



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



January 13, 2022

Tricia Stevens
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901
tricia.stevens@cityofsanrafael.org

Subject: Northgate Mall Redevelopment Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021120187, City of San Rafael, Marin County

Dear Ms. Stevens:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the Northgate Mall Redevelopment Project (Project).

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental Take Permit, a Native Plant Protection Act Permit, a Lake and Streambed Alteration (LSA) Agreement, or approval under other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The Project would redevelop an existing mall through demolition, renovation, and new construction of commercial and residential structures. The City of San Rafael (City) is the Lead Agency for the Project and Merlone Geier Partners, LLC, is the Project proponent. The Project is located at 5800 Northgate Drive in the City of San Rafael, County of Marin and is surrounded by a mix of residential and commercial development, and open space. The approximate Project centroid is Latitude 38.003694°N, Longitude 122.544458°W. The Project would cover approximately 44.76 acres. The Project would be split into two phases.

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the

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Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). 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.
- Area and plans for all proposed buildings/structures, demolition, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- 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, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes for each phase of the Project.

REGULATORY REQUIREMENTS

CDFW has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Fully protected species such as white-tailed kite (*Elanus leucurus*) may not be taken or possessed at any time (Fish & G. Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

ENVIRONMENTAL SETTING

The draft EIR should provide sufficient information regarding the environmental setting ("baseline") to understand the Project's, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the draft EIR provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the Project area and surrounding lands, including but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). CDFW recommends including all relevant information from previously adopted or certified CEQA documents associated with the Project site. Fully protected, threatened or endangered, 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:

- White-tailed kite, Fully Protected Species
- Townsend's big-eared bat (*Corynorhinus townsendii*), California Species of Special Concern (SSC)

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- Pallid bat (*Antrozous pallidus*), SSC
- Hoary bat (*Lasiurus cinereus*), SSC
- Western red bat (*Lasiurus blossevillii*), SSC
- Monarch butterfly (*Danaus plexippus* pop.1), California Terrestrial and Vernal Pool Invertebrate of Conservation Priority (ICP)¹
- Western bumble bee (*Bombus occidentalis*), ICP

Habitat descriptions and the potential for species occurrence should include information from multiple sources, such as aerial imagery; historical and recent survey data; previous CEQA documents associated with the Project site; field reconnaissance; scientific literature and reports; the U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; and findings from positive occurrence databases such as the California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessment, the draft EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, 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://wildlife.ca.gov/Conservation/Survey-Protocols>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The draft EIR should discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts, that may occur with implementation of the Project (CEQA Guidelines, § 15126, 15126.2, & 15358). This includes evaluating and describing impacts such as:

- Potential for impacts to special-status species.
- Loss or modification of breeding, nesting, dispersal, and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, rock outcrops, overhanging banks, anthropogenic habitat structures).

¹ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

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- 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.

The draft EIR should also 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 less-than-significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species, should be considered cumulatively considerable.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and mitigate potentially significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW and USFWS. Project-specific measures should be incorporated as enforceable Project conditions to reduce 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 & G. Code, § 3511, 4700, 5050, & 5515). Therefore, the draft EIR should include measures to ensure complete avoidance of fully protected species.

Nesting Birds

The Project site contains ornamental trees, landscaping, and building ledges and eaves that may provide nesting habitat for native birds. Many common species of migratory and resident birds use landscaping vegetation for nesting purposes. Bird species that may be considered common have still declined over the past 50 years; human activity and removal of habitat has contributed to the loss of a significant proportion of the total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Nesting birds may be disturbed by Project noise or human presence, which could lead to nest abandonment or reduced health and vigor of young, a potentially significant impact. To reduce potential impacts to less-than-significant, CDFW recommends the draft EIR disclose the potential for nesting birds to occur in the Project area and incorporate the following mitigation measure.

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Mitigation Measure BIO-1: Nesting Bird Surveys

If construction, grading, or other Project-related activities are scheduled during the nesting season, February 1 to September 1, a focused survey for active nests shall be conducted by a qualified biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, the qualified biologist shall delineate a no-work-zone buffer distance around the nest that is site and species specific using high visibility fencing or flagging. The buffer distance shall be specified to protect the bird's normal behavior and prevent nesting failure or abandonment. No work shall occur within the no-work-zone until the nest is no longer active as determined by a qualified biologist. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall occur before Project work is reinitiated.

Bat Species of Special Concern

As identified above, the Project is within the range of SSC bat species including pallid bat, hoary bat, western red bat, and Townsend's big-eared bat². Mature trees and existing buildings scheduled for demolition could provide suitable roosting habitat for SSC bats. These bats are experiencing population declines in California (Brylski et al. 1998). Removal of habitat could result in injury or mortality of these special-status bats, a potentially significant impact. To reduce potential impacts to less-than-significant, CDFW recommends that the draft EIR disclose the potential for these bats to occur in the Project area and incorporate the following mitigation measures.

Mitigation Measure BIO-2: Roosting Bat Habitat Assessment and Surveys

Prior to any building demolition or tree removal, a qualified biologist shall conduct a habitat assessment for bats. A qualified bat biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal or building demolition and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, suitable canopy for foliage roosting species, attics, eaves). If suitable habitat trees or buildings are found, or bats are observed, mitigation measures BIO-3 and BIO-4 shall be implemented.

Mitigation Measure BIO-3: Roosting Bat Building Exclusion Plan

If the qualified biologist identifies buildings scheduled for demolition as potential bat habitat, then building demolition shall not occur until either: 1) a qualified biologist

² CDFW maintains range maps for all terrestrial wildlife species in California, available at <https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range>.

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conducts night emergence surveys or completes visual examination of roost features that establishes absence of roosting bats, or 2) an appropriate bat eviction and exclusion plan has been approved by the City and implemented. The City shall seek CDFW's input on the exclusion plan. The plan shall: 1) recognize maternity and winter roosting season as vulnerable seasons for bats, and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15, 2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat, such as artificial bat houses, prior to Project activities, and include an associated management and monitoring plan with implementation and funding, and 3) include a requirement that exclusion materials shall be re-evaluated for effectiveness by the qualified biologist up to two weeks prior to building demolition.

Mitigation Measure BIO-4: Roosting Bat Tree Protections

If the qualified biologist identifies potential bat habitat trees, then tree trimming and tree removal shall not proceed unless the following occurs: 1) a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establishes absence of roosting bats, or 2) tree trimming and tree removal occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, and tree removal occurs using the two-step removal process. Two-step tree removal shall be conducted over two consecutive days. The first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided. The second day the entire tree shall be removed.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data 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>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. 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 Amanda Culpepper, Environmental Scientist, at amanda.culpepper@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

CF047D7F8D234E1
Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec: State Clearinghouse (SCH# 2021120187)

REFERENCES

- Brylski, Phillip V.; Collins, Paul W.; Peirson, Elizabeth D.; Rainey, William E.; and Kucera, Thomas E. 1998. Draft Terrestrial Mammals Species of Special Concern in California. Report submitted to California Department of Fish and Game, Sacramento, CA.
- Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.