



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

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May 24, 2024

Megan Calpin, Senior Planner  
City and County of San Francisco  
49 South Van Ness Avenue #1400  
San Francisco, CA 94103  
[Megan.Calpin@sfgov.org](mailto:Megan.Calpin@sfgov.org)

Subject: 3400 Laguna Street Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024050241, City and County of San Francisco

Dear Megan Calpin:

The California Department of Fish and Wildlife (CDFW) reviewed the City and County of San Francisco (City) Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the 3400 Laguna Street Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect fish and wildlife resources of the state. Please be advised, by law, CDFW may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW is providing the City, 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 (See: Cal. Code Regs., tit. 14, § 15082, subd. (b)).

## **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). For purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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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CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in "take" as defined by state law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION AND LOCATION**

**Proponent:** Mary Linde, Heritage on the Marina

**Location:** The Project site is located at 3400 Laguna Street on a 1.6-acre corner lot southeast of the Laguna Street and Bay Street intersection in the Marina neighborhood. The site is bounded by Bay Street to the north, single- and multi-family residences near to and along Octavia Street to the east, Francisco Street to the south, and Laguna Street to the west. The Project site has been occupied by the Heritage on the Marina residential care retirement community since 1925. The Heritage on the Marina consists of five existing structures of approximately 83,200 gross square feet (APN 0471 -003).

**Description:** The Project proposes to continue operating as a residential care facility and demolish two of the five existing buildings (the Perry Connector and the Health Care Center) and construct two new buildings (the Bay Building and the Francisco Building) of heights not to exceed 40 feet and in the same locations as the demolished structures. The proposed Project would renovate two of the other three existing buildings on the site and make improvements to the Julia Morgan Building. The Project proposes to add approximately 58,380 square feet of institutional use and increase the number of residential care suites by 23 from 86 to 109.

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the following Project components in the Project description including, but not limited to the below information.

Land use changes resulting from, for example, rezoning in certain areas.

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas. and access routes.

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- Area and plans for any proposed buildings/structures, ground-disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.

## ENVIRONMENTAL SETTING

Sufficient information for meaningful review regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the draft EIR (CEQA Guidelines, §§ 15125 & 15360). CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see:

<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City may require.

Candidate and other special-status species that are known to occur, or have the potential to occur, in or near the Project site include, but are not limited to:

Common Name	Scientific Name	Federal Status <sup>2</sup>	State Status <sup>3</sup>	CDFW Status
American peregrine falcon	<i>Falco peregrinus anatum</i>	Delisted	Delisted	-
monarch - California overwintering population	<i>Danaus plexippus plexippus pop. 1</i>	FC	-	-
obscure bumble bee	<i>Bombus caliginosus</i>	-	-	-
western bumble bee	<i>Bombus occidentalis</i>	-	SC	-

Habitat descriptions and species profiles included in the draft EIR should include robust

<sup>2</sup> FC = federal candidate for listing under ESA.

<sup>3</sup> SC = state candidate for listing endangered under CESA.

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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; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Only with sufficient data and information from the habitat assessment can the City adequately assess which special-status species are likely to occur in the Project vicinity.

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://wildlife.ca.gov/Conservation/Survey-Protocols>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://wildlife.ca.gov/Conservation/Plants>.

## **IMPACT ANALYSIS AND MITIGATION MEASURES**

The CEQA Guidelines necessitate the draft EIR, 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:

- Potential for "take" of special-status species;
- Loss of trees;
- 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);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence;
- Water quality impacts resulting from construction and operation of the Project;
- Impacts both from construction and operation of the Project; and
- Impacts to bed, channel, bank, and riparian habitat, and the direct and indirect effects to fish, wildlife, and their habitat.

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The draft EIR should also identify existing and 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 each 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 listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the City, as the Lead Agency, to consider and describe in the draft EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370.) This should include discussion of take avoidance and minimization measures for special-status species, which should be developed in consultation with the USFWS, the National Marine Fisheries Service, and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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 a CESA Permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

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## **Lake and Streambed Alteration Agreement**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

## **Migratory Birds and Raptors**

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to prepare subsequent EIRs or to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subds. (d) & (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 here: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

The types of information reported to CNDDDB can be found here: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

CDFW anticipates that the proposed Project will have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable

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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. (See: Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

## CONCLUSION

CDFW appreciates the opportunity to provide comments on the proposed Project to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Teichman, Environmental Scientist at [Jason.Teichman@wildlife.ca.gov](mailto:Jason.Teichman@wildlife.ca.gov); or Wesley Stokes, Senior Environmental Scientist (Supervisory), at [Wesley.Stokes@wildlife.ca.gov](mailto:Wesley.Stokes@wildlife.ca.gov).

Sincerely,

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

ec: Craig Weightman, CDFW Bay Delta Region - [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)