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

May 4, 2023

11-SD-78
PM 10.67
Capalina Apartments
NOP/SCH#2023050006

Mr. Sean del Solar
Senior Planner
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Dear Mr. del Solar:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Notice of Preparation of a Draft EIR for the Capalina Apartments located near State Route 78 (SR-78). 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 of San Marcos 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. Please use the Governor's Office of Planning and Research Guidance to identify VMT related impacts.[1]

- 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.

Complete Streets and Mobility Network

Caltrans views all transportation improvements as opportunities to improve safety, access and mobility for all travelers in California and recognizes bicycle, pedestrian and transit modes as integral elements of the transportation network. Caltrans supports improved transit accommodation through the provision of Park and Ride facilities, improved bicycle and pedestrian access and safety improvements, signal prioritization for transit, bus on shoulders, ramp improvements, or other enhancements that promotes a complete and integrated transportation network. Early coordination with Caltrans, in locations that may affect both Caltrans and the City of San Marcos, is encouraged.

To reduce greenhouse gas emissions and achieve California's Climate Change target, Caltrans is implementing Complete Streets and Climate Change policies into State Highway Operations and Protection Program (SHOPP) projects to meet multi-modal mobility needs. Caltrans looks forward to working with the City to evaluate potential Complete Streets projects.

Bicycle, pedestrian, and public transit access during construction is important. Mitigation to maintain bicycle, pedestrian, and public transit access during construction is in accordance with Caltrans' goals and policies.

Land Use and Smart Growth

Caltrans recognizes there is a strong link between transportation and land use. Development can have a significant impact on traffic and congestion on State transportation facilities. In particular, the pattern of land use can affect both local vehicle miles traveled and the number of trips. Caltrans supports collaboration with local agencies to work towards a safe, functional, interconnected, multi-modal transportation network integrated through applicable "smart growth" type land use planning and policies.

[1] 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

The City should continue to coordinate with Caltrans to implement necessary improvements at intersections and interchanges where the agencies have joint jurisdiction.

Noise
The applicant must be informed that in accordance with 23 Code of Federal Regulations (CFR) 772, Caltrans is not responsible for existing or future traffic noise impacts associated with the existing configuration of SR-78.

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' Right-of-Way (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.

Broadband
Caltrans recognizes that teleworking and remote learning lessen the impacts of traffic on our roadways and surrounding communities. This reduces the amount of VMT and decreases the amount of greenhouse gas (GHG) emissions and other pollutants. The availability of affordable and reliable, high-speed broadband is a key component in supporting travel demand management and reaching the state's transportation and climate action goals.

Mitigation
Caltrans endeavors that any direct and cumulative impacts to the State Highway network be eliminated or reduced to a level of insignificance pursuant to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) standards.

Mitigation measures to State facilities should be included in TIS/TIA. Mitigation identified in the traffic study, subsequent environmental documents, and mitigation monitoring reports, should be coordinated with Caltrans to identify and implement the appropriate mitigation. This includes the actual implementation and collection of any "fair share" monies, as well as the appropriate timing of the mitigation. Mitigation improvements should be compatible with Caltrans concepts.

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 or by visiting the website at

If you have any questions or concerns, please contact Shannon Aston, LDR Coordinator, at (619) 992-0628 or by e-mail sent to Shannon.Aston@dot.ca.gov.

Sincerely,

Kimberly Dodson for

MAURICE A. EATON
Branch Chief
Local Development Review

Sean del Solar

From: Troeller, Alexandra@Wildlife <Alexandra.Troeller@Wildlife.ca.gov>
Sent: Monday, May 8, 2023 10:31 AM
To: Sean del Solar
Subject: SCH 2023050006 Capalina Apartments

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Sean,

This email is a follow-up to my voicemail left on Friday 5/5/2023 and my phone call this morning, which also went to voicemail. I am the CDFW scientist reviewing the Capalina Apartments NOP, and I have a few questions I wanted to clarify/discuss with you. At your earliest convenience, please reach out via phone at 858-354-4299.

Thank you,

Alex Troeller
Environmental Scientist
South Coast Region 5
Habitat Conservation
3883 Ruffin Road
San Diego, CA 92123
Mobile: (858) 354-4299

CALIFORNIA DEPARTMENT OF FISH and WILDLIFE

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

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

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

May 30, 2023

Sean del Solar, Senior Planner
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069
sdelsolar@san-marcos.net

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Capalina Apartments Project, SCH #2023050006, San Diego County

Dear Mr. del Solar:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft environmental impact report (DEIR) from the City of San Marcos (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 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

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW also administers the Natural Community Conservation Planning (NCCP) program, a California regional habitat conservation planning program. The City was a local jurisdiction participant in the early planning of the Subregional Multiple Habitat Conservation Program (MHCP) in the late 1990's and early 2000's. The City had prepared a draft Subarea Plan under the Subregional MHCP, which addressed regional conservation planning across seven incorporated jurisdictions on northern San Diego County. However, the San Marcos Subarea Plan was not finalized, and state and federal permits have not been issued to the City. To date, only the City of Carlsbad has received permits pursuant to the MHCP; however, the conservation principals remain relevant for development projects occurring in other jurisdictions. The City is no longer an active participant in the plan; however, it is the City's policy to comply with the conservation policies identified in the draft San Marcos Subarea Plan.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Marcos (City)

Objective: The Project includes the rezoning and development of a 2.54-acre vacant lot into 119 apartment units, 4,000 square feet of commercial use, 147 parking spots, and associated residential amenities including a common open space area and a recreation/fitness center.

Location: The site is located along Capalina Road in the City of San Marcos, California. The Project site is currently an undeveloped, vacant lot located just north of Capalina Road, south of West Mission Road, east of South Rancho Santa Fe Road, and about one block north of CA State Route 78 (SR-78) in the Business/Industrial District. The SPRINTER rail line is also located in the Project vicinity. The Project site is undeveloped and generally flat with elevations ranging from approximately 580 to 600 feet above mean sea level (amsl).

Biological Resources: Though the Project site is mostly surrounded by development, multiple sensitive resources have previously been mapped within the surrounding areas, including thread-leaved brodiaea (*Brodiaea filifolia*; federally listed-threatened, state listed endangered, CNPS Rare Plant Rank 1B.1, proposed Narrow Endemic under the MHCP), Orcutt's brodiaea (*Brodiaea orcuttii*; CNPS Rare Plant Rank 1B.1), and San Diego button celery (*Eryngium aristulatum* var. *parishii*; federally listed-endangered, state listed-endangered,

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

California Native Plant Society (CNPS) Rare Plant Rank 1B.1, proposed Narrow Endemic under the MHCP). The site is mainly comprised of disturbed habitat containing non-native forbs and invasive grasses, mainly dominated by Russian thistle *(Salsola tragus*), Bermuda grass (*Cynodon dactylon*), tocalote (*Centaurea melitensis*), short-pod mustard (*Hirschfeldia incana*), and various species of bromes (*Bromus sp*.) and erodium (*Erodium* sp.). There are several non-native trees scattered throughout the site including Mexican fan palms (*Washingtonia robusta*) and Peruvian pepper tree (*Schinus molle*).

Comments and Recommendations

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

General Comments

1. **Biological Resource Inventory:** The DEIR document should contain a complete description of the Project, including purpose and need, that describes all 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, and locally unique species and sensitive habitats. This should include a complete floral and faunal species compendium of the Project site, undertaken at the appropriate time of year. Species to be further addressed should include all those which meet the CEQA definition (see CEQA Guidelines, § 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-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

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service.

2. **Mitigation for Project-related Biological Impacts:** The DEIR 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.

3. **MHCP Alignment:** While the City is not an active participant in the draft Subarea Plan, CDFW encourages consistency with draft Subarea Plan and appreciates the City's efforts to adhere to policies in that plan. Additionally, early, pre-Project coordination between the City and CDFW regarding regional conservation goals and objectives is also encouraged.

4. **Cumulative Effects Analysis:** 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. The DEIR should evaluate the full scope of potential actions as part of the cumulative impact analysis and discussion of related actions.

Specific Comments

5. **Brodiaea Surveys:** To avoid potential impacts to rare plants, CDFW recommends conducting an additional focused survey for brodiaea during the appropriate blooming period of March-May to compare with previous focused survey data from 2021. Additionally, seasonally appropriate brodiaea pre-construction checks should occur prior to the start of construction.

6. **Mitigation for Project-related Biological Impacts to Nonnative Grassland:** According to the Biological Resources letter provided by Dudek in April of 2023, the Project site is "extraordinarily disturbed with European grasses

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

and broadleaf mustards" (Dudek 2023). Despite the site characteristics being classified as disturbed, grasses are pictured on page C-1 of Attachment C of the Biological Resources Letter. Additionally, CDFW points out that the vegetation delineation methods from the MHCP include non-native forb associations in the non-native grassland category, and thus these conditions should be defined as such and mitigated accordingly rather than delineated as "disturbed" with no associated mitigation requirement. This non-native grassland recognition ensures that habitat value for many species, including for raptor foraging, will be appropriately off-set when permanently lost to development. Thus, CDFW encourages the applicant to reassess the site and map land cover/vegetation consistent with the MHCP classifications, and mitigate accordingly.

7. **Nesting Bird Surveys and Avoidance:** CDFW appreciates the mitigation measures described in Mitigation Measure 1 (MM-BIO-1) of the Biological Resources Letter (Dudek, 2023). CDFW recommends the following changes (**in bold** and ~~strikethrough~~).

MM-BIO-1: Construction-related ground-disturbing activities (e.g., clearing/grubbing, grading, and other intensive activities) that occur during the breeding season (typically February 1 through September 15) shall require a one-time biological survey for nesting bird species to be conducted within the limits of grading within 72 hours prior to construction. This survey is necessary to ensure avoidance of impacts to nesting raptors and/or birds protected by the federal Migratory Bird Treaty Act and California Fish and Game Code, Sections 3503 and 3513. If any active nests are detected, the area shall be flagged and mapped on the construction plans or a biological resources figure, and the information provided to the construction supervisor and any personnel working near the nest buffer. Active nests will have buffers established around them (e.g., 250 feet for passerines**, 300 feet for listed bird species, and** 500 feet for raptors) by the Project biologist in the field with brightly colored flagging tape, conspicuous fencing, or other appropriate barriers or signage. The Project biologist shall serve as a construction monitor during those periods when construction activities occur near active nest areas to avoid inadvertent impacts to these nests**, providing daily "sweeps" at the start of each workday**.

After conferring with CDFW and gaining approval, the Project biologist may adjust the 250-foot to 500-foot setback ~~at his or her discretion~~ depending on the

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

species and the location of the nest (e.g., if the nest is well protected in an area buffered by dense vegetation). However, if needed, additional qualified monitor(s) shall be provided in order to monitor active nest(s) or other Project activities in order to ensure all of the Project biologist's duties are completed. Once the nest is no longer occupied for the season, construction may proceed in the setback areas.

If construction activities, particularly clearing/grubbing, grading, and other intensive activities, stop for more than 3 days, an additional nesting bird survey shall be conducted within the proposed impact area **before construction proceeds**.

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 (CNDDB). The CNNDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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

We appreciate the opportunity to comment on the NOP for the Capalina Apartments Project to assist the City in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Alex Troeller, Environmental Scientist, at Alexandra.Troeller@wildlife.ca.gov or (858) 354-4299.

DocuSign Envelope ID: EFFE4755-DE79-4DAC-98ED-A8269E94D8D5

Sincerely,

DocuSigned by:
David Mayer
D700B4520375406...

David Mayer
Environmental Program Manager
South Coast Region

ec: CDFW
David Mayer, San Diego – David.Mayer@wildlife.ca.gov
Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov
Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov

OPR
State Clearinghouse, Sacramento – State.Clearinghouse@opr.ca.gov

City of San Marcos
Sean del Solar – sdelsolar@san-marcos.net

REFERENCES

California Department of Fish and Wildlife. 2023. California Natural Diversity Database (CNDDB) – Plants and Animals. Available from: https://wildlife.ca.gov/Data/CNDDB

Dudek, 2023. Biological Resources Letter Report for the Capalina Apartments Project, City of San Marcos, California (GPA22-0003, R22-0003, SDP22-000)

County of San Diego

AMY HARBERT
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH AND QUALITY
VECTOR CONTROL PROGRAM
5570 OVERLAND AVENUE, SUITE 102, SAN DIEGO, CA 92123
Phone: (858) 694-2888 Fax: (858) 505-6786
www.SDVector.com

HEATHER BUONOMO, REHS
DIRECTOR OF ENVIRONMENTAL HEALTH

May 16, 2023

Sean del Solar, Senior Planner for Chris Garcia
City of San Marcos Planning Division
1 Civic Center Drive
San Marcos, CA 92069

Via e-mail: sdelsolar@san-marcos.net

COMMENTS ON THE ENVIRONMENTAL IMPACT REPORT FOR THE CAPALINA APARTMENTS PROJECT

Dear Mr. Del Solar:

Thank you for the opportunity to comment on the Environmental Impact Report for the above referenced project. The County of San Diego Vector Control Program (VCP) is responsible for the protection of public health through the surveillance and control of mosquitoes that are vectors for human disease including West Nile virus (WNV). The VCP has completed their review and has the following comments regarding the proposed project.

1. The VCP respectfully requests that the Environmental Impact Report address potential impacts from possible mosquito breeding sources created by the project and that the project be designed and constructed in a manner to minimize those impacts. Specifically, ensure construction-related depressions created by grading activities, vehicle tires, and excavation do not result in depressions that will hold standing water. In addition, ensure drains, BMPs, stormwater capture systems, and other structures do not create a potential mosquito breeding source. Any area that is capable of accumulating and holding at least ½ inch of water for more than 96 hours can support mosquito breeding and development. Finally, if habitat remediation is required for the project, the design should be consistent with guidelines for preventing mosquito habitat creation.

2. Please note, the VCP has the authority pursuant to state law and County Code to order the abatement of any mosquito breeding that does occur either during construction or after the project is completed that is determined to be a vector breeding public nuisance. The VCP will exert that authority as necessary to protect public health if the project is not designed and constructed to prevent such breeding.

3. For your information, the County of San Diego Guidelines for Determining Significance for Vectors can be accessed at http://www.sandiegocounty.gov/content/dam/sdc/pds/docs/vector_guidelines.pdf and the California Department of Public Health Best Management Practices for Mosquito Control in California is available at https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/MosquitoesandMosquitoBorneDiseases.aspx#

The VCP appreciates the opportunity to participate in the environmental review process for this project. If you have any questions regarding these comments, please contact Daniel Valdez at 858-688-3722 or by e-mail at Daniel.Valdez@sdcounty.ca.gov.

Sincerely,

DANIEL VALDEZ, Registered Environmental Health Specialist
Vector Control Program

STATE OF CALIFORNIA Gavin Newsom, *Governor*

NATIVE AMERICAN HERITAGE COMMISSION

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Sara Dutschke
Miwok

COMMISSIONER
Isaac Bojorquez
Ohlone-Costanoan

COMMISSIONER
Buffy McQuillen
Yokayo Pomo, Yuki, Nomlaki

COMMISSIONER
Wayne Nelson
Luiseño

COMMISSIONER
Stanley Rodriguez
Kumeyaay

COMMISSIONER
[Vacant]

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Raymond C. Hitchcock
Miwok, Nisenan

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

May 2, 2023

Sean Del Solar
City of San Marcos
1 Civic Center Dr.
San Marcos, CA 92069

Re: 2023050006, Capalina Apartments, San Diego County

Dear Mr. Del Solar:

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 (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.

Sincerely,

Pricilla Torres-Fuentes

Pricilla Torres-Fuentes
Cultural Resources Analyst

cc: State Clearinghouse

San Diego County Archaeological Society, Inc.

Environmental Review Committee

13 May 2023

RECEIVED
MAY 18 2023
CITY OF SAN MARCOS
PLANNING DIVISION

To: Mr. Sean del Solar, Senior Planner
Planning Division
City of San Marcos
1 Civic Center Drive
San Marcos, California 92069

Subject: Notice of Preparation of a Draft Environmental Impact Report
Capalina Apartments
GPA22-0003, R22-0003, SDP22-0007, EIR23-003

Dear Mr. del Solar:

Thank you for the Notice of Preparation for the subject project, which was received by this Society earlier this month.

We are pleased to note the inclusion of historical resources in the list of subject areas to be addressed in the DEIR and look forward to reviewing it during the upcoming public comment period. To that end, please include us in notification of the public review of the DEIR and ensure availability of a copy of the cultural resources technical report(s).

SDCAS appreciates being included in the environmental review process for this project.

Sincerely,

James W. Royle, Jr., Chairperson
Environmental Review Committee

cc: SDCAS President
File

P.O. Box 81106 San Diego, CA 92138-1106 (858) 538-0935

Sean del Solar

From: Lionel Burton <percebu637@gmail.com>
Sent: Saturday, April 29, 2023 12:10 PM
To: Sean del Solar
Subject: SUGGESTION ON PROPOSED CAPALINA ROAD PROJECT

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

My name is Jeff Burton. My phone contact is == (760) 566-3999.

My suggestion on the proposed project at Capalina Road is create a City Park Project instead of an Apartment Unit Project.

Hopefully, this e=mail will be put with others who would prefer my suggestion.

Sean del Solar

From: Shannon <shannondoyleca1@aol.com>
Sent: Friday, May 5, 2023 7:49 PM
To: Sean del Solar
Subject: Capalina Apartments

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Shannon Doyle
1515 Capalina Road
Space 33
San Marcos, CA 92069
(714) 783-8746

Attn: Sean del Solar, Senior Planner for Chris Garcia
City of San Marcos Planning Division Re:

Re: Response to NOP for proposed Capalina Apartments:

While I can certainly see the advantages to this development, I have some concerns regarding this proposed project. Please note the following:

- No street lights or crosswalks on Capalina from Rancho Santa Fe to Pacific.
- Traffic: Congestion on Rancho Santa Fe with offramp activity to and from the 78 freeway. Pacific cut through turn is in an industrial area with a severe right curve and has a hard left unregulated turn onto Capalina right before 7-11 parking entrance.
- Noise: Will new tenants be advised considering Sprinter train, and 2 Nightclubs with loud music up to 2am?
- El Dorado Mobil Home Park at 1515 Capalina is a SENIOR PARK with owners and tenants needing to live in a quiet, safe environment. Please don't disregard us in the name of progress or profits.

Finally, when the construction is complete, the success or failure of the project will depend on the quality of the management. Hopefully, the owners and the City of San Marcos, will recognize this.

Thank you for your time.

02 May 2023

RE: CAPALINA APARTMENTS

Please notice, the subject CAPALINA RD is already filled up with parking at times.

You can expect students to pack the rentals.

There should be a plan for speed abatement on Mission.

The <u>MINIMUM</u> proposed parking spaces needs to be **208.**

Thank you,

David H.
1515 CAPALINA Rd.
San Marcos, CA 92069