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GAVIN NEWSOM, Governor
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September 16, 2024

Syd Sotoodeh, Senior Planner
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Sys.Sotoodeh@dcd.cccounty.us

Subject: Ariey Lane 3-Lot Minor Subdivision, Rezoning, and Preliminary and Final Development Plan, Initial Study/Mitigated Negative Declaration, SCH No. 2024080688, Contra Costa County

Dear Mr. Sotoodeh:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Contra Costa County (County) for the Ariey Lane Minor Subdivision, Rezone, Preliminary and Final Development Plan (Project) pursuant to 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 is submitting comments on the IS/MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the Project.

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

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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 alteration 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

CESA Incidental Take Permit

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if a project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of an ITP is subject to CEQA documentation. 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.

CESA-listed species identified that may occur within the Project area include, but are not limited to, the Alameda whipsnake (*Masticophis lateralis euryxanthus*). CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, and CEQA Guidelines section 15380, 15064, 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 Fish and Game Code section 2080.

PROJECT DESCRIPTION SUMMARY

Proponent: Contra Costa County Department of Conservation and Development c/o Syd Sotoodeh, 30 Muir Road, Martinez, California 94553

Objective: The applicant is requesting approval of a vesting tentative map to subdivide the subject 6.18-acre parcel into three parcels, resulting in an approximately 2.86-acre Parcel A, an approximately 2.51-acre Parcel B, and an approximately 0.81-acre Parcel C.

Access to the minor subdivision would extend from Arie Lane, a private road, via an existing bridge that crosses Grayson Creek. Proposed site improvements include an

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extension of Arie Lane from an existing bridge as a new 20-foot-wide private road within a 25-foot private access easement with slopes up to a 20% gradient. Additional site improvements include curbs, gutters, three bioretention basins for stormwater control, a drainage outfall and headwall approximately one foot in height, and an 8-inch rock over coir riprap outfall within the creek area adjacent to the bridge for erosion control. The project is seeking approval to construct improvements within the approximately 1.32-acre creek structure setback (CSS) easement area spanning the southernmost area of the property. The improvements include approximately 945 square feet of the private roadway and curbs extending from the bridge, approximately 380 square feet of a stormwater treatment bioretention basin (IMP 3), a drainage outfall and headwall, and retaining walls appurtenant to these improvements.

Location: The proposed Project is located at 85 Arie Lane in the unincorporated area of Lafayette, Contra Costa County. The Project is planned to occur on the Accessor's Parcel Number 167-010-017. The approximate center coordinate for the Project is 37.944506°, -122.1031°.

Timeframe: No estimate on the Project's commencement or completion has been provided.

ENVIRONMENTAL SETTING

The Project site is an undeveloped 6.18-acre lot located in an unincorporated, hilly area of Lafayette. Approximately 3.3 acres of the subject property have been grant-deeded to Contra Costa County, including a 1.98-acre scenic easement along the northern boundary of the property and a 1.32-acre CSS easement area along the southern boundary. The subject property is bounded by Grayson Creek to the south, a perennial creek that is part of the larger Walnut Creek watershed.

In its present state, the Project site is comprised of annual native/non-native grassland, oak woodland, perennial creek, riparian woodland, and an ephemeral drainage area in the center of the property. Suitable soil and habitat conditions exist to support common native and special-status plants, including bent-flowered fiddleneck and Diablo helianthella. The varied habitat types and current conditions present on-site provide suitable habitat for a wide variety of local and native species, including multiple special-status species. Special-status species with moderate to high potential to occur include white-tailed kites (*Elanus leucurus*), pallid bat (*Antrozous pallidus*), San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), California red-legged frog (*Rana draytonii*), and Alameda whipsnake.

The Project site is located approximately 0.75 miles east of Briones Regional Park, which provides 6,255 acres of habitat for local and native species. The Project site is also located within one mile of U.S. Fish and Wildlife Service (USFWS)-designated

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critical wildlife habitat for Alameda whipsnake and California red-legged frog. As such, the Project site provides opportunities for dispersal for wildlife, including special-status species, from suitable habitat nearby.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Contra Costa County 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends, CDFW concludes that an MND is appropriate for the Project.

Comment #1: Riparian Encroachment

Issue: The IS/MND proposes to construct permanent structures, including 380 square feet of a storm water treatment bioretention basin and its associated retaining wall, within an existing CSS easement area granted to Contra Costa County. This conflicts with Section § 914-14.014 of the Contra Costa County Ordinance, to which the IS/MND indicates that the Project proponent will seek an exception. The IS/MND cites "unique topographic constraints" of the site and indicates that the 1.98-acre scenic easement area, where slopes exceed 26% grade, along the northern side of the property will remain undeveloped. The IS/MND does not discuss how the site topography constraints would require encroachment within the CSS easement area. By building within the CSS easement area, the Project will encroach into the riparian corridor, which could have a significant adverse impact on sensitive aquatic and riparian organisms through reduction of habitat and decreases in water quality.

Evidence impact would be significant: Riparian vegetation and associated floodplains provide many essential benefits to stream and aquatic species habitat, including thermal protection, cover, and large woody debris (Moyle 2002, CDFW 2007). Development adjacent to the riparian zone can result in fragmentation of riparian habitat and decreases in native species abundance and biodiversity (Davies et al., 2001, Hansen et al. 2005, CDFW 2007). Narrowing of wildlife corridors exacerbate adverse edge effects which may affect their function as wildlife passages (Newmark, 1993). Riparian buffers help keep pollutants from entering adjacent waters through a combination of processes including dilution, sequestration by plants and microbes, biodegradation, chemical degradation, volatilization, and entrapment within soil particles. Narrow riparian buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers (Castelle et al., 1992, Brosofske et al., 1997, Dong et al., 1998, Kiffney et al., 2003,

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Moore et al., 2005). Setbacks are recommended by CDFW to provide adequate protection of the resources and to minimize the need for future maintenance and bank armoring in the channel.

Recommendation to minimize significant impact: Encroachment into the riparian zone is a significant impact. Avoidance of this impact is possible while still achieving the Project objectives of developing homes within the site area. The Lead Agency should consider altering the Project design to avoid development within the CSS easement area by building these structures within the Project site.

Comment #2: Impacts to Stream Hydrology

Issue #1: The Project additionally proposes to construct approximately 945 square feet of roadway and curbs, a drainage outfall and headwall, and associated retaining walls within the CSS easement area, thereby increasing impervious surfaces within the riparian corridor and potentially increasing the rate or amount of surface runoff. The IS/MND indicates that a storm water control plan will be obtained prior to construction that complies with the Stormwater Management and Discharge Control Ordinance (§1014), Contra Costa County's Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit, and Provision C.3 of the California Regional Water Quality Control Board's Municipal Regional Permit requirements. However, the IS/MND neglects to analyze the current hydrology of the creek or describe how the drainage outfall will be constructed to avoid altering the hydrology of the creek.

Issue #2: The IS/MND indicates that while some runoff from the Project site will be directed to storm water retention basins for filtration, retention, and release under a storm water control plan, some runoff will drain directly offsite. This runoff will be from an area consisting of 1,800 square feet of the existing bridge and a portion of the Ariey Lane extension which cannot be drained by gravity to a bioretention basin under the proposed plans. Through the addition of impervious surfaces in close proximity to the creek and by directing untreated runoff from a portion of one of these areas directly offsite, the Project has the potential to directly deposit substantial additional sources of polluted runoff into the creek, which may negatively impact water quality and have adverse impacts upon sensitive aquatic life.

Issue #3: With the exception of the 1,800-square-foot area described above, storm water runoff will be collected in three on-site bioretention basins and filtered through an active layer of soil before passing into the creek area. Soil filtration alone may not adequately remove all pollutants before runoff is discharged to the creek, and this discharge may negatively affect water quality and have adverse impacts upon sensitive aquatic life.

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Evidence impact would be significant: Impervious surfaces in and around creeks tend to increase both the velocity of runoff and the buildup of pollutants, and without measures in place this can lead to concentrated contaminants being released into waterways during rain events (Frazer, 2005). Even with the implementation of filtration measures, such as soil attenuation, certain pollutants may not be removed and may contaminate surface waters and groundwater (Walsh et al., 2016). Impacts to organisms within urban streams can occur at relatively low levels of urbanization (Riley et al., 2005). In addition, increasing impervious surfaces that then discharge to streams also increases the frequency of sediment moving storm events which then cause stream incision and bank destabilization (EPA, 2024). Storm water control measures may be most effective in protecting stream ecosystems when they deliver flow regimes that mimic the predevelopment regime in quality and quantity, when all storm water runoff is treated, and when control measures are combined with other measures and pollution-mitigating tools (Walsh et al., 2016).

Recommendation #1: To control the rate and amount of surface runoff, CDFW recommends that construction of impervious surfaces, particularly within and adjacent to the riparian corridor, be minimized to the maximum extent possible.

Recommendation #2: Within the Hydrology and Water Quality Section (page 42), the IS/MND states that the Public Works Department recommends that a hydrologic and hydraulic study and geotechnical analysis of the creek banks should be conducted prior to construction. CDFW concurs with this recommendation and further recommends that a peak flow analysis be conducted to establish the natural conditions for the site. Drainage outfalls should be constructed to mimic the natural conditions of the site prior to disturbance.

Recommendation #3: To adequately filter pollutants, all site runoff should be filtered prior to discharging into the creek, and CDFW recommends the IS/MND require devices on storm drains that prevent entrainment of amphibians and other wildlife, and that prevent pollutants such as trash, microplastics, oils, etc. from being released into Sand Creek from the outfalls. Pollution prevention devices should be certified and in compliance with the California State Water Resources Control Board's Full Capture System (https://www.waterboards.ca.gov/water_issues/programs/stormwater/trash_implementation.html).

Comment #3: Habitat Loss and Fragmentation

Issue: The IS/MND bases its assessment of impacts on an Arborist Report conducted by Traverso Tree, updated January 5, 2024. This assessment was limited to trees above 6.5 inches diameter at breast height (dbh) protected by Contra Costa County's Tree Protection Ordinance (code-protected trees). The updated report

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indicates that 13 trees will be removed, including one valley oak and 7 coast live oaks. A remaining 15 trees will be subject to dripline encroachment, including one valley oak and 12 coast live oaks. While the IS/MND indicates that riparian and oak woodland will be removed to accommodate Project activities, it fails to note that this collection of oaks may be identified as Coast Live Oak Riparian Woodland or Coast Live Oak Woodland and Forest. The IS/MND proposes mitigation for impacts to riparian woodland habitat in the form of a tree permit to be obtained from the County. The IS/MND neither sufficiently analyzes the impacts to oak woodland habitat or habitat fragmentation as a result of Project activities, nor proposes adequate mitigation to bring levels of impact to less-than-significant with mitigation.

Evidence of significant impact: The impacts of the Project extend not just to individual trees, but to the oak woodland and riparian woodland communities that provide food and habitat to a variety of local and native wildlife including birds, insects, mammals, reptiles, amphibians, and native understory plants (Zavaleta et al., 2007). When habitat is modified, as in the case of housing developments, the habitat is changed and may result in patches that cannot provide resident wildlife with the necessary resources (Giusti et al., 2005). Wildlife may depend upon the connections (corridors) between patches to meet its needs, and even a few oak trees can facilitate the movement of certain species, such as the oak titmouse (Giusti et al., 2005). When corridors do not exist, this leads to habitat fragmentation (Giusti et al., 2005) and could result in local extinction (Hilty and Merenlender, 2004).

To minimize the effects of habitat fragmentation, core habitat areas should be identified and protected and connectivity maintained among protected areas (Hilty and Merenlender, 2004). Streamside riparian zones not only provide important habitat, but also function as natural corridors (Rosenberg et al., 1997) and are therefore valuable in maintaining connectivity. The riparian corridor on the Project site and the adjacent oak woodlands provide connectivity for individuals between habitat patches, only a short distance from large swaths of crucial habitat from many special-status and local species. The Project site is located within one mile of USFWS-designated critical habitat for species including Alameda whipsnake and California red-legged frog. It is also within one mile of potential core and breeding habitat for dusky-footed woodrat, pallid bat, white-tailed kite, and Alameda whipsnake from California Natural Diversity Database (CNDDDB) records.

Coast Live Oak Riparian Woodland or Coast Live Oak Woodland and Forest communities have state ranks of 3 and 4, respectively, within CDFW's Sensitive Natural Communities List. According to the CNPS, the degradation of sensitive habitats can significantly disrupt ecological functions and ultimately result in decreased biodiversity (<https://www.cnps.org/vegetation/sensitive-natural-communities>). Valley and coast live oak are slow-growing trees, and their removal will alter the local habitat for years to come. Research suggests that valley oak trees

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are not regenerating enough for eventual replacement (Zavaleta et al., 2007). Therefore, trees removed by the Project may never be replaced. Oaks are generally difficult to replace and would require sufficient and specific planting and monitoring plans to ensure its success and restoration of the habitat.

Recommendation #1: To adequately assess the impact, CDFW recommends that the IS/MND evaluate impacts to all native tree species that are greater than three inches dbh. The determination of mitigation should be made based on the total area of Coast Live Oak Riparian Woodland and/or Coast Live Oak Woodland and Forest habitat that the Project will impact.

Recommendation #2: Due to the slow-growth habit of these natural communities and the cumulative impacts of development within natural communities of increasing rarity within the State, CDFW recommends container planting on-site at the point of disturbance in addition to a CDFW-approved off-site component at a minimum ratio of 5:1 (mitigation: loss) to sufficiently mitigate for permanent loss of Coast Live Oak Woodland and Forest or Coast Live Oak Riparian Woodland through Project activities. This mitigation should include container plantings, replanting salvage vegetation, and hydroseeding with Coast Live Oak Riparian Woodland and/or Coast Live Oak Woodland and Forest native plant focal species. Trees should be replaced at a level that will offset: 1) the lost biomass and canopy of the removed trees, and 2) the substantial temporal loss of growth habitat structure and diversity. Trees planted need to be spaced in a manner that promotes their long-term growth habits, and that serves to replicate or enhance the state of the habitat that was disturbed.

As an alternative to container planting, the Project proponent may elect to protect, enhance, and preserve an area of mature oak woodland of equal or greater habitat value under a conservation easement in accordance with the mitigation ratio described above.

The Project proponent should prepare a Mitigation and Monitoring Plan (MMP) outlining success criteria and benchmarks aligned to meet mitigation goals at the end of 10 years after initial mitigation efforts begin. CDFW recommends recirculating an updated IS/MND after performing a detailed analysis of impacts to trees, Sensitive Natural Communities, and including appropriate mitigation measures to reduce the impacts of the Project to a level of less-than-significant.

Comment #4: Alameda Whipsnake Habitat Loss

Issue: In the IS/MND, Mitigation Measure BIO-6 states that a survey of the Project site shall be conducted by a certified biologist for protected reptiles, and that if any protected reptiles are found, work shall not start until the species are removed and relocated according to USFWS and CDFW requirements. This mitigation

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measure fails to bring levels of impact on Alameda whipsnake to less-than-significant levels because there are no current systemic protocol-level surveys that have been adopted by CDFW or developed by an independent science panel to demonstrate the presence or absence of Alameda whipsnake within a Project site. Therefore, the IS/MND should presume presence of Alameda whipsnake and that the Project site provides habitat for the species.

Evidence this will be significant: The IS/MND indicates that the Project site provides adequate primary and secondary habitat for the Alameda whipsnake and that Alameda whipsnake was determined to have a high likelihood of using the Project site. Furthermore, the Project site is in close proximity to Briones Regional Park and USFWS designated critical wildlife habitat. The CNDDDB indicates multiple occurrences within five miles of the Project site. The Alameda whipsnake is a state and federally listed threatened species, and their populations have declined from loss of habitat due to urban expansion (USFWS, 2000). Urban development has also fragmented their populations and made them more vulnerable to extinction (USFWS, 1997).

Recommendation #1: Due to the likelihood of Alameda whipsnake potential presence of this listed species and the potential for Project-related take, including relocation out of harm's way, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation.

Recommendation #2: CDFW recommends the IS/MND identify and evaluate the area of Alameda whipsnake habitat (including oak woodland and grasslands) within the Project area that will be affected. CDFW recommends that the full scope of impacts from activities such as permanent destruction or fragmentation of habitat and ongoing impacts from roadways be identified and evaluated in a revised IS/MND. CDFW recommends that the Project mitigate for these impacts to Alameda whipsnake and their habitats to a less-than-significant level by requiring compensatory mitigation in the form of conserved lands at a minimum of 5:1 (mitigation to impact) ratio for roadways, a minimum 3:1 ratio for all other permanent impacts and a minimum 1.25:1 ratio for temporary impacts. Conserved lands should be protected in perpetuity under a legal instrument such as a conservation easement, be required to be managed in perpetuity through an endowment with an appointed land manager and be required to have a land trust named on the legal instrument as a beneficiary. CDFW recommends that priority for conserved lands be given to on-site locations. Alternatively, the significant impact of loss of habitat for the species may be offset through purchase of species credits through a CDFW-approved mitigation or conservation bank.

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Recommendation #3: The IS/MND should also be revised to address cumulative impacts to the Alameda whipsnake from fragmentation of habitat, permanent loss of habitat and impacts from vehicle traffic on roadways. To ensure significant impacts are mitigated to a level of less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA environmental document for the Project.

Comment #5: Pre-Construction Wildlife Surveys

Issue: Mitigation Measures BIO-4, BIO-5, and BIO-6 include language that allow for surveys for dusky-footed woodrats, California red-legged frogs, and reptiles to be timed based on the issuance of a grading or building permit.

Recommendation: In each case, CDFW recommends that BIO-4, BIO-5, and BIO-6 should be implemented as described in the IS/MND but modified to remove the language that predicates the timing of surveys on permit issuance. All surveys should be timed based on the commencement of construction activities.

Comment #6: Pre-Construction Avian Surveys

Mitigation measure BIO-2 fails to adequately survey for and protect nesting birds, including white-tailed kites, and therefore does not bring levels of impact to less-than-significant. The inadequacies are listed below:

Issue #1: Mitigation Measure BIO-2 indicates that preconstruction surveys will be conducted for construction activities that will occur during the nesting season, defined as February through August. It should be noted that some bird species may begin nesting as early as December, and raptors may continue to nest into mid-September.

Issue #2: Mitigation Measure BIO-2 indicates that preconstruction surveys will be conducted no more than 5 days prior to commencement of tree removal, site grading, or construction activities. This would not adequately survey for birds that may begin to nest during a period of reduced construction activity and disturbances due to pauses in Project activity.

Issue #3: Mitigation Measure BIO-2 indicates that the survey area shall include the Project site and a radius of 500 feet of the Project site. This proposed distance between the Project site and potentially active nests located outside of the Project site is not sufficient to identify potentially nesting birds that may be impacted by Project activities.

Issue #4: Mitigation Measure BIO-2 indicates that a buffer zone of a minimum 75 feet for passerine birds and 200 feet for raptors will be established for nests

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discovered for any bird listed under the Migratory Bird Treaty Act. The nest site shall be monitored for indications of stress. These proposed distances are likely insufficient to be adequately protective of nesting birds from visual and auditory Project impacts.

Evidence of significant impact: Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act. Project activities occurring too close to active nests may result in indirect take of protected birds.

Several species of raptors and nesting birds are identified within the IS/MND as having high potential for occurrence within the Project site, including but not limited to white-tailed kites. Consistent with CEQA Guidelines, Section 15380, the status of the white-tailed kite as a Fully Protected species (Fish & G. Code § 3511) qualifies it as an endangered, rare, or threatened species under CEQA. Threats to white-tailed kites include habitat loss from conversion and vegetation clearing, drought, and disturbance at nest sites (Dunk 1995).

Recommendations: CDFW recommends that Mitigation Measure BIO-2 should be implemented as described in the IS/MND with the following modifications:

Pre-Construction Avian Surveys: If Project-related work is scheduled during the nesting season (often defined as February 15 through September 15 for raptors), a pre-construction survey shall be conducted no more than 5 days before activities commence, and surveys will be repeated in areas where Project activities lapse for a period of 7 days or more. A qualified biologist will survey for non-raptors within and beyond the Project area for a radius of 250 feet, and for raptors within and beyond the Project area for a radius of 1,000 feet.

Nest Buffers: Any active nests will have an appropriately sized protective buffer determined and established by a qualified biologist where no Project personnel or equipment shall be allowed to enter. Typical protective buffers between each identified nest site and the construction site are as follows: 1,000 feet for large raptors; 250 feet for passerines. The Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests should be continuously monitored by the Qualified Biologist to detect any signs of disturbance and behavioral changes as a result of the project.

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Comment #7: Pre-Construction Bat Surveys

Issue: Mitigation Measure BIO-3 indicates that a bat habitat assessment will be conducted during seasonal periods of bat activity to determine if any special-status bats reside in the trees but does not describe additional survey protocols to determine the presence of bats. A bat habitat assessment without the employment of additional survey methods is not sufficient to identify potentially roosting special-status bats that may be impacted by Project activities.

Evidence of significant impact: The IS/MND indicates that the pallid bat and hoary bat have a high potential to occur within the subject property. The pallid bat is a California Species of Special Concern,

Recommendation: CDFW recommends that Mitigation Measure BIO-3 should be implemented as described in the IS/MND with the following modifications:

Bat Surveys: If suitable roosting habitat for special-status bats is identified, a qualified wildlife biologist will conduct surveys for special-status bats during the appropriate time of day to maximize detectability to determine if bat species are roosting near the work area no more than 14 days prior to beginning ground disturbance and/or construction. Survey methodology may include visual surveys of bats (e.g., observation of bats during foraging period), inspection for suitable habitat, bat sign (e.g., guano), or use of ultrasonic detectors (e.g., Anabat, etc.). Visual surveys will include trees within 0.25 mile of Project construction activities. The type of survey will depend on the condition of the potential roosting habitat.

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 CNDDDB. The CNNDDB 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>.

CONCLUSION


CDFW appreciates the opportunity to comment on the IS/MND to assist Contra Costa County Department of Conservation and Development in identifying and mitigating Project impacts on biological resources.

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Due to the issues presented in this letter, CDFW concludes that the IS/MND does not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. Deficiencies in the Lead Agency CEQA document can affect later project approvals by CDFW in its role as a Responsible Agency. In addition, because of these issues, CDFW has concerns that Lead Agency may not have the basis to approve the project or make "findings" as required by CEQA unless the environmental document is modified to eliminate and/or mitigate significant impacts, as reasonably feasible (CEQA Guidelines, §§ 15074, 15091 and 15092).

Questions regarding this letter or further coordination should be directed to Torrey Soland, Environmental Scientist, at (707) 266-2878 or Torrey.Soland@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory), at Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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