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**GAVIN NEWSOM, Governor**  
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November 25, 2020

Governor's Office of Planning & Research

**Dec 01 2020**

## STATE CLEARINGHOUSE

Ms. Lilly Whalen  
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Subject: City of Sausalito 2040 General Plan Update, Recirculated Revised 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 recirculated revised 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 provided written comment on the previous draft EIR in a letter dated July 30, 2020<sup>1</sup>. Thank you for incorporating some of our previous recommendations.

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

<sup>1</sup> [https://files.ceqanet.opr.ca.gov/256349-4/attachment/CxLIP9OVAR49UoT3HeNY\\_ObQ7uwTmmU1Z-iwQByBzNo25xI5vqpuBsSzx6w-IYpSG3v5RUfNTHGtK9fq0](https://files.ceqanet.opr.ca.gov/256349-4/attachment/CxLIP9OVAR49UoT3HeNY_ObQ7uwTmmU1Z-iwQByBzNo25xI5vqpuBsSzx6w-IYpSG3v5RUfNTHGtK9fq0)

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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 northeast, San Francisco Bay to the east, 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.

### **Tiering and Subsequent Project Checklist**

The draft EIR is identified as a Program EIR that "considers the broad environmental effects of the General Plan. This Revised Draft EIR will be used to evaluate subsequent projects and activities under the General Plan" (page 1-3). 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. As noted in our previous comment letter, 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 still strongly recommends creating a procedure for evaluating these subsequent projects. 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

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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.

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.

### **Mitigation Measures and Minimizing Impacts to Less-than-Significant**

#### *Mitigation Measure BIO-1a Special Studies*

The draft EIR identifies that future development projects could directly and indirectly impact special-status plants and animals through habitat modification, habitat loss, and mortality, among other impacts (page 3.3-16). To reduce impacts to less-than-significant, the draft EIR includes Mitigation Measure (MM) BIO-1a which requires future projects to conduct special studies that identify appropriate site-specific avoidance and minimization measures. MM BIO-1a should be as specific as possible to prevent confusion in the future and prevent impacts to special-status species and their habitat, and sensitive natural communities. Additionally, depending on the impacts and specific mitigation measures recommended in the special study, additional CEQA review may be necessary. To reduce impacts to less-than-significant, CDFW recommends the following edits to MM BIO-1a, with deletions in ~~strikethrough~~ and additions in **bold**.

MM BIO-1a Special Studies. Applicants of discretionary projects ~~that could result in a potential impact to special status species, or their habitat,~~ shall be required to prepare a special study. **The special study shall be conducted by a qualified biologist and shall minimally include a data review and habitat assessment, prior to Project approval, to identify whether any special-status plant or animal species’ habitat or sensitive natural communities occur on-site. The data reviewed shall include the biological resources setting of the EIR and the best available current data for the area, including an updated review of the California Natural Diversity Database (CNDDDB) and relevant citizen scientist data such as iNaturalist. Habitat assessments shall be completed at an appropriate time of year for identifying potential habitat and no more than one year prior to Project activity commencement.** The purpose of the special study is to identify appropriate measures to avoid or minimize the harm to sensitive biological resources and to incorporate the

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recommended measures as conditions of approval for the project. **Based on the results of the special study, the qualified biologist shall identify the locations of any potential biological resources on-site and shall provide site-specific measures to completely avoid those areas. If habitat avoidance is infeasible, the qualified biologist shall identify protocol-level surveys that shall occur prior to project commencement, and shall provide additional protective measures including no-work buffer zones, preparing post-project restoration plans, off-site mitigation, or other similar measures as determined on a project-specific basis. If compensatory mitigation appears necessary, a subsequent environmental review and CEQA document may be required.** Detailed studies are not necessary in locations where past and existing development have eliminated natural **or anthropogenic** habitat and the potential for the presence of sensitive biological resources.

*Mitigation Measure BIO-1b Nesting Bird Protection*

The draft EIR identifies that project activities may disturb nesting birds (page 3.3.-17). To reduce potential impacts to less-than-significant, Mitigation Measure (MM) BIO-1b requires pre-construction nesting bird surveys if activities will occur during the nesting season. However, MM BIO-1b does not specify how soon before commencement of activities nesting bird surveys shall occur. This lack of specificity could lead to gaps between surveys and activity commencement allowing for nests to go undetected. Project activities could then impact nesting birds, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends that pre-construction nesting bird surveys occur no more than 7 days prior to commencement of activities.

*Mitigation Measure BIO-2a Botanical Reports & BIO-2b Eelgrass Beds & Red Algae*

The draft EIR discusses potential impacts to botanical resources, including sensitive natural communities such as coast live oak (*Quercus agrifolia*) alliances and eelgrass (*Zostera marina*) (page 3.3-19). To reduce impacts to less-than-significant, the draft EIR includes Mitigation Measure (MM) BIO-2a and Mitigation Measure (MM) BIO-2b to identify whether these sensitive habitats are present in the Project area and identify appropriate site-specific mitigation measures. MM BIO-2a and MM BIO-2b are both generic and identify a range of mitigation options that may be required for future Project approval. Without expert review of proposed site-specific mitigation measures, mitigation may not reduce impacts to less-than-significant. To reduce impacts to less-than-significant, CDFW recommends that both MM BIO-2a and MM BIO-2b identify that if avoidance is not feasible and compensatory mitigation is required then a subsequent environmental review and CEQA document may be required.

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## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

Please be advised that a CESA Incidental Take Permit (ITP) is warranted if the Project has the potential to result in “take”<sup>1</sup> 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 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, 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

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<sup>1</sup> Fish and Game Code, section 86: “Take” means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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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**

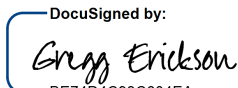
CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental 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](mailto:amanda.culpepper@wildlife.ca.gov); Mr. Arn Aarreberg, Environmental Scientist - Marine Region, at [arn.aarreberg@wildlife.ca.gov](mailto:arn.aarreberg@wildlife.ca.gov); or Mr. Garret Allen, Acting Senior Environmental Scientist (Supervisory), at [garrett.allen@wildlife.ca.gov](mailto:garrett.allen@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH #2019100322)