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May 2, 2019

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Governor's Office of Planning & Research

MAY 02 2019

STATE CLEARINGHOUSE

Subject: Comments on the Draft Mitigated Negative Declaration for the Design Review 19-3228 and Coastal Development Permit 19-3229 for a new single-family residence at 415 Nyes Place, Laguna Beach, Orange County, CA (SCH# 2019049013)

Dear Mr. Jedynak:

The California Department of Fish and Wildlife (the Department) has reviewed the above-referenced Draft Mitigated Negative Declaration (MND) for the 415 Nyes Place project prepared by the City of Laguna Beach (City).

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 the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

THE DEPARTMENT'S ROLE

The Department 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; California Environmental Quality Act [CEQA] Guidelines § 15386, subd. (a).) The Department, 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, the Department 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.

The Department is also a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) The Department may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the project may be subject to the Department'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.), related authorization as provided by the Fish and Game Code will be required.

Project Location:

The subject property is a currently vacant 9,077-square-foot lot located at 415 Nyes Place, in the City of Laguna Beach (APN# 656-062-17). The property is located within the City's Residential Low Density Zone. According to the General Plan Open Space/Conservation Element, the lot is located in an environmentally sensitive area (very high value habitat). The property is a narrow, rectangular area oriented from east to west and located on a steep (68%) gradient that is west-facing and slopes uphill from Nyes Place.

Project Description/Objective:

The proposed project involves construction of a 3,295-square-foot single-family residence and an attached two-car garage. Big-leaved crownbeard (*Verbesina dissita*; crownbeard), a plant species listed as Threatened under the California Endangered Species Act (CESA), is located on the lot within the construction footprint and the designated fuel modification zones.

An Incidental Take Permit (ITP) issued by the Department allows a permittee to take a CESA-listed species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. The permittee must implement species-specific minimization and avoidance measures, and fully mitigate the impacts of the project, as well as provide adequate funding to implement these measures and for monitoring compliance with, and effectiveness of, those measures. (Fish & G. Code § 2081 (b); Cal. Code Regs., tit. 14, §§ 783.2-783.8)

COMMENTS AND RECOMMENDATIONS

The Department offers the following comments and recommendations 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.

1. On March 27, 2017, the owners of the 415 Nyes Place property (collectively, the Applicant) submitted to the Department an Application (Notification of a Request) for an ITP for impacts to crownbeard. The Department did not declare the Application complete until Permit fees were paid in full. On December 20, 2017, the Department issued a letter to the Applicant designating the Application complete. The Department's designation of an ITP Application as complete is based solely on whether the Applicant has provided information responsive to each required element of the California Code of Regulations Title 14, Sections 783.2 and 783.3, and is not be based on the merits of the Application. The Department may require supplemental information and modifications to the proposed mitigation after the Application is deemed complete. The Department cannot complete final processing of the ITP until it receives a copy of the finalized CEQA document prepared for the project (the MND), a copy of the Notice of Determination, and a copy of the proof of payment of the environmental filing fee.
2. The Application submitted on March 27, 2017, included results of a 2016 survey for crownbeard on the 415 Nyes place property that identified nine patches of the plant totaling approximately 440 square feet. The City, in response to a peer review of the 2016 survey by Glenn Lukos Associates, requested a follow-up survey in 2017 due to the high precipitation that occurred during the 2016-2017 rainy season. The survey was conducted on August 14, 2017, and results showed an increase in area occupied by crownbeard to 1,762 square feet. Thus, the areal extent of the

crownbeard potentially impacted by the proposed project (due to both construction and fuel modification) increased compared to the amount stated in the ITP Application submitted to the Department. The ITP Application should be updated to identify the increased extent of crownbeard. The ITP Application may also need to revise the take statements and analysis supporting the conclusions therein.

3. The ITP Application proposed the City of Laguna Beach Habitat Conservation Easement Parcel (APN 656-062-30) as the receptor site for crownbeard individuals translocated from the 415 Nyes Place property. The Laguna Canyon Foundation (Foundation) was proposed as the entity (i.e., the Designated Biologist) that would perform the mitigation actions, including collection of propagation materials from the property, translocation of plants to the receptor site, maintenance and monitoring of the transplants for an initial five-year, short-term management period, and ultimate assumption of long-term management of the translocated population. Due to the time that has elapsed since the Application was submitted to the Department and the increase in the known area of crownbeard that would be impacted, the Department recommends the Applicant contact the Foundation to determine whether it is still willing to perform these actions. Additionally, the Applicant should work with the Foundation and the Department to determine whether the parcel proposed as the translocation receptor area is still appropriate.
4. The ITP Application proposes avoidance, preservation, and enhancement of the crownbeard within the non-irrigated Fuel Modification Zone B on site. The Designated Biologist would conduct regular inspections for five years to ensure the crownbeard population in Zone B remains viable. The final MND should add this as a potential measure to minimize and fully mitigate the impacts of the authorized take of crownbeard. Before approving this proposed measure, the Department will require proof that the Laguna Beach Fire Department concurs with the plan to allow the crownbeard to remain in Zone B, as well as leaving sufficient cover during vegetation thinning to provide the shade the crownbeard needs as an understory species to survive. The Department may require that a conservation easement be placed over the portion of the property where crownbeard would remain. The Department should be consulted to obtain the most recent conservation easement template.
5. As stated in the MND, the City will authorize Project-related ground disturbance only after receiving a copy of the ITP executed by the Department. The Project will be required to comply with all mitigation measures set forth in the ITP. The final ITP, including a mitigation, monitoring, and reporting plan (MMRP) approved by the Department, will include all of the mitigation measures required to fully mitigate impacts to crownbeard that would result from construction of the proposed Project. The Department-approved MMRP will include, among all required measures, some or all of the following:
 - a. Translocation of the crownbeard plants within the construction footprint to a preserved open space area with subsequent maintenance and monitoring of the transplants. Performance criteria for success of the translocation efforts and contingency measures in case of failure will be included in the mitigation plan;

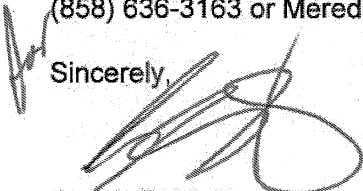
- b. Collection and storage of crownbeard seeds in a facility approved by the Department;
 - c. Avoidance of the crownbeard individuals within the 415 Nyes Place Fuel Zone B;
 - d. Funding for control of invasive weed species within the selected translocation site;
 - e. Funding for a five-year implementation, management, and monitoring program to ensure the success of the mitigation efforts;
 - f. Funding for long-term management of the relocated crownbeard.
6. The Foundation provided estimates of the amount of annual funding it would require to implement the short- and long-term management of the relocated crownbeard and the receptor area. These budgets were based on an estimated 362 square feet of impacted crownbeard and were included with the Application submitted on March 27, 2017. Due to the time elapsed since the Application was submitted and the increase in known area of crownbeard that would be impacted, the Department recommends the Applicant request updated budgets from the Foundation. These updated budgets will be used to calculate the amount of a security (i.e., Letter of Credit) to ensure the short-term management is carried out and a non-wasting endowment to fund long-term management of the translocated crownbeard.

CONCLUSION

The Department appreciates the opportunity to comment on the draft MND to assist the City in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Meredith Osborne at (858) 636-3163 or Meredith.Osborne@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

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Eric Weiss, CDFW