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DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

Oct 13 2021

STATE CLEARINGHOUSE

October 12, 2021

Mr. Hector J. Rojas, AICP
City of Martinez
525 Henrietta Street
Martinez, CA 94553
hrojas@cityofmartinez.org

Subject: New Single-Family Residence at 370 Lindsey Drive Project, Initial Study/Mitigated Negative Declaration, SCH No. 2021090170, Contra Costa County

Dear Mr. Rojas:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration from the City of Martinez (City) for the New Single-Family Residence at 370 Lindsey Drive Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines § 15386 for commenting on projects that could impact fish, wildlife, and plant resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish, wildlife, and plant trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Mr. Robert Romeo

Objective: The applicant seeks approval to construct a single-story single-family home, a pool house, pool, guard house kiosk, expansion of an existing drive with a new

¹ CEQA is codified in the California Public Resources Code in § 21000 et seq. The CEQA Guidelines are found in Title 14 of the California Code of Regulations, commencing with § 15000.

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retaining wall, and new landscaping all within two parcels totaling 120 acres. The Project consists of the following elements:

- Excavation and grading activities totaling an approximate 5,475 cubic yards of soil to be cut from the Project site
- Placement of approximately 1,076 cubic yards cut soils to be utilized as fill
- Placement of approximately 4,399 cubic yards of cut soils spread out throughout the Project site
- Constructing an approximately 6,498-square-foot new single-story, single-family residence within the footprint of a previously demolished home
- Construction of a pool
- Construction of an approximately 638-square-foot pool house
- Construction of an approximately 220-square-foot guard house kiosk
- Construction and expansion of an existing driveway with a new 212-foot-long retaining wall

Location: The Project is located at 370 Lindsey Drive, Martinez, California 94553, within Contra Costa County. The Project will occur on Assessor's Parcel Number 366-150-029 and 366-150-036. The approximate Project center coordinate is Latitude 37.975222, Longitude -122.2114833.

Timeframe: The Project is designed to be completed over the course of 12 months in a single phase.

ENVIRONMENTAL SETTING

The Project site is comprised of open space and the remnants of a demolished residential home footprint in the form of broken concrete. The open space areas found on and around the Project site are comprised of annual grasslands, oak savannah, mixed oak woodlands, and scrubland; all of which support and have adjacent and on-site positive occurrence records of Alameda whipsnake (AWS; Swaim, 2010) found on the California Natural Diversity Database (CNDDDB). In addition to AWS, the Project site contains habitat for nesting birds, fossorial mammals, roosting bats, and rare plants such as the California Native Plant Society's (CNPS) Rare Plant Rank 1.B2 species: bent-flowered fiddleneck (*Amsinckia lunaris*; CNPS East Bay Chapter, 2018), Mt. Diablo fairy lantern (*Calochortus pulchellus*; CNPS East Bay Chapter, 2011) and Diablo helianthella (*Helianthella castanea*; East Bay Regional Parks District, 2011). The topography of the Project site holds ridge features which contain contributing tributaries to Arroyo del Hambre.

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The immediate neighboring properties to the north, west, and southwest are comprised of suburban development that contain native and ornamental trees, and other vegetation or infrastructure, that provide potential nesting habitat for birds and potential roosting habitat for bats. In the remaining directions, adjacent areas contain public and privately owned open space areas comprised of annual grasslands, coast live oak riparian forests, coast live oak woodlands, and scrublands. Within a two-mile radius are designated open space areas including portions of Briones Regional Park, John Muir Land Trust managed lands, and privately held ranchlands; all of which are found to encircle the Project site. These neighboring, adjacent, and two-mile radii private and public open space areas hold potential habitat, habitat corridors, and positive occurrence records of special-status species, including but not limited to, AWS, big free-tailed bat (*Nyctinomops macrotis*; MaNIS, 2005) a CDFW Species of Special Concern, and the above listed CNPS-listed rare plants.

COMMENTS AND RECOMMENDATIONS

CDFW offers the 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, wildlife, and plant (biological) resources.

Impacts to Alameda Whipsnake

The Project will permanently impact habitat of Alameda whipsnake (*Masticophis lateralis euryxanthus*), a state threatened species. CDFW recommends that the Project applicant consult with CDFW on the necessity to obtain an ITP pursuant to Fish and Game Code Section 2081(b) prior to Project implementation.

The IS/MND does not offset significant impacts to AWS and the loss of AWS habitats. The IS/MND states on page 3-10 that AWS has been historically captured at the Project site in 2001, and that the Project as designed would likely result in substantial adverse impacts to AWS without mitigation. The Project's proposed construction activities which would occur within known AWS habitat, including but not limited to, excavation and grading, cut and fill of spoils, spreading of 4,399 cubic yards of spoils across the Project site, all hold the potential to cause direct mortality by equipment strike or death by entombment when spoils are placed over fossorial mammal burrows. CDFW defines this potential for direct and indirect mortality of AWS as take². Additionally, Mitigation Measure BIO-7 discusses the handling of AWS by a qualified biologist with the appropriate permits, which handling of CESA-listed species would be defined by CDFW as take². Moreover, CNDDDB holds numerous positive occurrence records surrounding the Project site (Swaim, 2010).

² In this context, the term "take" is defined by Fish and Game Code Section 86 as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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CDFW recommends that the Project mitigate for these impacts to AWS to a less-than-significant level by requiring compensatory mitigation in the form of conserved lands at 5:1 (mitigation to impact) ratio for new roadways or paved areas, a 3:1 ratio for all other permanent impacts, and a 1.1:1 ratio for temporary impacts. Conserved lands should be protected in perpetuity under a legal instrument such as a conservation easement, and be managed and maintained for AWS habitat in perpetuity through an endowment with a qualified and appointed land manager. CDFW also recommends, in addition to compensatory mitigation in the form of conserved lands and the provided Mitigation Measures BIO1-8, that the Project's Proponent apply for, and obtain, a CESA Incidental Take Permit (ITP) (found at: <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>) prior to the start of Project activities.

Additional AWS Mitigation Measures

CDFW recommends including the following avoidance and minimization measures in the biological resources section of the IS/MND:

Open Trenches: Any open trenches, pits, or holes with a depth of larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (e.g., plywood). Netting, canvas, or material capable of trapping or ensnaring wildlife shall not 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 (e.g., deer and coyotes) and small (e.g., frogs and snakes) wildlife to escape on their own volition. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, a biologist shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own volition. If wildlife does not leave of its own volition, consultation with the Lead Agency is required before work can be initiated.

Open Pipes Restriction: All pipes, culverts, or similar structures that are staged or stored at the site for one or more overnight periods shall be either: (1) capped, screened, or filled with material by Permittee when the structures arrive at the project site; or (2) thoroughly inspected for wildlife by a biologist prior to use in project activities. All hollow pipes or posts installed as part of the project and exposed to the environment at a positive angle shall be capped, screened, or filled with material by Permittee prior to the end of the workday in which the installation occurs.

Impacts to Special-Status Plants

The IS/MND does not offset significant impacts to special-status plants and the loss of special-status plant habitats. On Page 1 of Appendix A within the IS/MND, it is stated

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that only one biological survey was conducted on January 25, 2021, for the Project and did not include a floristics survey. Moreover, within Appendix A, and throughout the IS/MND, impacts to special-status plants were not assessed. The IS/MND states on page 1-2 that cut and fill activities will result in the excavation and placement of approximately 4,399 cubic yards of cut soils throughout the Project site which is comprised of potential habitat for special-status plants (e.g., oak savannah, mixed oak woodland, annual grassland, scrubland, etc. as stated on pages 3-9 and 3-10 of the IS/MND). Lastly, the Project site is located within a reasonable dispersal distance of rare-plant species (CNPS East Bay Chapter, 2005 & 2011; East Bay Regional Parks District 2018).

To ensure impacts to special-status plants are mitigated to a level of less-than-significant, 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://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>. The protocol surveys include the identification of reference populations and adjacent potential habitat areas to assist in the accuracy and timing of Project site floristic surveys. For example, utilizing adjacent populations of the Diablo helianthella (East Bay Regional Parks District, 2011), a CNPS 1B.2 moderately threatened rare plant with the potential to occur at the oak savannah, mixed oak woodland, annual grassland, and scrubland portions of the Project site, that blooms and fruits May through July, to best time surveying for the species on the Project site. The qualified botanist should have an applicable educational background in botany and, at the minimum, have two field seasons experience identifying and observing each special-status plant with the potential to occur at the Project site including, but not limited to, Diablo helianthella. The results of surveys following the protocol-level surveys should be summarized into Botanical Survey Reports, as found on page nine of the protocol-level surveys, and be submitted to CDFW by email to Andrew.Chambers@wildlife.ca.gov. Additionally, annual weather variance, including but not limited to the drought conditions of 2021 when the Project's biological survey was conducted, may require the necessity for additional floristic surveys to be performed.

If impacts to special-status plants, and the habitats thereof are identified during botanical surveys, then CDFW recommends to mitigate to a level of less-than-significant, the revised and recirculated IS/MND incorporate specific and enforceable avoidance and minimization measures designed to reduce impacts to special-status plants. If complete avoidance is not possible, by a qualified botanist, then CDFW recommends compensatory mitigation be required at a minimum of a 3:1 (mitigation to impact) ratio for permanent impacts, and a 1.1:1 ratio for temporary impacts to special-status plants to ensure the impact is mitigated to a level of less-than-significant. Examples of how to achieve this recommended mitigation may include, but is not limited

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to, the preservation and enhancement of on-site populations, seed collections or transplanting of applicable on-site individuals/populations, and preservation of occupied habitat on-site or off-site adjacent to the Project.

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>.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that CDFW recommends a CESA ITP be obtained as the Project has the potential to result in “take” of plants or animals listed under CESA, such as AWS, either during construction or over the life of the Project. Issuance of an ITP 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 an ITP.

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., 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 roadside ditches, streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements.

CONCLUSION

To ensure the analysis in the IS/MND is adequate, the protocol-level floristic surveys identified above should be implemented and results provided in a revised and recirculated IS/MND. In addition, to ensure significant impacts identified through the recommended floristic surveys and loss of CESA-listed species habitat and take of those species from Project construction and ongoing project operations identified above are adequately mitigated to a level less-than-significant, the feasible compensatory mitigation measures described above should be incorporated as enforceable conditions

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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 Andrew.Chambers@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Stephanie Fong

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Stephanie Fong
Acting Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2021090170)

LITERATURE CITED

CNPS East Bay Chapter. (2011). Diablo helianthella [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved October 7, 2021, from <https://wildlife.ca.gov/Data/BIOS>.

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