



THE CITY OF SAN DIEGO

Date of Notice: July 2, 2019

PUBLIC NOTICE OF PREPARATION OF SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

Development Services Department

SAP No. 24007539

The City of San Diego Development Services Department, as Lead Agency, has determined that the project described below will require the preparation of a Subsequent Environmental Impact Report (SEIR) in compliance with the California Environmental Quality Act (CEQA). This Notice of Preparation was publicly noticed and distributed on July 2, 2019. This notice was published in the SAN DIEGO DAILY TRANSCRIPT and placed on the City of San Diego website at: <https://www.sandiego.gov/ceqa/draft>. In addition, the Notice was also distributed to the Central Library as well as the Carmel Valley Branch Library.

Written/mail-in comments may be sent to the following address: **E. Shearer-Nguyen, Environmental Analyst, City of San Diego Development Services Department, 1222 First Avenue, MS 501, San Diego, CA 92101** or e-mail your comments to DSDEAS@sandiego.gov with the Project Name and Number in the subject line within 30 days of the receipt of the Public Notice. Responsible agencies are requested to indicate their statutory responsibilities in connection with this project when responding. A SEIR incorporating public input will then be prepared and distributed for the public to review and comment.

General Project Information:

- **Project Name:** Avion Property
- **Project Number:** 598173
- **SCH No.:** 97111070
- **Community Area:** Black Mountain Ranch Subarea I
- **Council District:** 5

Project Description: A request for a REZONE from AR-1-1 to RS-1-14; VESTING TENTATIVE MAP (VTM); PLANNED DEVELOPMENT PERMIT (PDP); SITE DEVELOPMENT PERMIT (SDP); MULTI-HABITAT PLANNING AREA BOUNDARY LINE ADJUSTMENT; and the annexation of the project from the City of San Diego Public Utilities Department to Olivenhain Municipal Water District and a latent powers expansion for sewer service for the project site from the Local Agency Formation Commission to subdivide the project site and construct 84 multi-family residential, the transfer of 19 affordable units to Lot X of Map No. 15919 Black Mountain Ranch North Village Town Center, and the transfer of 14 dwelling units to Lots 12, 13, 18 and 19 of Map No. 15919 in the Black Mountain Ranch North Village Town Center for a combined total of 117 dwelling units. The project would also construct various site improvements which include associated public and private streets, hardscape, retaining walls and landscaping. The project site consists of a 41.48-acre parcel of undeveloped land located approximately 0.6 mile south of Carmel Valley Road/Bernardo Center Drive, 1.2 miles west of Interstate 15, and 1.4 miles east of Black Mountain Road. The site is designated Low Density Residential and zoned AR-1-1 (Agricultural)) within the Black Mountain Ranch Subarea Plan. Additionally, the site is within the Airport Land Use Compatibility Overlay Zone (Marine Corps Air Station (MCAS) Miramar), Airport Influence

Area (MCAS-Miramar - Review Area 2), Affordable Housing Parking Demand, and the Very High Hazard Severity Zone. **The site is not included on any Government Code listing of hazardous waste sites.**

Applicant: CalAtlantic Homes/Lennar

Recommended Finding: Pursuant to Section 15060(d) of the CEQA Guidelines, it appears that the proposed project may result in significant environmental impacts in the following areas: **Land Use, Air Quality (construction), Biological Resources, Historical Resources (archaeology), Landform Alteration/Visual Quality (landform alteration), and Noise (construction).**

Availability in Alternative Format: To request this Public Notice in alternative format, call the Development Services Department at (619) 446-5460 or (800) 735-2929 (TEXT TELEPHONE).

Additional Information: For environmental review information, contact Elizabeth Shearer-Nguyen at (619) 446-5369. **For information regarding public meetings/hearings on this project, contact the Project Manager, Jeffrey Peterson at (619) 446-5237.** This notice was published in the SAN DIEGO DAILY TRANSCRIPT and distributed on July 2, 2019.

Gary Geiler
Deputy Director
Development Services Department

DISTRIBUTION: See Attached

ATTACHMENTS: Figure 1: Regional Location Map
Figure 2: Aerial Project Location
Figure 3: Proposed Site Plan

DISTRIBUTION:

Federal

U.S. Environmental Protection Agency (19)
U.S. Fish & Wildlife Service (23)
U.S. Army Corps of Engineers (26)

State of California

California Department of Fish & Wildlife (32)
Department of Toxic Substance Control (39)
California Regional Water Quality Control Board (44)
California Transportation Commission (51)
California Department of Transportation (51A)
California Department of Transportation (51B)
Native American Heritage Commission (54)

City of San Diego

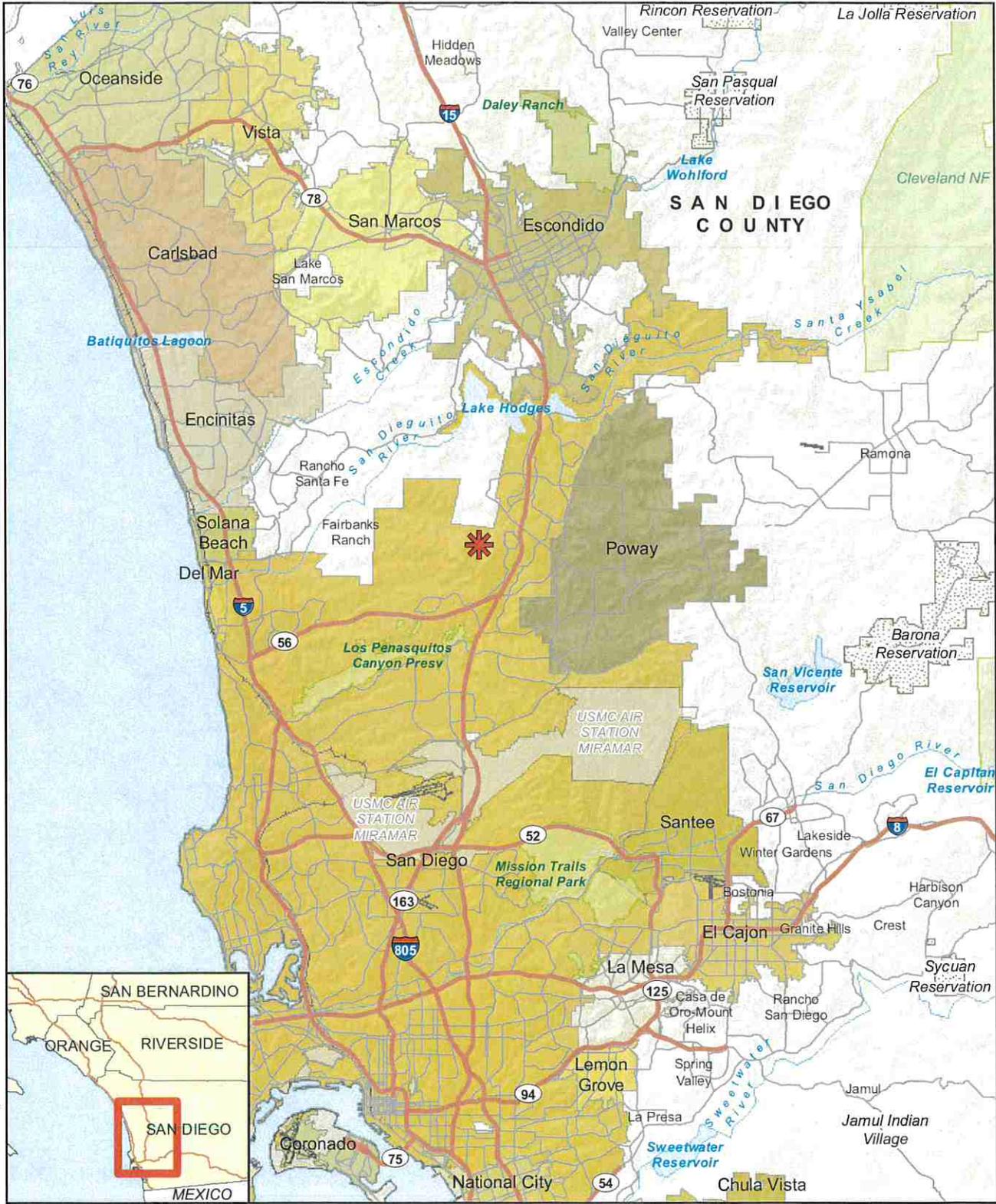
Mayor's Office (91)
Councilmember Lightner, District 1 (MS 10A)
Councilmember Zapf, District 2 (MS 10A)
Councilmember Gloria, District 3 (MS 10A)
Councilmember Cole, District 4 (MS 10A)
Councilmember Kersey, District 5 (MS 10A)
Councilmember Cate, District 6 (MS 10A)
Councilmember Sherman, District 7 (MS 10A)
Councilmember Alvarez, District 8 (MS 10A)
Councilmember Emerald, District 9 (MS 10A)
Development Services Department
 EAS
 Project Manager
San Diego Fire-Rescue Department (MS 603)
San Diego Police Department (MS 776)
Transportation Development (78)
Development Coordination (78A)
Fire and Life Safety Services (79)
San Diego Fire – Rescue Department Logistics (80)
Library Department (81)
 Central Library (81A)
 Carmel Valley Branch Library (81F)
Historical Resources Board (87)
Environmental Services Department (93A)
Facilities Financing (MS 93B)

Other Groups, Organizations and Interested Individuals

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San Diego Natural History Museum (166)

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Ron Christman (215)
Clint Linton (215B)
Frank Brown, Inter-Tribal Cultural Resources Council (216)
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Kumeyaay Cultural Heritage Preservation (223)
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Black Mountain Ranch – Subarea I (226C)
Joan Mei
Angie Huang
Michael Beckman
Kimberly Uyeda
Alex Plishner, CalAtlantic/Lennar, Applicant
Marina Wurst, Project design Consultants, Agent



 Project Location

Regional Location Map

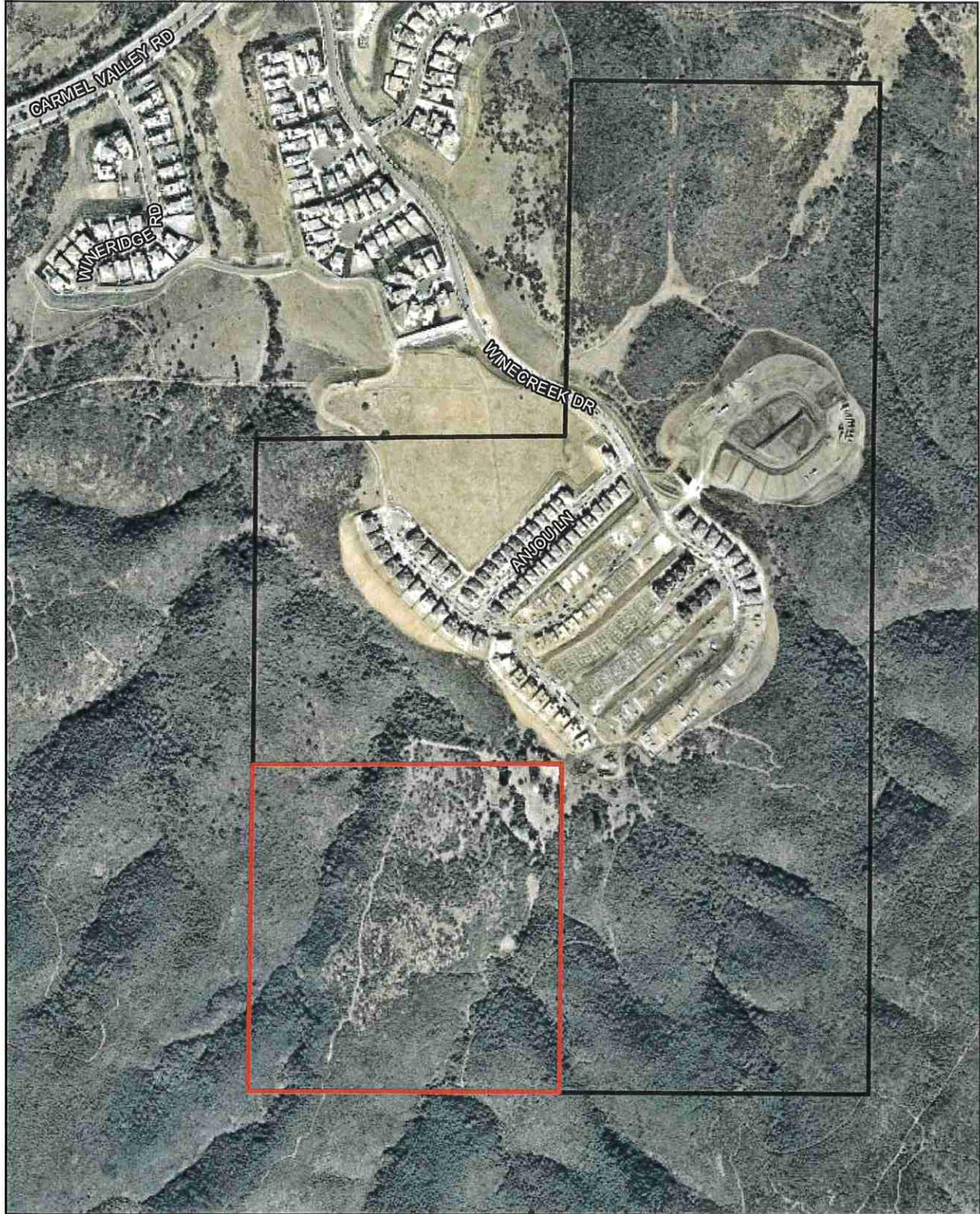
AVION PROPERTY

Project No. 598173

City of San Diego – Development Services Department

Figure
1





-  Project Boundary
-  Heritage Bluffs Boundary

Aerial Project Location

AVION PROPERTY Project No. 598173
City of San Diego – Development Services Department



Source: Project Design Consultants



- Project Boundary
- Plan Lines
- 10-foot Contours
- 2-foot Contours



THE CITY OF SAN DIEGO

Proposed Site Plan

AVION PROPERTY

Project No. 598173

City of San Diego - Development Services Department

Figure
3



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 1, 2019

Ms. E. Shearer-Nguyen
City of San Diego Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101
DSDEAS@sandiego.gov

Subject: Comments on the Notice of Preparation of a Supplemental Environmental Impact Report for the Avion Property Project, San Diego Project Number 598173 (SCH# 1997111070)

Dear Ms. Shearer-Nguyen:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation (NOP) for the Avion Property Draft Subsequent Environmental Impact Report (DSEIR). The following statements and comments have been prepared pursuant to the Department's authority as Trustee Agency with jurisdiction over natural resources affected by the project (California Environmental Quality Act [CEQA] Guidelines § 15386) and pursuant to our authority as a Responsible Agency under CEQA Guidelines section 15381 over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code section 1600 *et seq.* The Department also administers the Natural Community Conservation Planning (NCCP) program. The City of San Diego (City) participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP).

The project will construct 117 residential units and associated infrastructure (streets, hardscape, retaining walls, landscaping, etc.) on 41.48 acres. Located 0.6 mile south of Carmel Valley Road/Bernardo Center Drive, 1.2 miles west of Interstate 15, and 1.4 miles east of Black Mountain Road, the project area is also southwest of the Heritage Bluffs development. The site is composed of a central ridge that rises in elevation towards the south and is bounded by small canyons with drainage courses to the east and west. Southern mixed chaparral comprises the majority of the site with lesser acreages of coastal sage scrub, non-native grassland, and freshwater marsh patches.

The Department offers the following comments and recommendations to assist the City in avoiding or minimizing potential project impacts on biological resources.

Specific Comments

1. *Brodiaea filifolia* (CESA listed-Endangered; Endangered Species Act listed-Threatened; California Rare Plant Rank 1B.1) is a narrow endemic plant species that is located adjacent to the project area on the Heritage Bluffs property¹. The Department requests

¹ Affinis and REC Consultants. 2015. Final Biological Technical Report for Heritage Bluffs II. Prepared for

that, in addition to discussing potential direct impacts to rare plants within the project area, the DSEIR analyze any indirect impacts that may occur to *Brodiaea filifolia* or other rare plants.

We are particularly concerned that grading and hardscaping could adversely alter the hydrology on adjacent parcels with *Brodiaea filifolia*. In order to avoid or minimize this potential impact, the Department recommends the incorporation of Low Impact Development (LID), including:

- a. A site layout with sensitivity to biological resources, including off-site native habitat;
- b. the use of pervious surfaces (crushed aggregate, turf block, unit pavers, pervious concrete and asphalt) as alternatives to impervious surfaces; and,
- c. structure roof spouts emptying over pervious surfaces.

If it is anticipated that runoff cannot be dispersed through LID, other alternatives for managing stormwater that avoid or minimize the alteration of hydrology within or adjacent to the project area (e.g., a concrete drainage ditch along the toe of any adjacent graded slope descending to the area supporting *Brodiaea filifolia*) should be discussed and analyzed in the DSEIR.

2. To reduce the potential for the spread of non-native seeds which may adversely impact *Brodiaea filifolia* or other rare plants, the Department recommends that all heavy equipment proposed for use on the project site be verified as clean (including wheels, tracks, undercarriages, and bumpers, as applicable) before delivery to the project site. The City should ensure that all equipment delivered to the initial staging area(s) is documented as being weed free, including: (1) vegetation clearing equipment; (2) earth moving equipment; and (3) all project-associated vehicles (including personal vehicles) that, upon inspection by the monitoring biologist, are deemed to present a risk for spreading weeds. Equipment should be cleaned at existing construction yards or at a wash station. The biological monitor shall document that all construction equipment (as described above) has been cleaned prior to working within the project site.
3. The DSEIR should include a plant palette which does not contain non-native invasive species, as the use of native plants in landscaping further discourages spread of invasives. It also provides additional benefits such as the attraction of native pollinators and reduced water consumption; therefore, it is recommended that appropriate native plants should be used to the greatest extent feasible in landscaped areas. The applicant should not plant, seed, or otherwise introduce invasive exotic plant species to landscaped areas. Exotic plant species not to be used include those species listed on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory, which is available online at www.cal-ipc.org. This list includes but is not limited to: pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and

Spanish broom. The Department also recommends that landscaping not contain plants that require extensive irrigation, fertilizers, or pesticides.

General Comments

4. The Department has responsibility for wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion that would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. Development and conversion include but are not limited to conversion to subsurface drains, placement of fill or building of structures within the wetland, and channelization or removal of materials from the streambed. All wetlands and watercourses, whether ephemeral, intermittent, or perennial, should be retained and provided with substantial setbacks that preserve the riparian and aquatic values and maintain their value to on-site and off-site wildlife populations. Mitigation measures to compensate for impacts to mature riparian corridors must be included in the DSEIR and must compensate for the loss of function and value of a wildlife corridor.

The Department also has regulatory authority over activities in streams and/or lakes that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or "entity") must provide written notification to the Department pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, the Department determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. The Department's issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA may consider the local jurisdiction's (lead agency) Negative Declaration or Environmental Impact Report for the project. To minimize additional requirements by the Department pursuant to section 1600 *et seq.* and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSAA.²

5. The Department considers adverse impacts to a species protected by the 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 and Game Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project-related activity during

² A notification package may be obtained by accessing the Department's web site at <http://www.wildlife.ca.gov/Conservation/LSA>

the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, the Department recommends that the project proponent seek appropriate take authorization under CESA prior to implementing the project. Appropriate authorization from the Department may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and Game 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 the Department 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.

6. To enable the Department 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 DSEIR.
 - a. The document should contain 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.
 - b. A range of feasible alternatives should be included to ensure that alternatives to the proposed project are fully considered and evaluated; the alternatives should avoid or otherwise minimize impacts to sensitive biological resources. Specific alternative locations should be evaluated in areas with lower resource sensitivity where appropriate.

Biological Resources within the Project's Area of Potential Effect

7. The document should provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, sensitive, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the entire project site, undertaken at the appropriate time of year. The DSEIR should include the following information.
 - a. CEQA Guidelines, section 15125(c), specifies that knowledge on the regional setting is critical to an assessment of environmental impacts and that special emphasis should be placed on resources that are rare or unique to the region.
 - b. A thorough, recent floristic-based assessment of special status plants and natural communities, following the Department's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see <https://www.wildlife.ca.gov/Conservation/Plants/Info>). The Department recommends that floristic, alliance-based and/or association-based mapping and vegetation

impact assessments be conducted at the Project site and neighboring vicinity. The Manual of California Vegetation, second edition, should also be used to inform this mapping and assessment (Sawyer et al. 2008³). Alternately, for assessing vegetation communities located in western San Diego County, the Vegetation Classification Manual for Western San Diego County (Sproul et al. 2011⁴) may be used. 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.

- c. A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. The Department's California Natural Diversity Data Base in Sacramento should be contacted at www.wildlife.ca.gov/biogeodata/ to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code.
- d. An inventory of rare, threatened, endangered and other sensitive species on site and within the area of potential effect. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 15380). This should include sensitive fish, wildlife, reptile, and amphibian species. 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 the Department and the U.S. Fish and Wildlife Service.

Analyses of the Potential Project-Related Impacts on the Biological Resources

8. 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 DSEIR.
 - a. A discussion of potential adverse impacts from lighting, noise, human activity, exotic species, and drainage should also be included. The latter subject should address: project-related changes on drainage patterns on 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 discussions 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

3 Sawyer, J. O., T. Keeler-Wolf and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society Press, Sacramento.

4 Sproul, F., T. Keeler-Wolf, P. Gordon-Reedy, J. Dunn, A. Klein and K. Harper. 2011. Vegetation Classification Manual for Western San Diego County. First Edition. Prepared by AECOM, California Department of Fish and Game Vegetation Classification and Mapping Program and Conservation Biology Institute for San Diego Association of Governments.

the groundwater. Mitigation measures proposed to alleviate such impacts should be included.

- c. Discussions 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 NCCP). Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DSEIR.
 - d. The zoning of areas for development projects or other uses that are nearby or adjacent to natural areas may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the environmental document.
9. A cumulative effects analysis should be developed 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.

Mitigation for the Project-related Biological Impacts

10. The DSEIR should include measures to fully avoid and otherwise protect Rare Natural Communities from project-related impacts. The Department considers these communities as threatened habitats having both regional and local significance.
11. The DSEIR 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.
12. For proposed preservation and/or restoration, the DSEIR should include measures to perpetually protect the targeted habitat values from direct and indirect negative impacts. The objective should be to offset the project-induced qualitative and quantitative losses of wildlife habitat values. Issues that should be addressed include restrictions on access, proposed land dedications, monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.
13. The Department 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 3503.5 and 3513 of the California Fish and Game Code prohibit take of all raptors and other migratory nongame birds and section 3503 prohibits take of the nests and eggs of all birds. 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-

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, the Department 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.

14. The Department 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.
15. Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity.

We appreciate the opportunity to comment on the referenced NOP. Questions regarding this letter and further coordination on these issues should be directed to Jennifer Turner of the Department at (858) 467-2717 or via email at jennifer.turner@wildlife.ca.gov.

Sincerely,



Gail K. Sevens
Environmental Program Manager
South Coast Region

ec: Patrick Gower (U.S. Fish and Wildlife Service)
Scott Morgan (State Clearinghouse)

NATIVE AMERICAN HERITAGE COMMISSION
Cultural and Environmental Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691 Phone (916) 373-3710
Email: nahc@nahc.ca.gov
Website: <http://www.nahc.ca.gov>
Twitter: @CA_NAHC



RECEIVED

JUL 29 2019

Development Services

July 23, 2019

Elizabeth Shearer-Nguyen
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101

RE: SCH#1997111070 Avion Property, San Diego County

Dear Ms. Shearer-Nguyen:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Steven.Quinn@nahc.ca.gov.

Sincerely,



for

Steven Quinn
Associate Governmental Program Analyst

cc: State Clearinghouse



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Acting Director
5796 Corporate Avenue
Cypress, California 90630



Gavin Newsom
Governor

RECEIVED

JUL 26 2019

Development Services

July 22, 2019

Ms. Elizabeth Shearer-Nguyen
City of San Diego
1222 First Avenue
San Diego, California 92101
DSDEAS@sandiego.gov

NOTICE OF PREPARATION FOR DRAFT ENVIRONMENTAL IMPACT REPORT, AVION PROPERTY, SAN DIEGO (SCH# 1997111070)

Dear Ms. Shearer-Nguyen:

The Department of Toxic Substances Control (DTSC) has received a Notice of Preparation (NOP) for the Avion Property in San Diego. The project would allow development of an undeveloped 41.48-acre land into 117 dwelling units. The site is currently zoned for low density residential and agricultural uses.

As a Responsible Agency under the California Environmental Quality Act, DTSC is providing comments to the lead agency. DTSC recommends the following comments be addressed in the Environmental Impact Report (EIR), Hazards and Hazardous Materials impact analysis:

1. If the site was used for agricultural or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. The EIR should identify and determine whether current or historic uses at the project site may have resulted in any release of hazardous wastes/substances including pesticides.
2. The EIR should identify the mechanism to initiate any required investigation and/or remediation for any site that may be contaminated. If pesticides and other agricultural related chemicals were used at the site, an environmental assessment should be conducted to determine if a release has occurred. If so, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated, particularly for future residential uses.

3. All environmental investigations, sampling and/or remediation for the site should be conducted under a workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations should be summarized in an investigation report. All sampling results in which hazardous substances were found should be clearly summarized in a table. The investigation report shall also include recommendations to address sources of releases, if needed.
4. Proper investigation, sampling and remedial actions overseen by the respective regulatory agencies, if necessary, should be conducted at the site prior to the new development or any construction. All closure, certification or remediation approval reports by these agencies should be included in the EIR.
5. If buildings or other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of other related hazardous chemicals, lead-based paints or products, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

DTSC appreciates the opportunity to review the NOP. Should you need any assistance in environmental investigation, please submit a request for Lead Agency Oversight Application which can be found at: <https://dtsc.ca.gov/brownfields/voluntary-agreements-quick-reference-guide/>

Should you have any questions regarding this letter, please contact me at (714) 484-5392 or by e-mail at charin.yen@dtsc.ca.gov.

Sincerely,



Chia Rin Yen
Environmental Scientist
Brownfields Restoration and School Evaluation Branch
Site Mitigation and Restoration Program

mv/cy/yg

cc: See next page

Ms. Elizabeth Shearer-Nguyen
July 22, 2019
Page 3

cc: via email

Governor's Office of Planning and Research
State Clearinghouse
state.clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
dave.kereazis@dtsc.ca.gov

Ms. Yolanda Garza
Brownfields Restoration and School Evaluation Branch
Site Mitigation and Restoration Program
yolanda.garza@dtsc.ca.gov

Shearer-Nguyen, Elizabeth

From: Kimberly Uyeda <keuyeda@yahoo.com>
Sent: Thursday, August 29, 2019 3:55 PM
To: DSD EAS
Subject: Fw: NOP Subsequent EIR - Avion Property Project No. 598173 Date 7-2-19
Attachments: 598173 - NOP subsequent EIR Date 7-2-19.pdf

To: E. Shearer-Nguyen
Re: Project Name: Avion Property
• Project Number: 598173
• SCH No.: 97111070
• Community Area: Black Mountain Ranch Subarea I
• Council District: 5

I have read the Public Notice posted below, and I am concerned about the environmental impact of this project on the Black Mountain Area, specifically the Bluffs and surrounding communities. I have only lived in the neighborhood for 18 months, but I have seen a significant amount of construction, including landscaping and the associated immediate impacts. The area that the Avion Project is set to occur is steep chaparral leading up to the Open Space Park of Black Mountain. In fact, a number of county maintained hiking trails have been cut off from the existing development of the land, including one trailhead that is now not accessible because of the fire and utility road at the end of Sarah Ridge Road is restricted to official vehicles.

A significant amount of construction and grading will be needed to site the proposed development on this hillside. I am concerned about the short term environmental impact, which will likely include:

- Noise, including loud explosions to excavate/grade-- the houses in the Bluffs are very close to the site on Taburno Way, Sarah Ridge and Winecreek Dr. Loud noises are very disruptive to those that are at home during the day, and dangerous to those with young children, elderly and individuals with hearing deficits already.
- Dust and soil disturbance. The plants and grasses on the site currently keep the dust from spreading, excavation will create more dust in a neighborhood that is already populated by hundreds of families. While the initial assessments have not found any specific pollutants/toxics, I would be concerned about the previous usage of the land, including agricultural and mining toxins that may not have been detected in surface samples. This might include potential arsenic from an old mine on the property (32°59'08.1"N 117°06'24.0"W).
- Water and silt run-off during construction is a very large and probable concern. In our phase of construction, the builder was shut down for violations of water run-off. As a community directly adjacent to (and below) the proposed construction, homeowners have concerns about the toxins and chemicals in the surface water and groundwater that is on and surrounds our properties. Construction toxins in the water can also affect air quality, and I am very concerned about air toxins (in addition to the dust and soil disturbances mentioned above).
- Traffic on a residential road. The residential streets do not seem adequate for large construction equipment. While there are homeowners and families living in the neighborhood, construction equipment traffic represents a very real and dangerous proposition for pedestrians, bike riders and drivers.

I acknowledge that the city has a housing shortage and that there is a great need for low-income units. But the builder will be placing more higher-end houses at the top of a hill, miles from any public transportation or commercial areas, and this will contribute to more congestion and traffic on the roadways. Builders should build higher density units near public transportation hubs and not contribute to increased carbon emissions by creating situations where homeowners must drive to get anywhere. I am also very concerned about lack of evacuation routes when there is a fire. A single road for 100 new units, downhill, makes for a concerning "fire trap" in an already very high-risk fire area. Currently we have a fire road at the end of Sarah Ridge Dr., but it will not be extended to the new community as far as I can tell, and I think it is woefully inadequate for so many people.

Long term environmental impacts of this project include the destruction of sensitive habitat of native plants and animals, the encroachment upon designated open space, decreased sight lines to the Black Mountain Open Space park from all areas of the community, and possible soil erosion and landslides caused by the hillside construction.

For these reasons, I am expressing my concern over the environmental impact (short and long term) and request that careful consideration occur before the rezoning is approved. Alternative sites should be considered, including sites where there would be less environmental impact. There appears to be a similar sized area, on relatively flat, graded land in the current Bluffs development (west of Winecreek, north of Anjou Ln), although this area is fenced to protect a species of native plant. It does not seem reasonable to excavate a hillside with all native shrubs and plants, when there is a partially excavated area with little or no native plants that appear to have survived, just blocks away.

Thank you for allowing me to express my concerns with this rezoning request.

Kimberly Uyeda
keuyeda@yahoo.com
15924 Taburno Way
San Diego, CA 92127

----- Forwarded Message -----

From: Lee, Myra <MYLee@sandiego.gov>

Sent: Tuesday, July 2, 2019, 8:02:16 AM PDT

Subject: NOP Subsequent EIR - Avion Projerty Project No. 598173 Date 7-2-19

NOP

Hi Everyone,

For your review attached is the Public Notice for the draft environmental document distributed for draft public review. The Public Notice, draft environmental document and associated technical appendices will be posted on the City Clerk's website today.

If you any questions regarding to this Environmental Document, please contact Senior Planner, E. Shearer-Nguyen as indicated on the public notice.

Thank you,

Myra Lee

Clerical Assistant II

City of San Diego

Development Services Department

619-446-5189/MYLee@sandiego.gov