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DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



February 14, 2024

Governor's Office of Planning & Research

Brandon Phipps, Community Development Director  
City of Sausalito  
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Sausalito, CA 94965  
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**Feb 15 2024**  
**STATE CLEARINGHOUSE**

Subject: City of Sausalito 6th Cycle Housing Element Programs, Draft Program Environmental Impact Report, SCH No. 2023050516, City of Sausalito, Marin County

Dear Mr. Phipps:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Program Environmental Impact Report (EIR) from the City of Sausalito (City) for the City of Sausalito 6th Cycle Housing Element Programs (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW previously submitted comments in response to the Notice of Preparation of the EIR in a letter dated June 14, 2023.

CDFW is submitting comments on the EIR to inform the City, 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**

**Proponent:** City of Sausalito

**Objective:** The Project would implement the 6<sup>th</sup> Cycle Housing Element Update Programs 4, 8, 16 paragraphs A, B, C, D, E, G, H, L, M, and N; and Program 19 bullet 1.

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<sup>1</sup> 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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Implementation of these programs would result in amending the City's Zoning Ordinance and portions of the City's General Plan including the Land Use, Community Design, Historic and Cultural Preservation, and Circulation Elements. The Zoning Ordinance would be amended to establish overlay zones that would permit increased residential density. Amendments to the General Plan would include objective design and development standards (ODDS) applicable to housing projects qualifying for expedited permit processing under state laws, including the Housing Accountability Act, Senate Bill (SB) 35, and Assembly Bill (AB) 2011. The ODDS would apply to sites zoned for multifamily and commercial/mixed use developments and to individual Housing Opportunity Sites identified in the adopted Housing Element.

The City anticipates that implementing the 6<sup>th</sup> Cycle Housing Element Update Programs above would result in the addition of 763 new units of dwelling capacity, excluding existing residential sites, previously approved projects, and pending projects.

**Location:** Several parcels in the City of Sausalito, Marin County, with an approximate center point at the intersection of Curry Avenue and Monte Mar Drive; 37.85768°N, -122.49186°W (NAD 83).

## **REGULATORY REQUIREMENTS**

### **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 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 shown in the EIR (Figure 3.3-2), the Project may impact streams or associated 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 and in Attachment 1 to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

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## I. Project Description and Related Impact Shortcoming

### COMMENT 1: Program EIR Subsequent Project Review

The EIR is a Program EIR but does not include a checklist for subsequent project review. 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 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 Mitigation Measure Related Impact Shortcomings

***MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?***

And,

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***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:** California red-legged frog (*Rana draytonii*), California giant salamander (*Dicamptodon ensatus*), American badger (*Taxidea taxus*), Townsend's big-eared bat (*Corynorhinus townsendii*), Franciscan thistle (*Cirsium andrewsii*), California Rare Plant Rank (CRPR) 1B.2 species and other special-status plants, EIR pages 3.3-4, -5, -17, -18, and -20.

**Issue, specific impacts, why they may occur and be potentially significant:** The EIR does not adequately evaluate potential impacts to California red-legged frog, California giant salamander, American badger, Townsend's big-eared bat, Franciscan thistle, and other special-status plants. The California Natural Diversity Database (CNDDDB) documents seven occurrences of California red-legged frog, seven occurrences of California giant salamander, two occurrences of American badger, four occurrences of Townsend's big-eared bat, and eleven occurrences of Franciscan thistle within five miles of the Project site (CNDDDB 2024).

The occurrence of California red-legged frog closest to the Project is approximately 2.1 miles west-southwest of a housing inventory site. The occurrence of California giant salamander closest to the Project is approximately 720 feet southwest of a housing inventory site. The closest occurrence of American badger is approximately 1.6 miles southwest of a housing inventory site. The closest occurrence of Townsend's big-eared bat is approximately 2.0 miles east of the edge of the Project and approximately 2.1 miles east of a housing inventory site. The closest occurrence of Franciscan thistle is approximately 0.2 miles southwest of the edge of the Project and approximately 0.7 miles southwest of a housing inventory site.

The EIR only includes species that have been documented in CNDDDB within the Sausalito Planning Area (pages 3.3-4 and 3.3-5). However, 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 species above may occur in the Project area; however, the potential for Project impacts to these species is not discussed in the EIR.

The Project has the potential to impact California red-legged frog, California giant salamander, and Franciscan thistle directly through crushing or removal during grading, or indirectly through hydrological impacts to habitat. The Project has potential to impact American badger through crushing or removal during grading. The Project has potential to impact Townsend's big-eared bat through removal of roost trees and structures. 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

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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 Townsend's big-eared bat.

All of the species above except for Franciscan thistle are listed as California Species of Special Concern (SSC); California red-legged frog is also listed as threatened under the federal Endangered Species Act (ESA). 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. As such, impacts to species designated as SSC may be significant.

Franciscan thistle has a CRPR of 1B.2. 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 (California Native Plant Society (CNPS) 2023). The additional threat rank of 0.2 indicates that 20 to 80 percent of their occurrences are threatened (CNPS 2023). Additional special-status plant species may also occur. Consistent with CEQA Guidelines, section 15380, the status of special-status plants as CRPR 1 or 2 species qualifies them as endangered, rare, or threatened species under CEQA (see: <https://www.cnps.org/rare-plants/california-rare-plant-ranks>). If special-status plants occur within or adjacent to the Project site and would be directly or indirectly impacted by the Project, the Project 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. Thank you for including a mitigation measure in the EIR requiring detailed botanical reports (page 3.3-20); however, the measure does not specify that surveys will be conducted during the appropriate blooming periods for all potentially occurring special-status plants or that surveys will follow accepted protocols, therefore the proposed mitigation measure may not reduce impacts to special-status plants to less-than-significant.

As described above, development facilitated by the Project could have a substantial adverse effect, either directly or through habitat modifications, on special-status species. Mitigation Measure 3.3-1 proposes to mitigate the above impacts by requiring a study to be completed, the purpose of which is to "identify appropriate measures to avoid or minimize harm to sensitive biological resources and to incorporate the recommended measures as conditions of approval for the project" (pages 3.3-17 and 3.3-18). However, the proposed study inappropriately defers formulating mitigation measures and may not appropriately identify special-status species that may be impacted and measures reducing such impacts to less-than-significant. Further, the

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proposed study would not be subject to public review under CEQA, thereby circumventing key purposes of CEQA including informing the public and governmental decision makers about the potential, significant environmental effects of a proposed project and identifying ways that environmental damage can be avoided or significantly reduced (CEQA Guidelines, § 15002). CEQA Guidelines section 15126.4, subdivision (b) states: "Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards."

Mitigation Measure 3.3-1 does not adopt specific performance standards, nor does it identify types of actions that could meet these standards.

**Recommended Mitigation Measures:** To reduce potential impacts to special-status species to less-than-significant, CDFW recommends that the EIR evaluate potential Project impacts to special-status species and include specific mitigation measures for foreseeable potentially significant impacts. Where future site-specific impacts may not be presently foreseeable based on Project's broad scope, the checklist discussed in Comment 1 above should be used to determine if a future CEQA environmental document is required. For example, the EIR includes species such as longfin smelt (*Spirinchus thaleichthys*), chinook salmon (*Oncorhynchus tshawytscha*), black rail (*Laterallus jamaicensis*), etc.; however, it does not include specific mitigation measures for these species or appear that the Project as currently described would impact them as Project locations do not appear to be within or near their suitable habitat. Therefore, the checklist discussed in Comment 1 should identify any subsequent Project impacts to these species and an additional environmental document should be prepared if impacts may occur. Alternatively, the EIR could anticipate impacts to these species and include specific mitigation measures for them. Note that longfin smelt and chinook salmon are listed under the CESA and an Incidental Take Permit (ITP) from CDFW is required if impacts (i.e., take) would occur, and black rail is a California Fully Protected species; therefore, impacts to it must be avoided. CDFW can assist with formulating appropriate mitigation measures for the above species, would appreciate the opportunity to review the revised EIR, and may have further comments once more specific species information is provided.

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For example, CDFW recommends including the below mitigation measures in the EIR for the Project as it is currently described.

*Mitigation Measure 3.3-4 (California red-legged frog).* At any Project site west of U.S. Highway 101 or within 1,000 feet east of U.S. Highway 101, at least one month prior to the commencement of ground-disturbing activities, the Project area and a minimum 500-foot radius surrounding the Project area shall be assessed by a Qualified Biologist for the presence of California red-legged frog individuals and habitat features. Habitat features include both aquatic habitat such as plunge pools and ponds and terrestrial habitat such as burrows or other refugia. If habitat occurs, then no more than 48 hours prior to ground-disturbing activities the area shall be surveyed by a Qualified Biologist. Burrows and refugia sites shall be flagged or otherwise marked for avoidance; Project activities shall avoid habitat features to the extent feasible. If California red-legged frogs are encountered during the assessment or Project activities, the Project activity shall not proceed or all work shall cease, and CDFW and USFWS shall immediately be notified. Work shall not proceed until the frog, through its own volition, moves out of harm's way and CDFW has provided permission in writing to proceed with the Project activity. If California red-legged frog is encountered or the Qualified Biologist determines that impacts to the species are likely to occur, the Project shall consult with USFWS pursuant to the federal ESA and receive written approval from CDFW prior to the impact.

*Mitigation Measure 3.3-5 (California giant salamander).* At any Project site that is both: 1) within 500 feet of a stream, and 2) either west of U.S. Highway 101 or within 1,000 feet east of U.S. Highway 101, a Qualified Biologist shall conduct a pre-construction survey for California giant salamander within 48 hours of the commencement of Project activities. The survey area shall include the Project area and a 50-foot buffer zone within suitable habitat. If California giant salamanders are found on or adjacent to the Project site, a 50-foot construction avoidance buffer shall be established and CDFW shall be immediately notified, and the animal shall be allowed to move out of harm's way through its own volition. If the California giant salamanders must be disturbed, a Qualified Biologist shall relocate the animals into nearby suitable habitat that is out of harm's way.

*Mitigation Measure 3.3-6 (American badger).* At any Project site west of U.S. Highway 101, a Qualified Biologist shall conduct a pre-construction survey for American badger and suitable dens within 48 hours of the commencement of Project activities. The survey area shall include the Project area and a 50-foot buffer zone within suitable habitat. If badgers are found on or adjacent to the Project site, a 50-foot construction avoidance buffer shall be established and CDFW shall be immediately notified. If the occupied den must be disturbed, the Project shall submit a relocation plan to CDFW and obtain CDFW's written approval of the plan, and a Qualified Biologist shall implement the CDFW-approved plan.

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*Mitigation Measure 3.3-7 (Townsend's big-eared bat).* At any Project site where trees or abandoned buildings would be removed or heavily modified, 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 Townsend's 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). 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.

For loss of suitable bat habitat trees or impacts to buildings or structures occupied by bats subject to the above bat avoidance and exclusion plan, the Project shall provide habitat mitigation in the form of: 1) native tree planting at an appropriate ratio to offset canopy and temporal habitat loss and tree planting maintenance for a minimum of five years and until success criteria are met, or 2) suitable bat habitat structures. A Qualified Biologist shall prepare and submit a bat habitat mitigation plan to CDFW and obtain CDFW's approval of the plan prior to the start of Project activities, and shall implement the plan, unless otherwise approved in writing by CDFW.



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*Mitigation Measure 3.3-8 (Special-status plant survey).* At all sites not composed of hardscape or ornamental vegetation, a Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur at the Project site and adjacent to it where plants could be indirectly impacted, prior to the start of construction. Surveys shall be conducted following CDFW's *Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>) and include checking reference sites for target special-status plant species. Per this protocol, more than one year of surveys may be necessary if, for example, lack of rain inhibits growth of annual plants. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and provide an avoidance plan to CDFW and obtain CDFW written approval of the plan. If full avoidance is not possible, Project activities may not commence until the Project has consulted with CDFW and obtained CDFW's written approval prior to the start of construction, which may include salvaging topsoil, transplanting, and monitoring individuals, compensatory habitat mitigation, or other measures, based on the life history of the species and other relevant factors.

### **III. Stream Alteration and Impacts to Wetlands and other Waters**

***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 3:** Permits for Stream, Wetland, and Other Waters Impacts, EIR page 3.3-19 and figure 3.3-2

**Issue:** The EIR identifies that future development under the Project may be subject to sections 401 and 404 of the Clean Water Act and Fish and Game Code section 1600 et seq. (page 3.3-19). 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

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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 shown in the EIR (figure 3.3-2). When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially 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 protect and improve 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, Project 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., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, CDFW recommends including the mitigation measure below in the EIR.

*Mitigation Measure 3.3-9 (Stream and Wetland Mitigation and Resource Agency Permits).* The Project shall be designed to minimize fill of jurisdictional waters. If impacts to any streams cannot be avoided, then prior to the impacts the Project shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued. Additionally, if impacts to any streams, wetlands, or other waters cannot be avoided, the Project shall obtain authorization from the RWQCB and USACE pursuant to the Porter-Cologne Water Quality Control Act and Clean Water Act sections 401 and 404, as applicable. Impacts to waters, wetlands, and riparian habitat subject to the permitting authority of CDFW, the RWQCB, or the 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 the RWQCB or USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation. The Project shall obtain written approval of this plan from CDFW, the RWQCB, or the USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.

## **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

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communities detected during Project surveys to 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>.

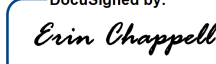
## ENVIRONMENTAL DOCUMENT FILING FEES

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 EIR to assist the City in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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. 2023050516)

## REFERENCES

- CDFW. 2024. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 6 February 2024].
- 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
<b>Subsequent Project review</b>	<p>The Lead Agency shall 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 shall be included as an attachment to the EIR. Future analysis shall 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>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 EIR Certification	Lead Agency
<b>Biological resources evaluation</b>	<p>The EIR shall evaluate potential Project impacts to special-status species and include specific mitigation measures for foreseeable potentially significant impacts. Where future site-specific impacts may not be presently foreseeable based on Project’s broad scope, the checklist discussed in Comment 1 above (Subsequent Project review) shall be used to determine if a future CEQA environmental document is required. For example, the EIR includes species such as longfin smelt (<i>Spirinchus thaleichthys</i>), chinook salmon (<i>Oncorhynchus tshawytscha</i>), black rail (<i>Laterallus jamaicensis</i>), etc., however it does not include specific mitigation measures for these species or appear that the Project as currently described would impact them as Project locations do not appear to be within or near their suitable habitat. Therefore, the checklist discussed in Comment 1 should</p>	Prior to EIR Certification	Lead Agency

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	<p>identify any subsequent Project impacts to these species and an additional environmental document should be prepared if impacts may occur. Alternatively, the EIR could anticipate impacts to these species and include specific mitigation measures for them. Note that longfin smelt and chinook salmon are listed under the CESA and an ITP from CDFW is required if impacts (i.e., take) would occur, and black rail is a California Fully Protected species therefore impacts to it must be avoided. CDFW can assist with formulating appropriate mitigation measures for the above species, would appreciate the opportunity to review the revised EIR, and may have further comments once more specific species information is provided.</p>		
3.3-4	<p><i>California red-legged frog.</i> At any Project site west of U.S. Highway 101 or within 1,000 feet east of U.S. Highway 101, at least one month prior to the commencement of ground-disturbing activities, the Project area and a minimum 500-foot radius surrounding the Project area shall be assessed by a Qualified Biologist for the presence of California red-legged frog individuals and habitat features. Habitat features include both aquatic habitat such as plunge pools and ponds and terrestrial habitat such as burrows or other refugia. If habitat occurs, then no more than 48 hours prior to ground-disturbing activities the area shall be surveyed by a Qualified Biologist. Burrows and refugia sites shall be flagged or otherwise marked for avoidance; Project activities shall avoid habitat features to the extent feasible. If California red-legged frogs are encountered during the assessment or Project activities, the Project activity shall not proceed or all work shall cease, and CDFW and USFWS shall immediately be notified. Work shall not proceed until the frog, through its own volition, moves out of harm's way and CDFW has provided permission in writing to proceed with the Project activity. If California red-legged frog is encountered or the Qualified Biologist determines that impacts to the species are likely to occur, the Project shall consult with USFWS pursuant to the federal ESA and receive written approval from CDFW prior to the impact.</p>	<p>Prior to Ground Disturbance and for Duration of Construction</p>	<p>Project Applicant</p>
3.3-5	<p><i>California giant salamander.</i> At any Project site that is both: 1) within 500 feet of a stream, and 2) either west of U.S. Highway 101 or within 1,000 feet east of U.S. Highway 101, a Qualified Biologist shall conduct a pre-construction survey for California giant salamander within 48 hours of the commencement of project activities. The survey area shall include the Project area and a 50-foot buffer zone within suitable habitat. If California giant</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>salamanders are found on or adjacent to the project site, a 50-foot construction avoidance buffer shall be established and CDFW shall be immediately notified, and the animal shall be allowed to move out of harm's way through its own volition. If the California giant salamanders must be disturbed, a Qualified Biologist shall relocate the animals into nearby suitable habitat that is out of harm's way.</p>		
3.3-6	<p><i>American badger</i>. At any Project site west of U.S. Highway 101, a Qualified Biologist shall conduct a pre-construction survey for American badger and suitable dens within 48 hours of the commencement of project activities. The survey area shall include the Project area and a 50-foot buffer zone within suitable habitat. If badgers are found on or adjacent to the Project site, a 50-foot construction avoidance buffer shall be established and CDFW shall be immediately notified. If the occupied den must be disturbed, the Project shall submit a relocation plan to CDFW and obtain CDFW's written approval of the plan, and a Qualified Biologist shall implement the CDFW-approved plan.</p>	Prior to Ground Disturbance	Project Applicant
3.3-7	<p><i>Townsend's big-eared bat</i>. At any Project site where trees or abandoned buildings would be removed or heavily modified, 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 Townsend's 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). 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</p>	Prior to Ground Disturbance	Project Applicant

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	<p>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>For loss of suitable bat habitat trees or impacts to buildings or structures occupied by bats subject to the above bat avoidance and exclusion plan, the Project shall provide habitat mitigation in the form of: 1) native tree planting at an appropriate ratio to offset canopy and temporal habitat loss and tree planting maintenance for a minimum of five years and until success criteria are met, or 2) suitable bat habitat structures. A Qualified Biologist shall prepare and submit a bat habitat mitigation plan to CDFW and obtain CDFW's approval of the plan prior to the start of Project activities, and shall implement the plan, unless otherwise approved in writing by CDFW.</p>		
<p><b>3.3-8</b></p>	<p><i>Special-status plant survey.</i> At all Project sites not composed of hardscape or ornamental vegetation, a Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur at the Project site and adjacent to it where plants could be indirectly impacted, prior to the start of construction. Surveys shall be conducted following CDFW's <i>Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities</i> (<a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants</a>) and include checking reference sites for target special-status plant species. Per this protocol, more than one year of surveys may be necessary if, for example, lack of rain inhibits growth of annual plants. If any special-status plant species are</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>observed, the Project shall fully avoid direct and indirect impacts to all individuals and provide an avoidance plan to CDFW and obtain CDFW written approval of the plan. If full avoidance is not possible, Project activities may not commence until the Project has consulted with CDFW and obtained CDFW's written approval prior to the start of construction, which may include salvaging topsoil, transplanting, and monitoring individuals, compensatory habitat mitigation, or other measures, based on the life history of the species and other relevant factors.</p>		
<p><b>3.3-9</b></p>	<p><i>(Stream and Wetland Mitigation and Resource Agency Permits)</i>. The Project shall be designed to minimize fill of jurisdictional waters. If impacts to any streams cannot be avoided, then prior to the impacts the Project shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued. Additionally, if impacts to any streams, wetlands, or other waters cannot be avoided, the Project shall obtain authorization from the RWQCB and USACE pursuant to the Porter-Cologne Water Quality Control Act and Clean Water Act sections 401 and 404, as applicable. Impacts to waters, wetlands, and riparian habitat subject to the permitting authority of CDFW, the RWQCB, or the 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 the RWQCB or USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation. The Project shall obtain written approval of this plan from CDFW, the RWQCB, or the 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>