



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



June 22, 2023

Aubrey Rose
Alameda County Community Development Agency Planning Department
224 West Winton Avenue, Room 111
Hayward, CA 94544
Aubrey.Rose@acgov.org

Subject: Arroyo Lago Residential Project, Notice of Preparation of a Draft
Environmental Impact Report, SCH No. 2023050339, Alameda County

Dear Aubrey Rose:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Arroyo Lago Residential Project (Project).

CDFW is providing the County of Alameda (County), 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 draft 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), the 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 construction of 194 single-family homes, with approximately 25 percent (49 homes) being designed with deed-restricted Accessory Dwelling Units (ADU). The dwelling units would be approximately 26 to 30 feet in height. The approximately 26.6-acre site would be developed with an approximate density of 7.3 dwelling units per gross acre. The Project is expected to include approximately 694 residents. The Project would construct seven internal streets (Streets A-F and Loop A) to provide internal circulation within the site. The Project would also include several off-

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site improvements including the development of a water storage and booster pump facility with a 400,000-gallon capacity, a recycled water storage facility with a 900,000-gallon capacity, a sewer treatment plant that would treat approximately 37,400 gallons of wastewater per day, and approximately 9 acres of agricultural irrigation fields.

The Project site is located within unincorporated Alameda County, directly east of the City of Pleasanton city limits between Lake I of the Zone 7 Chain of Lakes north of the Project site and Cope Lake east of the Project site.

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 draft EIR:

- Land use changes resulting from, for example, rezoning all, or a portion of, the Project area;
- Type and size of permanent Project facilities as well as temporary features, such as staging areas and access routes;
- Area and design 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; and
- Construction schedule, activities, equipment, and crew sizes.

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.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, including any listed in **Attachment 1**, may not be taken or possessed at any time except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

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 and 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 draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located, and potentially located, within the

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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 setback distances the County may require. Fully protected, threatened, or endangered, candidate, and other special-status species and sensitive natural communities 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 (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 draft 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/>), 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 draft 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 habitat areas;

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- 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);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of wildlife 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.

CDFW recommends that the County ensure that the draft EIR include the following:

- 1) A complete habitat assessment for the western burrowing owl (*Athene cunicularia*) and bats within the Project area and nearby surrounding lands. Lands should be assessed for their potential use by breeding, foraging, migrating and wintering species. The draft EIR should include results of pre-Project avian and bat surveys.
- 2) Project-specific impact analyses on tri-colored blackbird (*Agelaius tricolor*) and California tiger salamander (*Ambystoma californiense*), two species listed under CESA as threatened. The draft EIR must include detailed habitat assessments

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for these species and a thorough analysis of potential impacts of the Project on tricolored blackbird nesting, foraging and roosting habitats on the Project site during construction, as well impacts to the species from loss of habitat. Tri-colored blackbirds are known to nest on the adjacent property to the north and southeast of the Project site (CNDDDB 2023).

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, § 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 Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023050339)

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ATTACHMENT 1: Special-Status Species

Species Name	Common Name	Status
Birds		
<i>Agelaius tricolor</i>	Tricolored blackbird	ST
<i>Elanus leucurus</i>	White-tailed kite	FP
<i>Athene cunicularia</i>	Burrowing owl	SSC
Amphibians and Reptiles		
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
<i>Ambystoma californiense</i>	California tiger salamander	FT, ST
<i>Emys marmorata</i>	Western pond turtle	SSC
<i>Masticophis lateralis euryxanthus</i>	Alameda whipsnake	FT, ST
Mammals		
<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	FE, ST
<i>Antrozous pallidus</i>	Pallid bat	SSC
<i>Taxidea taxus</i>	American badger	SSC
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
Invertebrates		
<i>Bombus occidentalis</i>	Western bumble bee	SC
<i>Bumbus crotchii</i>	Crotch's bumble bee	SC
Plants		
<i>Atriplex depressa</i>	Brittlescale	CRPR 1B.2
<i>Centromadia parryi ssp. congdonii</i>	Congdon's tarplant	CRPR 1B.1
<i>Navarretia prostrata</i>	Prostrate vernal pool navarretia	CRPR 1B.2

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<i>Spergularia macrotheca</i> var. <i>longistyla</i>	Long-styled sand-spurrey	CRPR 1B.2
<i>Extriplex joaquinana</i>	San Joaquin spearscale	CRPR 1B.2
<i>Tropidocarpum capparideum</i>	Caper-fruited tropidocarpum	CRPR 1B.1
<i>Puccinellia simplex</i>	California alkali grass	CRPR 1B.2
<i>Trifolium hydrophilum</i>	Saline clover	CRPR 1B.2

FP = state fully protected under Fish and Game Code; 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; SC state candidate under CESA, SR = state listed as rare under the NPPA¹; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank²

REFERENCES

California Department of Fish and Wildlife (CDFW). 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed June 13, 2023.

¹ 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>

² 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>).