



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 16, 2019

Governor's Office of Planning & Research

JULY 17 2019

STATE CLEARINGHOUSE

Mr. John Funderburg
San Joaquin County Community Development Department
1810 East Hazelton Avenue
Stockton, CA 95205
jfunderburg@sjgov.org

Dear Mr. Funderburg,

Subject: PA-1800039,-40,-41,-42,-217; PA-0600237,PA-10000267 Neighborhoods J&K
Land Use Repurposing Project, Initial Study/Mitigated Negative Declaration,
SCH #2019069046, San Joaquin County

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/IS/MND) for the Neighborhoods J & K Land Use Repurposing (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the IS/MND as a means to inform the San Joaquin County – Community Development Department (County), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under 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 a California Endangered Species Act (CESA) Incidental Take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA ITP should 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 (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, 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 potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources

Mr. John Funderburg
San Joaquin County Community Development Department
July 16, 2019
Page 2 of 4

Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 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

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting 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, washes, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Mountain House Developers, LLC

Objective: The Project consists of a Master Plan Amendment (PA-1800039), a Specific Plan I Amendment (PA-1800040), a Specific Plan II Amendment (PA-1800041), a Specific Plan III Amendment (PA-1800042), a Revisions of Approved Action to Major Subdivision Application (PA-0600327), a second Revisions of Approved Actions Application to Major Subdivision Application (PA-1000267), and a Mountain House Development Title Text Amendment (PA-1800217).

Location: San Joaquin County near the City of Mountain House, northeast of Byron Road, between Byron Road and Old River, Assessor's Parcel Numbers 258-030-01, 258-030-02, 258-030-03, and 258-040-01.

Timeframe: Not Specified

The proposed amendments primarily focus on changes to Neighborhoods J & K residential layout and traffic circulation system, with a repurposing of the Golf Course to a Nature Preserve to allow for outdoor recreation uses consisting of hiking, picnicking, swimming, boating, or fishing. The revised design respects the underlying land plan but improves the spatial diversity of home sites, enhances the relationship of homes and people to open space and recreation areas.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Mr. John Funderburg
San Joaquin County Community Development Department
July 16, 2019
Page 3 of 4

IS/MND lacks an analysis of Project impacts to Biological Resources

On page 7, the IS/MND Biological Resources' Impact Discussion section a-e) states:

"Referrals have been sent to the San Joaquin Council of Governments (SJCOG) and SJCOG determined that the Major Subdivision application is subject to and may participate in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). If the applicant chooses to participate, then the proposed project is consistent with the SJMSCP, as amended, as reflected in the conditions of project approval for this proposal. Pursuant to the Final EIR/EIS for San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), dated November 15, 2000, and certified by SJCOG on December 7, 2000, implementation of the SJMSCP is expected to reduce impacts to biological resources resulting from the proposed project to a level of less-than-significant. If the applicant chooses not to participate, then the applicant will be required to participate in a similar mechanism that provides the same level of mitigation."

This statement is speculative in nature and inadequate for satisfying the requirements of CEQA which requires a Lead Agency to identify, analyze, or quantify direct, indirect and cumulative impacts from the Project [See Cal. Code Regs. Tit. 14 §15063 subd. (c)(5)]. In absence of analyzing these impacts of the Project to biological resources, CDFW is unable to evaluate whether participation in the SJMSCP is adequate to mitigate the Project's biological impacts to a level of less-than-significant. CDFW recommends that the biological resources section of the IS/MND be revised to include an analysis of habitats and species that could be impacted by the Project.

If potential significant biological impacts are identified in the analysis, then those impacts need to be addressed with specific enforceable mitigation measures. In the event SJMSCP doesn't provide coverage for permanent habitat loss or conversion, then conservation lands should be required at a 3:1 ratio (conserved habitat to impacted habitat). Conservation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

In addition, avoidance and minimization measures, such as those in the SJMSCP, that are specific to nesting birds and special status species should be identified and incorporated into a revised and recirculated IS/MND.

Project may require Notification under Fish and Game Code Section 1600 et. seq.

Current and proposed activities described in the IS/MND may be subject to Notification and CDFW may require an LSA Agreement, pursuant to Section 1600 et seq. of the Fish and Game

Mr. John Funderburg
San Joaquin County Community Development Department
July 16, 2019
Page 4 of 4

Code. It is unclear from the Project description whether a Notification is required or if impacts to bed, bank, or channel will be occurring as a result of Project activities. CDFW recommends the IS/MND be revised to provide the specific Project activities and a more in-depth Project description that identifies possible impacts to bed, bank, and channel. If required, please submit Notification to CDFW at the Bay Delta Office listed above. To obtain information about the LSAA notification process, please access our website at <https://www.wildlife.ca.gov/Conservation/LSA>; or to request a notification package, contact the Bay Delta Regional Office at (707) 428-2002.

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#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: cnddb@wildlife.ca.gov. 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 the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Mr. Devin Vlach, Environmental Scientist, at (209) 234-3439 or Devin.Vlach@Wildlife.ca.gov; Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or Jeanette.Griffin@wildlife.ca.gov; or to Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

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