



Draft Mitigated Negative Declaration

CITY OF ENCINITAS
Planning and Building Department
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Case No. MULTI 002610-2018

SUBJECT: Title: Sanctuary Project

Project Number(s): MULTI-002610-2018, SUB-002612-2018, USE-003068-2019, DR-002611-2018, BADI-004435-2021, ITRP-004018-2020. Nuevo-Real Estate (Applicant) proposes the Sanctuary Project (Project), which includes the processing of a Tentative Map, Major Use Permit, Design Review Permit, Boundary Adjustment and a Planning Commission Interpretation. The 8.32-acre Project site is located on the southwest corner of Rancho Santa Fe Road and Ranch View Terrace, in the eastern-central part of the city of Encinitas, California. The Project site is currently vacant and is surrounded on all sides by residential housing developments. Historical documents indicate that the site was previously used for agriculture, but has been vacant since approximately 1979.

- I. PROJECT DESCRIPTION: See attached Environmental Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Environmental Initial Study.
- III. DETERMINATION:

The City of Encinitas conducted an Environmental Initial Study that determined the proposed project could have a significant environmental effect in the following area(s):

- Air Quality
- Biological Resources
- Cultural Resources
- Noise
- Tribal Cultural Resources
- Geology

Subsequent revisions in the project proposal provide the specific mitigation measures identified in Section V. of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental

effects previously identified, and the preparation of an Environmental Impact Report will not be required.

IV. DOCUMENTATION:

The attached Environmental Initial Study documents the reasons to support the above determination.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

Air Quality

MM-AQ-1: Tier 4 Interim Construction Equipment. Prior to the commencement of any construction activities, the applicant or its designee shall provide evidence to the City of Encinitas (City) that for off-road equipment with engines rated at 80 horsepower or greater, no construction equipment shall be used that is less than Tier 4 Interim or equivalent (e.g. Tier 4 Final or other technology that achieves equivalent particulate matter control). An exemption from these requirements may be granted by the City if the applicant documents that equipment with the required tier is not reasonably available and equivalent reductions in PM10 exhaust emissions are achieved from construction equipment. The applicant shall be responsible for preparation of a new air quality assessment demonstrating that health risks are below significance thresholds of 10 in a million with the revised equipment mix. Before an exemption may be considered by the City, the applicant shall be required to demonstrate that three construction fleet owners/operators in the San Diego Region were contacted and that those owners/operators confirmed Tier 4 equipment could not be located within the San Diego region. The City shall review the exemption request and provide a determination within 10 business days from receipt of the request.

Biological Resources

MM-BIO-1: Prior to issuance of a grading permit, impacts to 18 Del Mar manzanita, nine coast white ceanothus, four Torrey pine individuals shall occur at a minimum ratio of 1:1 for Del Mar manzanita, 1:1 for coast white ceanothus, and 1:1 for Torrey pine, unless otherwise required by the City or United States Fish and Wildlife Service (USFWS). Mitigation for impacts to these three plant species shall be accomplished on-site through one or a combination of translocation or new plantings, habitat-based preservation, and/or purchase of conservation Mitigation Bank credits, as follows:

- 1:1 replacement ratio of the 18 Del Mar Manzanita, nine coast white ceanothus, and four Torrey pine individuals

impacted to be planted at an on-site location approved by the City and USFWS. Monitoring and management of the mitigation planting site would also be required; or

- Preservation of on-site mitigation land, recordation of a biological open space (BOS) easement, and preparation of a Resources Management Plan (RMP) to address long-term monitoring, maintenance, management, and reporting directives, in perpetuity, approved by the City and USFWS. The location shall be deemed acceptable by the City and USFWS. Long-term management shall be funded through a non-wasting endowment in an amount determined through a Property Assessment Record (PAR) or similar method for determining funding amount. The mitigation land shall be owned by a conservancy, the City or other similar, experienced entity subject to approval by the City and USFWS. Or,
- If demonstrated to the satisfaction of the City and USFWS that on-site preservation of mitigation land is not feasible to fulfill all or a portion of mitigation obligations, then the project shall include purchase of southern maritime chaparral credits at an approved conservation Mitigation Bank deemed acceptable by the City and USFWS. The mitigation credits shall include lands occupied by Del Mar manzanita, coast white ceanothus, and Torrey pine; resulting in a 1:1 replacement ratio for these species.

MM-BIO-2: Prior to issuance of a grading permit, impacts to 0.41 acres of southern maritime chaparral shall be mitigated at a 3:1 ratio, impacts to 0.33 acres of disturbed Diegan coastal sage scrub shall be mitigated at a 2:1 ratio, and 1.10 acres of Eucalyptus Woodland shall be mitigated at a 1:1 ratio, unless otherwise required by the City and United States Fish and Wildlife Service (USFWS). Unless otherwise mitigated by MM-BIO-1, mitigation for southern maritime chaparral, disturbed Diegan coastal sage scrub and Eucalyptus Woodland shall be accomplished off-site through a combination of habitat-based preservation, and/or purchase of conservation Mitigation Bank credits, as follows:

- Off-site preservation of mitigation land, recordation of a BOS easement, and preparation of a Resource Management Plan to address long-term monitoring, maintenance, management, and reporting directives, in perpetuity, approved by the City and USFWS. The location shall be deemed acceptable by the City and USFWS. Long-term management shall be funded through a non-wasting endowment in an amount determined through preparation

of a PAR or similar method for determining funding amount. The mitigation land shall be owned by a conservancy, the City or other similar, experienced entity subject to approval by the City and USFWS.

- If demonstrated to the satisfaction of the City and USFWS that off-site preservation of mitigation land is not feasible to fulfill all or a portion of mitigation obligations, then the project shall include purchase of southern maritime chaparral credits at an approved conservation Mitigation Bank deemed acceptable by the City and USFWS.

Cultural and Tribal Cultural Resources

MM-CUL-1: A qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards for precontact ("prehistoric") and historic archaeology, in collaboration with and at the direction of traditionally and culturally affiliated (TCA) Native American Tribes, shall provide pre-construction cultural resources awareness training, including but not limited to tribal cultural resources (TCRs) that may be designated or recorded as "archaeological", cultural landscapes, and flora, fauna, and geological materials of cultural significance and concern, to all construction personnel. Training will include appropriate protocol following the unanticipated discovery of any archaeological deposits and/or significant geological deposits during construction. A qualified professional archaeologist approved by TCA Native American Tribes shall be retained to monitor all ground-disturbing activity associated with the project.

MM-CUL-2 Due to the high potential for uncovering unknown subsurface TCRs or other historical resources that may be designated or recorded as archaeological or cultural resources, mitigation monitoring shall be undertaken for any and all on-site and off-site ground disturbing activities. If on-site and/or off-site ground disturbing activities (e.g., exploratory trenching or excavations) are required for any informal or formal solicitation (written or spoken) of construction bids or similar requirements, all applicable requirements identified in mitigation measures CUL-3 to CUL-9 shall be undertaken by the applicant and/or owner.

MM-CUL-3 Cultural Resource Mitigation Monitoring Program shall be conducted to provide for the identification, evaluation, treatment, and protection of any cultural resources that are affected by or may be discovered during the construction of the proposed project, including but not limited to TCA ancestral places that may be designated or recorded as "archaeological", cultural landscapes, and flora, fauna, and geological materials of cultural significance

and concern. The monitoring shall consist of the full-time presence of an archaeological monitor, who is a professional archaeologist working under the direction of the qualified archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for precontact ("prehistoric") and historic archaeology, and TCA Native American monitors for, but not limited to, any clearing or grubbing of vegetation, tree removal, demolition and/or removal of remnant foundations, pavements, abandonment and/or installation of infrastructure; grading or any other ground disturbing or altering activities, including the placement of imported fill materials (note: all fill materials shall be absent of any and all cultural resources); and related road improvements, including, but not limited to, La Costa Avenue. Other tasks of the monitoring program shall include the following:

1. The requirement for cultural resource mitigation monitoring shall be noted on all applicable construction documents, including demolition plans, grading plans, etc.
2. The archaeological monitor and TCA Native American monitors shall attend all applicable pre-construction meetings with the Contractor and/or associated Subcontractors.
3. The archaeological monitor shall maintain ongoing collaboration with TCA Native American monitors during all ground disturbing or altering activities, as identified above.
4. In the event that more than one TCA Consulting Tribe requests to provide a TCA Native American monitor for activities subject to these measures, the City will allow for either: 1) up to one monitor from each TCA Consulting Tribe to be present simultaneously;
5. The archaeological monitor and/or TCA Native American monitor may halt ground disturbing activities if archaeological artifact deposits, cultural features, and/or significant geological deposits are discovered. In general, ground disturbing activities shall be halted within a 50-foot radius of the discovery to allow a determination of potential significance, the subject of which shall be determined by the archaeological monitor and the TCA Native American monitors and at the direction of TCA Consulting Tribes. Ground-disturbing activities shall not resume until the qualified archaeologist, in consultation with the TCA Native American monitors, deems the cultural resource, feature, or deposit has been appropriately documented and avoided and/or protected. At

the discretion of the archaeological Monitor in consultation with the TCA Native American monitors, the location of ground disturbing activities may be relocated elsewhere on the project site to avoid further disturbance of cultural resources. The qualified archaeologist in collaboration with the appropriate authorities or monitors from the TCA Consulting Tribes shall be called to evaluate the significance of the find and shall have the authority to modify the no-work radius as appropriate, using professional judgement. The following notifications shall apply, depending on the nature of the find:

- a. If the qualified archaeologist in collaboration with and at the direction of the appropriate authorities from the TCA Native American Tribes determines that the find does not represent a cultural resource, work may resume immediately, and no agency notifications are required.
 - b. If the qualified archeologist in collaboration with and at the direction of the appropriate authorities from the TCA Native American Tribes determines that the find does represent a cultural resource from any time period or cultural affiliation, he or she shall immediately notify the City and landowner. The City shall consult on a finding of eligibility and implement appropriate treatment measures if the find is determined to be eligible for inclusion in the CRHR under all eligibility Criteria. Work may not resume within the no-work radius until the City, through consultation as appropriate, determines that the site either: 1) is not eligible for or CRHR; or 2) that the avoidance, minimization, and mitigation treatment measures have been completed to its satisfaction or, if it is a TCR, the satisfaction of the TCA Consulting Tribes.
6. The avoidance and protection of discovered unknown and significant cultural resources and/or unique archaeological resources is the preferable mitigation for the proposed project. If avoidance is not feasible, a Data Recovery Plan may be authorized by the City as the lead agency under CEQA. If data recovery is required, then TCA Consulting Tribes shall be notified and consulted in drafting and finalizing any such recovery plan.
 7. The archaeological monitor and/or TCA Native American monitors may also halt ground disturbing activities around known archaeological and/or culturally significant–deposits or

cultural features if, from their respective opinions, there is the possibility that they could be damaged or destroyed.

8. If the find includes human remains, or remains that are potentially human, he or she shall ensure reasonable protection measures are taken to protect the discovery from disturbance (Assembly Bill {AB} 2641). The archaeological monitor shall notify the San Diego County Medical Examiner (as per §7050.5 of the Health and Safety Code). The provisions of §7050.5 of the California Health and Safety Code, §5097.98 of the California PRC, and AB 2641 will be implemented. If the Medical Examiner determines the remains are Native American and not the result of a crime scene, the Medical Examiner will notify the NAHC, who then will designate a Native American Most Likely Descendant (MLD) for the Project (§5097.98 of the PRC). The designated MLD will have 48 hours from the time access to the property is granted to make recommendations concerning treatment of the remains. If the landowner does not agree with the recommendations of the MLD, the NAHC may mediate (§5097.94 of the PRC). If no agreement is reached, the landowner must rebury the remains where they will not be further disturbed (§5097.98 of the PRC). This will also include either recording the site with the NAHC or the appropriate information center; using an open space or conservation zoning designation or easement; or recording a reinternment document with the county in which the property is located (AB2641). Work may not resume within the no-work radius until the City, through consultation as appropriate, determines that the treatment measures have been completed to its satisfaction.

MM-CUL-4

Prior to the issuance of a grading permit, and subject to approval of terms by the City, the applicant or owner, and/or contractor shall enter into a Pre-Excavation Agreement with the TCA Consulting Tribes. The purpose of this agreement shall be to formalize protocols and procedures between the applicant or owner, and/or contractor, and the TCA Consulting Tribes for the protection and treatment of, but not limited to, such items as Native American human remains, funerary objects, cultural and religious landscapes, ceremonial items, traditional gathering areas and cultural items, located and/or discovered through the cultural resource mitigation monitoring program in conjunction with the construction of the proposed project, including additional archaeological surveys and/or ethnographic studies, excavations, geotechnical

investigations, soil surveys, grading, or any other ground-disturbing activities.

MM-CUL-5 Prior to the issuance of a grading permit, the applicant or owner, and/or contractor shall provide a written and signed letter to the City's Director of Development Services, stating that a City-approved qualified archaeologist and TCA Native American monitors have been retained at the applicant or owner and/or contractor's expense to implement the monitoring program, as described in the pre-excavation agreement. A copy of the letter shall be included in the grading plan submittals for the grading permit.

MM-CUL-6 Prior to any ground disturbing activities and/or the issuance of a grading permit and concurrent with any demolition activities within the project area, a Phase II archaeological assessment shall occur and be completed, and identify any additional potential negative impacts to subsurface tribal cultural resources that have not yet been identified due to safety conditions at the project area. The Phase II archaeological assessment shall be developed by the qualified archaeologist and the TCA Consulting Tribes. All sacred sites, significant tribal cultural resources and/or unique archaeological resources encountered within the project area shall be avoided and preserved as the preferred mitigation, if feasible.

MM-CUL-7 Prior to the issuance of a grading permit, and in order for potentially significant archaeological artifact deposits and/or cultural resources to be readily detected during mitigation monitoring, a written "Controlled Grade Procedure" shall be prepared by a qualified archaeologist, in consultation with the TCA Consulting Tribes, and the applicant or owner, subject to the approval of City representatives. The Controlled Grade Procedure shall establish requirements for any ground disturbing work with machinery occurring in and around areas the archaeological monitor and TCA Native American monitors determine to be sensitive through the cultural resource mitigation monitoring process. The Controlled Grade Procedure shall include, but not be limited to, appropriate operating pace, increments of removal, weight and other characteristics of the earth disturbing equipment. A copy of the Controlled Grade Procedure shall be included in the grading plan submittals for the grading permit.

MM-CUL-8 Prior to the release of the grading bond, a Monitoring Report and/or Evaluation Report, which describes the results, analysis and conclusions of the cultural resource mitigation monitoring efforts (such as, but not limited to, the Research Design and Data Recovery Program) shall be submitted by the qualified archaeologist, along with TCA Native American monitors' notes and

comments, to the City's Director of Development Services for approval.

MM-CUL-9 The landowner shall relinquish ownership of TCRs collected during the cultural resource mitigation monitoring conducted during all ground disturbing activities, and from any previous archaeological studies or excavations on the project site to the appropriate TCA Consulting Tribe and dignified treatment and disposition, including reburial on-site in a location determined in consultation with the appropriate TCA Consulting Tribes, in accordance with the Tribe's cultural and spiritual traditions. All cultural materials that are associated with burial and/or funerary goods will be repatriated to the Most Likely Descendant as determined by the Native American Heritage Commission per California Public Resources Code Section 5097.98.

Geology

Paleontological Resources

MM-GEO-1: Paleontological Data Recovery and Monitoring Plan will be made a condition of approval for the potential discovery of buried resources as outlined below:

1. Prior to grading permit issuance, during grading and excavation activities, and prior to building permit issuance, the project applicant shall implement a paleontological monitoring and recovery program consisting of the following measures, which shall be included on project grading plans to the satisfaction of the Development Services Department:
 - a. The project applicant shall retain the services of a qualified paleontologist to conduct a paleontological monitoring and recovery program. A qualified paleontologist is defined as an individual having an M.S. or Ph.D. degree in paleontology or geology, and who is a recognized expert in the identification of fossil materials and the application of paleontological recovery procedures and techniques. As part of the monitoring program, a paleontological monitor may work under the direction of a qualified paleontologist. A paleontological monitor is defined as an individual having experience in the collection and salvage of fossil materials.
 - b. The qualified paleontologist shall attend the project pre-construction meeting to consult with the grading and excavation contractors concerning the grading plan and paleontological field techniques.

- c. The qualified paleontologist or paleontological monitor shall be on site on a full-time basis during the original cutting of previously undisturbed portions of the underlying very old paralic deposits. If the qualified paleontologist or paleontological monitor ascertains that the noted formations are not fossil-bearing, the qualified paleontologist shall have the authority to terminate the monitoring program.
 - d. If fossils are discovered, recovery shall be conducted by the qualified paleontologist or paleontological monitor. In most cases, fossil salvage can be completed in a short period of time, although some fossil specimens (such as a complete large mammal skeleton) may require an extended salvage period. In these instances, the paleontologist (or paleontological monitor) shall have the authority to temporarily direct, divert, or halt grading to allow recovery of fossil remains in a timely manner.
 - e. If subsurface bones or other potential fossils are found anywhere within the project site by construction personnel in the absence of a qualified paleontologist or paleontological monitor, the qualified paleontologist shall be notified immediately to assess their significance and make further recommendations.
 - f. Fossil remains collected during monitoring and salvage shall be cleaned, sorted, and catalogued. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall be deposited (as a donation) in a scientific institution with permanent paleontological collections such as the San Diego Natural History Museum.
2. Prior to Certificate of Occupancy, a final summary report outlining the results of the mitigation program shall be prepared by the qualified paleontologist and submitted to the Development Services Department for concurrence. This report shall include discussions of the methods used, stratigraphic section(s) exposed, fossils collected, and significance of recovered fossils, as well as appropriate maps.

Noise

MM-NOI-1

A temporary soundwall shall be erected prior to the commencement of site preparation activities and maintained throughout construction of the project along the northern, eastern, southern, and western development envelope boundaries, to the extents indicated in figure 2 of the Sanctuary Project Noise Assessment. A licensed surveyor

or registered civil engineer shall ensure the design of the wall installation such that it does not encroach into the proposed open space areas. The soundwall shall be a minimum of 10 feet in height, measured from the ground elevation on the project side of the soundwall. The soundwall shall be of solid material with a minimum STC rating of 25.

VI. RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but did not address the draft Mitigated Negative Declaration finding or the accuracy/completeness of the Initial Study. No response is necessary. The letters are attached.
- () Comments addressing the findings of the Draft Mitigated Negative Declaration and/or accuracy or completeness of the Environmental Initial Study (xxxxx) were received during the public input period. The letters and responses follow.

Copies of the draft Mitigated Negative Declaration and any Initial Study material are available in the office of the City of Encinitas Development Services Department, the City of Encinitas Library, and for review, or for purchase at the cost of reproduction.

08/04/2023

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Date of Draft Report

Date of Final Report