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GAVIN NEWSOM, Governor  
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March 16, 2020

Governor's Office of Planning & Research

**MAR 17 2020**

## STATE CLEARINGHOUSE

Mr. Francisco Avila  
Contra Costa County  
Department of Conservation and Development  
Community Development Division  
30 Muir Road  
Martinez, CA 94553

Subject: Clayton Quarry Reclamation Plan Amendment, Notice of Preparation of a Draft Environmental Impact Report, SCH #2020020323, Contra Costa County

Dear Mr. Avila:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) prepared by the Contra Costa County Department of Conservation and Development (DCD) for the proposed Clayton Quarry Reclamation Plan Amendment (Project) located in unincorporated Contra Costa County.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §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 permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the 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. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

### PROJECT DESCRIPTION AND LOCATION

The proposed Project area is located at 515 Mitchell Canyon Road, on the east side of Mount Zion, approximately one-half mile south of the City of Clayton. The Project consists of reclamation activities over a 50-year time period, including grading, revegetation, and the creation of a quarry lake.

The CEQA Guidelines (§§15124 and 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the Project components listed below.

- Footprint area of permanent features and temporarily impacted areas, such as staging areas and access routes
- Plans for any proposed buildings or structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems

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- Operational features, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features
- Construction schedule, activities, equipment types and crew sizes

Additionally, the EIR should specify if CDFW is anticipated to be a Responsible Agency that is expected to use the EIR in its decision making for the Project [CEQA Guidelines, § 15124, subd. (d)(1)(A)].

### ENVIRONMENTAL SETTING

The Project is located in undeveloped grasslands and currently developed areas including a quarry, building structures, and roads. The EIR should provide sufficient information regarding the environmental setting necessary to understand the Project's, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 and 15360).

CDFW recommends that the EIR provide baseline habitat assessments for special-status fish, wildlife, and plant species potentially affected by the Project including but not limited to the species with the designations listed below.

- Threatened, endangered, rare, candidate, or fully protected under state law
- Threatened or endangered under federal law
- California Rare Plant Rank (CRPR) 1 through 4 (<http://www.cnps.org/cnps/rareplants/ranking.php>)
- California Species of Special Concern (<https://www.wildlife.ca.gov/Conservation/SSC/>)
- Local or regional rare plants or animals identified in a local or regional plan or policy
- Rare, threatened, or endangered pursuant to CEQA Guidelines section 15380

Special-status species documented to occur, or with the potential to occur, on or near the Project area include, *but are not limited to*, those listed in the table below.

Common Name	Scientific Name	Status	Rare Plant Rank
Alameda whipsnake	<i>Masticophis lateralis euryxanthus</i>	FT, ST	1B.2
Brewer's western flax	<i>Hesperolinon breweri</i>		
California red-legged frog	<i>Rana draytonii</i>	FT, SSC	
California tiger salamander	<i>Ambystoma californiense</i>	FT, ST	
Caper-fruited tropidocarpum	<i>Tropidocarpum capparideum</i>		1B.1
Coast horned lizard	<i>Phrynosoma blainvillii</i>	SSC	
Diablo helianthella	<i>Helianthella castanea</i>		1B.2
Golden eagle	<i>Aquila chrysaetos</i>	SFP	
Hall's bushmallow	<i>Malacothamnus hallii</i>		1B.2

Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC	
Mt. Diablo fairy-lantern	<i>Calochortus pulchellus</i>		1B.2
Pallid bat	<i>Antrozous pallidus</i>	SSC	
San Francisco dusky-footed woodrat	<i>Neotoma fuscipes annectens</i>	SSC	
Slender silver moss	<i>Anomobryum julaceum</i>		4.2
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC	
Western bumble bee	<i>Bombus occidentalis</i>	CE	
Western burrowing owl	<i>Athene cunicularia</i>	SSC	1B.2
White-tailed kite	<i>Elanus leucurus</i>	FP	

FE = federally listed as endangered under ESA; FT = federally listed as threaten under ESA; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SFP = state fully protected under Fish and Game Code; SSC = state species of special concern; CE= candidate for state listing as endangered

Habitat assessments and species baseline information should include information from multiple sources; for example, recent and historical aerial imagery and survey data, field reconnaissance surveys, scientific literature and reports, and findings from databases such as California Natural Diversity Database (CNDDDB). The CNDDDB is a “positive occurrence” database containing records of species and natural communities that have been observed and documented. Absence of data in such sources does not indicate that the species is absent from the Project area or vicinity. Based on the data and information from the habitat assessment and surveys, the EIR can adequately assess which special-status species are likely to occur in the Project area or vicinity.

**COMMENTS**

**Comment 1: State Fully Protected Species**

State fully protected species, including golden eagle and white-tailed kite, may occur within the Project area. CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code §§ 3511, 4700, 5050, and 5515. Take, as defined by Fish and Game Code § 86 is to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”, of any fully protected species is prohibited and CDFW cannot authorize their incidental take. Without appropriate mitigation measures, Project activities conducted within occupied territories have the potential to significantly impact these species.

Without appropriate avoidance and minimization measures for fully protected species, potentially significant impacts associated with Project activities may include, but are not limited to inadvertent entrapment, reduced reproductive success, reduced health and vigor, nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

To avoid impacts to fully protected species, CDFW recommends that a qualified biologist conduct species-specific surveys (using standard protocol or methodology, if available) of the Project site before Project implementation. If Project activities will take place when fully protected species are active or are breeding, CDFW recommends that additional pre-activity surveys for active nests or individuals be conducted by a qualified biologist no more than five (5) days prior to the start of Project activities.

In the event a fully protected species is found within or adjacent to the Project site, CDFW recommends that a qualified wildlife biologist develops an appropriate no-disturbance buffer to be implemented. The qualified wildlife biologist should also be on-site during all Project activities to ensure that the fully protect species is not being disturbed by Project activities.

**Comment 2: Alameda Whipsnake**

The Project site directly abuts suitable Alameda whipsnake core and dispersal habitat. Due to the potential presence of this listed species and the potential for Project-related take, including relocation out of harm's way, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any 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. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

**Comment 3: California Tiger Salamander**

The Project site is within the range of California tiger salamander (CTS). CTS spend the majority of their lives underground, taking shelter in small mammal burrows in grasslands. Data indicate that CTS can disperse as far as 1.3 miles (2.2 km) from breeding ponds to upland terrestrial habitat, and routinely disperse greater than 0.62 miles (1 km). CDFW recommends that a qualified biologist conduct a habitat assessment following the "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" which may be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. If California tiger salamanders or suitable habitat are identified on-site, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any 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. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

**Comment 4: Western Burrowing Owl**

CDFW recommends that Project area be surveyed for western burrowing owls following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the

CDFW Staff Report on Burrowing Owl Mitigation (Staff Report), which is available online at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

To offset loss of foraging habitat, CDFW recommends that the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio as a condition of Project 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). The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid "take".

#### **Comment 5: Special-Status Plants**

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>. 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 Incidental Take Permit (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.

#### **Comment 6: Nesting Birds**

If ground-disturbing or vegetation-disturbing activities occur during the breeding season (February through early-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections.

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

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than five (5) days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist determine any necessary buffer variances, in consultation with CDFW, in order to protect nesting birds based on existing site conditions.

## **REGULATORY REQUIREMENTS**

### *California Endangered Species Act*

Please be advised that a CESA Permit 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 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 section 21001(c), 21083, and CEQA Guidelines section 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 section 2080.

### *Lake and Streambed Alteration Program*

Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities 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

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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 section 21000 et seq.) as the responsible agency.

#### **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 section 711.4; Pub. Resources Code, section 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter, please contact Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or [jennifer.rippert@wildlife.ca.gov](mailto:jennifer.rippert@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [melissa.farinha@wildlife.ca.gov](mailto:melissa.farinha@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse #2020020323