



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

**CHARLTON H. BONHAM, Director**



August 12, 2021

Governor's Office of Planning & Research

**August 13 2021**

**STATE CLEARINGHOUSE**

Mr. Francisco Avila  
Contra Costa County  
30 Muir Road  
Martinez, CA 94553

[Francisco.Avila@dcd.cccounty.us](mailto:Francisco.Avila@dcd.cccounty.us)

Subject: Scannell Properties Project, Draft Environmental Impact Report,  
SCH No. 2019110186, Contra Costa County

Dear Mr. Avila:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from Contra Costa County (County) for the Scannell Properties Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the draft EIR to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

## **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting 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 a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

## **REGULATORY REQUIREMENTS**

### *California Endangered Species Act*

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained 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

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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 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 Fish and Game Code section 2080.

#### *Lake and Streambed Alteration*

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

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Scannell Properties

**Description and Location:** The Project would build two warehouse fulfillment buildings totaling approximately 325,000 square feet on a 29.4-acre site in unincorporated Contra Costa County in the North Richmond area. The Project includes the removal of existing vegetation, fill of 0.145 acre of existing wetlands/waters of the United States, and the creation of new wetland areas on-site. The proposed Project would include installation of approximately 425,000 square feet of landscaped areas (including bioretention areas and wetland mitigation sites); construction of approximately 546 auto parking spaces, 16 tractor parking spaces, and 194 trailer parking spaces; construction of roadway improvements, sidewalks, curbs, gutters, landscaping, bioretention swales, utility connections, and traffic calming features offsite; removal of five local code protected trees; and annexation into the West County Wastewater District.

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## **COMMENTS AND RECOMMENDATIONS**

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

### **Nesting Birds**

Mitigation Measure BIO-1a requires that nesting bird surveys be conducted 5 days prior to the commencement of Project activities for all activities conducted during the nesting bird season. Surveys should be conducted again in the event that there is a lapse in Project activities for 5 days or more. The measure also indicates that CDFW recommends a 250-foot construction exclusion zone around the nests of passerines, and a 500-foot buffer for nesting raptors. Buffers should be determined based upon factors such as topography, line of sight, activities being conducted, and species. In some cases, a 500-foot buffer may be insufficient to adequately protect raptor nests. If nests are found on or near the Project area, CDFW can provide guidance on establishing appropriate buffers to minimize the potential for take and to reduce potential impacts to less-than-significant. As such, CDFW recommends BIO-1a be revised to require nest buffer approval from an on-site qualified biologist with extensive training in bird nest surveys prior to Project construction.

### **Roosting Bats**

Mitigation Measure BIO-1b addresses the assessment and removal of trees with potential to support nesting bats. In addition to the actions prescribed in BIO-1b, CDFW recommends that the following measure be incorporated into the EIR to mitigate impacts to bats to less-than-significant:

*Removal of Roost Trees.* Trees that are 12-inches or greater at diameter at breast height should be considered bat roost trees and when slated for removal shall be removed over the course of two days. On the first day, limbs from the identified trees shall be removed in the late afternoon to encourage bats to seek alternative roosts during nighttime foraging. The remaining portions of the tree shall be removed on the second day as late in the afternoon as feasible. Tree limbing or removal shall not be performed under any conditions which may lead to bats seeking refuge, including, *but not limited to:* during any precipitation event, when ambient temperatures are below 4.5 degrees Celsius, when windspeeds exceed 11 miles per hour. CDFW shall be notified immediately if bats are found injured, or if bat mortality occurs during the course of tree removal.

### **Special-Status Plants**

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The draft EIR notes that 90 federal and State special-status plant species have been documented in the area, but concludes that the Project site does not provide suitable habitat for special-status species due to the disturbed and ruderal nature of the Project site. It is unclear from the Biological Resource assessment if protocol surveys for special-status plants were conducted, and if they were conducted during the appropriate bloom period of the species with potential to occur onsite. Be advised that some special-status plant species can thrive in disturbed environments. CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities," which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. The Lead Agency should also require all the reporting elements outlined in the CDFW protocols and provide them to the public in either a recirculated draft EIR or the Final EIR so that the Lead Agency, the public, and any Trustee or Responsible agencies can determine the sufficiency of the surveys. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

If a state-listed or state Rare<sup>1</sup> plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the Native Plant Protection Act.

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and 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 in order 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**

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates

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<sup>1</sup> In this context, "Rare" means listed under the California Native Plant Protection Act.

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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 Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or [Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or Mr. Andrew Chambers, Environmental Scientist, at (707) 266-2878 or [Andrew.Chambers@wildlife.ca.gov](mailto:Andrew.Chambers@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Stacy Sherman*

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Stacy Sherman  
Acting Regional Manager  
Bay Delta Region

cc: State Clearinghouse No. 2019110186