



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



November 8, 2023

Jeff Beiswenger, Planning and Building Services Director
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
JBeiswenger@townoffairfax.org

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

Dear Mr. Beiswenger:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Program Environmental Impact Report (EIR) from the Town of Fairfax (Town) for the Town of Fairfax 6th Cycle Housing Element, General Plan Amendments, and Zoning Amendments (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the EIR to inform the Town, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. CDFW previously provided comments in response to the Notice of Preparation for the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA 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 permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION AND LOCATION

The Project will include updates to the Housing Element of the Town of Fairfax's General Plan. The Project will also update portions of the General Plan including the Land Use Element and Safety Element, as well as portions of the Municipal Code including the Zoning Ordinance, to maintain internal consistency. The updates to the

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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

The Project identifies 19 sites, totaling approximately 1,563.56 acres, which have been identified as housing opportunity areas. The Town anticipates that this will result in the addition of 531 new units of dwelling capacity.

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.

REGULATORY REQUIREMENTS

California Endangered Species 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 either during construction or over the life of the Project. **The Project has potential to impact northern spotted owl (*Strix occidentalis caurina*), CESA listed as threatened species, as further described below.** Issuance of an 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, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

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

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the

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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 LSA Notification requirements. **As described in the EIR (pages 3.3-20 and 3.3-22), future development under the Project may impact streams or riparian habitat. If such impacts occur, an LSA Notification pursuant to Fish and Game Code section 1602 would likely be required, as further described below.** CDFW would 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.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Town in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments are also included below. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an EIR is appropriate for the Project.

I. Program EIR Subsequent Project Review

Comment 1: Program EIR Subsequent Project Review

The EIR does not appear to include a checklist for subsequent Project review as outlined in CDFW's Notice of Preparation (NOP) response letter. 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

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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.

II. Environmental Setting and Related Impact Shortcoming

MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Comment 2: Northern Spotted Owl, pages 2-9, 3.3-6, and 3.3-14.

Issue: The MND identifies that northern spotted owl “has potential to occur near the planning area” (page 3.3-6). The MND further includes northern spotted owl in a list of species which “have not been documented on or near the Proposed Project’s sites identified for housing development” (page 3.3-14). However, the Spotted Owl Observations Database shows approximately 195 observations of northern spotted owl, making up three separate spotted owl activity centers, within 0.25 miles of some sites available for housing (CDFW 2019), including sites near Scenic Road, between Ridge Road and Cypress Drive, and near Canyon Road (page 2-9).

Project implementation at these sites may result in take of northern spotted owl due to auditory or visual disturbance to active nest sites. Further, Project implementation at these sites may restrict the range of northern spotted owl through permanent habitat destruction.

Specific impacts, why they may occur, and evidence impacts would be potentially significant:

Auditory and Visual Impacts

Noise and visual disturbance from equipment, road use, or generators at Project sites identified for housing development may disrupt northern spotted owls nesting within

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0.25 miles by reducing hunting success of parents, which primarily use hearing to hunt, and increasing stress hormone levels, which was particularly evident in males when they were exclusively responsible for feeding their mates and nestlings (Hayward et al. 2011).

Habitat Loss

As a habitat specialist, northern spotted owls are primarily threatened by the loss, fragmentation, and degradation of their forest habitats, which is further complicated by their low reproductive rate and limited ability to disperse (Shuford and Gardali 2008). Destruction of foraging and nesting habitat would restrict the range of northern spotted owl.

Evidence of Significant Impacts

Northern spotted owl populations have declined significantly in California primarily as a result of destruction of forest habitat from logging, development, and wildfire (CDFW 2016). A more recent but also serious threat is invasion of their range by barred owls (*Strix varia*) which can out-compete and potentially kill northern spotted owls and hybridize with them (CDFW 2016).

Consistent with CEQA Guidelines, section 15380, the status of the northern spotted owl as a threatened species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 et seq., ESA) and under CESA (Fish & G. Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. Based on the foregoing, if northern spotted owls are nesting within 0.25 mile of sites identified for housing development by the Project, auditory and visual impacts may substantially reduce the number of northern spotted owl. Habitat destruction potentially caused by the Project may substantially restrict the range of northern spotted owl. Reducing the number or restricting the range of northern spotted owl is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measures: For an adequate environmental setting, to comply with CESA, and to reduce impacts to northern spotted owl to less-than-significant, CDFW recommends including the below mitigation measures.

Northern Spotted Owl Habitat Assessment and Compensation. Prior to the Project activities that will remove forested areas, a northern spotted owl habitat assessment shall be conducted by a qualified biologist to determine the type and quality of northern spotted owl habitat present on-site. The habitat assessment shall identify potential habitat as described on page 31 through 34 of the *U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012 (see:

<https://www.fws.gov/sites/default/files/documents/survey-protocol-for-northern-spotted->

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[owl.pdf](#)). Results of the habitat assessment shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of the assessment prior to commencement of Project activities. If nesting or foraging habitat is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing.

Northern Spotted Owl Surveys. If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal projects prior to Project activities, unless otherwise approved in writing by CDFW.

No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the above USFWS survey protocol for disturbance-only projects.

If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Comment 3: Bat Species of Special Concern, page 2-9.

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Issue: The Project is within the range of pallid bat (*Antrozous pallidus*), western red bat (*Lasiurus blossevillii*), and Townsend's big-eared bat (*Corynorhinus townsendii*) (page 2-9).² Townsend's big-eared bat has one occurrence mapped approximately 5 miles west of the Project (CDFW 2023). Pallid bat has four occurrences mapped in the California Natural Diversity Database (CNDDDB), with the closest approximately 1.3 miles southeast of the Project (CDFW 2023). All three of these bat species are known to roost in tree bark, hollows, or foliage; pallid bat and Townsend's big-eared bat are also known to roost in structures including buildings (Johnston 2004). Buildings, especially buildings not currently in use, that may be modified as part of this Project may be occupied by bats. Trees that may be removed as part of this Project may also be occupied by bats.

Specific impacts, why they may occur, and evidence impacts would be potentially significant: The above bat species are California Species of Special Concern (SSC). CDFW designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Removing a roost tree or building during breeding or hibernating seasons could kill many bats as they roost together in a colony. Bats are unusual for small mammals because they are long-lived and have a low reproductive rate (Johnston 2004). Lifespans of 15 years are not uncommon, and most species have only one young per pair per year (Johnston 2004). Bats also aggregate in colonies, some of which contain all the bats of a species from a wide area (Johnston 2004). The combination of these three factors (long lifespan, few young per year, and aggregation into colonies) means that if the Project impacts bat roosts, the Project may cause a substantial adverse effect to the regional population of bat species, including special-status bat species.

Recommended Mitigation Measures: To reduce potential impacts to special-status bat species to less-than-significant, CDFW recommends including the below mitigation measure.

Roosting Bat Habitat Assessment and Surveys: Prior to Project activities that would remove trees or modify buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.

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

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For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

For modification of buildings, the qualified biologist shall conduct a survey for roosting bats. If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.

III. Mitigation Measure and Related Impact Shortcoming

MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict the range of a rare or endangered plant or animal?

COMMENT 4: Special-Status Plant Mitigation, pages 3.3-2, 3.3-3, 3.3-7, 3.3-14 and 3.3-17.

Issue: The EIR includes Mitigation Measure BIO-4, Avoid and Minimize Disturbance to Special-Status Plant Species (page 3.3-17). Mitigation Measure BIO-4 includes success criteria but does not include a contingency plan if the success criteria are not met (page 3.3-17). If plant relocation as described in Mitigation Measure BIO-4 fails, there would be loss of special-status plants without successful mitigation.

Specific impacts, why they may occur, and evidence impacts would be potentially significant: Mitigation Measure BIO-4 includes relocation of plants to a new site if avoidance is not feasible (page 3.3-17). Relocated plants would be subject to annual

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monitoring for three to five years, with the success criteria being “the establishment of new viable occurrences equal to or greater in number than the number of plants impacted” (page 3.3-17). As Mitigation Measure BIO-4 does not include a contingency plan if the success criteria are not met, mitigation for the plant occurrences potentially destroyed during construction would not be adequately mitigated.

The EIR indicates that many species of plants that have been documented within or near the Town “do not overlap with any proposed sites for housing development” (page 3.3-14), however the information collected to come to this conclusion appears to be limited to a CNDDDB search (pages 3.3-2, -3, and -7). The CNDDDB is a database containing positive records; the lack of records in any given area does not necessarily correspond to an absence of species.

The Project may result in the loss of bent-flowered fiddleneck (*Amsinckia lunaris*), congested-headed hayfield tarplant (*Hemizonia congesta* ssp. *congesta*), napa false indigo (*Amorpha californica* var. *napensis*), Mount Tamalpais lessingia (*Lessingia micradenia* var. *micradenia*), and other special-status plant species. The plants listed above all have a California Rare Plant Rank (CRPR) of 1B.2 (California Native Plant Society (CNPS) 2023). Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century (CNPS 2023). The additional threat rank of 0.2 indicates that 20 to 80 percent of their occurrences are threatened (CNPS 2023). Consistent with CEQA Guidelines, section 15380, the status of the above special-status plants as CRPR 1B species qualifies them as endangered, rare, or threatened species under CEQA. If special-status plants may be directly or indirectly impacted by the Project, the lack of adequate mitigation as described above may result in a mandatory finding of significance pursuant to CEQA Guidelines section 15065, subdivision (a), due to a substantial reduction in the numbers or restriction of the ranges of these species.

Recommended Mitigation Measure: To reduce the potential for the impacts to special-status plants described above to less-than-significant, CDFW recommends replacing Mitigation Measure BIO-4 with the below mitigation measure.

Avoid and Minimize Disturbance to Special-Status Plant Species. If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the Project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedings shall be

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monitored annually for five years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.

IV. Project Description and Related Impact Shortcoming

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

AND

Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

COMMENT 5: LSA Notification and Resource Agency Permitting, pages 3.3-20 and 3.3-22.

Issue: The EIR identifies that future development under the Project may be subject to sections 401 and 404 of the Clean Water Act and to Fish and Game Code section 1600 et seq. (pages 3.3-20 and 3.3-22). However, the EIR does not clearly indicate if the Project would impact streams and riparian habitat, wetlands, or other waters. The EIR also does not provide certainty that such impacts would comply with Fish and Game Code section 1600 et seq., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, as the EIR does not include a mitigation measure requiring that development under the Project apply for CDFW, Regional Water Quality Control Board (RWQCB), or U.S. Army Corps of Engineers (USACE) Permits, nor does it contain a mitigation measure requiring compliance with the terms of these permits, if issued.

Specific impacts, why they may occur, and evidence impacts would be potentially significant: Streams, wetlands, and riparian zones, are of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. Development facilitated by the Project may result in impacts to streams and riparian habitats, as described in the EIR (pages 3.3-20 and 3.3-22). When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially

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adversely impacting aquatic and terrestrial species. More than 90 percent of California's historic wetlands have been lost to development and other human activity. Wetlands are a critical natural resource that protects and improves water quality and provide habitat for fish and wildlife. Absent the above permits which include measures to avoid and minimize impacts to streams, riparian habitat, wetlands, and associated species, impacts to these features may be significant.

Recommended Mitigation Measure: To reduce potential impacts to streams, wetlands, and other waters to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends including the mitigation measure below.

Stream and Wetland Mitigation and Resource Agency Permits: The Project shall be designed to minimize impacts jurisdictional waters. If impacts to any stream cannot be avoided, then prior to ground disturbance the Project applicant shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued for stream, wetlands, or other water impacts, the Project applicant shall obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.

V. Editorial Comments and/or Suggestions

Comment 6: Licensed Biologist, page 3.3-16

Mitigation Measure MM-BIO-1 refers to a "licensed biologist." While various certification programs for wildlife biologists through professional organizations exist, there is no state program that licenses wildlife biologists. CDFW suggests striking the word "licensed" and replacing it with "qualified."

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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link:

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<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>.

ENVIRONMENTAL DOCUMENT 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, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the EIR to assist the Town in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

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

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022080624)

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REFERENCES

- CDFW. 2016. A status review of the northern spotted owl (*Strix occidentalis caurina*) in California. Report to the Fish and Game Commission, California Department of Fish and Wildlife, Sacramento, CA, USA.
- CDFW. 2019. Spotted Owl Observations Database Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 26 October 2023].
- CDFW. 2023. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 26 October 2023].
- California Native Plant Society, Rare Plant Program. 2023. Rare Plant Inventory (online edition, v9.5). Website <https://www.rareplants.cnps.org> [accessed 30 October 2023].
- Hayward, L. S., A. E. Bowles, J. C. Ha, and S. K. Wasser. 2011. Impacts of acute and long-term vehicle exposure on physiology and reproductive success of the northern spotted owl. *Ecosphere* 2:65.
- Johnston, D, Tartarian, G, and Poerson, E. (2004). California Bat Mitigation Techniques, Solutions, and Effectiveness. Sacramento, CA.
- Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- USFWS. 2020. Revised Transmittal of Guidance: Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
N/A	<p>Create 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.</p> <p>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.</p>	Prior to EIR Certification	Lead Agency
MM-BIO-4	<p><i>Avoid and Minimize Disturbance to Special-Status Plant Species.</i> If necessary pursuant to the results of surveys conducted under Mitigation Measure BIO-1, the work area shall be modified to the extent feasible to avoid indirect or direct impacts on special-status plants. If complete avoidance of special-status plants is not feasible, at a minimum the special-status plant species shall be relocated on-site, at least 20 feet away from construction directly relating to the Project. All site preparation, seed/cutting/root collection, grow-out, and plant installation shall be conducted by a landscape company approved by the Town with experience working on restoration projects and within the habitats present on-site. Following the relocation, the plantings/seedings shall be monitored annually for five</p>	Prior to Ground Disturbance and for Duration of Construction	Project Applicant

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	<p>years or longer by a botanist paid for and hired by the Project proponent to determine the success of the relocation. For individual plants, success criteria is the establishment of new viable occurrences equal to or greater in number than the number of plants impacted, for at least three years without supplemental care such as watering. On-site maintenance of the relocated plants shall be contracted to a landscaping company which will also be paid for and hired by the Project proponent. An annual report by a botanist detailing the success of the relocation shall be drafted and submitted to all responsible agencies (e.g., CDFW, USFWS) for their review. If success criteria are not met, management of the relocated plants will be modified as needed, but management and reporting shall continue until success criteria are met.</p>		
MM-BIO-7	<p><i>Northern Spotted Owl Habitat Assessment and Compensation.</i> Prior to the Project activities that will remove forested areas, a northern spotted owl habitat assessment shall be conducted by qualified biologist to determine the type and quality of northern spotted owl habitat present on-site. The habitat assessment shall identify potential habitat as described on page 31 through 34 of the <i>U.S. Fish and Wildlife Service (USFWS) Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, dated (revised) January 9, 2012 (see: https://www.fws.gov/sites/default/files/documents/survey-protocol-for-northern-spotted-owl.pdf). Results of the habitat assessment shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of the assessment prior to commencement of Project activities. If nesting or foraging habitat is identified on-site and will be removed, compensatory mitigation for loss of habitat approved in writing by CDFW shall be completed prior to Project activities. Habitat compensation shall not be less than 1:1 for low quality habitat and shall be at least 3:1 for moderate to high quality habitat, unless otherwise required or approved by CDFW in writing.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>
MM-BIO-8	<p><i>Northern Spotted Owl Surveys.</i> If nesting habitat will be removed by the Project between February 1 and July 31, two years of protocol surveys shall be conducted by a qualified biologist approved in writing by CDFW pursuant to the above USFWS survey protocol for habitat removal project prior to Project activities, unless otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>

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	<p>No Project activities within 0.25 miles of potential northern spotted owl nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts northern spotted owl surveys following the above USFWS survey protocol for disturbance-only projects.</p> <p>If breeding northern spotted owl are detected during surveys, a 0.25 mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.</p> <p>Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.</p> <p>If take of northern spotted owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP, and also consult with USFWS pursuant to the federal ESA.</p>		
<p>MM-BIO-9</p>	<p><i>Roosting Bat Habitat Assessment and Surveys:</i> Prior to Project activities that would remove trees or modify buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.</p> <p>For tree removal, the habitat assessment shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, and anthropogenic structures such as buildings, bridges, and culverts). If suitable habitat is found, it shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p> <p>For modification of buildings, the qualified biologist shall conduct a survey for roosting bats. If roosting bats are detected, a bat avoidance and exclusion plan shall be implemented. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.</p>		
<p>MM-BIO-10</p>	<p><i>Stream and Wetland Mitigation and Resource Agency Permits:</i> The Project shall be designed to minimize impacts jurisdictional waters. If impacts to any stream cannot be avoided, then prior to ground disturbance the Project applicant shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued for stream, wetlands, or other water impacts, the Project applicant shall obtain a permit from the RWQCB and USACE pursuant to the Clean Water Act Sections 401 and 404 as applicable. Impacts to waters, wetlands, and riparian areas subject to the permitting authority of CDFW, RWQCB and USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by RWQCB and USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation approach. This plan shall be subject to approval by CDFW, RWQCB, and USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>