



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

January 29, 2021

Jan 29 2021

STATE CLEARINGHOUSE

Mr. Neal Toft
City of Larkspur
400 Magnolia Avenue
Larkspur, CA 94939
ntoft@cityoflarkspur.org

Subject: Larkspur General Plan Update 2040, Notice of Preparation of a Draft Program Environmental Impact Report, SCH No. 2020120517, City of Larkspur, Marin County

Dear Mr. Toft:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Program Environmental Impact Report (EIR) for the Larkspur General Plan Update 2040 (Project).

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental Take Permit, a Native Plant Protection Act Permit, a Lake and Streambed Alteration (LSA) Agreement, or approval under other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The Project is an update to the City of Larkspur (City) General Plan and is intended to guide community planning and development through the year 2040. The Project area is the City and surrounding areas within the City's sphere of influence, including the Community of Greenbrae and the San Quentin Peninsula. The Project is bordered by the City of San Rafael to the north, the Town of Corte Madera to the south and east, the communities of Kentfield and Kent Woodlands and the King Mountain Open Space Preserve to the west, and San Francisco Bay to the east. The Project covers approximately 3,283 acres.

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 and 15378). Please include a complete description of the following Project components in the Project description:

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- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, 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, and crew sizes.

The draft EIR is identified as a Program EIR. While Program EIRs have a necessarily broad scope, CDFW recommends providing as much information related to anticipated future activities as possible. 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 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. 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 including but not limited to species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380. The checklist should cite the specific portions of the draft EIR, including page and section references, include an analysis of the subsequent Project activities' potentially significant effects, and incorporate all applicable mitigation measures from the draft EIR.

ENVIRONMENTAL SETTING

The draft EIR should provide sufficient information regarding the environmental setting ("baseline") 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 draft EIR provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the Project area and surrounding lands, including but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The draft EIR should describe

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aquatic habitats, such as wetlands and/or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site. Fully protected, threatened or endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

- Tiburon jewelflower (*Streptanthus glandulosus* spp. *niger*), state and federally listed as endangered, California Rare Plant Rank (CRPR) 1B.1
- Tiburon paintbrush (*Castilleja affinis* var. *neglecta*), state listed as threatened, federally listed as endangered, CRPR 1B.2
- Tiburon mariposa-lily (*Calochortus tiburonensis*), state and federally listed as threatened, CRPR 1B.1
- Tiburon buckwheat (*Eriogonum luteolum* var. *caninum*), CRPR 1B.2
- Marin western flax (*Hesperolinon congestum*), state and federally listed as threatened, CRPR 1B.1
- California Ridgway's rail (*Rallus obsoletus obsoletus*), state and federally listed as endangered, Fully Protected Species
- California black rail (*Laterallus jamaicensis coturniculus*), state listed as threatened, Fully Protected Species
- Northern spotted owl (*Strix occidentalis caurina*), state and federally listed as threatened
- White-tailed kite (*Elanus leucurus*), Fully Protected Species
- San Pablo song sparrow (*Melospiza melodia samuelis*), California Species of Special Concern (SSC)
- California red-legged frog (*Rana draytonii*), federally listed as threatened, SSC
- California giant salamander (*Dicamptodon ensatus*), SSC
- Western pond turtle (*Emys marmorata*), SSC
- Coho salmon south of Punta Gorda (*Oncorhynchus kisutch* pop. 4), state and federally listed as endangered
- Longfin smelt (*Spirinchus thaleichthys*), state listed as threatened
- Central California Coast steelhead (*Oncorhynchus mykiss irideus* pop. 8), federally listed as threatened
- Salt marsh harvest mouse (*Reithrodontomys raviventris*), state and federally listed as endangered, Fully Protected Species
- Townsend's big-eared bat (*Corynorhinus townsendii*), SSC

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- Pallid bat (*Antrozous pallidus*), SSC
- Monarch (*Danaus plexippus* pop. 1), California Terrestrial and Vernal Pool Invertebrate of Conservation Priority (ICP)¹
- Western bumble bee (*Bombus occidentalis*), ICP

Habitat descriptions, and the potential for species occurrence, should include information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; the U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; and findings from positive occurrence databases such as California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessment, the draft EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

Botanical surveys for special-status plant species, including those with a CRPR (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all species potentially impacted by the Project within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrology, and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements, available at: <https://wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The draft EIR should discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts, that may occur with implementation of the Project (CEQA Guidelines, § 15126, 15126.2, and 15358). This includes evaluating and describing impacts such as:

- Encroachments into riparian habitats, wetlands, or other sensitive areas;
- Potential for impacts to special-status species;

¹ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

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- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, rock outcrops, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The draft EIR should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be less than significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species should be considered cumulatively considerable.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and mitigate potentially significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.4, and 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, the USFWS, and the National Marine Fisheries Service. These measures should be incorporated as enforceable Project conditions to reduce impacts to biological resources to less-than-significant levels.

Fully protected species such as white-tailed kite, California Ridgway's rail, California black rail, and salt marsh harvest mouse, may not be taken or possessed at any time (Fish and Game Code, § 3511, 4700, 5050, and 5515). Therefore, the draft EIR should include measures to ensure complete avoidance of these species.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in take² 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

² Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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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 to obtain a CESA 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 Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

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, as a Responsible Agency, 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.

Migratory Birds and Raptors

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Fully protected species may not be taken or possessed at any time (Fish and Game Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

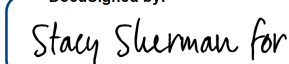
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FILING FEES

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.

If you have any questions, please contact 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

cc: State Clearinghouse (SCH No. 2020120517)