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July 30, 2020

Governor's Office of Planning & Research

Ms. Lilly Whalen
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Jul 31 2020

STATE CLEARINGHOUSE

Subject: City of Sausalito 2040 General Plan Update, Draft Environmental Impact Report, SCH No. 2019100322, City of Sausalito, Marin County

Dear Ms. Whalen:

The California Department of Fish and Wildlife (CDFW) reviewed the Draft Environmental Impact Report (EIR) provided for the City of Sausalito 2040 General Plan Update (Project) located within the City of Sausalito (citywide), Marin County.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) 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), Lake and Streambed Alteration (LSA) Program, and 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 Sausalito

Objective and Location: The Project is an update to the City of Sausalito 1995 General Plan, including previous updates from 1999, 2012, 2015, and 2019, through the year 2040. The Project location covers the entirety of the City of Sausalito as well as surrounding unincorporated Marin County which could be incorporated into Sausalito within the life of the Project, and nearby portions of Richardson Bay. Specific 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 6% increase in residential units and a 35% increase in commercial development from present conditions.

ENVIRONMENTAL SETTING

Located in the City of Sausalito and surrounding areas, the Project area encompasses approximately 1,730 acres. The Project area is bordered by Richardson Bay to the

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 2 of 8

north, San Francisco Bay to the east, the Community of Marin City to the northwest, and Golden Gate National Recreation Area to the west and south. Approximately 45% of the Project area is open bay water. The rest of the Project area is a mix of residential, commercial, open space, and waterfront land uses. Habitat types include oak savannah, oak woodland, marine wetland, estuarine, and eelgrass. Sensitive species have the potential to occur within the Project area, including rare native plants, fish, birds, mammals, and invertebrates.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist City of Sausalito in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Tiering and Subsequent Project Checklist

The Draft EIR is identified as a Program EIR that "considers the broad environmental effects of the proposed project. This Draft EIR will be used to evaluate subsequent projects and activities under the proposed 2040 General Plan" (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. Depending on the type of development proposed and the impact to specific habitat, CDFW could have further comments on the broad elements of proposed development to avoid and minimize potential impacts to marine species and habitat.

In addition, as subsequent projects will have site-specific impacts and require site-specific mitigation measures, CDFW strongly recommends creating a procedure for evaluating these subsequent projects. The CEQA Guidelines §15168(c)(4) state, "Where the subsequent 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 covered in the program EIR." CDFW recommends developing the checklist with this Draft EIR to guide the appropriate CEQA review level for future projects as an attachment to the Draft EIR. A procedure or checklist will be critical to ensuring adequate analysis of Project effects on biological resources. CDFW recommends using the procedure and checklist developed for infill projects as a model; it can be found in CEQA Guidelines Section 15183.3 and Appendix N. The checklist should also outline how habitat will be analyzed per species or habitat type, how impacts will be assessed, and whether any mitigation is necessary.

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 3 of 8

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.

Absence of Mitigation Measures

The Draft EIR does not identify any specific Mitigation Measures that would reduce or minimize the potentially significant effects of subsequent activities under the Program EIR. In fact, the Draft EIR identifies that no mitigation measures are necessary for any potential impacts from the Project (pages ES-7 to ES-15). While the Draft EIR identifies that it does not provide the “level of detail to consider approval of subsequent development projects that may occur after adoption of the proposed 2040 General Plan” (page 1-2), the Draft EIR still needs to broadly address the potential significant impacts of the future projects it contemplates. Without any identified Mitigation Measures, the Draft EIR does not reduce, avoid, minimize, or mitigate *any* of its potentially significant impacts to biological resources. CDFW recognizes that, pursuant to CEQA Guidelines section 15152 subdivision (c), where a lead agency is using the tiering process referenced above in connection with an EIR or a large-scale planning approval, the development of detailed, site-specific information may not be feasible but 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 as long as the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. As noted previously, based on CEQA Guidelines section 15183.3 and associated *Appendix N Checklist*, the EIR should include a clear procedure for evaluating future projects based on biological resources. Future analysis should include all rare, threatened and endangered species and should include all those which meet CEQA definition (see CEQA Guidelines, § 15380). The EIR should include the reasonably foreseeable direct and indirect changes (temporary and permanent) that may occur with implementation of the Project (pursuant to CEQA, § 15355). To reduce impacts to less-than-significant, CDFW recommends that the City of Sausalito review the Mitigation Measures proposed in other General Plan updates, such as the City of Novato General Plan 2035 (SCH No. 2016122043), and incorporate similar measures in this Draft EIR, or clearly identify that future CEQA environmental review is anticipated for subsequent projects.

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 4 of 8

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

CDFW reviewed the definition of “special-status species” in the Draft EIR and the list of potential special-status species within the Project area (pages 3.3-3 to 3.3-6 and Appendix C). The definition of special-status species does not include all possible species that could be considered “endangered, rare, or threatened” under CEQA guidelines Section 15380 or that receive legal protections from Fish and Game Code. The resulting list of potential special-status species within the Project area does not adequately disclose all species that could be significantly impacted from the Project or future projects that rely on the Draft EIR as a Program EIR. If special-status species are not identified as having the potential to occur in the Project area, there is no way to avoid, minimize, or mitigate potential significant impacts to those species. Therefore, the Project could significantly impact these unidentified species, unless identified in a future analysis and tiered CEQA document.

To reduce impacts to less-than-significant, CDFW recommends 1) additional criteria for the definition of special-status species, and 2) additional species that should be included as having the potential to occur within the Project area.

1) In addition to the criteria already proposed for special-status species, including, species protected by the California Endangered Species Act (CESA), federal Endangered Species Act (ESA), Native Plant Protection Act, Migratory Bird Treaty Act, or plants with a California Rare Plant Rank of 1B or 2, CDFW recommends including the following criteria:

- CDFW Species of Special Concern¹. Species of Special Concern are identified through a rigorous scientific process and may be experiencing serious population declines or range retractions, or have naturally small populations that are highly susceptible to anthropogenic changes to the environment. Project impacts to Species of Special Concern are potentially significant.
- Fish and Game Code Fully Protected Species (Fish and Game Code § 3511, 4700, 5050, and 5515). Fully Protected Species are species that were identified by the California Legislature in 1957 as rare or facing possible extinction. Fish and Game Code prohibits take² or possession of Fully Protected Species at any time.
- Species that are commercially, recreationally, and ecologically significant. The Project area includes open bay waters home to “over 100 marine fish species

¹ Species of Special Concern lists for all animal taxa are available on CDFW’s website: <https://wildlife.ca.gov/Conservation/SSC>

² Take, as defined by Fish and Game Code Section 86, means hunt, pursue, catch, capture, or kill, or attempt to do any of those actions.

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 5 of 8

that pass through the area” (page 3.3-2). Some of these fish species are part of culturally and historically important fisheries that CDFW manages¹. Project impacts to these species are potentially significant.

2) CDFW has identified the following species that should be included in the list of Special-status species present or potentially present in the Project area:

- Winter-run Chinook salmon (*O. tshawytscha*). Sacramento River winter-run Chinook salmon is state 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 be limited to avoid the migration season.
- Spring-run Chinook salmon of the Sacramento River drainage (*Oncorhynchus tshawytscha*). Sacramento River spring-run Chinook is state and federally listed as threatened. Spring-run Chinook enter the San Francisco Bay for migration upstream from mid-February through July. To avoid potentially significant impacts to spring-run Chinook, CDFW recommends in-water work be limited to avoid the migration season.
- California Ridgway’s rail (*Rallus obsoletus obsoletus*). The California Ridgway’s rail is state and federally listed as endangered and is a Fully Protected Species. To avoid potentially significant impacts to this species, CDFW recommends work within or near salt marsh or other potentially suitable habitat be limited to outside of the breeding season; the breeding season is typically considered January 15 to August 31.
- California brown pelican (*Pelecanus occidentalis californicus*). California brown pelican is a Fully Protected Species. CDFW recommends the Project incorporate measures to ensure no take of California brown pelican will occur.
- Pacific herring (*Culpea pallasii*). Pacific herring is state managed for its commercial, recreational, and ecological value and should be considered a special-status species. Pacific herring spawn within Richardson Bay and within the city limits of Sausalito during the winter months, approximately from December through March. CDFW has identified Richardson Bay as sensitive and vital spawning grounds for Pacific herring within San Francisco Bay. To avoid potentially significant impacts to spawning Pacific herring, CDFW

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>

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 6 of 8

recommends no in-water construction occur during the spawning season. Additionally, CDFW recommends construction timelines be developed to avoid spawning herring and spawning habitat such as eelgrass (*Zostera marina*) and red algae (*Gracilaria sp.*) beds during planning phases for waterfront development.

Sensitive Natural Communities and Habitat

The Draft EIR describes sensitive natural communities as “communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects” (page 3.3-2). The Draft EIR states that there are no sensitive natural communities within or near the Project area (page 3.3.-3). CDFW disagrees that no sensitive natural communities exist in the Project area. Sensitive natural communities are designated via vegetation mapping following the standards in the Manual of California Vegetation. Exhibit 3.3-1 in the Draft EIR depicts a vegetation mapping effort that occurred within Golden Gate National Recreation Area and covers some of the Project area. This vegetation mapping effort identifies the vegetation association *Quercus agrifolia-Arbutus menziesii-Umbellularia californica* within the Project area, which CDFW classifies as sensitive due its global and state rarity ranking of 3. CDFW maintains a list of over 1,500 vegetation associations identified as sensitive¹ that should be considered during environmental review. CDFW recommends incorporating this list of sensitive natural communities into the Draft EIR with a discussion of potential impacts and relevant Mitigation Measures, where appropriate.

In addition, Exhibit 3.3-3 in the Draft EIR identifies eelgrass (*Zostera marina*) communities along the Sausalito shoreline and in Richardson Bay within and adjacent to the Project area. With the proposed residential and non-residential growth projections on the waterfront, there is potential for significant impacts to eelgrass habitat within city limits and the sphere of influence depending on the type of development that is proposed. Eelgrass is a sensitive marine habitat that supports a number of aquatic communities and serves as valuable spawning, nursery, and foraging habitat. Additional development on the waterfront could have the following potential impacts, including but limited to: increase in direct and indirect impacts from additional overwater shading, removal via dredging/pile driving, increase in indirect impacts from additional watercraft trips, habitat modification, and temporary impacts from construction related activities. The National Marine Fisheries Service *California Eelgrass Mitigation Policy*² lays out a set of conditions and protocols for surveys and monitoring if eelgrass is located at or

¹ CDFW. California Sensitive Natural Communities, November 8, 2019.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>

² NOAA (National Oceanic and Atmospheric Administration) Fisheries, West Cost Region. 2014. California Eelgrass Mitigation Policy and Implementing Guidelines.

https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 7 of 8

near a project site and should be referenced and incorporated into future waterfront development. To reduce impacts to less-than-significant, CDFW recommends the Draft EIR incorporate a Mitigation Measure that references the *California Eelgrass Mitigation Policy* and further addresses potential impacts to eelgrass from any proposed waterfront related development.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit 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 a CESA Permit 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 a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 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 Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities within any waters within the proposed Project area that fall under LSA authority. Notification is required for any activity that will 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 subsurface flow, and floodplains are subject to notification requirements. CDFW, as a responsible agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

Migratory Birds and Raptors

CDFW also 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,

Ms. Lilly Whalen
City of Sausalito
July 30, 2020
Page 8 of 8

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 raptors are also protected under the federal Migratory Bird Treaty Act.

FILING FEES

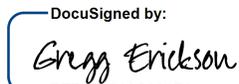
CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental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

CONCLUSION

CDFW appreciates the opportunity to comment on the Draft EIR to assist City of Sausalito 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 - Bay Delta Region, at amanda.culpepper@wildlife.ca.gov; Mr. Arn Aarreberg, Environmental Scientist - Marine Region, at arn.aarreberg@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH No. 2019100322)