



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



April 27, 2023

Dina Tasini, Director of Community Development
Town of Tiburon
1505 Tiburon Boulevard
Tiburon, CA 94920
Dtasini@townoftiburon.org

Subject: Tiburon General Plan 2040, Draft Environmental Impact Report,
SCH No. 2022100473, Town of Tiburon, Marin County

Dear Ms. Tasini:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from the Town of Tiburon (Town) for the Tiburon General Plan 2040 Update Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation (NOP) of the DEIR in a letter dated November 16, 2022.

CDFW is submitting comments on the DEIR to inform the Town, as the Lead Agency, of potentially significant impacts to biological resources associated with 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 SUMMARY

Description: Adopt a comprehensive, long-term general plan (Plan) for the physical development of the Town's planning area. The Plan will include land use, circulation, housing, conservation, open space, noise, and safety elements, and address environmental justice and climate adaptation. The Town will implement the General Plan by requiring development, infrastructure improvements, and other projects to be

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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consistent with its policies and by implementing the actions included in the Plan, including subsequent project-level environmental review, as required under CEQA. The Plan includes 20 lots that would be rezoned to accommodate housing development.

Location: The Town of Tiburon is located in Marin County on the Tiburon Peninsula and Angel Island. In addition to the lands within the Town boundaries, state law requires that a municipality adopt a General Plan that addresses “any land outside its boundaries which in the planning agency’s judgment bears relation to its planning (Gov. Code, § 65300).” The Town’s Planning Area is defined as all lands within the Town limits and Tiburon Sphere of Influence (SOI), as well as the Highway 101 Tiburon Boulevard/East Blithedale Avenue interchange west of the northwestern SOI boundary and the open space land to the north of the northern SOI boundary on Ring Mountain.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank; or deposit or dispose of material where it may pass into a river, lake, or stream including associated riparian or wetland resources. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **The DEIR identifies 4576 Paradise Drive as a site which would be rezoned to increase housing density. This site contains two ephemeral streams which may be impacted by subsequent development. The DEIR also identifies 1199 Tiburon Boulevard as a site which would be subdivided and partially rezoned to increase housing density. This site may contain two streams which may be impacted by subsequent Project development. If any streams are impacted, an LSA Notification pursuant to Fish and Game Code section 1602 would 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 or other suggestions are also included to improve the document. 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.

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I. Subsequent Project CEQA Evaluation, Page 3.3-27

Comment 1: The DEIR identifies that “Subsequent development under the Project could result in the direct and/or indirect loss or indirect disturbance of special-status plant or animal species or their habitats that are known to occur, or have potential to occur, in the region” (3.3-27). It is not clear from the DEIR what level of environmental review future Projects would receive. CDFW provided comments on the DEIR’s NOP in a letter dated November 16, 2022, and recommended providing a clear checklist or procedure for evaluating subsequent Project impacts and potentially significant effects. This checklist should be included as an attachment to the EIR.

Recommended Mitigation Measure: To ensure impacts to fish and wildlife resources are appropriately evaluated in compliance with CEQA and reduce subsequent Project impacts to fish and wildlife resources to less-than-significant, CDFW recommends including the below mitigation measure.

Mitigation Measure BIO-1: Subsequent Project CEQA Evaluation. A procedure or checklist for evaluating subsequent Project impacts on biological resources shall be prepared to determine if the impacts are within the scope of the Program EIR or if an additional environmental document is warranted. Future analysis shall include all special-status species and sensitive habitats including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.

The checklist shall 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 shall be prepared by a Qualified Biologist to provide the necessary supporting information. In addition, the checklist shall 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 Project Description Shortcomings

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 U.S Fish and Wildlife Service (USFWS)?

Comment 2: Bat Species of Special Concern, Pages 2-14, 3.3-27 and 3.3-28

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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*).² All of these bat species are known to roost in tree bark, hollows, or foliage; and pallid bat and Townsend's big-eared bat are known to roost in structures including buildings (Johnston 2004). Buildings, especially buildings not currently in use such as the building at 1601 Tiburon Boulevard, are identified at the various parcels to be rezoned and trees may be removed by subsequent Projects which may be occupied by bats.

Specific impacts, why they may occur and 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 year (Johnston 2004). The long lifespan of bats means that each mortality will have a protracted effect. 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 by impacting bat roosts, projects may cause a substantial adverse effect to the regional population of bat species.

Recommended Mitigation Measures: To reduce any potential impact to SSC bat species to less-than-significant, CDFW recommends including the below mitigation measures.

Mitigation Measure BIO-2: Roosting Bat Habitat Assessment and Surveys: Prior to Project activities that would remove trees or modify buildings or bridges, 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.

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

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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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 or bridges, 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. 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?

Comment 3: Impacts to Sensitive Natural Communities, Riparian Habitat, Wetlands, LSA Notification and Clean Water Act compliance, Pages 3.3-15, 3.3-28 to 3.3-30, and figure 3.3-3

Issue, specific impacts, why they may occur and be potentially significant: The DEIR identifies that development facilitated by the Project “could have a substantial adverse effect on riparian habitats, other sensitive natural communities, federally protected wetlands, or waters of the United States and/or State, through direct removal, filling, or hydrological interruption” (3.3-28 and 3.3-29), and may impact the streams described above.

The DEIR does not include mitigation measures to mitigate potential impacts to riparian habitats, sensitive natural communities, wetlands, and waters of the State. The DEIR relies on General Plan policies and on requirements that subsequent Projects, if necessary, obtain an LSA Agreement from CDFW and a water quality certification from the Regional Water Quality Control Board (RWQCB), to ensure that the level of significance would be less-than-significant (3.3-29). In addition, the DEIR cites a Stream

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Conservation Area Ordinance that would provide additional protection to stream and riparian function in unincorporated areas (3.3-30).

The DEIR does not provide certainty that impacts to riparian habitats, sensitive natural communities, wetlands, and waters of the State would be reduced to less-than-significant. Without specific mitigation measures containing performance standards CDFW considers impacts to these resources as potentially significant (CEQA Guidelines, §§ 15065, 15380).

Recommended Mitigation Measures: If impacts to streams, riparian habitat, or other sensitive natural communities may occur, to reduce potential impacts to less-than-significant and comply with Fish and Game Code section 1600 et seq. for LSA, CDFW recommends including the below mitigation measures.

Mitigation Measure BIO-3: LSA Notification and other Resource Agency Permits. The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and U.S. Army Corps of Engineers (USACE) pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.

Mitigation Measure BIO-4: Habitat Restoration and Compensation. The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to sensitive natural communities, riparian habitat, and wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan, unless otherwise approved in writing by CDFW.

IV. Editorial Comments and/or Suggestions

Comment 4: Foothill Yellow-Legged Frog Status

The northwest/north coast clade of foothill yellow-legged frog, the only clade occurring near the Project site, is not listed under CESA but is a California SSC.

Please be advised that the LSA Agreement, if issued, would likely include the above recommended mitigation measures, as applicable, in addition to other avoidance and minimization measures to protect fish and wildlife.

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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, § 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>.

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 DEIR 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 (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. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022100473)

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REFERENCES

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 27 February 2023].

Johnston, D, Tartarian, G, and Poerson, E. (2004). California Bat Mitigation Techniques, Solutions, and Effectiveness. Sacramento, CA.

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-1	<p><i>Subsequent Project CEQA Evaluation.</i> A procedure or checklist for evaluating subsequent Project impacts on biological resources shall be prepared to determine if the impacts are within the scope of the Program EIR or if an additional environmental document is warranted. Future analysis shall include all special-status species and sensitive habitats including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380.</p> <p>The checklist shall 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 shall be prepared by a Qualified Biologist to provide the necessary supporting information. In addition, the checklist shall 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 Adopting the Final EIR	Lead Agency
BIO-2	<p><i>Roosting Bat Habitat Assessment and Surveys:</i> Prior to Project activities that would remove trees or modify buildings or bridges, 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.</p>	Prior to Ground Disturbance	Project Applicant

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	<p>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 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 or bridges, 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>		
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<p>BIO-3</p>	<p><i>Habitat Restoration and Compensation.</i> The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to sensitive natural communities, riparian habitat, and wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan, unless otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>
<p>BIO-4</p>	<p><i>LSA Notification and other Resource Agency Permits.</i> The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and USACE pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>