

## **Appendix A. NOP Comments**

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Date of Notice: May 5, 2023

**PUBLIC NOTICE OF PREPARATION OF A  
PROGRAM ENVIRONMENTAL IMPACT REPORT  
AND  
A SCOPING MEETING  
PLANNING DEPARTMENT**

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**PUBLIC NOTICE:** The City of San Diego (City) as the Lead Agency under the California Environmental Quality Act (CEQA) has determined that the project described below will require the preparation of a Program Environmental Impact Report (PEIR) in compliance with CEQA. This Notice of Preparation (NOP) of a PEIR and Scoping Meeting was publicly noticed and distributed on **Friday, May 5, 2023**. This notice was published in the San Diego Daily Transcript and placed on the City's Planning Department website at: <https://www.sandiego.gov/planning/programs/ceqa> and on the City's CEQA website at: <https://www.sandiego.gov/ceqa/meetings>.

**SCOPING MEETING:** The City of San Diego will hold a public scoping meeting on **Wednesday, May 24, 2023, from 4:00 to 5:30 PM** online via Zoom. **Please note that depending on the number of attendees, the meeting could end earlier than 5:30 PM.** The public scoping meeting can be accessed at: <https://sandiego.zoomgov.com/j/1608940192>. Go to "Join a Meeting." Meeting ID: 160 894 0192. To access the webinar via phone, please call +1 669 254 5252 and enter the meeting information.

The City requests that all comments regarding the proposed PEIR's scope be provided electronically via e-mail to [PlanningCEQA@sandiego.gov](mailto:PlanningCEQA@sandiego.gov) with "**Coastal Resilience Master Plan**" in **the subject line**. However, if a hard copy submittal is preferred, it may be submitted to: Jordan Moore, Senior Environmental Planner, City of San Diego Planning Department, 9485 Aero Drive, MS 413, San Diego, CA 92123. All comments must be received no later than **Monday, June 5, 2023**. Responsible and Trustee agencies are requested to indicate their statutory responsibilities in connection with this project when responding. A PEIR incorporating public input will then be prepared and distributed for the public to review and comment.

**PROJECT NAME:** Coastal Resilience Master Plan

**LOCATION:** City of San Diego

**COMMUNITY PLANNING AREAS:** Torrey Pines, La Jolla, Pacific Beach, Mission Bay Park, Ocean Beach, and Peninsula

**COUNCIL DISTRICT:** 1 and 2

## **History of the Project**

### **Climate Change Hazard Vulnerability Assessment and Climate Resilient SD**

In 2020, the City completed a Citywide Climate Change Hazard Vulnerability Assessment to identify risks and potential impacts from climate change to the City's assets and resources. This Vulnerability Assessment informed the development of Climate Resilient SD, the City's comprehensive climate adaptation and resilience plan to identify beneficial adaptation strategies, capitalize on co-benefits, increase local resilience, and provide a framework for citywide resilience action. The Coastal Resilience Master Plan will use Climate Resilient SD to inform development of nature-based coastal resilience projects to build resilience to the impacts of sea level rise and enhance and protect the City's coastline, as described further in the Project Description below.

### **National Fish and Wildlife Foundation (NFWF) – National Coastal Resilience Fund 2021 Grant**

The City of San Diego applied for and was awarded the NFWF National Coastal Resilience Fund 2021 Grant. The grant is to prepare a Coastal Resilience Master Plan and PEIR, which will include project concepts and a pilot project design that, if implemented, would support community resilience, protect endangered species and habitat, and reduce risk to coastal storms and flooding. The Coastal Resilience Master Plan is anticipated to be completed by Winter 2024.

## **Project Location**

The Coastal Resilience Master Plan would span the coastal jurisdictional boundaries of the City of San Diego (see Figure 1, Regional Location), considering coastal locations such as: Los Peñasquitos Lagoon, Blacks Beach, La Jolla Shores Beach Park, Marine Street Beach, Windansea Beach, Pacific Beach, Ocean Beach Dog Beach, Ocean Beach, Sunset Cliffs, and the Naval Training Center (see Figure 2, Project Locations).

## **Project Description**

Climate change increasingly puts the City and its critical built and natural resources at risk of coastal flooding and erosion due to sea level rise. The City proposes a Coastal Resilience Master Plan, which will identify specific resilience and conservation needs along the coastline and develop a portfolio of nature-based solutions to promote resilience, protect critical coastal habitats, and support coastal access. The Coastal Resilience Master Plan will engage the public; analyze 10 sites based on feasibility, risk, and benefits; develop nature-based solutions for six of the most feasible locations; and select a pilot project, as described further below.

The Coastal Resilience Master Plan will evaluate 10 locations for nature-based solutions at a conceptual level and narrow the scope down to up to six locations most appropriate for nature-based solutions. The six locations will be analyzed at greater detail in the Coastal Resilience Master Plan and PEIR for suitability of nature-based solutions with up to three concepts for further development. One location (the pilot project) will be analyzed at 15 percent design level. The Coastal Resilience Master Plan will evaluate nature-based solutions, including both green and natural infrastructure. Green infrastructure encompasses a wide range of built or engineered solutions modeled after nature while natural solutions often refer to restoration activities. Both support purposes such as stormwater management, flood mitigation, urban heat island reduction, and climate adaptation. Nature-based solutions that achieve multiple benefits, such as habitat and

wildlife protection, water quality improvements, flood storage, resilience from potential upstream impacts, recreational opportunities, and increased coastal access for Communities of Concern, would be prioritized. Solutions to be considered include, but are not limited to, the following:

- **Wetland creation/restoration** for ecosystems characterized by permanent or seasonal inundations, which help mitigate flooding, provide habitat, improve water quality, and absorb wave energy.
- **Living shorelines**, which stabilize and protect the shoreline using a combination of plants, sand, rock, and other natural materials. They can help reduce wave energy, slow erosion, and minimize flooding.
- **Oyster reefs**, which provide natural barriers to the shoreline, protecting it from erosion, strong waves, and storm surge.
- **Waterfront parks**, including open space parks or recreational spaces in coastal areas that are designed to flood during extreme events, minimizing flooding elsewhere.
- **Engineered dunes** designed to or above the 100-year Stillwater elevation. Dunes can be designed to combine the aesthetic and habitat benefits of a dynamic beach and dune system with the robust storm protection provided by a structural core.
- **Landward realignment** involves moving the coastline boundary inland to reduce both coastal flooding and erosion.
- **Living levees/ecotone slopes** that, instead of dropping down sharply, slope gently downwards in the same way that the land naturally would. This allows for natural, gradual transitions—from open water, to tidal mudflat, to tidal marsh, to “ecotone” or transitional upland habitat—to be re-established in these areas.

The nature-based solutions will be developed through gathering relevant data to assess each site’s unique opportunities and constraints in order to ensure feasibility. The concepts will be presented graphically (i.e., plan and section views or illustrations) and clearly described. The concepts for each site will be compared in a multi-criteria decision matrix to support the City, stakeholders, and community members in understanding the proposed solutions for each site. The matrix will include an assessment of the community, resilience, economic, and ecosystem benefits.

The City will engage the public and stakeholders throughout the project to develop nature-based solutions.

**APPLICANT:** City of San Diego Planning Department, 9485 Aero Drive, San Diego, CA 92123

**RECOMMENDED FINDING:** Pursuant to CEQA Guidelines Section 15060(d), the proposed project may result in significant environmental impacts in the following areas: **Air Quality; Biological Resources; Energy Conservation; Greenhouse Gas Emissions; Geologic Conditions; Hazards & Hazardous Materials; Historical, Archaeological, and Tribal Cultural Resources; Hydrology/Water Quality; Land Use; Noise; Paleontological Resources; Public Services and Facilities; Public Utilities; Transportation & Circulation; and Visual Effects and Neighborhood Character.**

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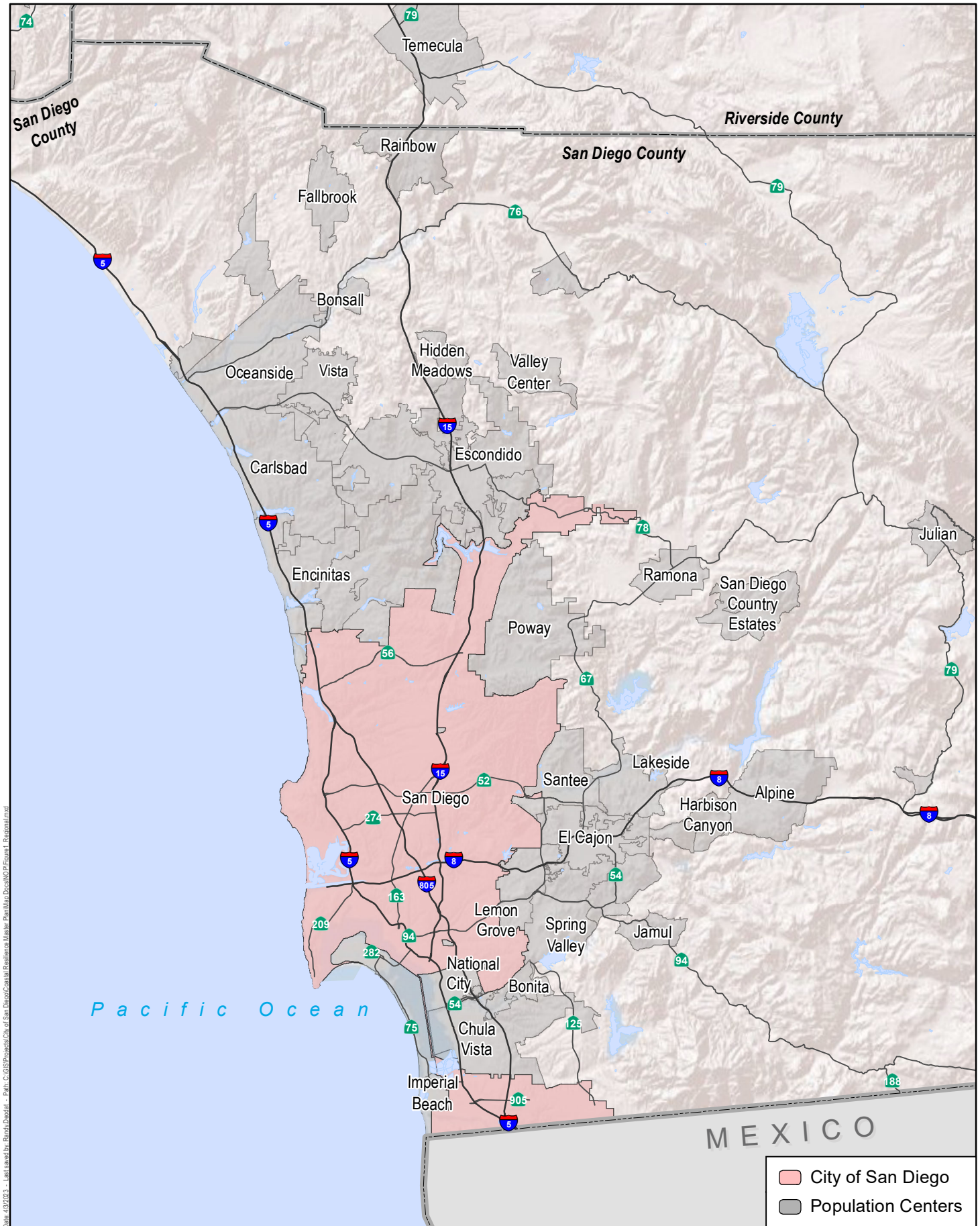
<sup>1</sup> The City’s term for communities with low to moderate access to opportunity based on the City’s Climate Equity Index. The Climate Equity Index was developed in 2019, and revised in 2021, to measure the level of access to opportunity residents have within a census tract and assess the degree of potential impact from climate change to these areas.

**AVAILABILITY IN ALTERNATIVE FORMAT:** To request this Notice in alternative format, call the Planning Department at (619) 235-5200 OR (800) 7352929 (TEXT TELEPHONE).

**ADDITIONAL INFORMATION:** For environmental review information, please contact Jordan Moore at (619) 236-5061 or [JTMoore@sandiego.gov](mailto:JTMoore@sandiego.gov). For information regarding public meetings/hearings on this project, please contact Chief Resilience Officer Julia Chase, at (619) 236-6057 or [ChaseJ@sandiego.gov](mailto:ChaseJ@sandiego.gov). This Notice was published in the San Diego Daily Transcript and distributed on Friday, May 5, 2023.

Heidi Vonblum  
Director  
Planning Department

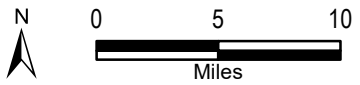
**ATTACHMENTS:** Figure 1: Regional Location  
Figure 2: Project Locations



Date: 4/10/2023 - Last saved by: Randy Dancout - Path: C:\GIS\Projects\City of San Diego\Capital Resilience Master Plan\Map Docs\NO Pr Figures - Regional.mxd

- City of San Diego
- Population Centers

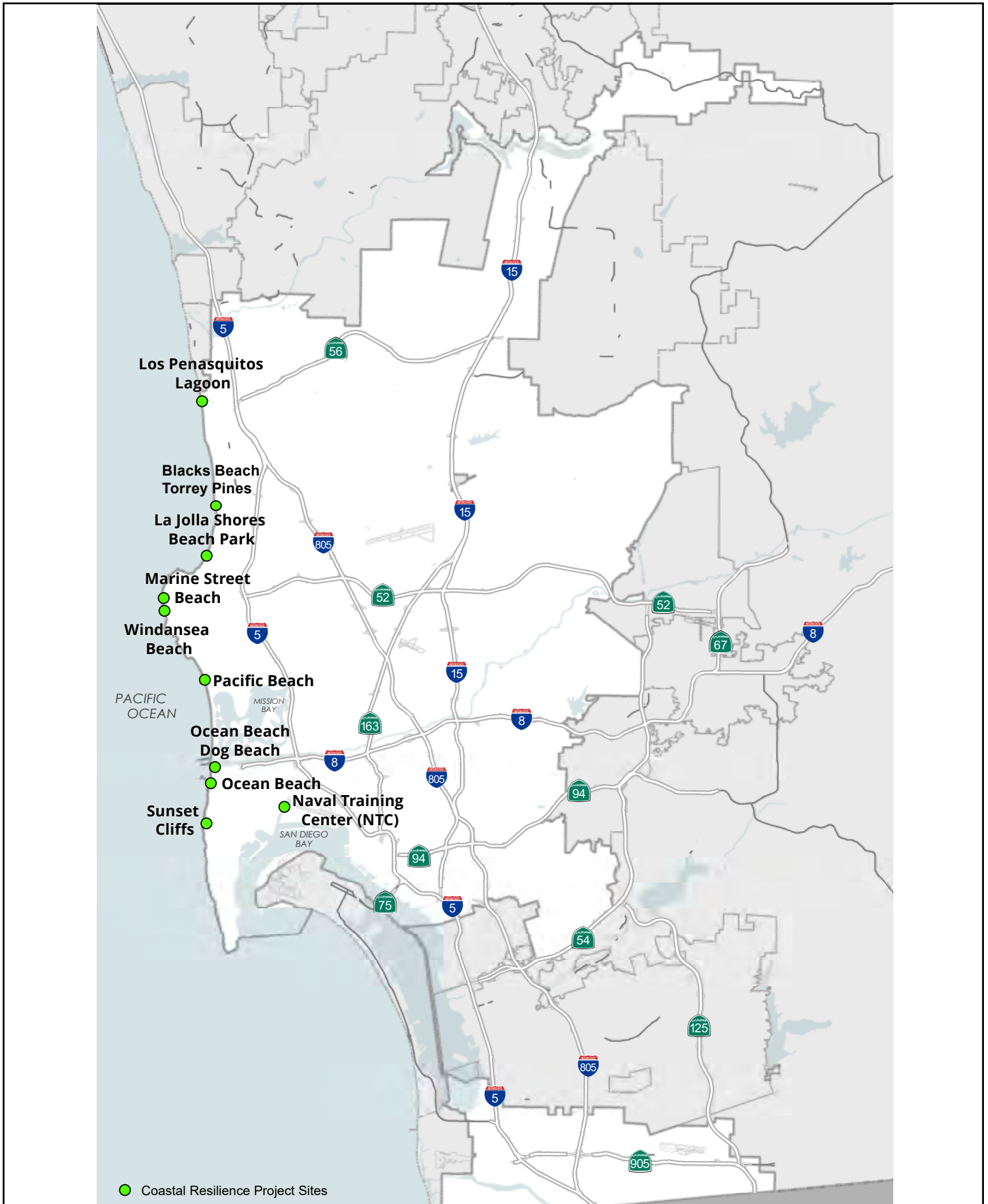
Source: ESRI 2023.



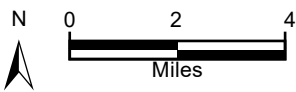
## Figure 1

### Regional Location

Coastal Resilience Master Plan Program EIR



Source: City of San Diego 2021.



**Figure 2**  
Project Locations



**From:** [SDGov Webmaster](#)  
**To:** [PLN PlanningCEQA](#)  
**Subject:** Public Comment from Jonathan Cohen  
**Date:** Monday, June 5, 2023 4:05:22 PM

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Submitted on Monday, June 5, 2023 - 16:05

**NOP/SCOPING MEETING:**

Public Notice of Preparation of a Program Environmental Impact Report (PEIR)  
and a Scoping Meeting for the Coastal Resilience Master Plan

**MEETING DATE:**

05/05/2023

**NAME:**

Jonathan Cohen

**EMAIL ADDRESS:**

jonathan@jonathancohen.net

**COMMENT:**

I reside in Carmel Valley. In the draft Program Environmental Impact Report (PEIR) for this project, I request a glossary that explains phrases such as community resilience and coastal access.

**From:** [Martinez, Tiffany@DOT](mailto:Martinez.Tiffany@DOT)  
**To:** [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)  
**Cc:** [Moore, Jordan](mailto:Moore, Jordan); [ALUCapp@san.org](mailto:ALUCapp@san.org)  
**Subject:** [EXTERNAL] 2023050148, Coastal Resilience Plan  
**Date:** Monday, June 5, 2023 3:36:10 PM  
**Attachments:** [2023050148 Aero-DOT Comment.pdf](#)

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Hello,

Please find the comments from the Division of Aeronautics attached regarding [SCH #2023050148 Coastal Resilience Plan](#).

Tiffany A. Martinez | Transportation Planner  
Office of Aviation Planning  
Caltrans Division of Aeronautics  
(916) 879-6596  
[tiffany.martinez@dot.ca.gov](mailto:tiffany.martinez@dot.ca.gov)

## California Department of Transportation

DIVISION OF AERONAUTICS – M.S. #40  
1120 N STREET  
P. O. BOX 942874  
SACRAMENTO, CA 94274-0001  
PHONE (916) 654-4959 | FAX (916) 653-9531 | TTY 711  
[www.dot.ca.gov](http://www.dot.ca.gov)



June 5, 2023

Jordan Moore  
Senior Environmental Planner  
City of San Diego  
9485 Aero Drive  
San Diego, CA 92123

Electronically Sent <[JTMoore@sandiego.gov](mailto:JTMoore@sandiego.gov)>

### **Re: 2023050148, Coastal Resilience Master Plan, City of San Diego**

Dear Mr. Moore,

The California Department of Transportation, Division of Aeronautics has reviewed the Notice of Preparation of a Draft EIR for the project titled Coastal Resilience Master Plan. One of the goals of the California Department of Transportation (Caltrans), Division of Aeronautics (Division), is to assist cities, counties, and Airport Land Use Commissions or their equivalent (ALUC), to understand and comply with the State Aeronautics Act pursuant to the California Public Utilities Code (PUC), Section 21001 et seq. Caltrans encourages collaboration with our partners in the planning process and thanks you for including the Division in the review of the Notice of Preparation.

Should the proposed pilot site be in the safety zone, airport influence area, or noise contours as defined by the San Diego International Airport Land Use Plan the site must adhere to the safety criteria and restrictions defined in the ALUCP formed by the ALUC pursuant to the PUC, Section 21674.

Caltrans advises the City of San Diego to coordinate with the ALUC to ensure consistency of the Coastal Resilience Master Plan with the ALUCP according to the State Aeronautics Act's statutory procedure. An ALUCP is crucial in minimizing noise nuisance and safety hazards around airports while promoting the orderly development of airports, as declared by the California Legislature. A responsibility of the ALUC is to assess potential risk to aircraft and persons in airspace and people occupying areas within the vicinity of the airport.

If you have any questions or need additional information, please contact me at my email address: [tiffany.martinez@dot.ca.gov](mailto:tiffany.martinez@dot.ca.gov).

Jordan Moore, Senior Environmental Planner  
June 5, 2023  
Page 2

Sincerely,

A handwritten signature in black ink that reads "Tiffany A. Martinez". The signature is written in a cursive, flowing style.

Tiffany A. Martinez  
Transportation Planner, Division of Aeronautics

Cc: State Clearinghouse

**From:** [Dodson, Kimberly@DOT](mailto:Dodson, Kimberly@DOT)  
**To:** [Moore, Jordan](mailto:Moore, Jordan)  
**Cc:** [Mccumsey, Mark@DOT](mailto:Mccumsey, Mark@DOT); [Kushkaki, Farah@DOT](mailto:Kushkaki, Farah@DOT); [State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov); [Allen, Reece@DOT](mailto:Allen, Reece@DOT)  
**Subject:** [EXTERNAL] Coastal Resilience Master Plan NOP SCH# 2023050148  
**Date:** Monday, June 5, 2023 1:18:38 PM  
**Attachments:** [SD\\_VAR Coastal Resilience Master Plan NOP-5-31-2023.pdf](#)

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Greetings:

Please see the attached comment letter for the Coastal Resilience Master Plan NOP SCH# 2023050148.

Thank you,

Kimberly D. Dodson, GISP, M. Eng.  
Associate Transportation Planner  
Caltrans District 11 LDR Branch  
4050 Taylor St., MS-240  
San Diego, CA 92110  
[Kimberly.Dodson@dot.ca.gov](mailto:Kimberly.Dodson@dot.ca.gov)  
Telework phone: 619-985-1587

## California Department of Transportation

DISTRICT 11  
4050 TAYLOR STREET, MS-240  
SAN DIEGO, CA 92110  
(619) 709-5152 | FAX (619) 688-4299 TTY 711  
[www.dot.ca.gov](http://www.dot.ca.gov)



May 30, 2023

11-SD-5, 8  
PM VAR  
Coastal Resilience Master Plan  
NOP/SCH#2023050148

Ms. Jordan Moore  
Senior Environmental Planner  
City of San Diego  
9485 Aero Drive  
San Diego, CA 92123

Dear Ms. Moore:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Notice of Preparation (NOP) for the Coastal Resilience Master Plan located near Interstate 5 (I-5) and Interstate 8 (I-8). The mission of Caltrans is to provide a safe and reliable transportation network that serves all people and respects the environment. The Local Development Review (LDR) Program reviews land use projects and plans to ensure consistency with our mission and state planning priorities.

Safety is one of Caltrans' strategic goals. Caltrans strives to make the year 2050 the first year without a single death or serious injury on California's roads. We are striving for more equitable outcomes for the transportation network's diverse users. To achieve these ambitious goals, we will pursue meaningful collaboration with our partners. We encourage the implementation of new technologies, innovations, and best practices that will enhance the safety on the transportation network. These pursuits are both ambitious and urgent, and their accomplishment involves a focused departure from the status quo as we continue to institutionalize safety in all our work.

Caltrans is committed to prioritizing projects that are equitable and provide meaningful benefits to historically underserved communities, to ultimately improve transportation accessibility and quality of life for people in the communities we serve.

We look forward to working with the City in areas where the City and Caltrans have joint jurisdiction to improve the transportation network and connections between

various modes of travel, with the goal of improving the experience of those who use the transportation system.

Caltrans has the following comments:

### **Traffic Impact Study**

- A Vehicle Miles of Travel (VMT) based Traffic Impact Study (TIS) should be provided for this project, if applicable. Please use the Governor's Office of Planning and Research Guidance to identify VMT related impacts.<sup>1</sup>
- The TIS may also need to identify the proposed project's near-term and long-term safety or operational issues, on or adjacent any existing or proposed State facilities.

### **Climate Change**

Caltrans District 11 supports the City's goal to further evaluate coastal climate impacts in order to identify adaptation options and improve resilience. During the development of the detailed site analyses please consider Caltrans' and other agency's previous work regarding coastal climate resilience and nature-based solutions including, but not limited to, the below examples:

- *Caltrans Climate Change Vulnerability Assessment*
- *Caltrans Climate Change Adaptation Priorities Report*
- *Caltrans Design Manual for Hybrid Coastal Protection Strategies*
- *Caltrans Climate Change Adaptation for Pacific Coast Highway Bicycle & Pedestrian Infrastructure* (estimated release date 7/2023)
- *The California Coastal Commission's Sea Level Rise Coastal Adaptation Planning Guidance for Critical Infrastructure*
- *The Federal Highway Administration's Nature-Based Solutions for Coastal Highway Resilience*
- *The California Natural Resource Agency's Toward Natural Shoreline Infrastructure to Manage Coastal Change in California*
- *The Ocean Protection Council's State Agency Sea-Level Rise Action Plan for California*

When considering adaptation concepts and design feasibility please consider the impacts not only from sea level rise and storm surge, but also coastal erosion, changes in stillwater level, riverine flooding, scour, groundwater, earthquakes, liquefaction,

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<sup>1</sup> California Governor's Office of Planning and Research (OPR) 2018. "Technical Advisory on Evaluating Transportation Impacts in CEQA." [https://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf)

tsunami, wildfire and other stressors associated with climate change. In addition, when evaluating potential sea level rise adaptation strategies, please consider emphasizing phased adaptation/resilience solutions and management strategies rather than large capital projects. Phased adaptation solutions allow for change over time and may be more cost effective when compared to large capital projects. Phased solutions are also preferred for their less permanent impact to the environment and allow for less disruptive impacts to natural processes.

Please include Caltrans in the stakeholder engagement process during the development of this master plan. Caltrans looks forward to reviewing the detailed analysis of the ten sites within the PEIR and will provide additional comments once released.

## **Environmental**

Caltrans welcomes the opportunity to be a Responsible Agency under the California Environmental Quality Act (CEQA), as we have some discretionary authority of a portion of the project that is in Caltrans' R/W through the form of an encroachment permit process. We look forward to the coordination of our efforts to ensure that Caltrans can adopt the alternative and/or mitigation measure for our R/W. We would appreciate meeting with you to discuss the elements of the EIR that Caltrans will use for our subsequent environmental compliance.

An encroachment permit will be required for any work within the Caltrans' R/W prior to construction. As part of the encroachment permit process, the applicant must provide approved final environmental documents for this project, corresponding technical studies, and necessary regulatory and resource agency permits. Specifically, CEQA determination or exemption. The supporting documents must address all environmental impacts within the Caltrans' R/W and address any impacts from avoidance and/or mitigation measures.

We recommend that this project specifically identifies and assesses potential impacts caused by the project or impacts from mitigation efforts that occur within Caltrans' R/W that includes impacts to the natural environment, infrastructure including but not limited to highways, roadways, structures, intelligent transportation systems elements, on-ramps and off-ramps, and appurtenant features including but not limited to fencing, lighting, signage, drainage, guardrail, slopes and landscaping. Caltrans is interested in any additional mitigation measures identified for the project's draft Environmental Document.



## Right-of-Way

- Per Business and Profession Code 8771, perpetuation of survey monuments by a licensed land surveyor is required, if they are being destroyed by any construction.
- Any work performed within Caltrans' R/W will require discretionary review and approval by Caltrans and an encroachment permit will be required for any work within the Caltrans' R/W prior to construction.

Additional information regarding encroachment permits may be obtained by contacting the Caltrans Permits Office at (619) 688-6158 or emailing [D11.Permits@dot.ca.gov](mailto:D11.Permits@dot.ca.gov) or by visiting the website at <https://dot.ca.gov/programs/traffic-operations/ep>. Early coordination with Caltrans is strongly advised for all encroachment permits.

If you have any questions or concerns, please contact Kimberly Dodson, LDR Coordinator, at (619) 985-1598 or by e-mail sent to [Kimberly.Dodson@dot.ca.gov](mailto:Kimberly.Dodson@dot.ca.gov).

Sincerely,

*Farah Kushkaki for*

MAURICE A. EATON  
Branch Chief  
Local Development Review

**From:** [Andrew Meyer](#)  
**To:** [PLN PlanningCEQA](#); [Moore, Jordan](#)  
**Cc:** [Jim Peugh](#); [Brandon Weber](#); [Muriel Spooner](#)  
**Subject:** [EXTERNAL] Coastal Resilience Master Plan comment letter  
**Date:** Tuesday, June 6, 2023 8:42:56 AM  
**Attachments:** [SDAS Comment letter City of San Diego Coastal Resilience Master Plan May 5 2023 2.pdf](#)

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Good morning,

Please accept this comment letter from the San Diego Audubon Society about the City of San Diego's Coastal Resilience Master Plan.

Please let me know if you have any questions.

Andrew

--

Andrew Meyer (he/him/his)

Director of Conservation



4010 Morena Blvd., St. 100, San Diego, CA 92117

Office: 858-273-7800, 101

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Fostering the protection and appreciation



of birds, other wildlife, and their habitats...

June 5th, 2023

Jordan Moore, Senior Planner  
City of San Diego Planning Department  
9485 Aero Drive, MS 413  
San Diego, CA 92123  
[PlanningCEQA@sandiego.gov](mailto:PlanningCEQA@sandiego.gov)

Re: City of San Diego Coastal Resilience Master Plan  
Dear Ms. Moore,

The San Diego Audubon Society (SDAS) is a 3,000+ member non-profit organization with a mission to foster the protection and appreciation of birds, other wildlife, and their habitats, through education and study, and to advocate for a cleaner, healthier environment. We have been involved in conserving, restoring, managing, and advocating for wildlife and their habitat in the San Diego region since 1948. San Diego Audubon Society offers these comments and concerns on the Notice Of Preparation to help the City's Coastal Resilience Master Plan project be as successful as possible.

We appreciate that 'protect and enhance habitat' is one of the four project purposes shared by the City. Our City's birds and other wildlife are contending with incredible challenges and our coastal habitats are critical components of their long-term needs for survival. Only 10% of California's historic wetlands remain. The Resilience Plan should prioritize coastal habitats, including nearby upland, transitional, tidal wetland, mudflat, eelgrass and nearby marine habitats. All of these are used by numerous birds and other wildlife and need to be in the plan. Is the City prioritizing any lagoon or estuary locations in the project locations? We encourage the City to include locations like these for their unique values, including Otay Valley river mouth, Peñisquitos Lagoon, South San Diego Bay, and Mission Bay locations.

San Diego Audubon Society also wants to highlight the importance of input and guidance from local communities, the best available science, and from regulatory agencies. If these audiences are not invited in and listened to, the value of the Master Plan will be greatly diminished in its ability to be used as an effective roadmap for future projects. By preserving habitats for local species, reducing the effects of climate change, and improving public access and engagement with the area, we hope to work with the City to ensure this unique part of California's coastline remains healthy, safe, and vibrant for generations to come.

Sincerely,

James A. Peugh  
San Diego Audubon Society Chair, Conservation Committee

**From:** [Zamora, Cherry@CATC](mailto:Zamora,Cherry@CATC)  
**To:** [PLN\\_PlanningCEQA](#)  
**Cc:** [Pennebaker, Laura@DOT](mailto:Pennebaker,Laura@DOT)  
**Subject:** [EXTERNAL] Coastal Resilience Master Plan  
**Date:** Monday, June 5, 2023 11:09:36 AM

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Dear Jordan Moore:

The California Transportation Commission (Commission) has received the City of San Diego's *Notice of Preparation of a Program Environmental Impact Report and Scoping Meeting for the Coastal Resilience Master Plan*. Commission staff do not have comments at this time.

Regards,

Cherry Zamora  
California Transportation Commission  
(916) 654-4245 | [cherry.zamora@catc.ca.gov](mailto:cherry.zamora@catc.ca.gov)

**From:** [Howell, Susan@Wildlife](mailto:Howell,Susan@Wildlife)  
**To:** [Moore, Jordan](mailto:Moore,Jordan)  
**Cc:** [PLN\\_PlanningCEQA](mailto:PLN_PlanningCEQA); [Wilkins, Eric@Wildlife](mailto:Wilkins,Eric@Wildlife); [Turner, Jennifer@Wildlife](mailto:Turner,Jennifer@Wildlife); [Drewe, Karen@Wildlife](mailto:Drewe,Karen@Wildlife); [Lane, Jessie@Wildlife](mailto:Lane,Jessie@Wildlife); [Ludovissy, Jennifer@Wildlife](mailto:Ludovissy,Jennifer@Wildlife); [Mayer, David@Wildlife](mailto:Mayer,David@Wildlife); [OPR State Clearinghouse](mailto:OPR_State_Clearinghouse)  
**Subject:** [EXTERNAL] Comment Letter  
**Date:** Monday, June 5, 2023 7:13:20 AM  
**Attachments:** [230601\\_City\\_of\\_San\\_Diego\\_Coastal\\_Resilience\\_Master\\_Plan\\_NOP\\_Comment\\_Letter\\_Clean.docx.pdf](#)

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Good Morning,

Please find attached the comment letter for the Coastal Resilience Master Plan. If you have any questions or concerns regarding this letter, please feel free to contact Jessie Lane via email at [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov).

Thank you for your time,

*Susan Howell*

Staff Services Analyst  
California Department of Fish and Wildlife  
3883 Ruffin Road  
San Diego, CA 92123  
858-467-4253 (Office) 858-386-9368 (Cell)  
[Susan.Howell@wildlife.ca.gov](mailto:Susan.Howell@wildlife.ca.gov)



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

South Coast Region  
3883 Ruffin Road | San Diego, CA 92123  
wildlife.ca.gov

June 2, 2023

Jordan Moore  
Senior Environmental Planner  
City of San Diego  
9485 Aero Drive  
San Diego, CA 92123  
[JTMoore@sandiego.gov](mailto:JTMoore@sandiego.gov)

**Subject: Coastal Resilience Master Plan**

Dear Jordan Moore:

COASTAL RESILIENCE MASTER PLAN (PROJECT)  
NOTICE OF PREPARATION (NOP)  
SCH# 2023050148

The California Department of Fish and Wildlife (CDFW) received a notice of preparation (NOP) of a draft program environmental impact report (PEIR) from the City of San Diego for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Senior Environmental Planner  
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habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. 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.*), the Project proponent may seek related take authorization as provided by the Fish and Game Code. The City of San Diego participates in the NCCP program by implementing its approved Multiple Species Conservation Program (MSCP) Subarea Plan (SAP).

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of San Diego (City)

**Objective:** The Coastal Resilience Master Plan (Plan) is being developed in response to projections of coastal flooding and erosion of City resources, due to sea level rise driven by climate change. The 2020 Climate Change Hazard Vulnerability Assessment (City 2020) assessed climate change risks and potential impacts to City assets, which informed the development of the City's Climate Resilient SD Plan (City 2022). The City was awarded funding through a 2021 National Fish and Wildlife Foundation National Coastal Resilience Fund grant, to prepare the Coastal Resilience Master Plan and PEIR.

The Plan will identify 10 locations for potential nature-based solutions to adapt to climate change; six locations will then be selected for further analysis in the Plan and PEIR. A single location will be analyzed at a 15 percent design level. Design elements will incorporate engineered solutions modeled after nature, as well as restoration activities. Several elements identified for consideration include wetland creation/restoration, living shorelines, oyster reefs, waterfront parks, engineered dunes, landward realignment, and living levees/ecotone slopes.

**Location:** The Plan will include coastal areas within the City of San Diego's jurisdiction. The following locations will be considered: Los Peñasquitos Lagoon, Blacks Beach, La Jolla Shores, Marine Street Beach, Windansea Beach, Pacific

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Beach, Ocean Beach Dog Beach, Ocean Beach, Sunset Cliffs, and the Naval Training Center.

**Biological Setting:** The diverse habitats of San Diego's coast support a wide variety of biological resources, including many species listed under the California Endangered Species Act, the federal Endangered Species Act, as well as several California Fully Protected species. Marine habitats such as lagoon, eelgrass, intertidal, and subtidal habitats provide vital resources for fish and wildlife. Some locations include areas (i.e., 'beds') of eelgrass (*Zostera marina*, *Z. pacifica*), which is a sensitive marine habitat type and is important to many aquatic and nearshore species. These locations are also important fish nursery habitat for fish spawning, shelter, and foraging.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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.

To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, wildlife, and natural habitats, we recommend the following information be included in the PEIR:

### Comments

- 1) **Biological Resource Inventory:** The document should contain a complete description of the Project, including purpose and need, that describes all terrestrial and marine habitats within or adjacent to the Project area, all staging areas and access routes to the construction and staging areas. The Project area is described as the area in which potential effects may occur.

The document should also provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying endangered, threatened, sensitive, 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. Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines, Section 15380). This should include sensitive fish and wildlife species. Seasonal variations in use of the Project area by wildlife should also be addressed. Focused species-



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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 CDFW and the U.S. Fish and Wildlife Service.

2) **Biological Impacts:** 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 PEIR:

a) a discussion of potential adverse impacts from lighting, noise, human activity, exotic species, recreational uses, and drainage. Mitigation measures proposed to alleviate such impacts should be included.

b) discussion 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., existing preserve lands or lands designated as Multi-Habitat Planning Area (MHPA) associated with the City's SAP).

c) CDFW also recommends that a habitat gain/loss table be included, which calculates the expected net habitat losses and gains of each type of habitat area lost, restored, enhanced, and created.

3) **Marine Species and Habitats:** To better understand potential effects and impacts from the proposed Project, baseline surveys should be conducted, and the results included in the Draft PEIR. Baseline surveys of marine habitats should include native and artificial habitats, and native and non-native species. The surveys should include all marine areas within the Project's footprint. Invasive marine *Caulerpa* spp. should also be included in marine baseline surveys. All excavations and placement of sediment in Project areas within, and adjacent to, all existing natural wetland or eelgrass habitat should be included in a site-specific baseline marine resources survey and Project impacts/benefits assessment. This should be performed to accurately assess wetland restoration benefits and impacts to marine species and habitats. Historical marine biological species and habitats for the Project area may also be found in the Marine BIOS database on the CDFW's website (<https://wildlife.ca.gov/Conservation/Marine/GIS/MarineBIOS>).

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CDFW recommends the marine biological survey and impact assessment reports include a listing of each Project component and the habitat that will be impacted, the total area of habitat impacted, and proposed mitigation measures for avoiding, and minimizing impacts. Additionally, the baseline assessment should include a habitat loss/gain summary indicating the total net gain or loss of each habitat impacted verses habitat restored. If impacts or net losses to sensitive, native marine habitats are unavoidable, additional mitigation plans should be developed to compensate for lost existing habitats.

- 4) **Special-status Species:** The PEIR should thoroughly analyze direct, indirect, and cumulative impacts to any special-status species likely to occur in the Project area. Impacts to species designated as Fully Protected must be completely avoided, as these species may not be taken or possessed at any time per section 3511 of the Fish and Game Code. Avoidance measures for avian species may include phasing construction to occur outside of nesting season, conducting species-specific surveys when construction will occur within 500' of a nesting site, retaining a qualified biological monitor on-site during construction, and implementation of no-activity buffers around active nests.

CDFW also considers adverse impacts to a species protected by the California Endangered Species Act (CESA), for the purposes of CEQA, to be significant without mitigation. As to CESA, take of any endangered, threatened, or candidate species not already covered by the City's SAP that results from the Project is prohibited, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if the Project, Project construction, or any Project-related activity during the life of the Project will result in take of a species designated as endangered or threatened, or a candidate for listing under CESA, unless covered by the City's SAP permit, CDFW recommends that the Project proponent seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from CDFW may include an incidental take permit (ITP) or a consistency determination in certain circumstances, among other options (Fish and G. Code §§ 2080.1, 2081, subds. (b),(c)). Early consultation is encouraged, as significant modification to a project and mitigation measures may be required to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, may require that CDFW issue a separate CEQA document for the issuance of an ITP unless the Project CEQA document addresses all Project impacts to CESA-listed species and specifies a mitigation monitoring and reporting

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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.

- 5) **Sensitive Marine Species and Habitats:** Many important commercial and recreational fish species use the Project area for breeding, shelter, spawning, and foraging. Potential impacts to marine fish, including both commercially and recreationally important species, should be identified and any significant impacts should be avoided and minimized to below a level of significance. A list and description of fish and wildlife species and habitat in the Bay may be found on Marine Bios (<https://wildlife.ca.gov/Conservation/Marine/GIS/MarineBIOS>).
- 6) **Mitigation for Project-related Biological Impacts:** The PEIR 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 discussed.
- 7) **Living Shorelines and Oyster Reefs:** To reduce wave energy, slow erosion, and minimize flooding and storm surge, the NOP proposes to create nature-based solutions such as living shorelines and oyster reefs. With limited details from the NOP, CDFW is identifying the proposed infrastructure as an artificial reef (Fish and Game Code Section 6421). CDFW has authority for artificial reefs under a variety of roles including Statutory/Legislative Authority, Trustee and Responsible Agency Status under CEQA and the Marine Life Management Act, and an advisory role to other agencies. Fish and Game Code Section 6420-6425 established the California Artificial Reef Program (CARP) through legislation in 1985. The program was created to investigate the potential to enhance declining species through the placement of artificial reefs and is currently unfunded with no identified source of funding. However, the CARP does not consider reef placement for mitigation, dampening effects of sea level rise, improve diving opportunities, or restoration. In order to provide adequate consultation and advice to the principal permitting agencies on reef design, development, and purpose, CDFW needs a comprehensive statewide scientifically based plan for overseeing the placement of artificial

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reefs in state waters. Without a scientifically based statewide artificial reef plan for California, CDFW does not recommend any new artificial reef or artificial habitat at this time, regardless of intent. CDFW recommends providing additional discussion within the Draft PEIR as to why the treatment would be necessary to achieve improved water quality. In addition, CDFW recommends including alternatives to the living shorelines and oyster reefs that could still achieve similar shoreline protection goals.

CDFW is concerned artificial reefs and habitat creation could attract invasive species. If the living shorelines and oyster reefs are implemented as currently described within the NOP, CDFW recommends that the PEIR include discussion on developing an invasive species monitoring plan that includes monitoring measures, adaptive management measures, and protocols if invasive species are identified.

Additionally, CDFW is concerned that placement of the living shorelines and oyster reefs would potentially decrease the amount of habitat for further eelgrass expansion. CDFW recommends the PEIR include additional discussion on whether the installation of the living shorelines and oyster reefs would be within current eelgrass habitat and whether it could prevent future expansion of eelgrass if it were to be implemented.

- 8) **City of San Diego SAP:** CDFW issued NCCP Approval and Take authorization for the City of San Diego SAP per section 2800, *et seq.*, of the California Fish and Game Code on July 16, 1997. The SAP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit.

Compliance with approved habitat plans, such as the SAP, is discussed in CEQA. Specifically, section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the SAP as a result of this Project is necessary to address CEQA requirements.

The proposed Project occurs within the SAP Plan Area and is subject to its provisions and policies. To be considered a covered activity, the City needs

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to demonstrate that proposed actions are consistent with the SAP and its associated Implementing Agreement.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the NOP assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination on terrestrial issues should be directed to Jessie Lane, Environmental Scientist, at [Jessie.Lane@wildlife.ca.gov](mailto:Jessie.Lane@wildlife.ca.gov). Questions and further coordination on marine issues should be directed to Leslie Hart, Marine Environmental Scientist, at [Leslie.Hart@wildlife.ca.gov](mailto:Leslie.Hart@wildlife.ca.gov).

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Senior Environmental Planner  
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Sincerely,

DocuSigned by:  
  
D700B4520375406...  
David Mayer  
Environmental Program Manager  
South Coast Region

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Karen Drewe, CDFW, [Karen.Drewe@wildlife.ca.gov](mailto:Karen.Drewe@wildlife.ca.gov)

## References

City of San Diego. February 2020. Climate Change Vulnerability Assessment. [climate-change-vulnerability-assessment.pdf \(sandiego.gov\)](#)

City of San Diego. 2022. Climate Action Plan. [san\\_diegos\\_2022\\_climate\\_action\\_plan\\_0.pdf \(sandiego.gov\)](#)

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## NATIVE AMERICAN HERITAGE COMMISSION

May 12, 2023

Jordan Moore  
City of San Diego  
9485 Aero Drive, MS 413  
San Diego, CA 92123

**Re: 2023050148, Coastal Resilience Master Plan, San Diego County**

Dear Mr. Moore:

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



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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, subs. (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](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](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 ([https://ohp.parks.ca.gov/?page\\_id=30331](https://ohp.parks.ca.gov/?page_id=30331)) 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: [Pricilla.Torres-Fuentes@nahc.ca.gov](mailto:Pricilla.Torres-Fuentes@nahc.ca.gov)

Sincerely,

*Pricilla Torres-Fuentes*

Pricilla Torres-Fuentes  
Cultural Resources Analyst

cc: State Clearinghouse