



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



Governor's Office of Planning & Research

July 2, 2021

**July 02 2021**

## **STATE CLEARINGHOUSE**

Ms. Zoe Merideth  
City of Antioch  
Post Office Box 5007  
Antioch, CA 94531-5007  
[zmerideth@antiochca.gov](mailto:zmerideth@antiochca.gov)

Dear Ms. Merideth:

Subject: Wild Horse Multifamily Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021050430, City of Antioch, Contra Costa County

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) provided for the Wild Horse Multifamily Project (Project) located between the current terminus of Wild Horse Road and Highway 4, in the City of Antioch, California.

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 the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement 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 Project would involve the development of 126 multifamily residences on an approximately 12-acre site at the terminus of Wild Horse Road and State Route 4 in Antioch, California. The Project site is currently vacant and consists of annual grassland surrounded by residential developments to the west and south, and Highway 4 to the east.

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 that contains sufficient information to evaluate and review the Project's environmental impact. 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;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Construction schedule, activities, equipment and crew sizes;
- 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 and greenhouse gas generation, traffic generation, and other features, both during construction and after completion of the Project.

## ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the Project's, and its alternative's (if applicable), significant impacts on the environment (CEQA Guidelines, §§15125 and 15360). CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, or endangered species (CEQA Guidelines, §15380). Fully protected, threatened or endangered, candidate, 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*, those listed in the table below:

Species	California Endangered Species Act	Federal Endangered Species Act	Other Special-Status
Loggerhead shrike <i>Lanius ludovicianus</i>			SSC <sup>1</sup>
Northern harrier <i>Circus cyaneus</i>			SSC
Swainson's hawk <i>Buteo swainsoni</i>	T <sup>2</sup>		
Western burrowing owl <i>Athene cunicularia</i>			SSC
White-tailed kite <i>Elanus leucurus</i>	FP <sup>3</sup>		
Alameda whipsnake <i>Masticophis lateralis euryxanthus</i>	T	T	
Northern California legless lizard <i>Anniella pulchra</i>			SSC
Pallid bat <i>Antrozous pallidus</i>			SSC
Townsend's big-eared bat <i>Corynorhinus townsendii</i>			SSC

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Western red bat <i>Lasiurus blossevillii</i>			SSC
American badger <i>Taxidea taxus</i>			SSC
San Joaquin kit fox <i>Vulpes macrotis mutica</i>	E <sup>4</sup>	T	

<sup>1</sup> SSC: California Species of Special Concern

<sup>2</sup> T: Threatened

<sup>3</sup> FP: Fully Protected

<sup>4</sup> E: Endangered

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends that during project planning 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://www.wildlife.ca.gov/Conservation/Survey-Protocols>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. Please follow survey methodology and reporting guidance for development of the draft EIR per CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

## IMPACT ANALYSIS AND MITIGATION MEASURES

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

- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and

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- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features;
- Permanent or temporary changes to natural community composition.

The CEQA document also should 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 insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a listed species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines (§§ 15021, 15063, 15071, 15126.2, 15126.4 and 15370) direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment. This includes a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species such as white-tailed kite may not be taken or possessed at any time (Fish and Game Code § 3511). Therefore, the draft EIR is advised to include measures to ensure complete take avoidance of these fully protected species.

CDFW recommends adding the following language to the draft EIR for the protection of wildlife:

1. Western Burrowing Owl

- “Pre-construction surveys for western burrowing owl shall be conducted for burrowing owl in accordance with the March 7, 2012 CDFW Staff Report on Burrowing Owl Mitigation. If pre-construction surveys find active nests avoidance and minimization guidelines must be developed prior to the start of construction in accordance with the March 7, 2012 CDFW memo, and through consultation with CDFW.”*
- “If temporary or permanent exclusion and closure of western burrowing owl burrows cannot be avoided, the Project proponent shall ensure that suitable,*

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*conserved burrowing owl habitat of equal or greater value is present within 100 meters of the destroyed burrows for all exclusions prior to the commencement of exclusion activities. If no such habitat exists, the Project proponent shall be required to obtain written approval of a Burrowing Owl Exclusion and Mitigation Plan from both CDFW and USFWS.”*

- c. *“To offset permanent impacts to western burrowing owl foraging habitat, the Project proponent shall purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 2:1 mitigation ratio (or a minimum mitigation ratio of 3:1 if active burrows or winter roosts are identified on-site) as a condition of Project approval. Mitigation lands shall be within 210 meters of an active breeding colony at minimum and shall have an active breeding colony of burrowing owls. Mitigation lands shall be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement shall 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 shall be named as a third-party beneficiary under the conservation easement.”*

## 2. Swainson’s Hawk

- a. *“A qualified biologist shall 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 shall be closely followed by starting early in the nesting season 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 shall be conducted within a minimum 0.5-mile radius of the Project area or a larger area, if necessary, to identify potentially impacted active nests. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.5-mile protective buffer shall be maintained around the nest until the young fledged. The protective buffer shall be clearly marked and be an area where no project-related activities or personnel are allowed while in place. If the 0.5-mile buffer must be reduced the*

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*Project proponent shall be required to obtain a CESA ITP as a condition of Project approval.”*

- b. “If Swainson’s hawk activity (foraging, not just nests) is identified on or near the Project site, the Project proponent shall mitigate for the permanent loss of foraging habitat at a minimum of a 2:1 mitigation ratio (mitigation: loss). Mitigation lands shall be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement shall 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 shall be named as a third-party beneficiary under the conservation easement.”*

### 3. San Joaquin Kit Fox

- a. “A qualified biologist shall conduct surveys for San Joaquin kit fox in accordance with USFWS’ San Joaquin Kit Fox Survey Protocol for the Northern Range (1999), available on USFWS’s webpage at [https://www.fws.gov/ventura/docs/species/protocols/sjkf/sfwo\\_kit-fox\\_protocol.pdf](https://www.fws.gov/ventura/docs/species/protocols/sjkf/sfwo_kit-fox_protocol.pdf). The qualified biologist shall have a minimum of two years of experience implementing the TAC survey methodology. If San Joaquin kit fox are identified on-site the project proponent shall be required to obtain a CESA ITP as a condition of Project approval.”*
- b. “If San Joaquin kit fox activity (hunting, not just dens) is identified on or near the Project site, the Project proponent shall mitigate for the permanent loss of kit fox habitat at a minimum of a 2:1 mitigation ratio (mitigation: loss). Mitigation lands shall be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement shall 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 shall be named as a third-party beneficiary under the conservation easement.”*

### 4. General Construction Measures for the Protection of Special-Status Species

- a. “Any fencing, sign posts, or vertical poles installed temporarily or permanently throughout the course of the project shall have the top capped and/or the top*

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*three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife.”*

- b. “Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (i.e., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (i.e., deer) and small (i.e., snakes) from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, a qualified biologist or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord.”*
- c. “Integrated pest management solutions that emphasize non-chemical pest management shall be used over chemical pesticides to the extent feasible. Rodenticides and insecticides shall not be used on the project site.”*
- d. “No erosion control materials containing plastic monofilament netting (erosion control matting) or similar material containing netting shall be used within the project area due to documented evidence of amphibians and reptiles becoming entangled or trapped in such material. The project proponent shall use natural-fiber substitutes (e.g., coconut coir matting).”*

## **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 §§ 21001(c), 21083, and CEQA Guidelines §§ 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 § 2080.

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## Lake and Streambed Alteration Agreement

Notification for an LSA Agreement pursuant to Fish and Game Code §§ 1600 et. seq. is required 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 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 § 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, § 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 Jennifer Rippert, Environmental Scientist, at [Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or Melissa Farinha, Environmental Program Manager, at [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Stacy Sherman*

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Stacy Sherman

Acting Regional Manager  
Bay Delta Region

cc: State Clearinghouse #2021050430