussion with City staff (Rosanne Humphrey), it is our understanding that Project approval would not include approval of any physical development (e.g., construction of housing or infrastructure); however, the SEIR assumes that such actions are reasonably foreseeable future outcomes of the Project. Any future development projects would be further evaluated for consistency with the City's HMP and proposed HMP Minor Amendments would be evaluated in coordination with the Wildlife Agencies.

Location: The Project incorporates 18 rezone sites, numbered as Site 1 through 18, located within the City's jurisdiction and HMP Plan Area. Several of the proposed sites are located within the California Coastal Zone. In addition, four of the sites (Sites 4,6,9,17) are located within or adjacent to a Standards Area, Proposed Hardline, and/or Existing Hardline identified in the HMP.

Biological Setting: The diverse habitats of the City support a wide variety of biological resources, including many species listed under CESA, the federal Endangered Species Act (ESA), as well as Narrow Endemics (NE), Obligate Wetland Species (OWS), California Fully Protected Species (FP), and California Species of Special Concern (SSC). Some of the rezone sites proposed in the SEIR are occupied by, or have the potential to be occupied by, several sensitive species, to include, but not limited to: California Orcutt grass (*Orcuttia californica*; ESA-listed Endangered, CESA-listed Endangered, NE, OWS), San Diego button celery (*Eryngium aristulatum* var. *parishii*; ESA-listed Endangered, CESA-listed Endangered, NE, OWS), thread-leaved brodiaea (*Brodiaea filifolia*; ESA-listed Threatened, CESA-listed Endangered, NE), spreading navarretia (*Navarretia fossalis*; ESA-listed Threatened, NE, OWS), little mouseltail (*Myosurus minimus* ssp. *apus*; NE, OWS), Orcutt's brodiaea (*Brodiaea orcutti*; NE, California Rare Plant Rank (CRPR) 1B.1), least Bell's vireo (*Vireo bellii pusillus*, ESA-listed Endangered, CESA-listed Endangered), coastal California gnatcatcher (*Poliophtila californica californica*; ESA-listed Threatened, SSC), San Diego fairy shrimp (*Branchinecta sandiegonensis*; ESA-listed Endangered, NE, OWS), and Riverside fairy shrimp (*Streptocephalus wootoni*; ESA-listed Endangered, NE, OWS). The SEIR stipulates that future development projects will be required to provide a biological resources technical report that incorporates site-specific information including a biological resource inventory, impact analysis, and mitigation measures consistent with the City's HMP requirements.

3, cont.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The SEIR should provide adequate and complete disclosure of the Project's potential impacts on biological resources [Pub. Resources Code, § 21061; CEQA Guidelines, §§ 15003(i), 15151].

Comments

1. **Potential Impacts to Listed Vernal Pool Species and Conserved Lands:**

Table 4.3-1 of the SEIR indicates that one of the Project's proposed rezone sites, Site 17, currently overlaps with the Poinsettia Station Vernal Pool Preserve (Preserve). The Preserve provides high quality vernal pool habitat for several listed and sensitive species including California Orcutt grass, San Diego button-celery, spreading navarretia, little mousetail, Orcutt's brodiaea, San Diego fairy shrimp, and Riverside fairy shrimp. The Preserve is managed by the City as a condition for vernal pool species coverage under the HMP (referenced on List 3, page C-12 in the HMP) and is protected under a Conservation Easement (CE) signed on July 25, 1994. The CE was granted to CDFW as mitigation for impacts to San Diego button-celery, pursuant to the CESA Memorandum of Understanding (MOU) 2081-1994-001-5 for the Poinsettia Lane Commuter Rail Station Project.

The Project's proposal to change the land use designation of Site 17 from Public Transportation Center (P, TC) to Residential 15-23 dwelling units/acre (R-23, P) would not be compatible with the provisions of the CE. The CE language strictly prohibits any activity on or use of the property that is inconsistent with retaining the property in a natural condition and protecting its natural resources in perpetuity; therefore, CDFW strongly discourages the City from allowing future development (e.g., housing) in any area that overlaps with the conserved property or otherwise results in indirect or cumulative impacts to the biological resources within the CE area. We recommend that the City coordinate with CDFW early on in their review of future development plans on Site 17 to ensure that any proposed impacts within, or adjacent to, the conserved property will be

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avoided to be consistent with the conservation goals and requirements of the HMP and the provisions of CESA MOU and CE.

4, cont.

2. **Natural Habitat Areas:** Per the SEIR's 4.33c Project Impacts and Mitigation Measures section, pages 4.3-20 through 4.3-21, rezone sites that contain or are adjacent to natural habitat areas, including coastal sage scrub, oak woodlands, vernal pools, and riparian habitat, have the potential to support special-status species. The SEIR indicates that Sites 1-2, 6-9, and 18 contain natural habitat or woodlands and Site 17 contains vernal pools. Based on our review of Table 4.3-1, Site 4 also contains natural habitat such as coastal sage scrub, riparian associated with Agua Hedionda Creek, and grassland with high potential for thread-leaved brodiaea. Therefore, we recommend that this section of the SEIR be revised to list Site 4 as one of the sites that contains natural habitat for consistency in the document. In addition, we recommend that this section be revised to consider grasslands, of both native and non-native composition, as natural habitat areas that may also support special-status species (e.g., raptor foraging, sensitive plant species' habitat, habitat linkages).

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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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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

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environmental document filing 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

Thank you for the opportunity to comment on the SEIR. CDFW appreciates the partnership with the City, and we look forward to working together in the future. Questions regarding this letter or further coordination should be directed to Alison Kalinowski, Environmental Scientist, by email at, Alison.Kalinowski@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
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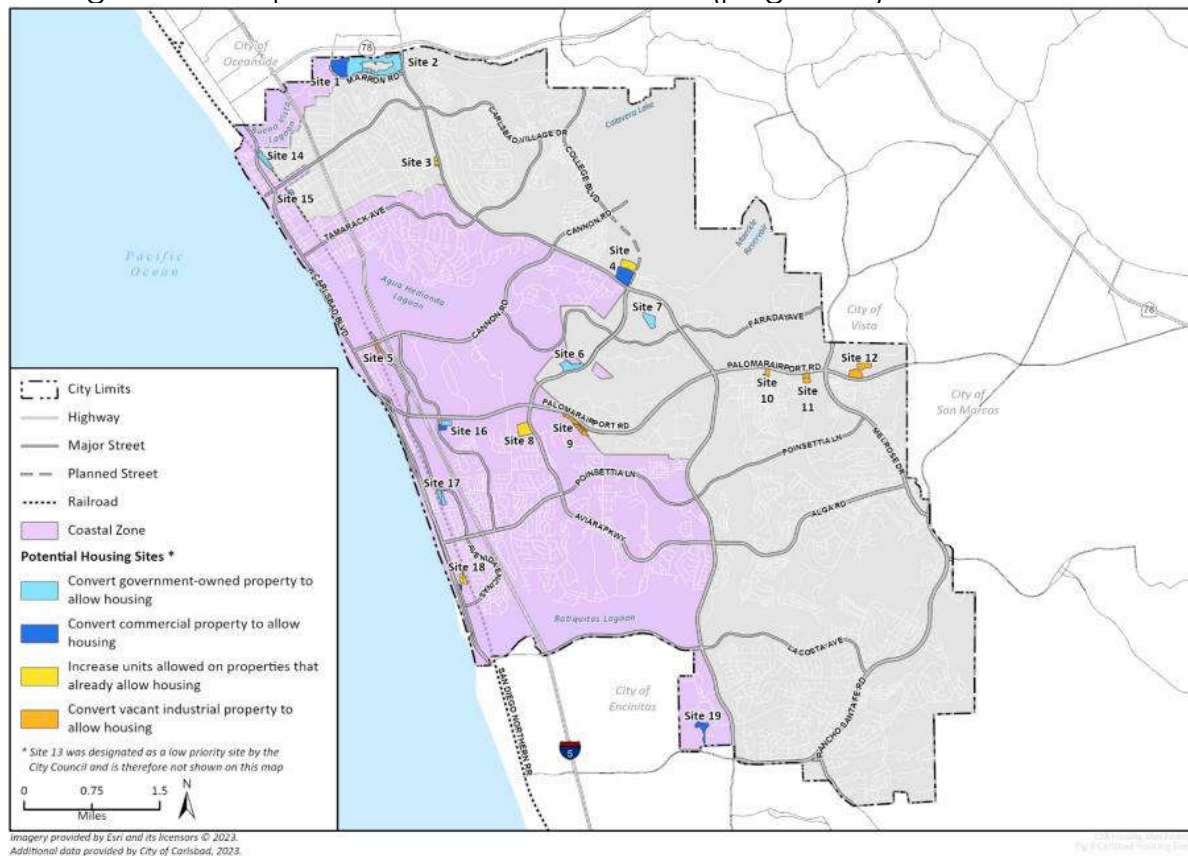
References

City of Carlsbad. August 2023. Draft Supplemental Environmental Impact Report for the Housing Element Implementation and Public Safety Element Update.

City of Carlsbad. December 1999. Habitat Management Plan.

Figures

SEIR Figure 2-4: Proposed Rezone Site Locations (page 2-13)



Letter A4

COMMENTER: David Mayer, Environmental Program Manager, South Coast Region, California Department of Fish and Wildlife

DATE: August 25, 2023

Response A4-1

The commenter states that CDFW is a trustee agency for fish and wildfire resources.

As stated in Section 1, *Introduction*, of the Draft SEIR, a trustee agency refers to a State agency having jurisdiction by law over natural resources affected by a project. There are no trustee agencies for the proposed project or EIR. Implementation of the proposed project would not directly cause development in areas where trustee agencies mentioned in *CEQA Guidelines* Section 15386 have jurisdiction. However, future development projects could be located on lands under trustee agency jurisdiction, at which time subsequent environmental review would occur. Therefore, it is acknowledged CDFW may be trustee agency with jurisdiction of the conservation, protection, and management of fish, wildlife, and native plants and habitat for future development projects on the rezone sites.

Response A4-2

The commenter states that the city has an approved and permitted Subarea Plan (City of Carlsbad Habitat Management Plan (HMP)) under the subregional North County Multiple Habitat Conservation Program (MHCP). The commenter states that the SEIR must ensure and verify that all requirements and conditions of the HMP and Implementing Agreement (IA) are met and that the SEIR should also address biological issues that are not addressed in the HMP and IA, such as specific impacts to and mitigation requirements for wetlands or sensitive species and habitats that are not covered by the HMP and IA.

This comment is informational background regarding the MHCP and city's Subarea Plan. These documents and requirements were reviewed for project consistency as discussed in the SEIR, as well as the CEQA environmental checklist for all biological resources that are considered sensitive under CEQA (such as wetlands). The Carlsbad HMP and project consistency with the HMB is discussed in Section 4.3, *Biological Resources*, of the Draft SEIR. Additional information and responses to specific comments raised on the Draft SEIR are provided in Responses A4-3 through A4-6.

Response A4-3

The commenter summarizes the project proponent, project details, project location, and biological setting.

The commenter's summary of the project and setting is accurate.

Response A4-4

The commenter states that Site 17 overlaps with the Poinsettia Station Vernal Pool Preserve (Preserve), which provides high quality vernal pool habitat for several listed and sensitive species. The commenter states the Preserve is managed by the city as a condition for vernal pool species coverage under the HMP and is protected under a Conservation Easement (CE). According to the commenter, the proposed land use designation change of Site 17 from Public Transportation Center (P, TC) to Residential 15-23 dwelling units/acre (R-23, P) [see Table 2-4 for the correct existing and

proposed land use and zoning] would not be compatible with the provisions of the CE because the CE language strictly prohibits any activity on or use of the property that is inconsistent with retaining the property in a natural condition and protecting its natural resources in perpetuity. Therefore, the commenter states that CDFW discourages the city from allowing future development (e.g., housing) in any area that overlaps with the conserved property or otherwise results in indirect or cumulative impacts to the biological resources within the CE area. The commenter recommends that the city coordinate with CDFW early on in their review of future development plans on Site 17 to ensure consistency with the HMP and the CE.

As discussed in Section 4.3, *Biological Resources*, of the Draft SEIR, Mitigation Measure BIO-5 on page 4.3-25 requires agency coordination for any proposed development on sites that encompass aquatic resources, including Site 17. In response to this comment, Mitigation BIO-7 has been revised to include coordination with responsible and administering resource agencies including CDFW and USFWS. This revision is shown in Chapter 3, Revisions to the Draft SEIR, of this document. These revisions do not change the findings of the Draft SEIR, do not result in new or substantially more severe significant impacts, and do not constitute significant new information warranting recirculation of the Draft SEIR.

Response A4-5

The commenter states that rezone sites that contain or are adjacent to natural habitat areas, including coastal sage scrub, oak woodlands, vernal pools, and riparian habitat, have the potential to support special-status species. The commenter states that the SEIR indicates that Pages 4.3-20 through 4.3-21 of the SEIR says Sites 1-2, 6-9, and 18 contain natural habitat or woodlands and Site 17 contains vernal pools. The commenter explains that based on their review, Site 4 also contains natural habitat such as coastal sage scrub, riparian associated with Agua Hedionda Creek, and grassland with high potential for thread-leaved brodiaea. Therefore, the commenter recommends that the SEIR be revised to list Site 4 as one of the sites that contains natural habitat.

Table 4.3-1 on page 4.3-2 of the Draft SEIR lists coastal sage scrub, riparian, and grassland with high potential for thread-leaved brodiaea as occurring on Site 4. The *Special-Status Species* section on Page 4.3-21 under BIO-1 identifies that there are natural areas present on Sites 1- 4, 6-9, 17-19 and mitigation measures are identified accordingly. No revisions to the Draft SEIR have been made in response to this comment because mitigation is already required on Site 4 which addresses the commenter's concern.

Response A4-6

The commenter recommends that the SEIR be revised to consider grasslands, of both native and non-native composition, as natural habitat areas that may also support special-status species.

Page 4.3-4 of the Draft SEIR, *Grassland*, describes grassland habitat (including non-native grasslands) within the city as potentially supporting sensitive plant and animal species including foraging raptors such as the California Fully Protected white-tailed kite (*Elanus leucurus*). This section also states: *Non-native grassland may also support sensitive plant species such as the federally and state-listed thread leaved brodiaea (Brodiaea filifolia) and San Diego thorn-mint (Acanthomintha ilicifolia), and may serve as a habitat linkage for a number of wildlife species such...as the coastal California gnatcatcher.* Grassland habitat is identified in Table 4.3-1 as occurring on sites 4, 6, and 7. Potential impacts to these sites and sensitive species potentially occurring in these grassland habitats is discussed in Bio-1 on page 4.3-21 of the Draft SEIR. No revisions to the Draft SEIR have been made in response to this comment.