



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 9, 2022

Governor's Office of Planning & Research

Sep 12 2022

Heather Abrams, Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
habrams@townoffairfax.org

STATE CLEARINGHOUSE

Subject: Town of Fairfax 6th Cycle Housing Element, General Plan Amendments, and Zoning Amendments, Notice of Preparation of Draft Environmental Impact Report, SCH No. 2022080624, Marin County

Dear Ms. Abrams:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Town of Fairfax 6th Cycle Housing Element, General Plan Amendments, and Zoning Amendments (Project).

CDFW is providing the Town of Fairfax, as the lead agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

CDFW ROLE

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 permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), Lake and Streambed Alteration (LSA) Program, and 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 includes updates to the Housing Element of the Town of Fairfax's General Plan. The Project will also update the Land Use Element and Safety Element, as well as portions of the Municipal Code including the Zoning Ordinance, to maintain internal

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consistency. The updates to the Housing Element and related sections of the General Plan and Municipal Code will extend from 2023 to 2031.

The Housing Element Update will identify specific “opportunity” sites deemed appropriate for developing housing (including affordable units), and the Town would rezone those sites as necessary to meet the requirements of State law. The Project identifies 19 sites, totaling approximately 153.56 acres, which have been identified as housing opportunity areas. The Town of Fairfax anticipates that this will result in the addition of 531 new dwelling units.

The Project includes three types of zoning amendments. The first is to amend regulations for several existing zoning districts in Title 17, Zoning, of the Town of Fairfax Municipal Code to accommodate the proposed development types and capacities. The second is to rezone one housing opportunity site to allow multi-family development. The third is to amend the zoning map to reflect the zone change for that opportunity site.

Per legislative mandates, the Project also includes updates to the General Plan Safety Element to address climate change resiliency, reduce fire and flooding risks, and plan for emergency evacuations.

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future 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:

- Land use changes resulting from, for example, rezoning certain areas.
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, 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.

Although not stated in the NOP, the EIR may be a Program EIR. In this case, while Program EIRs have a necessarily broad scope, CDFW recommends providing as much

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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 EIR. Future analysis should include all special-status species and sensitive habitat including but not limited to species considered rare, threatened, or endangered species 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 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 EIR.

REGULATORY REQUIREMENTS

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 "take" of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, such as those identified in **Attachment 1**, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

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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, 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 CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will 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. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

ENVIRONMENTAL SETTING

The 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 CEQA document prepared for the Project 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 EIR should describe aquatic habitats, such as wetlands 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/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the Town may require. Fully protected, threatened or endangered, candidate, 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 those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service's

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(USFWS) Information, Planning, and Consultation System, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the 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://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>)¹, must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

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

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);

¹ California Rare Plant Rank (CRPR) 1B plants are considered rare, threatened, or endangered in California and elsewhere. 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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- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document 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 insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

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 EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 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. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

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/Plantsand-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,

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§ 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.

If you have any questions, please contact Alex Single, Environmental Scientist, at (707) 799-4210 or Alex.Single@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 # 2022080624

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ATTACHMENT 1: Special-Status Species

Species Name	Common Name	Status
<i>Acipenser medirostris</i> pop. 1	green sturgeon - southern DPS	FT
<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>Antrozous pallidus</i>	pallid bat	SSC
<i>Aplodontia rufa phaea</i>	Point Reyes mountain beaver	SSC
<i>Arctostaphylos montana</i> ssp. <i>montana</i>	Mt. Tamalpais manzanita	CRPR 1B.3
<i>Arctostaphylos virgata</i>	Marin manzanita	CRPR 1B.2
<i>Astragalus pycnostachyus</i> var. <i>pycnostachyus</i>	coastal marsh milk-vetch	CRPR 1B.2
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Bombus caliginosus</i>	obscure bumble bee	ICP
<i>Bombus occidentalis</i>	western bumble bee	ICP
<i>Calamagrostis crassiglumis</i>	Thurber's reed grass	CRPR 2B.1
<i>Cardamine angulata</i>	seaside bittercress	CRPR 2B.1
<i>Carex lyngbyei</i>	Lyngbye's sedge	CRPR 2B.2
<i>Ceanothus masonii</i>	Mason's ceanothus	SR, CRPR 1B.2
<i>Chloropyron maritimum</i> ssp. <i>palustre</i>	Point Reyes salty bird's-beak	CRPR 1B.2
<i>Chorizanthe cuspidata</i> var. <i>cuspidata</i>	San Francisco Bay spineflower	CRPR 1B.2
<i>Cirsium hydrophilum</i> var. <i>vaseyi</i>	Mt. Tamalpais thistle	CRPR 1B.2
<i>Collinsia corymbosa</i>	round-headed Chinese-houses	CRPR 1B.2
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC

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<i>Dirca occidentalis</i>	western leatherwood	CRPR 1B.2
<i>Emys marmorata</i>	western pond turtle	SSC
<i>Entosthodon kochii</i>	Koch's cord moss	CRPR 1B.3
<i>Eriogonum luteolum</i> var. <i>caninum</i>	Tiburon buckwheat	CRPR 1B.2
<i>Fissidens pauperculus</i>	minute pocket moss	CRPR 1B.2
<i>Fritillaria lanceolata</i> var. <i>tristulis</i>	Marin checker lily	CRPR 1B.1
<i>Gilia capitata</i> ssp. <i>chamissonis</i>	blue coast gilia	CRPR 1B.1
<i>Gilia millefoliata</i>	dark-eyed gilia	CRPR 1B.2
<i>Helianthella castanea</i>	Diablo helianthella	CRPR 1B.2
<i>Hemizonia congesta</i> ssp. <i>congesta</i>	congested-headed hayfield tarplant	CRPR 1B.2
<i>Hesperoleucus venustus subditus</i>	southern coastal roach	SSC
<i>Hesperolinon congestum</i>	Marin western flax	ST, FT, CRPR 1B.1
<i>Holocarpha macradenia</i>	Santa Cruz tarplant	SE, FT, CRPR 1B.1
<i>Kopsiopsis hookeri</i>	small groundcone	CRPR 2B.3
<i>Lessingia micradenia</i> var. <i>micradenia</i>	Tamalpais lessingia	CRPR 1B.2
<i>Microseris paludosa</i>	marsh microseris	CRPR 1B.2
<i>Mielichhoferia elongata</i>	elongate copper moss	CRPR 4.3
<i>Navarretia rosulata</i>	Marin County navarretia	CRPR 1B.2
<i>Oncorhynchus kisutch</i> pop. 4	coho salmon - central California coast ESU	SE, FE
<i>Oncorhynchus mykiss irideus</i> pop. 8	steelhead - central California coast DPS	FT
<i>Pentachaeta bellidiflora</i>	white-rayed pentachaeta	SE, FE, CRPR 1B.1
<i>Pleuropogon hooverianus</i>	North Coast semaphore grass	ST, CRPR 1B.1
<i>Polygonum marinense</i>	Marin knotweed	CRPR 3.1

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<i>Quercus parvula</i> var. <i>tamalpaisensis</i>	Tamalpais oak	CRPR 1B.3
<i>Rana boylei</i>	foothill yellow-legged frog - northwest/north coast clade	SSC
<i>Sidalcea calycosa</i> ssp. <i>rhizomata</i>	Point Reyes checkerbloom	CRPR 1B.2
<i>Sidalcea hickmanii</i> ssp. <i>viridis</i>	Marin checkerbloom	CRPR 1B.1
<i>Stebbinsoseris decipiens</i>	Santa Cruz microseris	CRPR 1B.2
<i>Streptanthus batrachopus</i>	Tamalpais jewelflower	CRPR 1B.3
<i>Streptanthus glandulosus</i> ssp. <i>pulchellus</i>	Mt. Tamalpais bristly jewelflower	CRPR 1B.2
<i>Strix occidentalis caurina</i>	Northern spotted owl	ST, FT
<i>Trifolium amoenum</i>	two-fork clover	FE, CRPR 1B.1

FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SR = state listed as rare under the Native Plant Protection Act; ICP = California Terrestrial and Vernal Pool Invertebrate of Conservation Priority ²; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank

² 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>