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October 3, 2022

Dana Ayers, Community Development Director
City of Clayton
6000 Heritage Trail
Clayton, CA 94517
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Subject: City of Clayton 6th Cycle Housing Element Update and Associated Land Use Element and Zoning Amendments, Draft Environmental Impact Report, SCH No. 2022030086, City of Clayton, Contra Costa County

Dear Ms. Ayers:

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft Environmental Impact Report (DEIR) for the City of Clayton (City) 6th Cycle Housing Element Update and Associate Land Use Element and Zoning Code Amendments (Project).

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish and Game Code, Section 711.7, subd. (a) and I1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., Section 1802). Similarly, for purposes of the California Environmental Quality Act (CEQA), CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority (Fish and Game Code, Section 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Pursuant to our jurisdiction, CDFW has provided concerns, comments, and recommendations regarding the Project herein.

Conserving California's Wildlife Since 1870

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PROJECT DESCRIPTION

The City proposes to update the Housing Element, as well as the associated Land Use Element and Zoning Codes, of the City of Clayton's General Plan for the years 2023 through 2031.

The Housing Element Update establishes programs, policies, and actions to further the goal of meeting the existing and projected housing needs of all income levels of the community; identify how the City plans to accommodate its Regional Housing Needs Allocation (RHNA) of 570 units across approximately 2460 acres through the year 2031; and identify changes to the General Plan Land Use Element needed to support the required housing capacity. The proposed Land Use changes have the potential to result in increased capacity for as many as 868 new dwelling units, an increase of approximately 20,000 square feet of commercial space, and a reduction of approximately 7,000 square feet of public facilities/institutional space. Potential increases of approximately 2,364 residents. Additionally, the City's Zoning Code is proposed to be amended in order to implement the proposed House and Land Use Elements.

The City has identified 18 preliminary housing sites to accommodate the addition of 570 or more housing units. As described in the Housing Element Update, these sites include:

- Vacant properties zoned for residential, public, or agricultural use;
- An overflow parking lot owned by the Oakhurst Country Club;
- Within the Town Center, vacant properties (including a City-owned site), public parking lots, and private properties that could be redeveloped with mixed-use projects;
- Properties that are currently developed with a single-family home but are large enough to support additional residences or a multifamily housing project; and
- Sites owned by religious institutions that have expressed interest in developing housing on portions of their properties.

PROJECT LOCATION

The City of Clayton is located in north-central Contra Costa County, at the base of the north slope of Mount Diablo. For the purposes of this Project, the planning area of interest includes all properties within the corporate City boundaries and the City's Sphere of Influence (SOI), as defined by the Contra Costa County Local Agency Formation Commission. This planning area is bounded to the south by Mt. Diablo State Park and to the northeast by Black Diamond Regional Preserve. The northern and western planning area boundaries are shared with the City of Concord. The planning

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area includes the entire City of Clayton (3.84 square miles of land), as well as its SOI (an additional 0.98 square miles).

REGULATORY AUTHORITY

Lake and Streambed Alteration Agreement

Please be advised that CDFW requires an LSA Notification, pursuant to Fish and Game Code, Section 1600 et seq., for any Project-related activities potentially affecting rivers, lakes, or streams, and their associated riparian habitat. LSA 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 generally subject to notification requirements. CDFW, as a Responsible Agency, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Several of the potential development sites identified in the DEIR appear to be subject to CDFW's regulatory authority under Section 1600 et seq. CDFW recommends that an LSA Notification be submitted for all activities which have potential to affect rivers, lakes, or streams, and their associated riparian habitat, and that this requirement be made a Mitigation Measure within the Final EIR (FEIR). To obtain information about the LSA notification process, please access our website at: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>).

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take¹ 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 to obtain a CESA ITP.

The Project falls within areas covered by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCC HCP/NCCP or "Plan"). Participation in the Plan provides take coverage for certain CESA-listed species and is encouraged. The DEIR states that any subsequent projects undertaken due to the General or Housing Plan updates will need to receive take coverage from the ECCC

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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HCP/NCCP. However, if the Project may impact a CESA-listed species that is not covered under the Plan, then a CESA ITP may be needed for those individual species.

Please note that 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 (CEQA Guidelines, Section 15380, 15064, and 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 Fish and Game Code, Section 2080.

Migratory Birds and Raptors

Fish and Game Code, Section 3503, 3503.5, and 3513 places protections on birds, their eggs, and nests. CDFW has authority over actions that may disturb or destroy active nest sites or take birds. Fully protected bird species, such as the golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time (Fish and Game Code, Section 3511).

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Cumulative Impact Analysis

The DEIR should also identify reasonably foreseeable future projects in the Project vicinity (which includes the future potential development sites), 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, Section 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.

COMMENT 2: Protocol-Level Surveys for Special-Status Animals and Plants

If take coverage is being obtained under the ECC HCP/NCCCP, surveys for those special-status species for which coverage is available should be conducted as part of the review process by the ECC Habitat Conservation Agency.

For projects that do not elect to participate in the ECC HCP/NCCP, CDFW recommends that protocol-level surveys for special-status animals and plants be conducted by a qualified biologist. Surveys should be conducted for special-status

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species with potential to occur, following recommended survey protocols. Survey and monitoring protocols and guidelines for some species are available at: (<https://wildlife.ca.gov/Conservation/Survey-Protocols>). Where no protocols have been established, the surveys should be completed by a qualified biologist and the survey methodology should be approved by CDFW in advance of initiation of any such survey.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), should be conducted during the blooming period for all species potentially impacted by the Project within the planning 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 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 Rare² 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 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.

COMMENT 3: Edits to Figure 4.4-1, Biological Resources Constraints Map

Figure 4.4-1, Biological Resources Constraints Map, should be revised to note that the blue areas demarcated as “NWI wetlands” are also creeks/streams. These areas are subject to CDFW regulatory authority, as set forth elsewhere in this letter.

COMMENT 4: Evaluation of Impacts to Riparian Areas and Creeks

Issue: The planning area has the potential to contain water features subject to CDFW’s regulatory authority, pursuant to Fish and Game Code, Section 1600 et seq. Project implementation could potentially result in temporary and permanent impacts to these features. The DEIR’s ‘Environmental Setting’ section does not adequately describe or address waterways that are present within the planning area, and which have potential to be impacted by Project related activities. These waterbodies include, but are not limited to Mount Diablo Creek, Peacock Creek, Donner Creek, Mitchell Creek, tributaries thereto, and other unnamed creeks/waterways. Obtaining coverage via the ECCC HCP/NCCP does not provide mitigation for impacts to waterways or fin-fish

² In this context, “Rare” means listed under the California Native Plant Protection Act.

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residing in those waterways. CDFW will require that these impacts be mitigated to a level of less-than-significant.

CDFW's regulatory authority over activities that may affect streams, rivers, or lakes is discussed on page 4.4-23, but the impacts to those resources arising from Project-related activities are not evaluated. Most of the potential sites identified in the DEIR, in particular sites B, D, F, G, I, J, L, M, and R, are definitively located within or adjacent to creeks and/or riparian woodlands and will require individual site-specific impact evaluation and will likely require a Notification to CDFW. Other potential sites identified in the DEIR might also be subject to the same requirements, depending on Project designs that are ultimately developed. The DEIR does not provide sufficient information for CDFW to determine if the impacts to creeks and riparian areas arising from Project-related activities would be considered significant, and if compensatory mitigation would be required. The Final EIR must disclose and evaluate potential temporary and permanent impacts to these areas. It will also need to include fully enforceable measures to minimize and mitigate potentially significant impacts and should not defer these measures to a future time, pursuant to CEQA Guidelines, Section 15126.4.

Specific impact: Project activities within wetland and riparian features have the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water feature causing water pollution that is deleterious to fish and wildlife.

Evidence impact is potentially significant: Construction activities within these features has the potential to permanently impact wetland and riparian communities, as well as their downstream waters.

Recommended Biological Resource Mitigation Measures:

1. *Habitat Assessment.* A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the planning area or its immediate vicinity supports wetland and/or riparian communities. This survey should include, but not be limited to, Mount Diablo Creek, Peacock Creek, Donner Creek, Mitchell Creek, tributaries thereto, and other unnamed creeks/waterways, and drainage channels.
2. *Wetland Delineation.* CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and Federal definitions of wetlands, as well as which activities may require Notification pursuant to Fish and Game Code Section 1602.

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3. *Project-Specific Notification of Lake and Streambed Alteration for Future Development Sites.* Fish and Game Code, Section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Each site selected for development should be evaluated on an individual basis and will notify CDFW as required by law. CDFW retains sole discretion for determining whether a proposed activity is likely to substantially adversely affect an existing fish or wildlife resource [Fish and Game Code, Section 1603(a)]. The information provided to CDFW shall include a description of all of the activities associated with the proposed Project, not just those closely associated with the streams and creeks. Information included in a complete Notification package shall include but is not limited to: an analysis and description of all temporary and permanent impacts; a description of all proposed avoidance, minimization and mitigation for the described impacts; and project-specific drainage and hydrology changes that will result from Project implementation. Minimization and avoidance measures shall include species-specific pre-construction surveys, reporting, identification and avoidance of ecologically sensitive areas, environmental awareness training, and restoration of disturbed areas.

Written verification of CDFW's determination whether notification is required should be made a condition of approval for any Project proposed for coverage under the Final EIR.

4. *Compensatory Mitigation for Riparian Impacts.* Impacts to creeks and riparian areas will require compensatory mitigation at a minimum ratio of 1:1 (conserved habitat to impacted habitat) for temporary impacts and a minimum of 3:1 (conserved habitat to impacted habitat) for permanent impacts. This shall be calculated in acres and linear distance. Temporary impacts to stream/riparian habitat should be restored in the same year as impacted.

COMMENT 5: Large flowered fiddleneck (*Amsinckia grandiflora*)

Issue: In Table 4.4-1 (page 4.4-11), Large flowered fiddleneck (*Amsinckia grandiflora*) is documented as "Not Expected". The historic geographic range of this species covers the entirety of the planning area.

Resolution: CDFW recommends this determination be revised to "May be Present" in the "Probability to occur within the planning area and/or Housing Inventory Sites" column of Table 4.4-1 and that the Final EIR evaluate impacts to this species accordingly.

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COMMENT 6: Loggerhead shrike (*Lanius ludovicianus*)

Issue: In Table 4.4-1, Loggerhead shrike (*Lanius ludovicianus*), a State species of special concern (SSC), is not documented or evaluated. The historic geographic range of this species covers the entirety of the planning area, and it may be present.

Resolution: CDFW recommends loggerhead shrike discussion and analysis be included in the FEIR, and that the determination be revised to indicate “May be Present” in the “Probability to occur within the planning area and/or Housing Inventory Sites” column of Table 4.4-1, and evaluate impacts to the species accordingly.

COMMENT 7: State Fully Protected Species

Issue: State fully protected species, including golden eagle and white-tailed kite, may occur within the planning area. CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code Section 3511, 4700, 5050, and 5515. Take, as defined by Fish and Game Code Section 86 is to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”, of any fully protected species is prohibited and CDFW cannot authorize their incidental take except under an NCCP. Without appropriate mitigation measures, Project activities conducted within occupied territories have the potential to significantly impact these species.

Specific Impact: Without appropriate avoidance and minimization measures for fully protected species, potentially significant impacts associated with Project activities may include, but are not limited to inadvertent entrapment, reduced reproductive success, reduced health and vigor, nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

Recommended Biological Resource Mitigation: To avoid impacts to fully protected species, CDFW recommends that a qualified biologist conduct species-specific surveys (using standard protocol or methodology, if available) of the Project site before Project implementation. If Project activities will take place when fully protected species are active or are breeding, CDFW recommends that additional pre-activity surveys for active nests or individuals be conducted by a qualified biologist no more than **five (5)** days prior to the start of Project activities.

In the event a fully protected species is found within or adjacent to the Project site, CDFW recommends that a qualified biologist develops an appropriate no-disturbance buffer to be implemented. The qualified biologist should also be on-site during all Project activities to ensure that the fully protect species is not being disturbed by Project activities.

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COMMENT 8: Procedure or Checklist to Verify if Future Projects are Within Scope of EIR

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.

CEQA Guideline 15126.4 (a)(1)(B) states: “Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.”

CDFW acknowledges that the DEIR is identified as a Program EIR. CDFW also 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 can be deferred if infeasible, in many instances, until such time as the Lead Agency prepares a future environmental document(s). This future environmental document(s) 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.

However, while Program EIRs have a necessarily broad scope, CDFW recommends providing as much additional information related to anticipated future residential and non-residential development, as possible and recirculating the DEIR. The additional information may allow for further comment on the proposed Project to avoid and minimize potential impacts to species and habitat.

In addition, as subsequent projects will have site-specific impacts and require site-specific mitigation measures, CDFW still strongly recommends creating a procedure for evaluating these subsequent projects. 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 FEIR. A procedure or checklist will be critical to

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ensuring adequate analysis of Project effects on biological resources. Future analysis should include all special-status species and sensitive natural communities including but not limited to species considered rare, threatened, or endangered pursuant to CEQA Guidelines, Section 15380. The checklist should also outline how habitat will be analyzed per species or habitat type, how impacts will be assessed, and whether any mitigation is necessary.

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 DEIR, 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 DEIR.

COMMENT 9: Biological Resources Significance Thresholds (Section 4.4.3)

Issue: The DEIR indicates in Significance Thresholds for Biological Resources, Section 4.4.3, item (a)/Impact BIO-1 and (b)/Impact BIO-2, that the impact will be “less-than-significant” *before* mitigation. CDFW recommends that the DEIR be revised to indicate that these impacts will be “less-than-significant with mitigation incorporated”.

Mitigation is defined in Section 15370 of the California Code of Regulations (CEQA Guidelines) as: “*Compensating for the impact by replacing or providing substitute resources or environment*”.

- For item (a)/Impact BIO-1, the substantial adverse effects to candidate, sensitive, or special-status species are being accounted for with participation in ECCC HCP/NCCP. However, should participation in the ECCC HCP/NCCP be infeasible for some reason, impacts to these species arising from Project-related activities would be significant. Impacts to special-status species arising from Project activities should be fully mitigated under CESA. Participation in the ECCC HCP/NCCP, or equivalent CESA take coverage via an Incidental Take Permit from CDFW, would achieve this statutory threshold, and the Significance Threshold should be “less-than-significant with mitigation”.
- Item (b)/Impact BIO-2, states that substantial adverse effects to the bed, bank or channel of waterways, riparian habitat or other sensitive natural communities identified by the CDFW will be accounted for in the LSA process and the accompanying mitigation prescribed by CDFW. Without this, the impacts to these areas would be significant. Therefore, the Significance Threshold should be “less-than-significant with mitigation”.

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Resolution: The DEIR should be revised to indicate the Significance Threshold determinations for items (a) and (b) will be “less-than-significant with mitigation incorporated”. Additionally, the following Mitigation Measures shall be included in the Final EIR.

Recommended Biological Resource Mitigation Measures:

1. Full Mitigation for Impacts to Special-Status Species. Prior to initiation of Project activities, all sites selected for development will be evaluated on an individual, project-by-project basis and will submit all required information and a Planning Survey Report (PSR) to the ECCC Habitat Conservation Agency for review and acceptance. All survey protocols, avoidance and minimization measures, and construction monitoring as specified in the PSR shall be implemented and adhered to by the Project proponent and representatives of the Project proponent including all on-site personnel, employees, and contractors. If participation in the ECCC HCP/NCCP is either not possible or does not address the mitigation requirement, then each Project shall seek individual take coverage by applying to CDFW for an Incidental Take Permit.
2. Please see the suggested Mitigation Measure “Individual Notification of Lake and Streambed Alteration for Future Development Sites” above.

COMMENT 10: Nesting Bird Protections

Issue: The City is responsible for ensuring that the project does not result in any violation of relevant Fish and Game Codes (such as Sections 3503 or 3503.5). The DEIR has no evaluation of potential impacts to nesting or migratory birds.

Specific impacts: Tree and vegetation removal or modification have the potential to impact nesting birds. In addition to direct impacts, nesting birds might be indirectly affected by noise, vibration, odors and movement of workers or equipment.

Evidence impact is potentially significant: Construction activities resultant from the housing re-zoning decisions have the potential to directly and indirectly impact nesting or migratory birds.

Recommended Biological Resource Mitigation Measures: CDFW recommends including the following Mitigation Measures, if project activities might occur during nesting bird season:

1. *Nesting Birds.* If Project activities will occur during nesting bird season (February 15 to September 15 for raptors; March 15 to August 30 for non-raptors), the Qualified Biologist shall conduct a focused survey for active nests within **5 days** prior to the initiation of project-related activities. Surveys shall be conducted in all suitable habitat located at project work sites and in staging and storage areas.

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The minimum survey radii surrounding the work area shall be the following: (1) **250 feet** for non-raptors; (2) **1,000 feet** for raptors.

2. *Active Nest Protections.* If active nests are found, the Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests shall be regularly monitored by the Qualified Biologist for a minimum of **two (2)** consecutive days to detect any signs of disturbance and behavioral changes as a result of the project. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, and flying away from the nest. If signs of disturbance and behavioral changes are observed, work shall halt, and the Qualified Biologist shall either halt work until the nest is no longer active and increase protective buffer zones (see Mitigation Measure 3 below).
3. *Active Nest Buffers.* Active nest sites and protective buffer zones shall be designated as Ecologically Sensitive Areas (ESAs), where no project-related activities may occur and no personnel may enter. These ESAs shall be maintained (while occupied, or longer for multi-clutch and annually returning species such as raptors) during project activities with the establishment of a fence barrier or flagging surrounding the nest site. Buffers shall remain in place throughout project activities or until the nest becomes inactive, whichever comes first.
4. *Bird Protections During Vegetation Removal.* To the maximum extent possible, vegetation within the stream or creeks shall not be removed between **February 15 to September 15** to avoid impacts to nesting birds. If any vegetation removal must occur during this time, vegetation will only be removed if the following requirement is met:
5. Within the 3 days prior to vegetation modification or removal activities, the Qualified Biologist will conduct a focused survey for nesting birds in the vegetation slated to be removed or modified and either determines no nesting birds are present or if present then the Qualified Biologist shall determine and demarcate an active nest buffer.

COMMENT 11: Changes to Table 2-1 Resultant from CDFW Comment

Please reflect all changes in determinations and mitigation measures resultant from CDFW's comments above, in Table 2-1, Summary of Potentially Significant Impacts and Recommended Mitigation Measures.

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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, Section 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & Game Code, Section 711.4; Pub. Resources Code, Section 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Clayton in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Sabrina Dunn, Environmental Scientist, at (707) 428-2069 or Sabrina.Dunn@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at (707) 339-6052 or Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77F9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento