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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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March 2, 2021

Governor's Office of Planning & Research

Mar 03 2021

STATE CLEARINGHOUSE

Alex Casbara
Midpeninsula Regional Open Space District
330 Distel Circle
Los Altos, CA 94022
acasbara@openspace.org

Subject: Beatty House Removal and Site Restoration, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021020021, Santa Clara County

Dear Alex Casbara:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the Midpeninsula Regional Open Space District (Midpen) for the Beatty House Removal and Site Restoration (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under 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 SUMMARY

Proponent: Midpeninsula Regional Open Space District

Objective: The Project includes demolition of the existing Beatty House structure.

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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Location: The Project is located at 17820 Alma Bridge Road, Los Gatos, CA 95033. The Assessor's Parcel Numbers are 558-36-011 and 558-36-012.

COMMENTS AND RECOMMENDATIONS

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

Bat Measures

The NOP does not discuss wildlife species that may be present within the area of impact or any potential impacts to wildlife and habitats such as tree removal. In review of the California Natural Diversity Database (CNDDDB, CDFW 2021) bat species occurrences within 5 miles of the Project area include pallid bat (*Antrozous pallidus*, State Species of Special Concern), Townsend's big-eared bat (*Corynorhinus townsendii*, State Species of Special Concern), and hoary bat (*Lasiurus cinereus*). Demolition of the Beatty House could cause direct mortality to Townsend's big-eared bat and pallid bat, if present. Disturbance due to demolition and other construction activities could impact pallid and hoary bats that may be roosting in trees adjacent to the work area.

To reduce impacts to less-than-significant levels, CDFW recommends the following mitigation measures be included in the draft EIR:

1. **Bat Habitat Assessment and Surveys:** A qualified biologist will conduct a habitat assessment for bats within the Project area. The habitat assessment will include a visual inspection of potential roosting features (building and potential trees to be removed) and presence of guano within the Project area, access routes, and 50 feet around these areas. The qualified biologist will survey these areas 14 days prior to the start of work.
2. **Roost Disturbance Avoidance:** If roosting features are found during the survey, these features will be flagged or marked. A minimum 50-foot buffer will be established around maternity roosts adjacent to the work area. Construction proposed adjacent to roosts will not occur within the established buffer area until the time of year in which young are able to fly.
3. **Exclusion Plan:** If pre-construction surveys have determined that bats are present in the building and adjacent trees, and full avoidance of disturbance of bats is not possible prior to demolition of structures or tree removal, exclusion structures (e.g., one-way doors or similar methods) will be installed in the roosting feature. The exclusion structures shall not be placed until the time of year in which young are able to fly. This exclusion plan will be submitted to CDFW for review.

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4. Bat Mitigation and Monitoring Plan. A Bat Mitigation and Monitoring Plan will be prepared and implemented to mitigate for the loss of roosting habitat. The Plan should include information pertaining to the species of bat and location of the roost, compensatory mitigation for permanent impacts (including specific mitigation ratios and location of proposed mitigation) and monitoring to assess bat use of mitigation areas. This exclusion plan will be submitted to CDFW for review.

Bird Nest Measures

The NOP on page 2 describes plant communities on the Project site including oak woodland, chaparral, and annual grassland. The NOP does not include a discussion of wildlife that may be present within these habitats. There is a potential for avian species to nest within these habitats; therefore, the draft EIR should include a thorough habitat assessment and description of special-status avian species that could be present within the Project area and surrounding lands. In order to avoid significant impacts to avian species potentially nesting in or near the impact area, CDFW recommends that the following protective measures be included in the draft EIR:

1. Nesting Bird Surveys: If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist will conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys will be conducted at the appropriate times of day and during appropriate nesting times.
2. Active Nest Buffers: If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction will be established. The buffer will be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist will conduct baseline monitoring of the nest to characterize "normal" bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist will monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman will have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

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Special-Status and Sensitive Amphibian Species

The NOP does not include discussion of wildlife that may be present within the impact area. In review of the CNDDDB (CDFW 2021) and other sources, amphibian species occurrences within two miles of the Project area include California red-legged frog (CRLF, *Rana draytonii*, Federally Threatened, State Species of Special Concern) and California newt (*Taricha torosa*). There may be a potential for these species to disperse into the Project site.

CDFW recommends that the draft EIR include an analysis of the potential for CRLF and California newt to be present within Project site, staging area, and access areas. If CRLF or other native amphibians may be present, the draft EIR should analyze how Project implementation may directly and indirectly impact these species. The draft EIR should include measures to avoid, minimize, or mitigate for impacts to CRLF or other native amphibians to reduce impacts to a less-than-significant level.

Rare Plant Species

The NOP does not include discussion of special-status or rare plants that may be present within the impact area. In review of the CNDDDB (CDFW 2021), there are several rare plant species that are located within two miles of the Project site such as Loma Prieta hoita (*Hoita strobilina*, California Rare Plant Rank 1B.1), bent-flowered fiddleneck (*Amsinckia lunaris*, California Rare Plant Rank 1B.2), most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*, California Rare Plant Rank 1B.2), and woodland woollythreads (*Monolopia gracilens*, California Rare Plant Rank 1B.2). In order to avoid significant impacts to rare plant species within impact area, CDFW recommends that the following protective measures be included in the draft EIR:

- 1- Special-Status Plant Habitat Assessment: A qualified botanist will conduct an assessment of the plant communities/land cover (e.g., serpentine bunchgrass grassland or Coast live oak forest and woodland with serpentine soils) that provide habitat for rare plant species.
- 2- Special-Status Plant Focused Surveys: If plant communities/land cover suitable for rare plants are determined to be present, the Project location will be surveyed for State-listed plant species by a qualified biologist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.
- 3- Special-Status Plant Avoidance: Special-status plant species will be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

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ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base 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 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>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 NOP to assist Midpen in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento

LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 24, 2021.