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DEPARTMENT OF FISH AND WILDLIFE  
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Resubmitted 5/26/23

March 16, 2020

Mr. John Swiecki, AICP  
Community Development Director  
City of Brisbane  
50 Park Place  
Brisbane, CA 94005  
[baylands@brisbaneca.org](mailto:baylands@brisbaneca.org)

Subject: Brisbane Baylands Specific Plan, Notice of Preparation, SCH #2006022136, City of Brisbane, San Mateo County

Dear Mr. Swiecki:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Brisbane for the Brisbane Baylands Specific Plan (Project) located in the City of Brisbane, San Mateo County. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

#### **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological resources). CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

#### **PROJECT DESCRIPTION SUMMARY**

The Project is located within the northeast corner of San Mateo County. The Project is bounded on the north by the City and County of San Francisco, on the east by the US 101 freeway, and on the west and south by Bayshore Boulevard.

The Project includes the development of approximately 2,000 residential units and 7 million square feet of commercial space, acquisition of an annual water supply of 2,400 acre-feet from Oakdale Irrigation District, green energy generation and infrastructure, park and trail creation.

#### **ENVIRONMENTAL SETTING**

The state special-status species that have the potential to occur in or near the Project site, include, but are not limited to:

- Alameda song sparrow (*Melospiza melodia pusillula*), state species of special concern;
- California Ridgway's rail (*Rallus obsoletus obsoletus*), state listed as fully protected under Fish and Game Code, state listed as endangered under CESA, federally listed as endangered under the Endangered Species Act (ESA);
- Burrowing owl (*Athene cunicularia*), state species of special concern;
- Longfin smelt (*Spirinchus thaleichthys*), state listed as threatened under CESA, federally listed as a candidate species under ESA;
- Northern harrier (*Circus cyaneus*), state species of special concern;
- Pallid bat (*Antrozous pallidus*), state species of special concern;
- Sacramento river winter-run, Central Valley spring-run, and Central Valley fall/late fall-run Chinook salmon (*Oncorhynchus tshawytscha*), state listed as endangered under CESA, federally listed as endangered under ESA.
- Salt-marsh common yellowthroat (*Geothlypis trichas sinuosa*), state species of special concern;
- San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), state listed as fully protected under Fish and Game Code, state listed as endangered under CESA, federally listed as endangered under ESA; and
- Townsend's Pacific big-eared bat (*Corynorhinus townsendii*), state species of special concern.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Brisbane in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

### COMMENT 1: Full Project description of Project features

The CEQA Guidelines (§§15124 and 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact.

To fully address the Project's impacts to fish and wildlife resources. Please include complete descriptions of the following features within the draft EIR:

- Residential and commercial building heights and widths;
- Introduction of sources of light and glare into habitat areas;
- Stormwater or effluent drainage outlet systems, including systems draining into the San Francisco Bay and Brisbane Lagoon;
- Detailed description of proposed work (e.g., crossing improvements, repairs, etc.) at and within stream crossings;
- Renewable energy generation type and infrastructure; and
- Location, type, and height of all fencing.

## **COMMENT 2: Cumulative impacts**

The Project has a potential to contribute to cumulative impacts, such as decreasing in wildlife connectivity due to the installation of fencing and infrastructure; increase in deleterious material (e.g., trash, pollutants, etc.) into streams, Brisbane lagoon, and the San Francisco Bay due to the increase of residences and visitors to commercial space; and increase in stream flow due to the culverting of ditches and the funneling of storm runoff throughout the project into streams, Brisbane Lagoon, or the San Francisco Bay. Any cumulative impact to biological resources should be mitigated to the extent possible or avoided.

CDFW recommends that the Project incorporate wildlife friendly fencing (if fencing is proposed), creation of wildlife bypasses to mitigate for decreases in wildlife connectivity, education future residences and visitors regarding leaving no trace while on open spaces trails, and ensuring that storm runoff is dispersed as sheet flow along the landscape and not funneled into streams, Brisbane Lagoon, or the San Francisco Bay.

## **COMMENT 3: Wind energy**

Wind energy, specifically collisions with wind turbine blades, are known to cause mortality, injury, and cause disturbances to bird and bat species. When developing wind energy projects, CDFW strongly recommends using the *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* October 2007 (<https://wildlife.ca.gov/Conservation/Renewable-Energy/Activities/Wind>) to assess bird and bat activity at the Project site, avoid or minimize impacts, and mitigate for impacts.

To evaluate and mitigate for potential impacts to biological resources, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

### **Recommended Mitigation Measure 1: Wind Turbine Location**

CDFW recommends having a qualified avian and bat biologist develop a minimum of a one-year study in conjunction with the assessment to determine the flight patterns and activity of birds and bats within the Project site. Once high activity locations are determined, CDFW recommends that wind turbines are not located in these locations.

### **Recommended Mitigation Measure 2: Wind energy operational periods**

Current research has also identified that shutting off wind turbines during bat migration period could decrease bat mortalities associated with operation of wind turbines (Smallwood and Bell, 2020). CDFW recommends not operating wind turbines during bat migration periods to minimize bat mortality.

### **Recommended Mitigation Measure 3: Wind Turbine Monitoring**

CDFW recommends that a qualified avian and bat biologist develop a bird and bat monitoring plan for a minimum of five years to determine impacts of wind energy operations to bird and bat species and the effectiveness of wind energy operation periods. If annual

monitoring identifies that current wind energy operations are not protecting bird and bat species, the qualified avian and bat biologist should develop a plan to further minimize impacts of wind energy operations to bird and bat species.

The monitoring plan should also provide annual reports to CDFW.

#### **COMMENT 4: State Fully Protected Species**

State fully protected species may occur within the Project area. CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code §§ 3511, 4700, 5050, and 5515. Take, as defined by Fish and Game Code § 86 is to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”, of any fully protected species is prohibited and CDFW cannot authorize their incidental take. Without appropriate mitigation measures, Project activities conducted within occupied territories have the potential to significantly impact these species.

Without appropriate avoidance and minimization measures for fully protected species, potentially significant impacts associated with Project activities may include, but are not limited to inadvertent entrapment, reduced reproductive success, reduced health and vigor, nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

To evaluate and avoid potential impacts to fully protected species, CDFW recommends incorporating the following mitigation measures into the Project’s draft EIR, and that these measures be made conditions of approval for the Project.

#### **Recommended Mitigation Measure 4: Fully Protected Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment, before Project implementation, to determine if the Project site or its vicinity contains suitable habitat for fully protected raptors.

#### **Recommended Mitigation Measure 5: Fully Protected Species Surveys**

To avoid impacts to fully protected species, CDFW recommends that a qualified biologist conduct species-specific surveys (using standard protocol or methodology, if available) of the Project site before Project implementation. If Project activities will take place when fully protected species are active or are breeding, CDFW recommends that additional pre-activity surveys for active nests or individuals be conducted by a qualified biologist no more than seven (7) days prior to the start or restart of Project construction and every 14 days during Project construction.

#### **Recommended Mitigation Measure 6: Fully Protected Species Avoidance**

In the event a fully protected species is found within or adjacent to the Project site, CDFW recommends that a qualified wildlife biologist develops an appropriate no-disturbance buffer to be implemented. The qualified biologist should also be on-site during all Project activities to ensure that the fully protect species is not being disturbed by Project activities.

#### **COMMENT 5: Nesting Birds**

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through early-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or Fish and Game Codes.

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

##### **Recommended Mitigation Measure 7: Nesting Bird Surveys**

CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every 14 days during Project activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

##### **Recommended Mitigation Measure 8: Nesting Bird Buffers**

If continuous monitoring of identified nests by a qualified avian biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.

#### **COMMENT 6: Bats**

Bat species are known to occur within and surrounding the Project site. To evaluate and avoid potential impacts to bat species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 9: Bat Habitat Assessment**

To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at work sites seven (7) days prior to the start of Project activities and every 14 days during Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

**Recommended Mitigation Measure 10: Bat Habitat Monitoring**

If any habitat features identified in the habitat assessment will be altered or disturbed by Project construction, the qualified bat biologist should monitor the feature daily to ensure bats are not disturb, impacted, or fatalities are caused by the Project.

**Recommended Mitigation Measure 11: Bat Project Avoidance**

If bat colonies are observed at the Project site, at any time, all Project activities should stop until the qualified bat biologist develops a bat avoidance plan to be implement at the Project site. Once the plan is implemented, Project activities may recommence.

**REGULATORY REQUIREMENTS**

*California Endangered Species Act*

Please be advised that a CESA Permit must be obtained 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. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a 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 [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.

*Lake and Streambed Alteration Program*

Notification is required, pursuant to CDFW’s LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

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## FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Monica Oey, Environmental Scientist, at (707) 428-2088 or [monica.oey@wildlife.ca.gov](mailto:monica.oey@wildlife.ca.gov); or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786 or [randi.adair@wildlife.ca.gov](mailto:randi.adair@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse #2006022136

## REFERENCES

Smallwood, K.S. and D.A. Bell. 2020. Effects of Wind Turbine Curtailment on Bird and Bath Fatalities. *The Journal of Wildlife Management* 1-12.