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March 9, 2021

Governor's Office of Planning & Research

Mar 10 2021

Ms. Alicia Giudice
City of San Rafael
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San Rafael, California 94901
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STATE CLEARINGHOUSE

Subject: City of San Rafael General Plan 2040 and Downtown Precise Plan, Draft Environmental Impact Report, SCH No. 2019039167, Marin County

Dear Ms. Giudice:

The California Department of Fish and Wildlife (CDFW) reviewed the draft Environmental Impact Report (EIR) provided for the City of San Rafael General Plan 2040 and Downtown Precise Plan (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW is submitting comments on the draft EIR to inform the City of San Rafael (City), as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** pursuant to CEQA Guidelines section 15386 and has authority to comment on projects that could impact fish, plant, and wildlife 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), the 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 and wildlife trust resources.

PROJECT DESCRIPTION AND LOCATION

Proponent: City of San Rafael

Objective and Location: The Project is an update to the City of San Rafael 2020 General Plan, adopted in 2004, through the year 2040, and the Downtown Precise Plan, which specifically addresses growth and development in downtown San Rafael. The Project location covers the entirety of the City of San Rafael as well as surrounding unincorporated Marin County which could be incorporated into San Rafael within the life of the Project, and nearby portions of San Rafael Bay and San Pablo Bay. Specific

¹ 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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changes to the General Plan include updates to objectives, policies, and programs, and identification of maximum thresholds for land use categories and planned buildout within the Project area by year 2040. Full buildout is projected to include a 15% increase in residential units.

ENVIRONMENTAL SETTING

Located in the City of San Rafael and surrounding areas, the Project area encompasses approximately 25,600 acres. The Project area is bordered by San Pablo Bay and San Rafael Bay to the east, the City of Novato to the north, the City of Larkspur and Town of Ross to the south, and the City of San Anselmo and unincorporated Marin County to the west. The Project area is approximately 39% developed urban core bordered by approximately 55% remaining undeveloped areas including woodlands, forests, grasslands, scrub, and chaparral in the surrounding hillsides and ridges. Riparian woodland remains along some streams and drainages and bay marshland remains on the shoreline of San Pablo Bay and the lower reaches of major streams. Sensitive and special-status species have the potential to occur within the Project area and in adjacent areas where they could be impacted, including but not necessarily limited to special-status native plants, fish, and wildlife.

COMMENTS AND RECOMMENDATIONS

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

Tiering and Subsequent Project Checklist

The draft EIR is identified as a Program EIR that "is not project specific and does not evaluate the impacts of individual projects that may be proposed in the future under the General Plan 2040 and Downtown Precise Plan. However...later activities that are within the scope of the effects examined in the program EIR, may qualify for a streamlined environmental review process or may be exempt from environmental review" (page 1-2). While Program EIRs have a necessarily broad scope, CDFW recommends providing as much additional information related to anticipated types of residential and non-residential development as possible, particularly that may occur in the marine environment near the waterfront [CEQA Guidelines, § 15168, subd. (c)(5)]. Depending on the type of development proposed and the impact to specific habitat, CDFW may have further comments if the draft EIR is recirculated or for future tiered projects to avoid and minimize potential impacts to marine species and habitat.

CDFW recognizes that, pursuant to CEQA Guidelines section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information may not be

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feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. The CEQA Guidelines section 15168, subdivision (c)(4) states, "Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR." Based on CEQA Guidelines section 15183.3 and associated Appendix N Checklist, and consistent with other Program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the draft EIR. Future analysis should include all special-status species and sensitive habitat including but not limited to species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a "within the scope" of the draft EIR conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the draft EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects and indicate whether it incorporates all applicable mitigation measures from the draft EIR.

Special-Status Species with the Potential to Occur in the Project Area

CDFW reviewed the list of potential special-status species within the Project area (pages 4.4-9 to 4.4-24 and Appendix E). CDFW recommends including species that are commercially, recreationally, and ecologically significant.

The Project area includes open bay waters home to numerous marine fish species and commercial fisheries, and subsequent projects may involve shoreline development and in-water work which could significantly impact fish species. Some of these fish species are part of culturally and historically important fisheries that CDFW manages¹. Project impacts to these species are potentially significant because they could "interfere substantially with the movement of any native resident or migratory fish or wildlife species...or impede the use of native wildlife nursery sites," but have not been identified in the draft EIR (CEQA Guidelines Appendix G). The draft EIR should identify the

¹ California Department of Fish and Wildlife. May 2019. Draft California Pacific Herring Fishery Management Plan. Fish and Game Commission.
<https://www.nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=169741&inline>

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species listed below that could be significantly impacted from the Project or future projects that may rely on the draft EIR as a Program EIR, and the identified mitigation measures. If these species are not identified as having the potential to occur in or adjacent to the Project area and be impacted, the draft EIR would not ensure impacts are mitigated to less-than-significant. Therefore, the Project has the potential to significantly impact these species.

1) **Winter-run Chinook salmon** (*Oncorhynchus tshawytscha*, pop. 7). Sacramento River winter-run Chinook salmon is CESA and federally listed as endangered. Additionally, the San Francisco Bay, including the Project area, is identified as critical habitat by the National Marine Fisheries Service. Winter-run Chinook enter the San Francisco Bay for migration upstream from November through June. To avoid potentially significant impacts to winter-run Chinook, CDFW recommends in-water work avoid the migration season, November 1 to June 30.

2) **Pacific herring** (*Culpea pallasii*). Pacific herring is state managed for its commercial, recreational, and ecological value and should be included in the draft EIR. Pacific herring spawn within San Francisco Bay including the Project area during the winter months, approximately from December through March. CDFW has identified San Francisco Bay as sensitive and vital spawning grounds for Pacific herring. To avoid potentially significant impacts to spawning Pacific herring, CDFW recommends avoiding in-water construction near spawning herring and spawning habitat such as eelgrass (*Zostera marina*) and red algae (*Gracilaria* sp.) beds during the spawning season, December 1 to March 31.

If the Project may result in impacts to CESA or federally listed species, the draft EIR should require that a CESA Incidental Take Permit (ITP) and/or federal authorization be obtained prior to the impact.

Mitigation Measures

CDFW recommends the following edits to the proposed Mitigation Measure to avoid potentially significant impacts to nesting birds and special-status species that may be using anthropogenic habitat in the Project area. Proposed deletions are in ~~strikethrough~~ and additions are in ***bold italics***.

Mitigation Measure BIO-1 Surveys for Special-Status Species & Avoidance of Nesting Birds. Require that sites with suitable natural ***or anthropogenic*** habitat, including creek corridors through urbanized areas, be surveyed for the presence or absence of special status species prior to development approval. Such surveys shall be conducted by a qualified biologist ***according to CDFW-accepted species-specific protocol-level surveys, as applicable***, and occur prior to development-related vegetation removal or other habitat modifications. Nests of native birds ~~should~~ ***shall*** be avoided in compliance with State and federal regulations. For new

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development sites where nesting birds may be present, vegetation clearing and construction ~~should~~ **shall** be initiated outside the bird nesting season (~~February 1~~ **March 4** through August 31) or preconstruction surveys ~~shall~~ **should** be conducted by a qualified biologist **within a minimum of 500 feet from the project site and** ~~in advance of~~ **at no more than seven days prior to** any disturbance. If active nests are encountered, appropriate **work avoidance** buffer zones ~~shall~~ **should** be established based on recommendations by the qualified biologist and remain in place until any young birds have successfully left the nest **and are no longer dependent on parental care.**

EDITORIAL COMMENT

CDFW recommends revising Table 4.4-1 which identifies the estimated vegetation cover in the Project area. The acres of vegetation types do not sum to the total, and the percentages identified sum to greater than 100% (page 4.4-9).

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA ITP is warranted if the Project has the potential to result in take of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation, monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a

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subsurface flow, and floodplains are subject to notification requirements. In that case, CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

FILING FEES

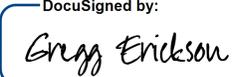
CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at amanda.culpepper@wildlife.ca.gov; or Ms. Melanie Day, Acting Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

ec: State Clearinghouse (SCH No. 2019039167)
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