



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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February 22, 2022

Mr. Trevor Hawkes
County of Napa
1195 Third Street, Suite 210
Napa, CA 94559
trevor.hawkes@countyofnapa.org

Subject: Napa County Housing Element Update, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022010309, Napa County

Dear Mr. Hawkes:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the County of Napa (County) for the Napa County Housing Element Update (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 (ITP), a Native Plant Protection Act (NPPA) 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 update the Housing Element within the County's General Plan, as well as limited amendments and updates to other portions of the General Plan and zoning map. The Housing Element would identify locations in unincorporated Napa County to meet the need for a maximum of 1,014 housing units and a minimum of 106 housing units. The County has identified that a portion of the housing units will be transferred to nearby cities and incorporated jurisdictions, if approved by the Association of Bay Area Governments. The timeframe for the Housing Element update would be 2023 through 2031. The Project is located in unincorporated Napa County.

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

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phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description, as applicable:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, floodwalls or levees, 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.

Based on the broad scope of the Project, it appears that the draft EIR may be a program EIR (CEQA Guidelines, § 15168). In this case, while program EIRs have a necessarily broad scope, CDFW recommends providing as much information related to anticipated future activities as possible. CDFW recognizes that, pursuant to CEQA Guidelines section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information may not be feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. The CEQA Guidelines section 15168, subdivision (c)(4) states, "Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR." Based on CEQA Guidelines section 15183.3 and associated *Appendix N Checklist*, and consistent with other program EIRs, CDFW recommends creating a procedure or checklist for evaluating subsequent project impacts on biological resources to determine if they are within the scope of the program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the draft EIR. Future analysis should include all special-status species and sensitive natural

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communities including but not limited to species considered rare, threatened, or endangered pursuant to CEQA Guidelines, section 15380.

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the EIR conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the draft EIR, including page and section references, containing the analysis of the subsequent Project activities’ significant effects and indicate whether it incorporates all applicable mitigation measures from the draft EIR.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in take¹ of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. If the Project will impact CESA or NPPA listed species, including but not limited to those identified in **Attachment 1: Special-Status Species**, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program.

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, & 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 Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with 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, drainage ditches, washes,

¹ Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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watercourses with a subsurface flow, and floodplains are subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also subject to notification. CDFW, as a responsible agency under CEQA, will consider the EIR for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as the responsible agency.

Nesting Birds

CDFW also 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. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, including those listed in **Attachment 1**, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

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). The draft EIR should describe aquatic habitats, such as wetlands, vernal pools, and/or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>). 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 area, include but are not limited to, those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources, such as aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; the U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System; findings from positive occurrence databases such as the California Natural Diversity Database (CNDDDB); and

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sensitive natural community information available on the Napa County vegetation map². 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>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all species potentially impacted by the Project within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrology, and require the identification of reference populations. More than one year of surveys may be necessary given environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements (<https://wildlife.ca.gov/Conservation/Plants>).

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:

- Encroachments into riparian habitats, drainage ditches, wetlands, or other sensitive areas.
- Potential for impacts to special-status species or sensitive natural communities.
- 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).
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence.

² The Napa County vegetation layer is available on CDFW's Biogeographic Information and Observation System (BIOS). The layer title is "Vegetation – Napa County Update 2016 [ds2899]." <https://apps.wildlife.ca.gov/bios/?bookmark=940>

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- 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, USFWS, and the National Marine Fisheries Service. 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 those listed in **Attachment 1**, 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 these species.

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: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at: <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 (707) 428-2075 or Amanda.Culpepper@wildlife.ca.gov, or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species

ec: State Clearinghouse (SCH No. 2022010309)

Jillian Feyk-Miney, Environmental Science Associates, jfeyk-miney@esassoc.com

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Attachment 1: Special-Status Species

Scientific Name	Common Name	Status
Birds		
<i>Rallus obsoletus obsoletus</i>	California Ridgway's rail	CESA and Endangered Species Act (ESA) listed as endangered; California Fully Protected species
<i>Buteo swainsoni</i>	Swainson's hawk	CESA listed as threatened
<i>Laterallus jamaicensis coturniculus</i>	California black rail	CESA listed as threatened; California Fully Protected species
<i>Strix occidentalis caurina</i>	northern spotted owl	CESA and ESA listed as threatened
<i>Agelaius tricolor</i>	tricolored blackbird	CESA listed as threatened
<i>Riparia riparia</i>	bank swallow	CESA listed as threatened
<i>Haliaeetus leucocephalus</i>	bald eagle	CESA listed as endangered; California Fully Protected species; Bald and Golden Eagle Protection Act
<i>Charadrius nivosus nivosus</i>	western snowy plover	ESA listed as threatened; California Species of Special Concern (SSC)
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Aquila chrysaetos</i>	golden eagle	California Fully Protected species; Bald and Golden Eagle Protection Act
<i>Progne subis</i>	purple martin	SSC
<i>Circus hudsonius</i>	northern harrier	SSC
<i>Geothlypis trichas sinuosa</i>	saltmarsh common yellowthroat	SSC
<i>Melospiza melodia samuelis</i>	San Pablo song sparrow	SSC
<i>Elanus leucurus</i>	white-tailed kite	California Fully Protected species

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<i>Falco peregrinus anatum</i>	American peregrine falcon	California Fully Protected species
Fish		
<i>Spirinchus thaleichthys</i>	longfin smelt	CESA listed as threatened; candidate for ESA listing
<i>Oncorhynchus mykiss irideus</i> pop. 8	central California coast steelhead	ESA listed as threatened
Amphibians		
<i>Rana draytonii</i>	California red-legged frog	ESA listed as threatened; SSC
<i>Rana boylei</i>	foothill yellow-legged frog, northwest/north coast clade	SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
Mammals		
<i>Reithrodontomys raviventris</i>	salt-marsh harvest mouse	CESA and ESA listed as endangered; California Fully Protected species
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
<i>Antrozous pallidus</i>	pallid bat	SSC
<i>Lasiurus blossevillii</i>	western red bat	SSC
<i>Taxidea taxus</i>	American badger	SSC
<i>Sorex ornatus sinuosus</i>	Suisun shrew	SSC
Reptiles		
<i>Emys marmorata</i>	western pond turtle	SSC

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<i>Invertebrates</i>		
<i>Syncaris pacifica</i>	California freshwater shrimp	CESA and ESA listed as endangered
<i>Branchinecta lynchi</i>	vernal pool fairy shrimp	ESA listed as threatened; California Terrestrial and Vernal Pool Invertebrate of Conservation Priority (ICP) ³
<i>Desmocerus californicus dimorphus</i>	valley elderberry longhorn beetle	ESA listed as threatened; ICP
<i>Bombus caliginosus</i>	obscure bumble bee	ICP
<i>Bombus occidentalis</i>	western bumble bee	ICP
<i>Plants</i>		
<i>Lasthenia burkei</i>	Burke's goldfields	CESA and ESA listed as endangered; California Rare Plant Rank (CRPR) ⁴ 1B.1
<i>Chloropyron molle</i> ssp. <i>molle</i>	soft salty bird's-beak	NPPA listed as rare; ESA listed as endangered; CRPR 1B.2
<i>Astragalus claranus</i>	Clara Hunt's milk-vetch	CESA listed as threatened; ESA listed as endangered; CRPR1B.1
<i>Castilleja affinis</i> var. <i>neglecta</i>	Tiburon paintbrush	CESA listed as threatened; ESA listed as endangered; CRPR 1B.2
<i>Limnanthes vinculans</i>	Sebastopol meadowfoam	CESA and ESA listed as endangered; CRPR 1B.1
<i>Plagiobothrys strictus</i>	Calistoga	CESA listed as threatened; ESA listed as

³ 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>

⁴ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere while CRPR 4 plants are considered watch list plants that have a limited distribution in California. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

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	popcornflower	endangered; CRPR 1B.1
<i>Poa napensis</i>	Napa blue grass	CESA and ESA listed as endangered; CRPR 1B.1
<i>Lilaeopsis masonii</i>	Mason's lilaeopsis	NPPA listed as rare; CRPR 1B.1
<i>Navarretia leucocephala</i> ssp. <i>pauciflora</i>	few-flowered navarretia	CESA listed as threatened; ESA listed as endangered; CRPR 1B.1
<i>Lasthenia conjugens</i>	Contra Costa goldfields	ESA listed as endangered; CRPR 1B.1
<i>Sidalcea keckii</i>	Keck's checkerbloom	ESA listed as endangered; CRPR 1B.1
<i>Trifolium amoenum</i>	two-fork clover	ESA listed as endangered; CRPR 1B.1
<i>Amorpha californica</i> var. <i>napensis</i>	Napa false indigo	CRPR 1B.2
<i>Amsinckia lunaris</i>	bent-flowered fiddleneck	CRPR 1B.2
<i>Carex lyngbyei</i>	Lyngbye's sedge	CRPR 2B.2
<i>Polygonum marinense</i>	Marin knotweed	CRPR 3.1
<i>Rhynchospora californica</i>	California beaked- rush	CRPR 1B.1
<i>Sagittaria sanfordii</i>	Sanford's arrowhead	CRPR 1B.2
<i>Sidalcea hickmanii</i> ssp. <i>napensis</i>	Napa checkerbloom	CRPR 1B.1