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DEPARTMENT OF FISH AND WILDLIFE
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August 30, 2021

Governor's Office of Planning & Research

August 30 2021

STATE CLEARINGHOUSE

Mr. Sean Tully
Contra Costa County
30 Muir Road
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Sean.Tully@dcd.cccounty.us

Subject: Spieker Senior Continuing Care Community Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021070517, Contra Costa County

Dear Mr. Tully:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) provided for the Spieker Senior Continuing Care Community Project (Project) located in unincorporated Walnut Creek.

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 Permit, 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 354 living units, including a 550,000-square-foot apartment-style building and 30 single-story residential buildings on an approximately 30.6-acre site along Seven Hills Ranch Road. The Project site consists of woodland and grassland habitats and is bounded by The Seven Hills School to the north, Walnut Creek to the north and west, Seven Hills Ranch Road to the south, the Walnut Creek city limit and existing residential neighborhoods to the south and east, and Heather Farms Park to the east. The approximate center coordinate for the Project is latitude 37.919678, and longitude -122.050118. The Project would occur on Assessor's Parcel Numbers 172-150-012 and 172-080-007.

The CEQA Guidelines (§§15124 & 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

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impact. Please include a complete description of the following Project components in the Project description:

- 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; and
- 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 alternatives' (if applicable), significant impacts on the environment (CEQA Guidelines, §§15125 & 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 ¹
Northern harrier <i>Circus cyaneus</i>			SSC
Western burrowing owl <i>Athene cunicularia</i>			SSC
Bald Eagle <i>Haliaeetus leucocephalus</i>	FP ³ , E ⁴		
Golden Eagle <i>Aquila chrysaetos</i>	FP ³ , E ⁴		

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White-tailed kite <i>Elanus leucurus</i>	FP		
California red-legged frog <i>Rana draytonii</i>		T ²	SSC
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
Western red bat <i>Lasiurus blossevillii</i>			SSC
American badger <i>Taxidea taxus</i>			SSC
Diablo helianthella <i>Helianthella castanea</i>			1B.2 ⁵
Oakland star tulip <i>Calochortus umbellatus</i>			4.2 ⁶

¹ SSC: California Species of Special Concern

² T: Threatened

³ FP: Fully Protected

⁴ E: Endangered

⁵ 1B.2: Plants rare, threatened, or endangered in California and elsewhere; fairly threatened in California

⁶ 4.2: Plants of limited distribution; fairly threatened in California

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.

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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 (CNPS) (found at: <http://www.cnps.org/cnps/rareplants/inventory/>) and/or found on the CNPS East Bay Chapter's Database of Rare, Unusual and Significant Plants of Alameda and Contra Costa Counties (found at: <https://ebcnps.org/ebrare-plant-database/>), must be conducted during the appropriate identification period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. Please refer to 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;
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features; and
- 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 & 15370)

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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, 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.

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

1. Western Burrowing Owl

- a. *“Pre-construction surveys for western burrowing owl shall be conducted in accordance with the March 7, 2012 CDFW Staff Report on Burrowing Owl Mitigation (found at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>). 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.”*
- b. *“If temporary or permanent exclusion and closure of western burrowing owl burrows cannot be avoided, the Project proponent shall ensure that suitable, conserved western 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 Western Burrowing Owl Exclusion and Mitigation Plan from both CDFW and the U.S. Fish and Wildlife Service.”*
- 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 and take cannot be avoided) 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 if western burrowing owls will be evicted from the Project site. Mitigation lands shall be protected in perpetuity under a*

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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. Trees and Riparian Vegetation

- a. *"The Project area shall 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. If a State-listed or State Rare¹ 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 Incidental Take Permit (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 Native Plant Protection Act."*
- b. *"All vegetation within the Project shall be surveyed and clear of special status species by the Qualified Biologist prior to removal or disturbance, including temporary disturbance for equipment ingress/egress. The disturbance of vegetation shall not exceed the minimum necessary to complete work. Precautions shall be taken to avoid other damage to vegetation by people or equipment."*
- c. *"All trees removed or pruned as result of proposed work activities shall be replaced as follows:*
 - i. *Trees up to 12 inches in diameter at breast height (DBH) reduced by 20-percent or more of their baseline canopy cover or limbs between 4 and 12 inches in diameter removed or trees where root systems are impacted (e.g., excavation or grading activities, placement of hardscape, changes in surface or subsurface hydrological dynamics) shall be replaced at an in-*

¹ In this context, "Rare" means listed under the California Native Plant Protection Act.

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kind ratio of 3:1 (mitigation to removed) for native species. Non-native trees shall be replaced at a 2:1 ratio with native species.

- ii. *Trees greater than 12 inches DBH reduced by 20 percent or more of their baseline canopy cover or limbs greater than 12 inches in diameter removed or trees where root systems are impacted shall be replaced at an in-kind ratio of 6:1 for native species. Non-native trees shall be replaced at a 3:1 ratio with native species.*
- iii. *All oaks greater than 2 inches DBH removed or pruned shall be replaced at a ratio of 6:1.*

Replacement trees shall consist of 5-gallon saplings, stakes, or other suitable nursery stock and shall be native species adapted to the lighting, soil and hydrological conditions at the replanting site. If replanting within the work area is unfeasible due to slope steepness or other physical constraints, replacement trees may be planted at an alternate location within the same watershed.”

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

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

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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, & 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.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities affecting lakes or streams and associated riparian habitat within the proposed Project area. Notification is required for any activity 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 LSAA 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 & 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.

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If you have any questions, please contact Jennifer Rippert, Senior Environmental Scientist (Specialist) at Jennifer.Rippert@wildlife.ca.gov; or Melissa Farinha, Environmental Program Manager, at 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 #2021070517