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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

August 05 2021

STATE CLEARINGHOUSE

August 4, 2021

Ms. Zoe Merideth
City of Antioch
200 H Street
Antioch, CA 94509
zmerideth@antiochca.gov

Subject: AMPORTS Antioch Vehicle Processing Facility, Initial Study/Mitigated Negative Declaration, SCH No. 2021070030, City of Antioch, Contra Costa County

Dear Ms. Merideth:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Antioch (City) for the AMPORTS Antioch Vehicle Processing Facility (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. 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) and the Native Plant Protection Act (NPPA), 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

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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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: AMPORTS

Location: The Project is located at 2301 Wilbur Avenue in the City of Antioch in Contra Costa County. The Project site consists of two vacant parcels identified as Assessor's Parcel Numbers (APN) 051-020-006 and 051-020-012. It is in the northeast portion of the City, adjacent to the San Joaquin River, and approximately 1.3 miles west of State Route 160.

Objective: The Project consists of the development of an automotive logistics and processing facility on an approximately 38.0-acre vacant site to store and process new automobiles shipped from overseas to be transported to dealerships throughout the San Francisco Bay Area. The Project would involve structural upgrades to the existing wharf to accommodate vessels arriving at the site to off-load new automobiles. It would also involve the construction of a new pre-engineered metal building of approximately 25,328 square feet; grading and paving of the site for automobile storage; the demolition and

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construction of new utility connections; and construction of a new storm drain line and stormwater inlet.

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.

Special-Status Plants

The IS/MND states that the Project site consists mostly of urban habitat with annual grassland occurring along the western project limits and two small portions at the east and west ends of the slope between the two concrete pads. Due to the disturbed nature of the site, the IS/MND concludes that the Project site does not provide potential habitat for special-status plant species. A reconnaissance survey of the site conducted in March 2021 did not identify any special-status plant species on-site. While disturbance can decrease the likelihood of special-status plant species occurring on-site, it does not necessarily preclude the presence of such species. Furthermore, a single survey conducted once outside of the appropriate blooming period is insufficient to determine a species' absence from the survey area. CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities," which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. The IS/MND should be revised and recirculated to include the reporting elements and results from protocol-level surveys and the impact analysis revised to incorporate and disclose these results to the public and CDFW as a Trustee Agency.

If a state-listed or state Rare² plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the NPPA.

Swainson's Hawk (*Buteo swainsoni*)

The IS/MND notes that there are no potential nest trees for Swainson's hawk on the Project site. However, there are suitable nest trees on neighboring properties and

² In this context, "Rare" means listed under the California Native Plant Protection Act.

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records of Swainson's hawks nesting approximately one mile from the Project site. CDFW recommends that a qualified biologist conduct surveys prior to any construction activities that may impact 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 0.25-mile buffer shall 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.

The IS/MND for the Project should also include measures to avoid or minimize loss of Swainson's hawk foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. Foraging habitat should be mitigated if Swainson's hawk activity (foraging, not just nests) is identified on or near the Project site. 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.

If active Swainson's hawk nests are discovered within 0.25 miles of the Project site and cannot be avoided, the City should pursue further mitigation and incidental take coverage **prior** to the initiation of Project construction.

California Endangered Species Act-Listed Fish Species

The IS/MND identifies potentially significant impacts to CESA-listed fish species, including Central Valley spring-run Chinook salmon, Sacramento River winter-run Chinook salmon, Delta smelt and longfin smelt. Activities associated with the wharf repair (e.g., pile driving) have the potential to result in take of these species. The IS/MND indicates that the Project proponent has consulted with the U.S. Fish and

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Wildlife Service and the National Marine Fisheries Service, and has received a Biological Opinion for Project activities. Due to the potential presence of these listed species and the potential for Project-related take, CDFW advises that the Project proponent include an analysis for the potential of take of special-status fish species and consult with CDFW to evaluate impacts to state endangered and threatened fish. If take of CESA-listed fish species cannot be avoided, CDFW advises that the Project proponent seek incidental take authorization pursuant to Fish and Game Code Section 2080 et seq. in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any 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. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Giant Garter Snake

The project is located less than one mile from an extant record of giant garter snake, yet the IS/MND does not contemplate potentially significant impacts to giant garter snake, up to and including take. An IS/MND should be prepared with sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences (CEQA Guidelines §15151). CDFW recommends revising the IS/MND to identify all impacts to giant garter snake, provide quantifiable and enforceable measures to mitigate impacts to giant garter snake to less-than-significant, and recirculating for public review.

If take of giant garter snake cannot be avoided, CDFW advises that the Project proponent seek incidental take authorization pursuant to Fish and Game Code Section 2080 et seq. in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any 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. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Migratory and Nesting Birds

Mitigation Measure BIO-3 notes that exclusion zones around active nests may be as small as 25 feet or as large as 250 feet. Depending on the species, nest stage, and site conditions, 250 feet may not be sufficient to prevent disturbance-related nest failure.

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The no-disturbance buffer should be determined by a CDFW approved Qualified Biologist. Nests should be monitored daily during project-related activities by a Qualified Biologist to determine the sufficiency of the buffer and whether it should be expanded to protect the nest based on disruptions to an individual bird's natural nesting behaviors.

ENVIRONMENTAL DATA

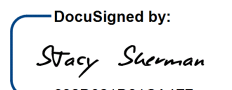
CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status 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 IS/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 Jennifer.Rippert@wildlife.ca.gov; or Ms. Melissa Farinha, Environmental Program Manager, at (530) 351-4801 or Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Stacy Sherman
Acting Regional Manager
Bay Delta Region

ec: State Clearinghouse