



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 428-2002

www.wildlife.ca.gov

GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



May 27, 2022

Mr. Joseph W. Lawlor Jr., Project Planner
Contra Costa County Community Development Division
30 Muir Road
Martinez, CA 94553
Joseph.Lawlor@dcd.cccounty.us

Subject: Grayson Road 10-Lot Subdivision Project, Initial Study/Mitigated Negative Declaration, County File CDSD20-09531, SCH No. 2022050245, Contra Costa County

Dear Mr. Lawlor:

The California Department of Fish and Wildlife (CDFW) received Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from Contra Costa County (County) for the Grayson Road 10-Lot Subdivision Project (Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the IS/MND to inform the County, 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 (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 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 a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Applicant: Calibr Ventures c/o Andy Byde, 1908 Cambridge Place, Walnut Creek, California 94598

Objective: The applicant is requesting approval of a vesting tentative map for a subdivision which proposes to subdivide the 3.05-acre Project site into 10 lots ranging in size from 7,347 to 22,460 square feet (ft²). On each new lot, a 4- to 5-bedroom single-family residence ranging in size from approximately 2,900 to 3,500 ft², is expected to be

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constructed. Two existing, vacant, residences would be demolished to accommodate the Project.

Associated access, drainage, and utility facilities would be constructed throughout the site. For access, a 28-foot-wide roadway and 4.5-foot-wide sidewalk would connect the lots to Grayson Road. Stormwater flows would be directed to a 2,021 ft² detention basin located at the northeast corner of the property. Treated stormwater will be discharged from the basin into a Contra Costa County maintained stormwater drainage system that currently exists under Grayson Road. No direct stormwater discharge will be placed into Grayson Creek without previously being cleaned and metered through a compliant flowthrough treatment planter.

A riparian setback between the Project's grading limits and Grayson Creek would be included as part of the Project. With implementation of the geotechnical engineering study recommendations, the Project could include more than 1,000 yd³ of grading. To accommodate improvements, a tree permit would be included for the removal of 83 code-protected trees.

An exception to Title 9 of the County Code would be required to allow for the alternative roadway improvements along Grayson Road (where curb, 5-foot-wide sidewalk, necessary longitudinal and transverse drainage are required). Finally, the Project is seeking a concession to allow the installation of the complete frontage improvements be omitted in lieu of a reconstructed asphalt-concrete curb along the edge of pavement of Grayson Road along the Project frontage as well as bicycle lane striping.

Location: The proposed Project is located at 1024 and 1026 Grayson Road, Walnut Creek, California 94598, within Contra Costa County. The Project is planned to occur on Accessor's Parcel Numbers 166-030-001 and 166-030-002. The approximate center coordinate for the Project is 37.947520, -122.095145.

Timeframe: No estimate on the Project's commencement or completion has been provided.

ENVIRONMENTAL SETTING.

The Project footprint comprises of an existing semi-developed 3.05-acre lot consisting of: intact mixed woodlands comprising of coast live and valley oaks, buckeye, other native or non-native trees, and their associated understory; the perennial mainstem of Grayson Creek and its associated riparian woodland corridor; non-native and native annual and perennial grasses, forbs, and shrubs; and two existing residential buildings.

The Project site has had historic disturbance occur in relation to residential occupation and maintenance. Landscaping includes ornamental planting and fruit trees. The as-is site conditions provide potential foraging, roosting, and nesting habitat for local birds

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including, but not limited to, raptors and passerines, in addition to providing foraging and roosting habitat for bats. Existing vegetation assemblages and soils provide potential habitat for common native and special-status plants including Mt. Diablo fairy lantern (*Calochortus pulchellus*). On-site perennial freshwater stream resources provide potential dispersal and breeding habitat for reptiles including western pond turtle (*Emys marmorata*), amphibians including California reg-legged frog (*Rana draytonii*), and other common and/or special-status wildlife. The Project site is immediately surrounded by low density residential development which also contains mature oak woodlands. The Project site holds a habitat corridor to a larger section of oak woodland immediately to the southwest. Within 3 quarters of a mile to the west are public and privately owned areas comprising of designated open space, oak woodlands including Sensitive Natural Communities of Valley Oak Woodland and Coast Live Oak Woodland and Forest, and annual grasslands. These open space areas hold potential habitat and records of special-status species within reasonable dispersal distances including, but not limited to, Alameda whipsnake (*Masticophis lateralis euryxanthus*), California red-legged frog, Mt. Diablo fairy lantern, and bent flowered fiddleneck (*Amsinckia lunaris*).

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish, wildlife, and plant resources, including the habitats on which they depend.

Special-Status Plants

The IS/MND notes that 16 special-status plant species have been documented in the vicinity of the Project site. Four of which [bent-flowered fiddleneck, Diablo helianthella (*Helianthella castanea*), Mt. Diablo fairy lantern, and oval-leaved viburnum (*Viburnum ellipticum*)] have the potential to occur at the Project site and hold known records within a reasonable dispersal distance for propagules (California Native Plant Society (CNPS)-East Bay Chapter, 2018). The Biological Resources Analysis Report (BRAR) and IS/MND, states that only one (1) site visit was conducted for a floristic survey on April 6, 2021, resulting in no observations of special-status plants at the Project site.

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://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants> (Protocol). This Protocol includes 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 oval-leaved viburnum (East Bay Regional Park District, 2017), a CNPS 2B.3 rare plant with the potential to

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occur at the Project site that blooms May through June, to best time surveying for this rare plant on the Project site. A 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, the species referenced in this letter. In the absence of protocol-level surveys being performed, additional surveys may be necessary. Annual weather variations may require the necessity for additional floristic surveys to be performed. The results of surveys following the Protocol should be summarized into Botanical Survey Reports, as found on Page 9 of the Protocol, and be disclosed to the public through the appropriate CEQA disclosure procedures in a revised and recirculated IS/MND.

If State listed plants, special-status plants, State rare plants found on the CNPS California Rare Plant Ranking system, or plants found on the CNPS East Bay Chapter's Database of Rare and Unusual Plants are identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. In the absence of botanical surveys being performed in accordance with the Protocol, presence of said species should be assumed and mitigated for accordingly. Impacts for CESA-listed plant species should be fully avoided or addressed through application for, and issuance of, an Incidental Take Permit (ITP). Impacts to special-status plant species not listed under CESA should be mitigated for either by individual or acreage, depending on the species. CDFW recommends all future mitigation measures be summarized and disclosed to the public through the appropriate CEQA disclosure procedures in a revised and recirculated IS/MND.

Tree Removal Sensitive Natural Communities

The IS/MND, supported by the included Revised Arborist Report dated May 6, 2020, and authored by Traverso Tree Service, indicates that 83 trees, 6.5 inches or greater in diameter at breast height (DBH), from an on-site upland woodland will be removed as a result of the Project. Of the trees slated for removal, 32 are coast live oaks (*Quercus agrifolia*), 20 valley oaks (*Quercus lobata*), and the remaining 31 being an assemblage of native, native yet not local, and non-native trees. Many of these trees are described as multi trunk and/or hold features displaying growth habit associated with individuals aged over 50 years. An analysis of oak natural communities was not provided, and the Revised Arborist Report did not include an assessment of canopy cover and absolute percentages in upland areas or covering the channel of Grayson Creek. The IS/MND fails to note that this collection of oaks may be identified as Valley Oak Woodland, and/or Coast Live Oak Woodland and Forest, based on these initial findings; both of which are Sensitive Natural Communities ranked as State Rank 3 and 4 respectively according to CDFW's Natural Communities List (available at:

<https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>). The IS/MND indicates within

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Mitigation Measure Biology-8 (MM B-8) that a 3:1 (mitigation: loss) ratio will be sought to mitigate for the loss of native trees caused by Project activities. However, MM B-8 does not include a replanting regime associated with the monitoring component. The proposed ratio and lack of success criteria and monitoring period are inadequate for mitigating the Project-related impacts to Sensitive Natural Communities to a level of less than significant.

CDFW recommends that the IS/MND evaluate impacts to native tree species with a DBH of greater than 3 inches in the Project area that would be removed as part of the Project activities. Due to the cumulative impacts and increasing rarity of Valley Oak Woodland, and/or Coast Live Oak Woodland and Forest in proximity to the Project area (i.e., remaining percentage of the communities within the County compared against their historic range within) and the State, the slow-growth habit and pattern of both of these natural communities, CDFW recommends mitigating for the loss of Valley Oak Woodland, and/or Coast Live Oak Woodland and Forest, at a 10:1 (mitigation: loss) ratio for both trees removed by quantity, and understory removed by area. This 10:1 ratio should include container plantings, replanting salvage vegetation, and hydroseeding with Valley Oak Woodland, and/or Coast Live Oak Woodland and Forest, focal species on-site at the point of disturbance in addition to a CDFW approved off-site mitigation component. Trees should be replaced at a level that will offset: 1) the lost biomass and canopy of the removed trees, and 2) the substantial temporal loss of growth habitat structure and diversity. Trees planted need to be spaced in a manner that promotes their long-term growth habits, and that serves to replicate or enhance the state of which was disturbed. As an alternative to container planting, the Project proponent may elect to protect, enhance, and preserve an area of mature oak woodland of equal or greater habitat value under a conservation easement in accordance with the mitigation ratio described above. The Project proponent should prepare a Mitigation and Monitoring Plan (MMP) outlining success criteria and benchmarks aligned to meet the 10:1 (mitigation: loss) ratio goal at the end of 10 years after initial mitigation efforts begin. CDFW recommends recirculating an updated IS/MND after performing a detailed analysis of such impacts to trees, Sensitive Natural Communities, and including appropriate mitigation measures to reduce the impacts of the Project to a level of less-than-significant.

Nesting Birds

The IS/MND indicates in Mitigation Measure Biology-1 that nesting bird surveys would be limited to the large trees of the adjacent riparian area from February 15 to August 31. This measure fails to avoid ground nesting birds and those that nest in shrubs. CDFW recommends the following mitigation measure be incorporated into a revised and recirculated IS/MND: a qualified biologist will survey for non-raptors within and beyond the Project area for a radius of 250 feet, and for raptors within and beyond the Project area for a radius of 1,000 feet; nesting surveys will occur from February 15 through

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September 15 and within 5 days prior to the expected commencement of Project activities; surveys will be repeated in areas where Project activities lapse for a period of 7 days or more; any active nests will have an appropriately sized protective buffer determined and established by a qualified biologist where no Project personnel or equipment shall be allowed to enter; that any active nest be continuously monitored by a qualified biologist; and that active nest buffers will increase if any change in bird behavior is detected as determined by a qualified biologist.

Roosting Special-Status Bats

CDFW recommends the following language replace Mitigation Measure Biology-4 to mitigate for the permanent impacts to special-status bats and their habitats to a level of less-than-significant:

1. Special-Status Bats (Bats). For all Project activities planned in or adjacent to potential bat roosting habitat, such as structures and/or involving woody vegetation modification or removal of any and all trees, a qualified biologist shall conduct daytime and evening acoustic surveys in addition to extensive visual surveys of potential habitat for special-status bats at least 7 days prior to initiation of Project activities. If bats are found on-site, a qualified biologist shall identify the species, estimated quantity present, roost type, and roost status, but shall avoid disturbing bats during surveys. A qualified biologist shall also create a Bat Mitigation and Monitoring Plan if special-status bat species are detected prior to the start of Project activities. The Bat Mitigation and Monitoring Plan shall include: (1) an assessment of all Project impacts to special-status bats, including noise disturbance during construction; (2) effective avoidance and minimization measures to protect special-status bats; (3) and compensatory mitigation for permanent impacts to special-status bats or their nesting/roosting habitat. If structures, trees, or other refugia equivalents are slated for limbing, removal, or modification, the Bat Mitigation and Monitoring Plan shall include the following measures:
 - 1.1. To ensure that special-status bats have left potential roosting refugia, work shall occur over the course of two days. On the first day, smaller limbs or items from the identified trees or structures shall be brushed back or modified in the late afternoon. This disturbance should cause any potential roosting bats to seek other roosts during their nighttime foraging. The remainder of the refugia item can then be further limbed or removed as needed on the second day as late in the afternoon as feasible. If bats are found injured, or if bat mortality occurs during the course of tree work, a qualified biologist shall record the species impacted, and the number of individuals documented.
 - 1.2. Tree limbing, modification, removal, or work on structural refugia shall not be performed under any of the following conditions: during any precipitation events,

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when ambient temperatures are below 4.5 degrees Celsius, when windspeeds exceed 11 miles per hour, and/or any other condition which may lead to bats seeking refuge.

- 1.3. If special-status bats are found utilizing a tree, structure, or equivalent for roosting, the Bat Mitigation and Monitoring Plan shall include permanent artificial roosting habitat installation that shall be adjacent to, and sufficient for, the species observed and associated ecology thereof. Effective buffer zones for the installation and monitoring of the artificial roosts shall be determined and established by a qualified biologist. Artificial roosts shall follow the 2018 *Acceptable Management Practices for Bat Species Inhabiting Transportation Infrastructure* (found at: <https://www.fs.fed.us/r6/sfpnw/issssp/documents2020/cpt-ma-bats-transportion-structures-management-2018-04.pdf>).

REGULATORY REQUIREMENTS

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 streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. Based on the Vesting Tentative Map for the Project, dated January 28, 2022, and authored by DeBolt Civil Engineering, an LSA Notification under Fish and Game Code section 1600 et. seq. would be a requirement of the Project as designed.

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 California Natural Diversity Database (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>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination

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by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the IS/MND to assist the County 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 (707) 266-2878 or Andrew.Chambers@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at (707) 339-6052 or Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Erin Chappell
Regional Manager
Bay Delta Region

cc: State Clearinghouse

REFERENCES

East Bay Regional Park District (2017). Diablo Helianthella [ds45]. Mt. Diablo fairy lantern [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved April 26, 2022, from <https://wildlife.ca.gov/Data/BIOS>.

CNPS East Bay (2018). Bent-flowered fiddleneck [ds45]. Oval-leaved viburnum [ds45]. Calif. Dept. of Fish and Wildlife. Biogeographic Information and Observation System (BIOS). Retrieved May 2, 2022, from <https://wildlife.ca.gov/Data/BIOS>.