



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



February 25, 2021

Governor's Office of Planning & Research

Mr. Jose Cortez, Associate Planner  
City of Antioch

**Feb 26 2021**

Community Development Department—Planning Division  
200 H Street  
Antioch, CA 94509  
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**STATE CLEARINGHOUSE**

Subject: Mount Diablo Resource Recovery Maintenance Facility Project,  
Mitigated Negative Declaration, SCH No. 2021010330, City of Antioch,  
Contra Costa County

Dear Mr. Cortez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Antioch (City) for the Mount Diablo Resource Recovery Maintenance Facility Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. 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 or wildlife resources. CDFW is also considered a Responsible Agency if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, 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.

## **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

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<sup>1</sup> 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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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 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:** City of Antioch

**Location:** The Project is located approximately one mile west of State Route 160 (SR-160) at 2600 Wilbur Avenue in the City of Antioch, California.

**Objective:** The Project consists of the development of the Mt. Diablo Resource Recovery Truck Maintenance Facility. The Project will be developed in three phases on a 10.28-acre site that is currently developed with a 9,730-square-foot metal warehouse building and approximately 10,000 square feet of paved surface parking. Phase 1 will initially use the existing warehouse building as an interim truck repair and maintenance facility and would construct approximately 3.5 acres of truck and employee parking and a truck fueling station. In Phase 2, the Project will construct a new metal warehouse building of approximately 18,533 square feet, a vehicle and equipment wash station, and a storage yard. Phase 3 will include drainage improvements and grading approximately 1.73 acres in the western portion of the site. This portion will continue to

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be used as a storage yard; however, future development is planned and may include construction of a 18,500 square foot warehouse building similar in design, appearance and height as the Phase 2 building.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

### **Swainson's hawk**

The MND determined that there is the potential for Swainson's hawk to be present within and adjacent to the Project area. CDFW recommends that prior to the initiation of construction activities, the Project proponent should conduct surveys for Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted: 1) within a minimum 0.25-mile radius of the Project area or a larger area, if necessary, to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.5-mile buffer should be maintained around the nest until the young fledge. If take of Swainson's hawk cannot be avoided, the Project proponent should be required to obtain a CESA ITP as a condition of Project approval.

If Swainson's hawk activity (foraging, not just nests) is identified on or near the Project site, the Project proponent should mitigate for the permanent loss of foraging habitat at a minimum of a 1:1 mitigation ratio (mitigation: loss). Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

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## Nesting Bird Surveys

Mitigation measure *MM BIO-1* indicates nesting bird surveys will be conducted no more than 15 days prior to the initiation of construction activities. For many birds, 15 days is more than enough time to establish a nest and begin rearing young. Therefore, CDFW recommends that nesting bird surveys are conducted no more than **5 days** prior to the initiation of construction. If construction activities lapse for a period of 7 days or more during the nesting bird season, another nesting bird survey should be conducted no more than 5 days prior to the re-initiation of construction activities.

## ENVIRONMENTAL DATA

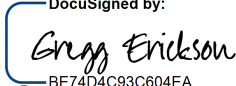
CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status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

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City 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 via email to [Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or to Ms. Melissa Farinha, Acting Environmental Program Manager, at (707) 944-5579 or via email to [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C83C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse