



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



August 12, 2021

Governor's Office of Planning & Research

August 13 2021

Ms. Emily Carroll
City of Richmond
450 Civic Center Plaza, Second Floor
Richmond, CA 94804
Emily_Carroll@ci.richmond.ca.us

STATE CLEARINGHOUSE

Subject: Cherry Blossom Row, Initial Study/Mitigated Negative Declaration,
SCH No. 2021070248, City of Richmond, Contra Costa County

Dear Ms. Carroll:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration from the City of Richmond (City) for the Cherry Blossom Row Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the Initial Study/Mitigated Negative Declaration (IS/MND) to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) 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 a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or 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

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any species listed under CESA cannot be avoided either during

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and 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 to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

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.

Migratory Birds and Raptors

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 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511).

PROJECT DESCRIPTION SUMMARY

Proponent: City Ventures. 444 Spear Street, Suite 200. San Francisco, California 94105.

Objective: The Project would develop a 4.74-acre site located in the Southwest Annex neighborhood in the southern end of the City of Richmond with a landscaped residential community of 100 townhome-style condominiums. The applicant is requesting rezoning of the Project property from CG – General Commercial to an RM1 – Medium Density Multi-Family Residential. At least 10 percent of the proposed new housing units would be affordable to moderate-income households. The Project site is comprised of three parcels: two contiguous parcels located west of Napa Street and a separate parcel located east of Napa Street. There is existing residential development on the west side

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of Napa Street. This development would be retained and is not part of the proposed Project. The three-story townhome-style condominiums with traditional architecture would be developed in 15 buildings ranging from triplexes to eight-plexes, separated by landscaped paseos and common open space. Five floor plans would be offered. The development will also contain amenities, including a community garden, landscaping, pathways, and small open space areas throughout the site to serve the Project residents.

Location: The Project is located at the cross streets of Dalai Lama Avenue and San Joaquin Street, in an unincorporated area of Richmond, California 90804, within Contra Costa County. The Project will occur on Assessor's Parcel Numbers: 507-251-015, 507-251-020, and 507-251-021. The approximate Project center coordinate is Latitude 37.905000, Longitude -122.316111.

Timeframe: The Project is planned to commence January 2022 be completed in 27 months.

COMMENTS AND RECOMMENDATIONS

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

Nesting Birds

Mitigation Measure BR-1 on page 57 of the MND states that nesting bird surveys will be conducted 14 days prior to the commencement of Project activities during the early point of nesting bird season, noted as January through April. BR-1 also states that after peak nesting season, stated as May through August, surveys will be conducted no more than 30 days prior to the commencement of Project activities. CDFW does not concur that these survey windows would mitigate for potential impacts to nesting birds to a level of less-than-significant. CDFW recommends nesting bird surveys be conducted by a qualified biologist within five days prior to the commencement of Project activities and that surveys be conducted again in the event that there is a lapse in Project activities for five days or longer. Moreover, some bird species with the potential to occur within and adjacent to the Project site may reuse the same nest year to year, such as osprey (*Pandion haliaetus*) a special-status species. Therefore, CDFW recommends that bird nesting surveys not be bound by a predetermined monthly requirement to fully mitigate for potential impacts to nesting birds.

Mitigation Measure BR-1 concludes with stating that active nests will be protected until September 1 or until the young have fledged. In order to comply with Fish and Game Code 3503 et seq. and to mitigate for potential impacts to nesting birds to a level of less-than-significant, CDFW recommends modifying this language in BR-1 to be, "...and

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the site shall be protected and monitored daily by a qualified biologist ~~until September 4st~~ or until they determine the young have fledged.”

Roosting Bats

Mitigation Measure BR-1 addresses the assessment and removal of 106 existing trees in regard to nesting birds, yet does not assess the potential impacts to roosting bats. Moreover, the special-status bat species, the hoary bat (*Lasiurus cinereus*), and the pallid bat (*Antrozous pallidus*), both Species of Special Concern, are known to occur in the vicinity of the Project area according to California Natural Diversity Database (CNDDDB) records (MaNIS 2006, MaNIS 2007). In addition to the actions described in BR-1, CDFW recommends that the following measure be incorporated into the MND to mitigate for any potential impacts to these two bat species, and other bats that have the potential to occur, to less-than-significant:

Removal of Roost Trees. Trees that can provide roost habitat for bats that are slated for removal shall be felled over the course of two days. On the first day, limbs from the identified trees shall be removed in the late afternoon to encourage bats to seek alternative roosts during nighttime foraging. The remaining portions of the tree shall be felled on the second day as late in the afternoon as feasible. Tree limbing or removal shall not be performed under any conditions which may lead to bats seeking refuge, including, *but not limited to*: during any precipitation event, when ambient temperatures are below 4.5 degrees Celsius, and/or when windspeeds exceed 11 miles per hour. CDFW shall be notified immediately if bats are found injured, or if bat mortality occurs, during the course of tree removal.

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 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 in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

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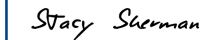
CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. 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 Andrew Chambers, Environmental Scientist, at (707) 266-2878 or Andrew.Chambers@wildlife.ca.gov; or 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

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2021070248)

REFERENCES

- Mammal Networked Information System (MaNIS) (2007, Mar. 3). Hoary bat [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved August 9, 2021 from <https://wildlife.ca.gov/Data/BIOS>.
- Mammal Networked Information System (MaNIS) (2006, Sep. 29). Pallid bat [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved August 9, 2021 from <https://wildlife.ca.gov/Data/BIOS>.