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September 5, 2024

Damien Curry, Planner
Alameda County
224 W Winton Avenue
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Damien.Curry@acgov.org

Subject: PLN2021-00064 - Fa Yun Chan Temple Project, Mitigated Negative Declaration, SCH No. 2024080043, Alameda County

Dear Damien Curry:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Alameda County (Lead Agency) for the PLN2021-00064 - Fa Yun Chan Temple Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

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.) Similarly 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.

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 as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed

[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.

Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed 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.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: County of Alameda

Objective: Applicant proposes phased construction consisting of Phase 1: internal renovation of an existing residence for continued and expanded use as a residence by Temple staff and addition of Buddha statues and associated meditation trails, and in Phase 2: demolition of existing storage and stable buildings, and construction of five new buildings and site improvements for the proposed private Buddhist temple. Other site improvements would include stabilization of the hillsides, replacement and expansion of the current leach field and provision of individual wastewater service laterals, septic tanks and ejector/grinder pumps. Additionally, a new fire suppression system would be provided, consisting of a new fire pump and delivery system with sufficient on-site water storage to provide fire protection as required under National Fire Protection Association standards. A second driveway connection off Crow Canyon Road would be built. Landscaping would include stormwater treatment areas.

Location: The Project is located at 7825 Crow Canyon Road, Castro Valley, Alameda County. Parcel APNs include 85-4060-1-9; 85-5000-1-1 and -1-26.

Timeframe: Construction activities are anticipated to span about 2 years, with a target start in late-2025. Phase 1 is expected to take 12 months, and Phase 2 would be an additional 12 months and would include demolition of the existing non-residential buildings.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency 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 may also be included to improve the document.

I. 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 #1: Alameda whipsnake

The Project could permanently impact 6.46 acres of suitable Alameda whipsnake (*Masticophis lateralis euryxanthus*) foraging, dispersal, and refugial habitat, a state and federally threatened species including 2.64 acres of coyote brush scrub, 0.1 acre of riparian woodland, 0.63 acre of mixed oak woodland, and 3.18 acres of California annual grassland. The Project area contains habitat features (scrub intermixed with woodland and small patches of grassland) in close proximity to Alameda whipsnake sightings, including, within 0.7 miles based with some sightings as recent as 2017 based on the California Natural Diversity Database (CNDDB) review. Additionally, Alameda whipsnake can move substantial distances within home ranges which have been reported to encompass between at least 1.9-8.7 hectares depending on sex and length of tracking (Swaim 1994; USFWS 2002).

Furthermore, throughout the year, Alameda whipsnake may be present but difficult to detect in a given area due to their secretive behavior. During their inactive season (roughly November through February/March, dependent on weather conditions), Alameda whipsnakes will use rodent burrows or crevices in rock outcrops for brumation (Hammerson 1979; Swaim 1994; USFWS 2002). During their active season (roughly February/March through October, dependent on weather conditions; Swaim 1994; USFWS 2002; Alvarez et al. 2021), Alameda whipsnake will utilize rodent burrows and other refugia (e.g., rocks, rock outcrops, logs, vegetation piles, or cracks between cement foundation and native substrate) to oviposit, thermoregulate, estivate and/or evade potential threats including people.

Alameda whipsnakes will also use vegetation structure (e.g., shrubs or other similar vegetation), rocks and open soil to bask on the ground or within the shrub layer (Swaim and McGinnis 1992; Swaim 1994; Miller and Alvarez 2016; Alvarez and Murphy 2022). Alameda whipsnake have also been observed on a few documented occasions in trees (e.g. 15 feet up, Shafer and Hein 2005 in Alvarez and Murphy 2022).

Analysis of existing data has found that a minimum of 30-days focused drift-fence funnel trapping during peak activity (typically April-May, though dependent on weather conditions) may be necessary to assess presence/ absence of this species (Richmond et al. 2015). For these reasons, single-day visual surveys are not adequate to detect or determine absence from a location for this species.

Take of Alameda whipsnake may occur directly or indirectly through ground-disturbing activities, including grubbing, grading, excavation (including for wildlife exclusion fence installation and planting/landscaping), removal of existing concrete pads and/or other foundation materials, vehicle passage, vegetation removal (shrubs and trees from the root or above-ground structure), and from changes to physical habitat structure (e.g., changes in refuge or basking resource availability) including to vegetation structure

through introduction of non-native species. Non-native plant species may be introduced through transport of seeds inadvertently in contaminated dirt or erosion control materials (e.g., straw), from goat defecation, disturbance to the ground which can favor germination and colonization by opportunistic non-native invasive species, or directly by introduction of horticultural varietals during construction and operation.

Potential impacts to Alameda whipsnake due to increased human activity and noise levels during both construction and operation include effects to behavior and spatial use of habitat that could affect survival and reproduction/recruitment. These same activities, as well as physical changes to the site, may reduce availability of prey to Alameda whipsnake, thereby also affecting Alameda whipsnake behavior and spatial use of habitat that could affect survival and reproduction/recruitment.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant or to minimize significant impacts:

Mitigation Measure #1: Habitat Assessment and Buffers

A detailed habitat assessment shall be conducted by a qualified biologist knowledgeable of the life history and ecological requirements of Alameda whipsnake. The habitat assessment shall be used to determine ecologically appropriate avoidance buffers. The habitat assessment shall include all suitable basking, burrowing, dispersal, overwintering, and foraging habitats within the Project area and surrounding areas. This can include but is not limited to burrows and other refugia (e.g., rocks, rock outcrops, logs, vegetation piles, or cracks between cement foundation and native substrate).

Mitigation Measure #2: Clearance Surveys

No more than 24 hours prior to the date of initial ground disturbance and vegetation clearing, a CDFW-approved biologist with experience in the identification of the Alameda whipsnake will conduct clearance surveys and monitoring within 100 feet of the Project site. The biologist will investigate all areas that could be used by Alameda whipsnakes for sheltering, movement, and other essential behaviors. This includes an adequate examination of rock outcroppings and mammal burrows. Safety permitting, the approved biologist will investigate areas of disturbed soil for signs of the listed species within 30 minutes following the initial disturbance of that given area. The biologist will conduct clearance surveys at the beginning of each day and regularly throughout the workday when construction activities are occurring that may result in take of Alameda whipsnake.

Mitigation Measure #3: Compensatory Mitigation

The MND should include effective and feasible compensatory mitigation measures to offset all permanent and temporary impacts of the Project on Alameda whipsnake and

its habitat. To ensure impacts to Alameda whipsnake are mitigated to less-than-significant levels, CDFW recommends inclusion of compensatory mitigation at a minimum of a 3:1 mitigation ratio (conservation to loss) for permanent impacts to habitat, and a 1:1 ratio for temporary impacts to the species' habitats. CDFW recommends that priority for conserved lands be given to on-site locations. Conservation lands should be placed under a conservation easement, an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity, and a long-term management plan should be prepared and implemented by a land manager. The Grantee of the conservation easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

Mitigation Measure #4: Take Permit

CDFW recommends that the Project applicant consult with CDFW on the necessity to obtain an Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081(b) prior to Project implementation. The Project Proponent should apply for an ITP to cover impacts of the Project to Alameda whipsnake. Through the ITP, CDFW will work with the Project Proponent to develop adequate measures to minimize and mitigate potential for take of this species due to Project activities

COMMENT #2: Western Pond Turtle

Western pond turtle (*Actinemys marmorata*) have the potential to occur in the Project site. Crow Canyon Creek is within 300 feet of the Project boundary. Western pond turtle are known to nest in the spring or early summer within 300 feet of a water body, although nest sites as far away as 1,500 feet have also been reported. Western pond turtle can move more than four miles up or down stream.

Without appropriate avoidance and minimization measures for western pond turtle, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant or to minimize significant impacts:

Mitigation Measure #5: Western Pond Turtle Surveys

CDFW recommends a qualified biologist conduct focused surveys for western pond turtle 10 days prior to Project implementation using a best available methodology for the intended purpose CDFW maintains a list of recommended survey protocols for western pond turtle and other fish and wildlife species online at: https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles.

Mitigation Measure #6: Western Pond Turtle Relocation

CDFW recommends that if any western pond turtle are discovered at the site immediately prior to or during Project activities, they should be allowed to move out of the area on their own. If a western pond turtle is unable to move out of the Project area on its own, a qualified biologist shall relocate western pond turtle out of the Project area into habitat similar to where it was found.

COMMENT #3: Crotch's bumble bee

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). The MND does not adequately address whether the proposed Project could result in impacts to Crotch's bumble bee. Crotch's bumble bee occurrences have been documented within Alameda County. The Project location is within the Crotch's bumble bee range (https://wildlife.ca.gov/Conservation/CESA) and grassland within and adjacent to the Project area may contain potential habitat for Crotch's bumble bee.

The proposed Project includes construction that will occur within ruderal grass and herbaceous vegetation that may be potential Crotch's bumble bee nesting and foraging habitat.

Direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of suitable breeding and foraging habitats, loss of native vegetation that may support essential foraging habitat.

Bumble bees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species. As a candidate species, unauthorized take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant or to minimize significant impacts:

Mitigation Measure #7: Habitat Assessment

A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumble bee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The

habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bee feed. Further guidance on habitat surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (https://wildlife.ca.gov/Conservation/CESA).

Mitigation Measure #8: Survey Plan

If Crotch's bumble bee habitat is present within the Project area, the Project should include a pre-construction survey plan as a mitigation measure. The survey plan should be submitted to CDFW for review. Surveys should be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bee. If CESA candidate bumble bees will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding (MOU) from CDFW.

Surveys should be conducted during the colony active period (i.e. April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year, therefore, surveys should be conducted each year that Project work activities will occur. Further guidance on presence surveys can be found within Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (https://wildlife.ca.gov/Conservation/CESA).

Mitigation Measure #9: Crotch's Bumble Bee Avoidance or Take Authorization

If Crotch's bumble bee are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan should be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal.

If full take avoidance is not feasible, CDFW strongly recommends that the MND state that the Project proponent will apply to CDFW for take authorization under an ITP.

Mitigation Measure #10: Herbicide Application

To minimize impacts to bumble bees, avoid the bloom periods for herbicide application and mowing activities. If this is not possible, CDFW recommends that the Project obtain take authorization under an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Mitigation Measure #11: Compensatory Mitigation

CDFW recommends that the MND include compensatory mitigation for the loss of all suitable Crotch's bumble bee habitat. Bumble bee floral resources should be mitigated at a 3:1 ratio for permanent impacts in the absence of information regarding the compensatory mitigation site. Floral resources should be replaced as close to their original location as is feasible. If active Crotch's bumble bee nests have been identified

and floral resources cannot be replaced within 600 feet of their original location, floral resources should be planted in the most centrally available location relative to identified nests. This location should be no more than 4,900 feet (1.5-km) from any identified nest. Replaced floral resources may be split into multiple patches to meet distance requirements for multiple nests. The MND should state that mitigation lands will be protected in perpetuity under a conservation easement with an endowment established for long-term management of the lands.

COMMENT #4: Special-Status Plant Species

The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq*.) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Impacts to special-status plant species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. CDFW considers plant communities, alliances, and associations with a statewide ranking of S1, S2, S3, and S4 as sensitive and declining at the local and regional level (Sawyer 2009).

Additionally, plants that have a California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) of 1A, 1B, 2A, and 2B are rare throughout their range, endemic to California, and are seriously or moderately threatened in California. All plants constituting CRPR 1A, 1B, 2A, and 2B are eligible for State listing. Impacts to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA, as they meet the definition of rare or endangered (CEQA Guidelines, § 15380). Please see CNPS Rare Plant Ranks (CNPS 2022) page for additional rank definitions.

The draft MND states that multiple special-status plant species could potentially occur within the Project area and adjacent areas. Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation. CNDDB records show Diablo helianthella (*Helianthella castanea*) within 0.7 miles of the Project and bent-flowered fiddleneck (*Amsinckia lunaris*) within 2 miles of the Project, both with ranking of 1.B.2.

Mitigation Measure #12: Surveys and Buffers

According to CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* the protocol botanical field surveys should be conducted in the field at the times of year when plants will be both evident and identifiable. Usually this is during flowering or fruiting. Space botanical field

survey visits throughout the growing season to accurately determine what plants exist in the project area. This usually involves multiple visits to the project area (e.g., in early, mid, and late-season) to capture the floristic diversity at a level necessary to determine if special-status plants are present. The timing and number of visits necessary to determine if special-status plants are present is determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which botanical field surveys are conducted.

To avoid indirect impacts to special-status plants, an appropriate buffer distance should be established between the special-status plant occurrence and the Project impact areas. Appropriate buffer distance should be based upon review of site-specific conditions (e.g. special-status plants located downstream or in lower elevational areas in relation to the impact location, special-status plants being down wind of earth moving activities, and other conditions).

Mitigation Measure #13: Compensatory Mitigation and Revegetation

A review of protocol-level survey results should be conducted to establish appropriate compensatory mitigation ratios specific to each special-status plant species. Compensatory mitigation ratios should be developed based on the biological factors specific to each species and should be sufficient to compensate for the loss of those species.

All revegetation/restoration areas that will serve as mitigation should include preparation of a restoration plan, to be approved by CDFW prior to any ground disturbance. The restoration plan should include restoration and monitoring methods; annual success criteria; contingency actions should success criteria not be met; long-term management and maintenance goals; and a funding mechanism for long-term management.

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 CNDDB. The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 comment on the MND to assist Alameda County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marcus Griswold, Senior Environmental Scientist (Specialist), at (707) 815-6451 or Marcus.Griswold@wildlife.ca.gov or Jason Faridi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@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. 2024080043)

REFERENCES

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ATTACHMENT 1:Special-Status Species

Species	Status
Fish and Invertebrates	
Crotch's bumble bee (*Bombus crotchii*)	State candidate (SC)
Birds	
loggerhead shrike (*Lanius ludovicianus*)	Species of Special Concern (SSC)
yellow warbler (*Setophaga petechia*)	SSC
white-tailed kite (*Elanus leucurus*)	State Fully Protected (FP)
Mammals	
pallid bat (*Antrozous pallidus*)	SSC
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	SSC
Townsend's big-eared bat (*Corynorhinus townsendii*)	SSC
Reptiles and Amphibians	
Alameda whipsnake (*Masticophis lateralis euryxanthus*)	Federally Threatened (FT), State Threatened
California red-legged frog (*Rana draytonii*)	FT, SSC
western pond turtle (*Emys marmorata*)	Proposed FT, SSC
Plants	
bent-flowered fiddleneck (*Amsinckia lunaris*)	S3, 1.B.2
Congdon's tarplant (*Centromadia parryi ssp. congdonii*)	S2, 1B.1
Helianthella castanea (*Diablo helianthella*)	S2, 1B.2