



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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Mar 02 2021

March 1, 2021

STATE CLEARINGHOUSE

Mr. Immanuel Bereket
County of Marin, County Development Agency
3501 Civic Center Drive, Suite 308
San Rafael, CA 94903
IBereket@marincounty.org

Subject: O'Donnell Financial Group Master Plan Amendment and Design Review,
Mitigated Negative Declaration, SCH No. 2021010122, Marin County

Dear Mr. Bereket:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Marin (County) for the O'Donnell Financial Group Master Plan Amendment and Design Review (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA 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 permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: O'Donnell Financial Group, LLC

Objective: The Project will amend the Howard Johnson's Master Plan, originally approved in 1969 and amended in 1973, to allow housing development at a designated gasoline service station property; and receive design review approval to construct a two-story, mixed-use building with approximately 10 studio apartments and 11 studio

¹ CEQA is codified in the California Public Resources Code in Section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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extended-stay hotel rooms on a vacant lot. A gasoline station was removed from the lot in 1994 and it has been vacant since that time. Primary Project activities include grading, excavation, trenching, building construction, concrete pouring, and landscaping.

Location: The Project is located at 150 Shoreline Highway, approximately 700 feet west of the intersection of Highway 101 and Highway 1 (Shoreline Highway), at the western edge of Richardson Bay near the City of Mill Valley, in Marin County. The Project will occur on Assessor's Parcel Number 052-371-03. The approximate Project centroid is Latitude 37.88107°N, Longitude 122.51864°W.

Timeframe: The Project is anticipated to take between 12 and 14 months to complete.

ENVIRONMENTAL SETTING

The Project site is located on a 0.59-acre undeveloped lot with a hard-packed dirt and gravel surface. The lot contains no vegetation and is currently used for construction equipment and material storage. The site is immediately surrounded by mixed-use development, including a Holiday Inn Express to the northwest and housing and commercial businesses to the southeast. Adjacent properties contain ornamental trees and vegetation that could provide nesting habitat for birds. In addition, the Project site is approximately 350 feet southwest of the Marin County Parks Mill Valley/Sausalito pedestrian pathway and adjacent Coyote Creek Marsh. The nearest watercourse, Coyote Creek, is approximately 485 feet northwest of the Project site and a drainage ditch flowing to Richardson Bay is approximately 150 feet southeast of the Project site. Bothin Marsh Open Space Preserve is approximately 600 feet northwest of the Project site, on the opposite side of Coyote Creek relative to the Project. The site is located within the Federal Emergency Management Agency (FEMA) designated 100-year flood zone and will be subject to sea level rise under various climate change scenarios (Ackerly et al. 2018; see also Our Coast Our Future² and BayWAVE: Sea Level Rise and Marin's Bayside³).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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.

² <https://data.pointblue.org/apps/ocof/cms/>

³ <https://www.marincounty.org/main/marin-sea-level-rise/baywave>

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Environmental Setting and Related Impact Shortcoming

California Ridgway's rail and California black rail:

The MND identifies that tidal marshland habitat supporting California Ridgway's rail (*Rallus obsoletus obsoletus*; previously named California clapper rail) and California black rail (*Laterallus jamaicensis coturniculus*) is present within approximately 350 feet and 600 feet from the Project site (page 37). California Ridgway's rail is listed as endangered under CESA and the federal Endangered Species Act (ESA), and is a Fully Protected species. California black rail is listed as threatened under CESA and is a Fully Protected species.

The California Ridgway's rail has lost nearly 90% of its historic tidal marsh habitat and its range is currently limited to the San Francisco Bay Area (U.S. Fish and Wildlife Service (USFWS) 2013). Similarly, the California black rail relies extensively on tidal marsh habitat and its population size has been reduced due to habitat loss and fragmentation (Spautz et al. 2005). Nesting rails are sensitive to noise and visual disturbance up to approximately 700 feet⁴ from the disturbance source, which can cause nest abandonment and juvenile mortality. The MND concludes that the Project distance from the marsh habitat is adequate to reduce potential impacts to marsh species, such as rails, to less-than-significant. In addition, the MND states that baseline noise levels on-site are approximately 56 decibels and construction activities will likely cause noise levels to increase (pages 93-94). Due to the proximity of potential rail habitat and the increased noise levels from Project activities, the Project has the potential to significantly impact rails through nest abandonment and reduced health and vigor of young. To reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure:

Mitigation Measure BIO-1: California Ridgway's Rail and California Black Rail Habitat Assessment, Surveys, and Avoidance

A qualified biologist shall conduct a habitat assessment for potentially suitable California Ridgway's rail or California black rail (henceforth, rail) habitat within 700 feet of the Project site. Any Project activities within 700 feet of potential rail habitat shall be avoided during rail breeding season, January 15 to August 31 for California Ridgway's rail, February 1 to August 31 for California black rail⁵ each year of Project construction unless: 1) appropriately timed, yearly protocol level surveys are conducted and the survey methodology, such as the USFWS *Site-Specific Protocol for Monitoring Marsh Birds* (Wood et al. 2017), and results are submitted to and accepted in writing by

⁴ A 700-foot no-disturbance buffer is based on the average home range of nesting rails (Albertson 1995).

⁵ The USFWS protocol survey (Wood et al. 2017) identifies January 15 as the beginning of rail breeding season. Juvenile rails disperse during the fall and winter, hence CDFW generally considers that August 31 is the end of the breeding season (Goals Project 2000).

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CDFW, and/or 2) the Project implements noise and disturbance avoidance measures described below.

Surveys shall focus on potentially suitable habitat that may be disturbed by Project activities during the breeding season to ensure that rails are not nesting in these locations.

If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight), and/or increase in ambient noise level shall occur within 700 feet of areas rails have been detected. If surveys have not been conducted, all work shall be conducted a minimum of 700 feet from potential rail habitat during breeding season.

If rails are detected during surveys or are assumed present in potential habitat, work may only be conducted during the breeding season within 700 feet of rail habitat if the Project submits a noise attenuation plan to CDFW for review and written approval. The noise attenuation plan will: 1) identify that the Project will be constructed with noise levels that do not exceed ambient noise levels, and 2) provide a map and design plan for noise attenuating fence(s) and visual barrier(s) that will be installed to prevent visual and acoustic impacts.

Nesting Birds:

The MND states the Project site is adjacent to ornamental trees and vegetation, but since the trees are not “expected to be utilized by special-status species,” no impacts to biological resources from the Project are anticipated (page 35). Many species of migratory and resident birds use landscaping vegetation for nesting purposes. Bird species that may be considered common have still declined over the past 50 years. Human activity and removal of habitat has contributed to the loss of a significant proportion of the total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Nesting birds may be disturbed by Project noise or human presence, which could lead to nest abandonment or reduced health and vigor of young, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure:

Mitigation Measure BIO-2: Nesting Bird Surveys

If construction, grading, or other Project-related activities are scheduled during the nesting season, February 1 to September 1, a focused survey for active nests shall be conducted by a qualified biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, the qualified biologist shall delineate a no-work-zone buffer distance around the nest that is site- and species-specific using high visibility fencing or flagging. The buffer distance shall be specified to protect the bird’s normal behavior and prevent nesting failure or abandonment. No work shall occur within the no-work-zone until the nest is no longer active as determined by a qualified biologist. If a

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lapse in Project-related work of 7 days or longer occurs, another focused survey shall occur before Project work is reinitiated.

Non-native Ornamental Landscaping:

The MND includes a list of ornamental species that will be planted on-site, including mayten (*Maytenus boaria*), Italian stone pine (*Pinus pinea*), Australian tree fern (*Dicksonia antarctica*), coffeeberry (*Frangula californica*), parrots beak (*Lotus maculatus*), creeping fig (*Ficus pumila*), and emerald carpet (*Arctostaphylos uva-ursi x nummularia*, a manzanita cultivar) (page 12). The MND states that the identified species are “consistent” with Marin County policies to promote the use of native plant species and control the spread of invasive exotic plants (page 80). Of the proposed plants, mayten is currently on the California Invasive Plant Council (CalIPC) watch list of plants that have a high risk of becoming invasive in California in the future (CalIPC 2017). Plants considered invasive are non-native species, i.e., species that were introduced to California post-European contact, and spread in the environment displacing or hybridizing with native species and altering natural ecosystems and processes. Planting species that could become invasive is a potentially significant impact to the environment. For example, mayten could spread to the adjacent sensitive marsh habitat supporting the above rail species and salt-marsh harvest mouse (*Reithrodontomys raviventris*), listed an endangered under CESA and ESA and a Fully Protected species, or the upland habitat south of the Project site, displacing native species and disrupting ecosystem processes. Marin County Parks considers mayten invasive on some of its properties and actively removes this species to prevent its spread (Marin County Parks 2020). To reduce impacts to less-than-significant, CDFW recommends evaluating the potential for mayten and other potentially invasive species to adversely impacts nearby habitat, and if impacts could occur, removing them from the planting list.

GENERAL SUGGESTIONS

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native nesting birds and other wildlife. As noted above, the removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s. Planting native trees and shrubs is an opportunity to improve conditions for birds. CDFW recommends replacing the proposed non-native ornamental species with native species⁶.

CDFW also suggests that the MND assess potential impacts from the Project to the environment that could result from sea level rise. The MND does not discuss the potential changes to habitat from sea level rise in combination with the Project. The

⁶ For native species recommendations and planting tips, review the Sonoma County Master Gardener document *Gardening Success with California Native Plants*: http://www.marinrcd.org/wp/wp-content/uploads/2015/02/Gardening-Success-with-CA-Natives_UCCE_Sonoma.pdf

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MND does identify that the Project building is within the FEMA Flood Hazard Area Zone and that the proposed building “would be constructed on a raised 3-foot-high concrete plinth base that would protect the building from flooding during the 100-year storm event” (pages 8 and 74). FEMA flood maps do not incorporate the impacts from climate change and often underestimate flood risks (Marcantonio et al. 2019); therefore, the 3-foot-high concrete plinth may not be adequate. Flooding of developed areas, including residential and commercial structures, can lead to the spread of toxins and contaminants in the environment (*ibid.*). While most studies of flood contaminants focus on human health, these same contaminants can impact the native flora and fauna, leading to potentially significant impacts to biological resources. CDFW recommends reviewing and incorporating sea level rise into the project design and ensuring that the Project site will not be flooded from sea level rise, in addition to 100-year storm events. Potential resources for analyzing sea level rise include Our Coast Our Future⁷, the San Francisco Bay Area Summary Report of California’s Fourth Climate Change Assessment (Ackerly et al. 2018), and BayWAVE: Sea Level Rise and Marin’s Bayside⁸.

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 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 may substantially divert or obstruct the

⁷ <https://data.pointblue.org/apps/ocof/cms/>

⁸ <https://www.marincounty.org/main/marin-sea-level-rise/baywave>

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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. The MND identifies Coyote Creek and an unnamed drainage ditch near the Project site but specifies no activities will occur in or near either drainage. Both drainages are subject to notification requirements if Project activities change and would impact those areas. In that case, CDFW 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.

Raptors and Other Nesting Birds

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 sections 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as 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).

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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

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 for the underlying Project approval to be

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operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND 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. 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: Office of Planning and Research, State Clearinghouse (SCH No. 2021010122)

REFERENCES

- Ackerly, David; Jones, Andrew; Stacey, Mark; Riordan, Bruce. University of California Berkeley. 2018. San Francisco Bay Area Summary Report. California's Fourth Climate Change Assessment. https://www.energy.ca.gov/sites/default/files/2019-11/Reg_Report-SUM-CCCA4-2018-005_SanFranciscoBayArea_ADA.pdf
- Albertson, J.D. 1995. Ecology of the California clapper rail in the south San Francisco Bay. Thesis. San Francisco State University, San Francisco, California, USA.
- CallIPC. 2017. California Invasive Plant Council Inventory. <https://www.cal-ipc.org/plants/inventory/>
- Goals Project. 2000. Baylands Ecosystem Species and Community Profiles: Life histories and environmental requirements of key plants, fish and wildlife. Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. P.R. Olofson, editor. San Francisco Bay Regional Water Quality Control Board, Oakland, California. https://www.waterboards.ca.gov/sanfranciscobay/water_issues/hot_topics/Berressa/references/2000Species_and_Community_Profiles.pdf

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Marin County Parks. 2020. Vegetation & Biodiversity Management Annual Report and Project List. https://www.marincountyparks.org/-/media/files/sites/marin-county-parks/projects-and-plans/vegetation-management/annual-reports/vegetationmgmt_2020_reportandprojectlist.pdf?la=en

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avirind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

Spautz, Hildie; Nur, Nadav; Stalberg, Diana. 2005. California Black Rail (*Laterallus jamaicensis coturniculus*) Distribution and Abundance in Relation to Habitat and Landscape Features in the San Francisco Bay Estuary. USDA Forest Service Gen. Tech. Rep. PSW-GTR-191.

USFWS. 2013. California clapper rail (*Rallus longirostris obsoletus*) 5-year Review: Summary and Evaluation. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, CA. <https://biologists handbook.com/wp-content/uploads/2018/01/5-Year-Review-2013-1.pdf>

Wood, J.K; Nur, N.; Salas, L; and Richmond, O.M.W. 2017. Site-specific Protocol for Monitoring Marsh Birds: Don Edwards San Francisco Bay and San Pablo National Wildlife Refuges. Prepared for the U.S. Fish and Wildlife Service, Pacific Southwest Region Refuge Inventory and Monitoring Initiative. Point Blue Conservation Science. Petaluma, CA. <https://ecos.fws.gov/ServCat/DownloadFile/110223>