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Governor's Office of Planning & Research

June 28, 2021

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STATE CLEARINGHOUSE

Mr. Gary Kupp
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, California 94553
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Subject: Bayview Estates Residential Project, County File Nos. CDSD04-08809, CDGP04-00013, CDRZ04-03148, CDDP04-03080, Draft Environmental Impact Report, SCH No. 2008032074, Contra Costa County

Dear Mr. Kupp:

California Department of Fish and Wildlife (CDFW) personnel reviewed the draft Environmental Impact Report (EIR) for the Bayview Estates Residential Project (Project). CDFW is submitting comments on the draft EIR to inform Contra Costa County, as Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15386 for commenting on projects that could impact fish, wildlife, and plant resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish, wildlife, and plant trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Discovery Builders, Inc. 4021 Port Chicago Highway, Concord, CA 94520.

Objective: The applicant seeks to develop a 144-unit residential subdivision on 48.2 acres of vacant open land in the Vine Hill/Pacheco Boulevard area of unincorporated Contra Costa County. The Project consists of the following elements:

- Removal of up to 30 mature Valley Oak Woodland trees and associated understory.

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- On-site grading of approximately 900,000 cubic yards of earth material for residential subdivision development, including substantial grading of the lower hill area and limited grading of the upper hill area in order to balance overall cut and fill earthwork volumes.
- Extension of new utility lines to and throughout the Project site, and the repair and upgrade of existing off-site utility lines.
- Improvement of two existing off-site roadways, Central Avenue and Palms Drive, to accommodate for two lanes of moving vehicular traffic .
- Development of up to 144 detached single-family homes and associated new internal roadways on approximately 31.8 acres of the Project site.
- Development of an approximately 4.5-acre private neighborhood park in proximity to "Parcel B" and "Parcel F".
- Approximately 46.4 acres of open space, marshes, and undeveloped land, including: the preservation of approximately 20.1 acres of the upper hill area shown as "Parcel A"; the preservation of approximately 19.8 acres of the lower site areas (containing wetlands, coastal salt marsh, freshwater marsh, open water, and alkali meadow) shown as "Parcel B"; and the development of a new 2-acre stormwater treatment basin, in accordance with the County's C.3 Guidebook, and shown as "Parcel F".

The Project proposes amendments to the existing Contra Costa County General Plan (General Plan). Specifically, the Project seeks to amend the existing General Plan land use map to change the existing Heavy Industrial (HI) land use designation on the Project site to the Single Family Residential-High Density (SH), and Open Space (OS) land use designations. The Project would also amend the existing General Plan to modify existing land use policy language regarding the Vine Hill/Pacheco Boulevard area. For zoning, the Project seeks to reclassify the existing Heavy Industrial (H-I) zoning designation on the Project site to the Planned Unit District (P-1) designation.

The Project involves a grading plan that would alter the existing topography in specific areas of the Project site and would clear approximately 1,500 cubic yards of vegetation, almost all of which would be reused on-site. The total on-site balance of cut and fill grading would involve approximately 900,000 cubic yards being moved. The proposed Project would use existing and available water and wastewater treatment and off-site transmission/conveyance capacity. Some existing utility lines would require repair and/or upgrade to serve the proposed development.

Location: The Project is located at the southern terminus of Palms Drive in an unincorporated area of Martinez, California 94553, within Contra Costa County. The Project will occur on Assessor's Parcel Number 380-030-046. The approximate Project center coordinate is Latitude 38.012056, Longitude -122.082444.

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Timeframe: The Project is anticipated to be developed in up to three phases, generally from west to east across the site, with an anticipated grading start date in 2021 and last house completion date in 2024.

ENVIRONMENTAL SETTING

The Project site is located at an undeveloped and semi-disturbed parcel adjacent to the Contra Costa Canal and a tributary to Pacheco Creek. Historically there was a singular residence on the property that was then demolished some time prior to 2002. The site consists of Valley Oak Woodland, Creeping Wildrye Grassland, Alkali Meadow, Emergent Freshwater Marsh, Northern Coastal Salt Marsh, Seasonal Wetlands, Non-native Annual Grasslands, and ruderal disturbed areas with bare soil. There is also a freshwater pond on the Project site.

Except for the northeast boundary, the Project site is immediately surrounded by urban development and highway infrastructure. Northeast of the Project site is an area of open space with historic disturbance prior to 1993, that now contains emergent scrub vegetation. The immediate neighboring suburban properties contain native and ornamental trees and vegetation that provide potential nesting habitat for birds. Additionally, within two miles of the Project are extant and designated open space areas including portions of the Waterbird Regional Preserve and intact Coastal Brackish Marsh. These adjacent private and public open space areas hold potential habitat and current records of special-status species, including but not limited to burrowing owls (*Athene cunicularia*), California black rail (*Laterallus jamaicensis cortuniculus*), California Ridgeway's rail (*Rallus obsoletus obsoletus*), and salt-marsh harvest mouse (*Reithrodontomys raviventris*).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, cumulative, direct, and indirect impacts on fish, wildlife, and plant (biological) resources.

Environmental Setting and Related Impact Shortcomings

Burrowing Owls

The draft EIR does not identify potentially significant impacts to burrowing owls, yet the Project site holds potential habitat and adjacent positive occurrence records on the California Natural Diversity Database (CDFW, 2021) within approximately two miles, a reasonable dispersal distance for the species. This positive occurrence record also has a contiguous habitat corridor leading to the Project site. Lastly, the draft EIR notes that potential burrowing owl habitats (grassland habitats with surrogate fossorial mammal occupation) are present at the Project site on pages 4.3-2, 4.3-4, and 4.3-6.

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The CEQA document for the Project should include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. Please note that the permanent loss of habitat is considered significant in and of itself in western Contra Costa County and should be mitigated regardless of the current level of disturbance or reconnaissance survey results. To offset this significant permanent impact, the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 2:1 mitigation ratio (mitigation: loss) as a condition of the Project's approval. If active burrows or winter roosts are found on-site and take cannot be avoided, the mitigation ratio should be increased to a minimum of 3:1 (mitigation: loss) and the conserved lands should be currently occupied by the species during all season(s) of the owls' life history stages that the site may support.

The draft EIR should also include adequate survey techniques to effectively identify nesting or non-nesting (wintering) burrowing owls in and near the Project site in accordance with California Department of Fish and Wildlife's *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report) (see: <https://wildlife.ca.gov/Conservation/SurveyProtocols#377281284-birds>). As burrowing owls on or adjacent to the Project site may be missed under the proposed survey methodology, the Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults. Burrowing owls are a California Species of Special Concern due to population decline and breeding range retraction. Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a "take" avoidance, minimization, or mitigation measure. Therefore, off-site habitat compensation shall be included in the eviction plan. Based on the above and the design provided and explained in the draft EIR, the Project may potentially significantly impact burrowing owls. To reduce significant impacts to a less-than-significant level, CDFW recommends the following mitigation measure:

Mitigation Measure BIO-3c: Burrowing Owl Habitat Assessment, Surveys, and Avoidance, and Habitat Compensation

"Prior to Project activities, a habitat assessment shall be performed following Appendix C: *Habitat Assessment and Reporting Details* in the CDFW 2012 Staff Report. The habitat assessment shall extend at least 500 meters from the Project area or more where direct or indirect effects could potentially extend off-site, and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the CDFW 2012 Staff Report survey methodology. Surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or Project activities will trigger subsequent surveys, as determined by a qualified biologist, including but not limited

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to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report's survey methodology. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report.

Off-site habitat compensation shall be required for loss of foraging, overwintering, and breeding habitats as well as any known nest burrows used within the last three years that would be removed. Habitat compensation acreages shall be developed in consultation with CDFW, as the amount depends on site specific conditions. Compensatory habitats shall be conserved before Project construction through recordation of a conservation easement, preparation and implementation of a long-term management plan in consultation with CDFW, and the funding of an endowment to oversee protection and retainment of conservation values to the species in perpetuity."

Impact Analysis: Life of the Project Related to Salt-Marsh Harvest Mouse, California Black and California Ridgeway's Rails

The CEQA Guidelines (§15126.2) necessitate that the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as: potential for "take" of special-status species; loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features; permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, increases in traffic or human presence; and obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document also should identify reasonably foreseeable future projects in the Project's vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to such impact (CEQA Guidelines, §15355). Although a project's impacts may be mitigated to a level of less-than-significant individually, its contributions to a cumulative impact may be considerable. Contribution to a significant cumulative impact (e.g., increased encroachment on available habitat for a listed species) should be considered cumulatively considerable in the absence of compensatory mitigation requirements from a Lead Agency to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines (§§ 15021, 15063, 15071, 15126.2, 15126.4 and 15370) direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment. This includes a discussion of take avoidance

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and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service, and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

The draft EIR lacks an adequate analysis related to impacts associated with the life of the Project, including increased pressures related to the introduction of additional domestic pets in the environment. The Project site is located adjacent to potential habitat for salt-marsh harvest mouse, and the California black and California Ridgeway's rails; all of which are State Endangered Fully Protected Species under CESA. While the draft EIR currently includes an analysis and assessment on how to protect these species during the construction phase of the Project, impacts are not analyzed or discussed after construction and the reasonably foreseeable impacts associated with occupation of the new housing development. Domestic pets, with emphasis on domestic cats (feral and otherwise) are noted by both CDFW and USFWS as top predators to these species. CDFW recommends recirculating the draft EIR after performing a detailed analysis of such impacts to these species, and others with the potential to occur that could be affected, over the life of the Project. Therein, mitigation measures should be included that specifically address post-construction impacts and fully ensure to protect against take of listed species with the potential to occur in the vicinity of the Project area to a level of less-than-significant.

Valley Oak Woodland Tree Removal

The draft EIR indicates that up to 30 trees, 6.5 inches or greater in diameter at breast height (DBH), from an on-site oak woodland will be removed as a result of the Project. These trees provide potential nesting, sheltering, and roosting habitats for birds, bats, and mammals. Moreover, the draft EIR also notes that this collection of oak trees is identified as Valley Oak Woodland, a Sensitive Natural Community according to CDFW's Natural Communities List available on CDFW's webpage at: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>. The draft EIR indicates on pages 2-16 and 2-17 within BIO-5b that a 1:1 (mitigation: loss) ratio will be sought to mitigate for the loss of Valley Oak Woodland caused by Project activities. This 1:1 (mitigation: loss) ratio includes a replanting regime paired with a five-year monitoring component. CDFW finds this ratio and monitoring period inadequate for mitigating the loss of mature oak woodlands a level of less-than-significant.

CDFW recommends that the draft EIR evaluate native tree species in the Valley Oak Woodland greater than two inches DBH that would also be removed as part of Project activities. Sufficient trees should be planted to offset for: 1) the lost biomass and canopy of the removed trees, and 2) the substantial temporal loss of older growth habitat structure and diversity. Due to the cumulative impacts and now extreme rarity of

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undisturbed Valley Oak Woodland left in the proximity to the Project area, their slow growth and role in providing habitat for a biologically diverse community of species, and the uniqueness of the topography of the portion of the Project slated to be cut for fill use, CDFW recommends mitigating for the loss of Valley Oak Woodland at a 5:1 (mitigation: loss) ratio for both trees removed by quantity, and understory removed by area. This 5:1 ratio should include replanting and hydroseeding with Valley Oak Woodland species onsite at the point of disturbance in addition to an off-site restoration site that historically supported oak woodlands in western Contra Costa County as a mitigation component. The Project proponent should prepare a Mitigation and Monitoring Plan (MMP) outlining success criteria and benchmarks aligned to meet the 5:1 (mitigation: loss) ratio goal at the end of 10 years after initial mitigation efforts begin.

Creeping Wildrye Grassland Removal

The draft EIR notes on page 4.3-5, and elsewhere, portions of the Project will remove up to 3.5 acres of noted Creeping Wildrye Grassland, a Sensitive Natural Community according to CDFW's Natural Communities List available on CDFW's webpage at: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>. This grassland type provides potential nesting habitat for waterfowl and shorebirds in addition to providing foraging resources for adjacent birds, bats, and mammals. The draft EIR indicates on pages 2-15 and 2-16 within BIO-5a that a 0.75:1 (mitigation: loss) ratio of successful replanting of onsite-salvaged bunched rhizomes will be sought to mitigate for the loss of Creeping Wildrye Grassland caused by Project activities. This 0.75:1 (mitigation: loss) ratio includes a salvage relocation regime paired with a 5-year success of transplant monitoring component. CDFW finds this salvage ratio and monitoring period inadequate for mitigating the Project impacts to a level of less-than-significant.

CDFW recommends mitigating for the loss of Creeping Wildrye Grassland at a 3:1 (mitigation: loss) ratio by acreage area. This 3:1 (mitigation: loss) ratio should include the replanting of salvaged bunched rhizomes onsite, seed collection and dispersal on-site in areas of disturbance, and a CDFW approved off-site mitigation component if the Project proponent is unable to meet this acreage ratio on-site. Sufficient propagules should be planted to meet this ratio based on the total area removed. Replanted and mitigation areas should be paired with a five-year monitoring period to ensure successful establishment, and to ensure invasive species on and adjacent to the Project area do not jeopardize the goals of this mitigation ratio. The Project proponent should prepare an MMP outlining success criteria and benchmarks aligned to meet the 3:1 (mitigation: loss) ratio goal at the end of five years after initial mitigation efforts begin.

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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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

FILING FEES

The Project, as proposed, would have an impact on fish, wildlife, plants, and the habitats on which they depend. Therefore, an assessment of 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 fee is required for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Andrew Chambers, Environmental Scientist, at Andrew.Chambers@wildlife.ca.gov, or Melissa Farinha, Environmental Program Manager, at Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2008032074)

LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed June 11, 2021.