

APPENDIX B

BIOLOGICAL ASSESSMENT

Biological Resources Assessment

WEST BROADWAY SPECIFIC PLAN

Seaside, CA
November 2007



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INTRODUCTION

The West Broadway Avenue project study area (PSA) consists of 179 parcels, which together total approximately 39.4 acres. The PSA is located along Canyon Del Rey Boulevard, Del Monte Boulevard, and Broadway Avenue, just west of Fremont Boulevard in the City of Seaside, California (**Figures 1 and 2**). The PSA lies within the Noche Buena Land Grant on the *Seaside, California* United States Geological Survey (USGS) 7.5-minute quadrangle (USGS 1983).

The purpose of this biological resources assessment is to describe vegetation communities, identify sensitive habitats including potentially jurisdictional waters of the U.S., and assess the potential for occurrence of special-status plant and wildlife species within the PSA. This assessment will help to support a Specific Plan being prepared for West Broadway Avenue PSA.

REGULATORY FRAMEWORK

FEDERAL ENDANGERED SPECIES ACT

The United States Congress passed the Federal Endangered Species Act (FESA) in 1973 to protect those species that are endangered or threatened with extinction. FESA is intended to operate in conjunction with the National Environmental Policy Act (NEPA) to help protect the ecosystems upon which endangered and threatened species depend. FESA prohibits the "take" of endangered or threatened wildlife species. "The term 'take' means to harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (FESA Section 3 [(3)(19)]). Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns (50 CFR §17.3).

MIGRATORY BIRD TREATY ACT

Raptors (birds of prey), migratory birds and other avian species are protected by a number of state and federal laws. The federal Migratory Bird Treaty Act (MBTA) prohibits the killing, possessing, or trading of migratory birds except in accordance with regulations prescribed by the Secretary of Interior. Section 3503.5 of the California Fish and Game Code states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto."

SECTION 404 OF THE CLEAN WATER ACT

The objective of the Clean Water Act (CWA 1977, as amended) is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Discharge of fill material into waters of the U.S., including wetlands, is regulated by the U.S. Army Corps of Engineers (ACOE) under Section 404 of the federal CWA (33 USC 1251-1376). "Discharges of fill material" is defined as the addition of fill material into waters of the U.S., including, but not limited to the following: placement of fill that is necessary for the construction of any structure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; fill for intake and outfall pipes and subaqueous utility lines [33 C.F.R. §328.2(f)]. In addition to verifying wetlands for potential jurisdiction, the ACOE is responsible for the issuance of permits for projects that propose filling of wetlands. Section 404 permits are required for construction activities in waters of the U.S.

Waters of the U.S. include essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters. Navigable waters of the U.S. are defined as waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation. Boundaries between jurisdictional waters and uplands are determined in a variety of ways depending on which type of water is present. Wetlands are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions" [33 C.F.R. §328.3(b)]. Presently, to be a wetland, a site must exhibit positive indicators of three wetland criteria: hydrophytic vegetation, hydric soils, and wetland hydrology existing under the "normal circumstances" for the site. The lateral regulatory extent of non-tidal waters is determined by delineating the ordinary high water mark (OHWM) [33 C.F.R. §328.4(c)(1)].

SECTION 401 OF THE CWA

Section 401 of the CWA (33 U.S.C. 1341) requires any applicant for a federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the U.S. to obtain a certification that the discharge will comply with the applicable effluent limitations and water quality standards.

The Central Coast Regional Water Quality Control Board (CCRWQB) is responsible for enforcing water quality criteria and protecting water resources within its region. The CCRWQB is responsible for controlling discharges to surface waters of the state by issuing waste discharge requirements (WDR) or commonly by issuing conditional waivers to WDR's. The CCRWQB requires that a project proponent obtain a CWA Section 401 water quality certification or waiver for Section 404 permits granted by the ACOE. A request for water quality certification (including WDR's) by the CCRWQB and a Notice of Intent (NOI) application for a General Permit for Storm Water Discharges Associated with Construction Activities are prepared and submitted following completion of the CEQA environmental document and submittal of the wetland delineation to the ACOE.

CALIFORNIA COASTAL ACT OF 1976

The California Coastal Act (California Public Resources Code sections 30000 et seq.) was enacted by the State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline. The Coastal Act created a unique partnership between the State (acting through the California Coastal Commission) and local government (15 coastal counties and 58 cities) to manage the conservation and development of coastal resources through a comprehensive planning and regulatory program.

Coastal Act policies constitute the standards used by the Coastal Commission in its coastal development permit decisions and for the review of local coastal programs (LCPs) prepared by local governments and submitted to the Commission for approval. These policies are also used by the Commission to review federal activities that affect the coastal zone. Coastal cities and counties must incorporate these policies into their individual LCPs. The policies require numerous provisions including, but not limited to:

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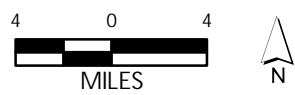


Figure 1
Regional Location Map



