



April 10, 2025

Karineh Samkian, Senior Program Manager

City of El Cerrito

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Subject: Hillside Natural Area Fire Resilience and Forest Conservation Management Plan, Initial Study/Mitigated Negative Declaration, SCH No. 2025030610, Contra Costa County

Dear Karineh Samkian:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Initial Study/Mitigated Negative Declaration (IS/MND) from the City of El Cerrito (City) for the Hillside Natural Area Fire Resilience and Forest Conservation Management Plan (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

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

PROJECT DESCRIPTION SUMMARY

Proponent: City of El Cerrito

Objective: The objective of the Project is to establish and adopt a comprehensive fire hazard reduction and forest conservation plan to guide maintenance activities in the City of El Cerrito's 107.18-acre Hillside Natural Area. Primary Project activities to reduce fire hazard include pruning and removing trees and other vegetative growth, removing eucalyptus stands and non-native conifers, and ongoing maintenance of vegetation within the Hillside Natural Area. Methods of removal may include the use of mechanical equipment, hand crews, herbicide, chipping, and burning. Primary Project activities to manage forest health include managing threats to native oak species, removing invasive species, and restoring native plants within the Project site.

Location: The Project site is located within the City of El Cerrito, Contra Costa County. The approximate coordinates for the project are 37.922434°N, -122.302019°W.

Timeframe: A timeframe is not specified for the initiation of Project activities.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, 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 horizontal 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

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considered the IS/MND and complied with its responsibilities as a responsible agency under CEQA.

Raptors and Other Nesting Birds

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 (MBTA).

Fully Protected Species

Fully protected species, such as white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*) may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species;
- Live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process.

California Endangered Species Act and Native Plant Protection Act

A CESA ITP must be obtained from CDFW if the Project has the potential to result in “take” of plants or animals listed under CESA or the Native Plant Protection Act (NPPA), 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

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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 (FOC) 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.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts with implementation of mitigation measures, CDFW concludes that a MND is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: White-Tailed Kite, Golden Eagle, and Other Special-Status Species

Issue: The IS/MND does not assess potential impacts to special-status species resulting from tree removal within the Project site.

Specific Impact: Project objectives include reducing the risk of fire within the Hillside Natural Area by removing stands of eucalyptus and non-native conifers. Though eucalyptus is a non-native species and a fire hazard, it may still provide valuable habitat for white-tailed kite, golden eagle, and other local special-status species with potential to occur within the Project area. Without an assessment of potential adverse impacts resulting from removal of these trees, including habitat loss or fragmentation, impacts to special-status species may still be *potentially significant*.

Why Impact Would Occur: White-tailed kite was observed during preliminary surveys of the Project site, and the IS/MND indicates that there is potential habitat within the Project site to support golden eagle. Both species have been documented using eucalyptus trees for nesting (Hunt et. al., 1998; Vaughn, 2011) and therefore may utilize eucalyptus stands in the Hillside Natural Area as habitat. Though the IS/MND does not specify the total acreage of trees to be removed, it indicates that eucalyptus and pine groves comprise over 36.2 acres of the Hillside Natural Area

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(page 3-8). Though removal of eucalyptus and other trees will reduce fire risk within the Hillside Natural Area, it may contribute to habitat loss or habitat degradation for special-status species such as white-tailed kite or golden eagle. Habitat loss from conversion and clearing remains one of the largest threats to white-tailed kite and golden eagle (Dunk, 1995; CDFW, 2018), and vegetation clearing can cause habitat fragmentation and edge effects which permeate beyond the Project site (Harris, 1988; Murcia, 1995).

Evidence Impact Would Be Significant: Consistent with CEQA Guidelines, Section 15380, the status of the white-tailed kite and golden eagle as Fully Protected species (Fish & G. Code § 3511) qualifies them as endangered, rare, or threatened species under CEQA. Therefore, if the Project has the potential to reduce habitat for white-tailed kite or golden eagle to an extent which substantially restricts their range, this would be a *mandatory finding of significance* and must be evaluated in the initial study (CEQA Guidelines § 15065 & 15380).

To Minimize Significant Impacts: To evaluate and avoid potential impacts to white-tailed kite and golden eagle, CDFW recommends that the IS/MND evaluate potential impacts to white-tailed kite, golden eagle, and other special-status species resulting from the removal of trees within the Project site.

COMMENT 2: Nesting Birds

Issue: Mitigation Measures BIO-4a and 4b may not be sufficient to reduce impacts to nesting birds to less-than-significant levels.

Specific Impact: Nesting birds are particularly sensitive to human disturbance. If nests within the area of disturbance are either undetected during surveys or unassessed for signs of distress, impacts to nesting birds as a result of Project activities may still be *potentially significant*.

Why Impact Would Occur: Project activities including ground disturbance, operation of heavy machinery, and the movement of workers may generate noise or visual disturbances which may in turn result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young. If nesting birds occur within the Project site and are undetected during surveys, Project activities including pruning, tree removal, and vegetation removal may inadvertently crush, destroy, or remove active nests.

Evidence Impact Would be Significant: Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the federal MBTA is a violation of Fish and Game Code §§ 3503, 3503.5, 3513.

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To Reduce Impacts to Nesting Birds to a Less-Than-Significant Level: CDFW recommends the following modifications to Mitigation Measures BIO-4a and 4b:

BIO-4a – Nesting Bird Season. Nesting bird season should be defined as February 1 through September 15.

BIO-4a – Survey Methods and Radii. CDFW recommends the following minimum survey radii: (1) 250 feet for passerines, (2) 1,000 feet for raptors, and (3) 0.5 miles for golden eagle. Protocol-level surveys for golden eagle should be conducted prior to Project commencement according to the Interim Golden Eagle Inventory and Monitoring Protocols and Other Recommendations document, located at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83940>.

BIO-4b – Active Nest Buffers. CDFW recommends the following typical protective buffers for nesting birds: 1) 1,000 feet for large raptors such as buteos, 2) 500 feet for smaller raptors such as accipiters, and 3) 250 feet for passerines. No Project personnel or equipment shall be allowed to enter the protective buffer until the Qualified Biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.

BIO-4b – Biological Monitoring. A 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, and the nest site(s) shall be monitored by the biologist periodically to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased.

COMMENT 3: Crotch’s Bumble Bee and Western Bumble Bee

Issue: Mitigation Measure BIO-3 may not be sufficient to reduce potential adverse impacts to Crotch’s bumble bee (*Bombus crotchii*) or western bumble bee (*Bombus occidentalis*) to less-than-significant levels.

Specific Impact: If special-status bumble bees are undetected during pre-activity surveys, additional protective measures would not be implemented. If special-status bumble bees occur within the Project site but are undetected during pre-activity surveys, impacts to special-status bumble bees resulting from Project activities may be *potentially significant*.

Why Impact Would Occur: Though on-site surveys provide valuable information for determining potential impacts of Project activities, surveys may fail to detect the presence of bumble bees. Additionally, bumble bees move nest sites each year and may be present within the Project site in years following surveys even if they are initially undetected (CDFW, 2023). The IS/MND identifies potential suitable foraging,

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nesting, and overwintering habitat within the Project site, as well as the potential for these species to occur.

Project activities include removal of vegetative growth and brush within the Project site, which may be accomplished manually or with the use of herbicides. Direct mortality to bumble bees could occur during vegetation removal and clearing, as bumble bees may utilize grasses, under brush piles, old bird nests, and dead trees or hollow logs for nesting, or they may overwinter in leaf litter of woody forest edges (Williams et al. 2014; Hatfield et al. 2015; CDFW, 2023). Additionally, certain herbicides used for vegetation management may lead to direct mortality of bumble bees if exposed while foraging within the Project site.

Evidence Impact Would Be Significant: 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. Crotch and western bumble bee are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). Unauthorized take of this species pursuant to CESA is a violation of Fish and Game Code section 2080 et seq.

Recommended Potentially Feasible Mitigation Measures to Minimize

Significant Impacts: To help reduce potential impacts to Crotch's and western bumble bee to less-than-significant levels, CDFW offers the following recommendations:

Mitigation Measure BIO-3a – Bumble Bee Pre-activity Surveys. A minimum of three pre-activity surveys should be conducted. Surveys should be repeated for each year of Project activities.

Herbicide Use. Because potential habitat for bumble bee species exists within the Project site, CDFW recommends the avoidance of herbicides which are toxic to bumble bees for vegetation management activities. The Pollinator Resource Center on the Xerces Society for Invertebrate Conservation (<https://www.xerces.org/pollinator-resource-center/california>) offers some resources to protect pollinators from pesticides.

II. Editorial Comments and/or Suggestions

COMMENT 4: Native Oak Protection

Thank you for including active management of native oak species as an action item of the plan. CDFW concurs with the plan for control of Sudden Oak Death within the Hillside Natural Area and offers additional recommendations to help support this goal, as well as protect oak trees from potential harm incidental to Project activities. To help

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protect native oak trees during Project activities, CDFW recommends the following potentially feasible mitigation measures be incorporated:

Native Oak Protection – Heavy Equipment. No materials shall be stored, and no vehicles or equipment shall be driven or parked within the dripline of an oak tree.

Native Oak Protection – Equipment Sanitation. If work must be conducted in infested areas, it should be conducted during dry conditions to the greatest extent feasible. Shoes, pruning gear, and other equipment should be disinfected before working in areas with susceptible species, and all gear and equipment should be cleaned of soil, mud, and organic debris prior to exiting infested areas. Additional sanitation guidelines can be found at https://www.suddenoakdeath.org/wp-content/uploads/2017/04/Professional-sanitation-guide_January-2013.pdf.

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 California Natural Diversity Database (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. (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 IS/MND to assist the City in identifying and mitigating Project impacts on biological resources.

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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:

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Erin Chappell
Regional Manager
Bay Delta Region

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

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