



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
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Rancho Cordova, CA 95670-4599
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 21, 2022

Lea Simvoulakis
Planning Manager
City of Manteca
1011 W. Center Street
Manteca, CA 95337
lsimvoulakis@ci.manteca.ca.us



Dear Ms. Simvoulakis:

Subject: Hat Ranch Project
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2013112049

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from the City of Manteca for the Hat Ranch Project (project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the project that CDFW, by law, may need to exercise 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. (Fish & G. Code., § 1802.) Similarly for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the

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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project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code is encouraged. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California’s fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The project site is located southeast of the City of Manteca limits in an unincorporated area of San Joaquin County at approximately latitude: 37.764339, and longitude: -121.192372.

The project consists of a master planned residential community of up to 738 dwelling units, two (2) neighborhood parks, and an elementary/middle school located on the project site. The proposed project would include the development of 634 traditional single-family detached homes and a unique district of 104 “half-plex” units. The existing 20,000-sf residence would be demolished and replaced with single-family lots consistent with the proposed development. The proposed project would require an annexation into the City of Manteca, Pre-zoning, a General Plan Map Amendment (GPA), approval of a Tentative Map, a Development Agreement, and approval of the Design Review Guidelines.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Manteca in adequately identifying and, where appropriate, mitigating the project’s significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

CDFW is primarily concerned with the project impacts to Swainson’s Hawk (*Buteo swainsoni*), Tricolored Blackbird (*Agelaius tricolor*), Western Burrowing Owl (*Athene cunicularia hypugaea*) and California tiger salamander (*Ambystoma californiense*). CDFW provides the following comments for the City of Manteca’s consideration:

1. **Mitigation and Take Authorization through CESA:** The DEIR states that the project proponent is seeking CESA take authorization through the San Joaquin Multi-Species Conservation Plan (SJMSCP). If the project is not approved under the SJMSCP for take coverage, CDFW encourages early coordination and a timely application for an Incidental Take Permit (ITP) to ensure there is adequate time for processing to avoid potential project delays.

Additionally, on page 4.4.-15 on the DEIR it states, “Taking may be authorized by CDFW if an approved habitat management plan or management agreement that avoids or compensates for possible jeopardy is implemented. In addition, CDFW requires preparation of mitigation plans in accordance with published guidelines.” Please note, the above referenced text does not accurately reflect the CESA take coverage options, which include but are not limited to an ITP, Consistency Determination, Safe Harbor Agreement, or Natural Community Conservation Plan. CDFW recommends this text is revised to more accurately reference CESA authorizations.

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Furthermore, please update the DEIR to accurately state Fish and Code section 2081 (b) and (c), which discusses take and jeopardy:

(b) [CDFW] may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. [CDFW] shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

2. **Burrowing Owls:** The DEIR states that no burrows were detected within the project area during surveys. CDFW recommends that additional surveys for burrows are conducted after the agricultural land has been abandoned and prior to initiating project activities. If suitable burrows are identified, CDFW recommends that a qualified biologist conduct targeted surveys for Burrowing Owls following the methodology described in the *Staff Report on Burrowing Owl Mitigation (2012)*, within 1-2 weeks prior to the start of construction. If Burrowing Owls or signs of Burrowing Owl presence such as whitewash, feathers, animal dung, etc. are not detected, no further mitigation will be recommended. If Burrowing Owls are observed within 500 feet of the project area, an Impact Assessment should be developed consistent with the *Staff Report on Burrowing Owl Mitigation (2012)* and submit the Impact Assessment to CDFW prior to initiating project activities for review. The final avoidance and mitigation measures will be determined in coordination with CDFW, but the Impact Assessment should at a minimum include the following mitigation measure:

Occupied burrows will not be disturbed. If occupied burrows are found, a qualified biologist will ensure active nests are avoided and a no disturbance or destruction buffer be established. The buffer shall be kept in place until

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after the breeding nesting season or the qualified biologist confirms the young have fledged, and the nest is no longer active for the season. The extent of these buffers shall be determined by the qualified biologist and will depend on the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.

- 3. Lake and Streambed Alteration:** The DEIR has identified some heavily modified, and potentially isolated aquatic features on the project site. The DEIR did not analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned aquatic features and associated biological resources/habitats that may occur because of the project. Therefore, CDFW recommends the DEIR propose appropriate avoidance, minimization, and/or mitigation measures to reduce impacts to a less-than-significant level including but not limited to project impacts to water temperature, water nutrient concentrations, and turbidity.

The DEIR has identified project activities that may require notification to CDFW pursuant to Section 1602 of the Fish and Game Code. Please update the applicable section on page 4.4-15 of the DEIR to reflect that Lake and Streambed Alteration (LSA) Notification is required for any activity that may do one or more of the following:

- Substantially divert or obstruct the natural flow of any river, stream, or lake;
- Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- Deposit debris, waste, or other materials where it may pass into any river, stream, or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW will determine if the project activities may substantially adversely affect existing fish and wildlife resources and whether a LSA Agreement is required. The project as currently proposed in the DEIR will require a LSA Agreement. A LSA Agreement will include measures necessary to protect existing fish and wildlife resources.

CDFW's issuance of a LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of a LSA Agreement, the DEIR should fully identify the potential impacts to any lake, stream, or riparian resources, and provide adequate avoidance, minimization, mitigation, and monitoring and reporting commitments.

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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 found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

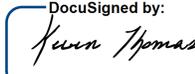
The project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the DEIR to assist in identifying and mitigating project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Zach Kearns, Environmental Scientist at (916) 358-1134 or zachary.kearns@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kevin Thomas
Regional Manager

ec: Tanya Sheya, Environmental Program Manager
Billie Wilson, Senior Environmental Scientist (Supervisor)
Zach Kearns, Environmental Scientist
California Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

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REFERENCES

Staff Report on Burrow Owl Mitigation, March 7, 2012