



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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April 16, 2020

Governor's Office of Planning & Research

**APR 20 2020**

Ms. Alexis Morris, Planning Manager

City of Antioch

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**STATE CLEARINGHOUSE**

Subject: Creekside/Vineyards at Sand Creek Project, Notice of Preparation of a Draft Environmental Impact Report, SCH #2020039044, City of Antioch, Contra Costa County

Dear Ms. Morris:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) prepared by the City of Antioch for the proposed Creekside/Vineyards at Sand Creek Project (Project) located in the City of Antioch, Contra Costa County. CDFW is submitting comments regarding potential impacts to biological resources associated with the proposed 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. 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 public trust resources.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** GBN Partners, LLC

**Objective:** The objective of the Project is development of 220 single-family residential units and associated improvements on approximately 58.9 acres of the 158.2-acre Project site, as well as 1.8 acres of off-site improvements. The Project improvements would include, but would not be limited to, parks, trails, landscaping, circulation improvements, and utility installation. The remainder of the site, including Sand Creek and the associated buffer area, would be retained as open space.

**Location:** The Project site consists of 158.2 acres located south of Sand Creek Road in the southeastern portion of the City of Antioch, California. The City of Antioch is located within eastern Contra Costa County and is bordered to the north by the San Joaquin River; to the east by the City of Brentwood and the City of Oakley; to the west by the City of Pittsburg and

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unincorporated portions of Contra Costa County; and to the south by unincorporated portions of Contra Costa County. Sand Creek is located to the north of the site, and State Route (SR) 4 is located approximately 0.38 miles east of the site. The site is identified by Assessor's Parcel Number (APN) 057-050-024.

**Timeframe:** All Project improvements, including off-site improvements, are anticipated to be built over three phases. Phase I of the Project would commence after resource agency permits are obtained (anticipated in 2022), and Phase III is expected to be completed within four years of Phase I.

## ENVIRONMENTAL SETTING

Rare, threatened and endangered or special-status species; also see CEQA Guidelines section 15380) that have the potential to occur in or near the Project site, include:

- Big tarplant (*Blepharizonia plumosa*), California Native Plant Society (CNPS) Rare Plant Rank<sup>1</sup> 1B
- Congdon's tarplant (*Hemizonia parryi congdonii*), CNPS Rare Plant Rank 1B;
- Carquinez goldenbush (*Isocoma arguta*), CNPS Rare Plant Rank 1B;
- Showy golden madia (*Madia radiata*), CNPS Rare Plant Rank 1B;
- Large-flowered fiddleneck (*Amsinckia grandiflora*), State listed under Fish and Game Code as endangered;
- Hoover's cryptantha (*Cryptantha hooveri*), CNPS Rare Plant Rank 1A;
- Caper-fruited tropidocarpum (*Tropidocarpum capparideum*), CNPS Rare Plant Rank 1B;
- Heartscale (*Atriplex cordulata cordulata*), CNPS Rare Plant Rank 1B;
- Brittlescale (*Atriplex depressa*), CNPS Rare Plant Rank 1B
- Lesser saltbush (*Atriplex minuscula*), CNPS Rare Plant Rank 1B;
- Alkali milkvetch (*Astragalus tener tener*), State listed as endangered;
- Mt. Diablo fairy lantern (*Calochortus pulchellus*), CNPS Rare Plant Rank 1B;
- Diamond-petaled California poppy (*Eschscholzia rhombipetala*), CNPS List 1B;
- California alkali grass (*Puccinellia simplex*), CNPS Rare Plant Rank 1B;
- Shining navarretia (*Navarretia nigelliformis radians*), CNPS Rare Plant Rank 1B;
- Mount Diablo buckwheat (*Eriogonum truncatum*), CNPS Rare Plant Rank 1B;
- Recurved larkspur (*Delphinium recurvatum*), CNPS Rare Plant Rank 1B.2;
- California red-legged frog (*Rana draytonii*), State designated as species of special concern;
- California tiger salamander (*Ambystoma californiense*), State listed as threatened;
- Western pond turtle (*Emys marmorata*), State designated species of special concern;
- Golden eagle (*Aquila chrysaetos*), State listed under Fish and Game Code as fully protected;
- White-tailed kite (*Elanus leucurus*), State listed under Fish and Game Code as fully protected;
- Swainson's hawk (*Buteo swainsonii*), State listed under Fish and Game Code as threatened;
- Western burrowing owl (*Athene cunicularia*), State designated as species of special concern;
- Tricolored blackbird (*Agelaius tricolor*); State listed as threatened;

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<sup>1</sup> Rank 1A – Presumed extinct in California; Rank 1B – Rare, threatened, or endangered in California and elsewhere; Rank 2A - Plants presumed extirpated in California, but more common elsewhere; 2B: Rare, threatened, or endangered in California, but more common elsewhere.

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- San Joaquin kit fox (*Vulpes macrotis mutica*), State listed as threatened;
- American badger (*Taxidea taxus*), State listed under Fish and Game Code as species of special concern;
- Nesting and migratory birds

## COMMENTS

### Special-Status Plant Species

Rare, threatened or endangered plant species may occur within the Project location. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species. Potential impacts to special-status plants include inability to reproduce and direct mortality. Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species. Therefore, there is a potential for the Project have significant impacts to these species and their populations.

#### *Recommended Mitigation Measure 1: Special-Status Plant Impacts Avoidance*

CDFW recommends that the draft EIR include a mitigation measure requiring special-status plant species avoidance through delineation and establishment of no-disturbance buffers of at least 50 feet or greater from the outer edge of the plant population or specific habitat type required by special-status plant species. Buffer sizes should be developed by a qualified botanist and based on seed dispersal and other biological characteristics of the plant species being avoided.

#### *Recommended Mitigation Measure 2: Define Floristic Survey Protocol and Reporting Requirements*

CDFW recommends that the draft EIR include measures that adhere to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009). Results from surveys should follow the reporting requirements contained in these protocols and included in the draft EIR. Special-status plant surveys should be performed by a qualified botanist according to the protocols.

#### *Recommended Mitigation Measure 3: Mitigate Special-Status Plants to a Less-Than-Significant Level*

The NOP identifies special-status plant species that may be on the Project site (listed above) and defines avoidance and minimization measures in the event they or other special-status plants are discovered. CDFW recommends that the draft EIR include a statement defining compensatory mitigation in the event impacts to special-status plants are not fully avoidable. CDFW recommends the draft EIR include a requirement for compensatory mitigation for impacts to special-status plant species and their habitats at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for all permanent impacts and those related to grading or compaction where the soils may take years to recover to baseline conditions.

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*Recommended Mitigation Measure 4: Take Authorization for CESA-listed Plants*

If CESA-listed plant species are identified during surveys and full avoidance of impacts is not feasible, then the Project may receive take authorization through CDFW issuance of an Incidental Take Permit (ITP).

**Western Pond Turtle (WPT)**

WPT have the potential to occur in the Project site. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported. Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities include nest destruction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality. The Project includes outfall construction and construction of a clear span bridge over Sand Creek. CDFW recommends incorporating the following measures specific to WPT in the draft EIR for the Project.

*Recommended Mitigation Measure 5: WPT Nesting Habitat Surveys and Exclusion*

CDFW recommends that the draft EIR include a measure requiring a qualified biologist to conduct focused surveys for potential WPT nesting habitat prior to each phase of the Project. If nesting habitat is identified then to exclude any female WPT from laying eggs within a development phase of the Project, exclusion fencing should be placed prior to the egg-laying season (March through August). Exclusion fencing should be designed to encompass each development phase and maintained weekly until construction activities have been completed.

*Recommended Mitigation Measure 6: WPT Relocation*

CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project activities, they should be allowed to move out of the area of their own accord. If a WPT is unable to independently move out of the Project area, a qualified biologist should relocate WPT out of harm's way in habitat similar to where it was found.

**Western Burrowing Owl**

The burrowing owl is designated by the State of California as a Species of Special Concern, defined as a species with declining population levels, limited ranges, and/or continuing threats which make them vulnerable to extinction (<https://wildlife.ca.gov/Conservation/SSC>). Habitat loss, degradation, and fragmentation are the greatest threats to burrowing owls in California. Loss of agricultural and other open lands (such as grazed landscapes) also negatively affect burrowing owl populations. Because of their need for open habitat with low vegetation, burrowing owls are unlikely to persist in agricultural lands dominated by vineyards and orchards or urbanized lands. Also, fossorial mammal burrows are important habitat to burrowing owl.

The Project has the potential to adversely impact the species through permanent loss of nesting and foraging habitat. The Project may also result in additional impact to burrowing owl through nest abandonment, loss of young, reduced health and vigor of chicks (resulting in reduced

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survival rates), and breeding and foraging behavior disturbance through Project activities. Burrowing owls are also known to utilize dormant or infrequently maintained urban infrastructure for nesting habitat, such as utility conduits and graded subdivision lots. Therefore, the draft EIR should include measures to require annual surveys for burrowing owls throughout each phase or each construction season of the Project to address potential impacts from Project phasing or dormancy periods.

*Recommended Mitigation Measure 7: Add Language to Draft EIR to Mitigate Impacts to Burrowing Owls*

CDFW recommends the draft EIR adhere to the mitigation strategies and survey guidelines as defined in CDFW's 2012 *Staff Report on Burrowing Owl Mitigation* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>). The draft EIR should include measures requiring compensatory mitigation for impacts to burrowing owl breeding, foraging and wintering habitat at a 3:1 mitigation ratio (conserved habitat to impacted habitat) minimum for permanent impacts and a 1:1 ratio minimum for temporary impacts.

Mitigation lands for owls should have presence of ground squirrel and their burrows, well-drained soils, abundant and available prey within close proximity to burrows, as well as foraging habitat. The mitigation areas for burrowing owls should be currently occupied by owls and approved by CDFW prior to the start of Project-related activities.

*Recommended Mitigation Measure 8: Burrowing Owl Surveys*

CDFW recommends the draft EIR include a mitigation measure with detailed survey requirements consistent with Appendix D of CDFW's 2012 *Staff Report on Burrowing Owl Mitigation*.

**Tricolor Blackbird (TRBL)**

TRBL has the potential to occur within or near the Project site. Review of aerial imagery indicates that the Project site is near dense low vegetation fields that may serve as nest colony sites. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young. CDFW recommends incorporating the following measures specific to TRBL into the EIR for the Project.

*Recommended Mitigation Measure 9: TRBL Surveys*

CDFW recommends that Project activities be timed to avoid the bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified biologist conduct annual surveys for TRBL prior to the start of implementation of each Project phase or construction season. The surveys should be designed to evaluate presence/absence of TRBL nesting colonies in proximity to the Project and potential Project-related impacts.

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### *Recommended Mitigation Measure 10: TRBL Take Authorization*

CDFW recommends the draft EIR include the following mitigation measure: In the event that a TRBL nesting colony is detected during biological surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.

### **Address Project Phasing-related Impacts**

Project activities may have additional significant biological impacts due to the Project's phasing over time. Projects that include multiple phases with different sections or parcels built out at different time periods may include whole-site or mass grading with separate sections or parcels developed at later dates. Delays or phasing of full buildout of a Project after initial mass grading over long periods of time negates the sufficiency of one-time-only pre-construction surveys and their validity becomes questionable over the lifetime of the Project. For example, if an area is left dormant for a season or two post-grading, grassland and scrub habitats or ground squirrel colonies can be quickly established. These elements then provide nesting habitat for nesting birds and other wildlife. There is also the potential for habitat elements to develop and wildlife to occupy dormant housing lots where foundational infrastructure is in place.

### *Recommended Mitigation Measure 11: Resurvey of Biological Resources Each Project Phase or on Dormant Previously Graded Areas*

CDFW recommends the draft EIR include a description of the Project's phasing and estimated timeframes from start of construction to complete buildout and require resurveys for biological resources. If the Project's timeframe from start of construction to complete build out includes breaks in construction longer than 15 days or periods of inactivity that could allow establishment of habitat elements such as ground squirrel burrows or vegetation, then impacts to wildlife that may use these habitat elements should be addressed in the draft EIR. CDFW recommends including in the draft EIR a mitigation measure that includes the following elements: 1) a qualified biologist shall conduct a wildlife survey and habitat assessment to determine potential wildlife and habitat elements present that may be utilizing the vacant sections and/or parcels prior to Project-related activities taking place when there is a break in these activities greater than 15-days; 2) if unbuilt or fallow sections and/or parcels are being utilized by wildlife, avoidance and minimization measures shall be specified to prevent impacts and mortality, 3) if impacts and "take" are not fully avoidable, additional compensatory mitigation shall be discussed and agreed upon with CDFW's approval prior to the re-initiation of construction activities, and 4) if there is a break in these activities greater than 15 days, compliance checks by a qualified biologist are required to ensure habitat assessments, pre-construction surveys, and other biological mitigation measures in the draft EIR are being implemented.

### **Stormwater Outfalls and Changes to Stream Hydrology Impacts**

CDFW recommends that the draft EIR include an analysis and discussion of the immediate and cumulative direct and indirect impacts of the Project's proposed stormwater outfalls and discharge into Sand Creek. The analysis and discussion should address the possibility of bank

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erosion, channel scour, bank undercutting, increased frequency and duration of five- or ten-year stormflow hydrograph events within the creek, and hydrologic issues downstream, etc. If riprapping, ongoing removal of large woody debris or other such actions will be required in the future, this Project will cause further loss of instream habitats and impede the natural stream processes of Sand Creek.

### **Cumulative Impacts**

Page 58 of the NOP states: *“Sand Creek, near the northern boundary of the project site, provides a valuable east/west wildlife corridor with suitable cover, foraging and water resources, and migration pathways that lead to other natural habitats. However, the proposed project would retain Sand Creek and a 200-foot-wide buffer to the south of the creek as open space. The two proposed outfall structures and the two proposed clear span bridges over Sand Creek would not adversely affect the existing use of the creek as a wildlife corridor. Medium and large mammal movements along the creek would remain unaffected by the proposed project.”* CDFW recommends analyzing the cumulative impacts of the Project to Sand Creek in the draft EIR. The Project will alter the creek dynamic by installing two stormwater outfalls in Sand Creek, constructing the Hillcrest Avenue bridge over Sand Creek, installing the potential Emergency Vehicle Access/Pedestrian Bridge over Sand Creek, and creating a public trail in the buffer area next to the creek. Adding more structures introduces regular and long-term human disturbance where there once was none and reduces habitat value for wildlife. The Project will severely restrict wildlife movement through the Sand Creek area. The proposed wildlife corridor will be surrounded by development, fragmented by recreational features, and wildlife will be confined to a 200-foot-wide buffer area that is subject to significant human disturbance. In addition, there will be the potential by predation by domestic animals, human disturbance by bicyclists and hikers, trash in the creek, potential for deleterious substances to be released in the creek, potential erosion/scour from the outfalls, and lighting disturbance. Small animals, such as amphibians, could be adversely impacted over time by these cumulative impacts to the creek. In addition, the creek corridor would be an insufficient corridor for San Joaquin kit fox who prefer open space and grasslands. For many wildlife species sensitive to human disturbance, the recreational use and proximity to development would preclude their use of Sand Creek as a movement corridor entirely. Due to these issues, CDFW recommends that the draft EIR contemplate an increase in the creek setback area greater than the proposed 200 feet or completely excluding recreation from this corridor.

### **Alternatives Analyses**

CDFW recommends that two Project alternatives be analyzed in the draft EIR. The first would be an alternative to design the Project such that stormwater runoff from the development areas is completely retained within the Project footprint and no outfalls to Sand Creek are constructed. The second alternative would be to design the Project such that storm drains discharge directly into constructed wetlands that gradually drain into Sand Creek with a greater than 200-foot creek setback that also encompasses flat grasslands easily traversed by San Joaquin kit fox and large enough to accommodate wildlife species more sensitive to human disturbance (e.g., American badger).

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### **Water Pollution Prevention Devices**

CDFW recommends the draft EIR 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](https://www.waterboards.ca.gov/water_issues/programs/stormwater/trash_implementation.html)). Devices to prevent entrainment and mortality of wildlife may include "frog ladders", fine mesh grate coverings, etc.

### **Nesting Bird Timeframe**

The NOP states that the nesting bird season ends August 31 and that buffers can be removed September 1. CDFW recommends that the draft EIR specify that the nesting season is from February 1 to September 15 and use the same time frame for buffer installations and removals. Actual timing of the bird nesting season within the Project area will depend on site conditions and should be determined each year by a qualified biologist.

### **Nesting Bird Buffers**

CDFW recommends that the minimum buffer area around nesting birds shall be the following: 1) 250 feet for passerines, 2) 500 feet for small raptors such as accipiters, and 3) 1,000 feet for larger raptors such as buteos. A qualified biologist may adjust the buffers depending on the results of nest monitoring at a time of day and duration necessary to ascertain if the nesting birds are disturbed or not. This language should be incorporated into the draft EIR.

### **Additional Recommended Measures for the EIR**

#### *Recommended Mitigation Measure 12: Open or Hollow Pipes Wildlife Checks, Filling and Capping*

To prevent entrapment and mortality of smaller wildlife and birds, all pipes, culverts, or similar structures that are stored at the construction site vertically or horizontally for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation at the Project site by the Qualified Biologist. All hollow pipes or posts installed as part of the Project and exposed to the environment shall be capped, screened or filled with material by Permittee prior to the end of the workday in which installation occurs.

#### *Recommended Mitigation Measure 13: Filling of fencing or signage post holes on uppermost sections*

To prevent entanglement of raptor talons, any post with exposed perforations installed on the Project site and exposed to the environment shall have the holes permanently filled within the top six (6) inches of the post upon installation by Permittee.



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## REGULATORY REQUIREMENTS

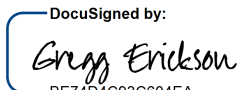
### *California Endangered Species Act*

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 the 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.

Thank you for the opportunity to comment on the Project’s NOP. If you have any questions regarding this letter, please contact Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or [Andrea.Boertien@wildlife.ca.gov](mailto:Andrea.Boertien@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

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