



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 25, 2019

Governor's Office of Planning & Research

JULY 26 2019

STATE CLEARINGHOUSE

Mr. John-Paul Harries
City of Cotati
Community Development Department
201 W Sierra Avenue
Cotati, CA 94931
jpharries@cotaticity.org

Subject: Zoning Amendment and Residential Care Facility for the Elderly and Commercial Building, Mitigated Negative Declaration, SCH #2019079007, City of Cotati, Sonoma County

Dear Mr. Harries:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from City of Cotati (City) for the Zoning Amendment and Residential Care Facility for the Elderly and Commercial Building (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND to inform the City, 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) Permit, 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 Incidental Take Permit (ITP) 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 ITP.

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CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 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 CESA.

Lake and Streambed Alteration

CDFW requires an LSA 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, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for 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: Townsend Capital Partners LLC

Objective: Construction of a 77,000-square-foot Assisted Living Facility with 88 units, a 24,100-square-foot Memory Care Facility with 34 units, and a 4,000-square-foot commercial building to be operated as a cannabis dispensary, and expand Assessor Parcel Number (APN) 144-040-011 through a lot line adjustment.

Location: The Project is located on the northwest corner of State Route 116 and Alder Avenue in the City of Cotati, Sonoma County. It is centered at approximately 38.333034 latitude and -122.721294 longitude on APN 144-040-011.

Timeframe: 12-month duration.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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. Based on the Project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that the proposed MND is appropriate for the Project.

Environmental Setting

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status

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species in local or regional plans, policies, or regulations, or by CDFW or the U.S. Fish and Wildlife Service?

Comment 1: Biological Resources Setting, Page 31

Issue: The Project may substantially adversely impact burrowing owl (*Athene cunicularia*).

Specific impact: The Project may cause injury or mortality of burrowing owls and would likely cause loss of foraging habitat.

Why impact would occur: Project construction activities may disturb or remove overwintering burrowing owls resulting in injury, mortality, shelter abandonment, and exposure to predation and other adverse impacts. The Project would also remove grasslands, through habitat conversion, that may be used for foraging. There is a 2002 California Natural Diversity Database recorded occurrence of burrowing owl approximately 3 miles northeast of the Project site, and a 2015 recorded occurrence of the species utilizing a badger (*Taxidea taxus*) burrow approximately 7.7 miles east of the Project site, demonstrating that the species occurs in the Project vicinity.

Evidence impact would be significant: Burrowing owl is a special-status species because it is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. Based on the foregoing, Project impacts would potentially substantially adversely affect burrowing owl. Therefore, Project impacts to burrowing owl would be potentially significant.

To reduce impacts to less-than-significant:

Recommended Mitigation Measure 1: Burrowing owl surveys

CDFW recommends that a qualified biologist conduct surveys following the Department of Fish and Game (CDFG) *Staff Report on Burrowing Owl Mitigation (2012)* survey methodology. Surveys should encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or Project activities should trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist should have a minimum of two years of experience implementing the CDFG 2012 survey methodology resulting in detections. Detected burrowing owls should be avoided pursuant to the buffer zone prescribed in the the CDFW 2012 Staff Report and any passive relocation plan should be subject to CDFW review.

Permanent loss of burrowing owl habitat, including foraging habitat, should be mitigated by: 1) permanent preservation of offsite habitat at a 1:1 impact to mitigation ratio, through a conservation easement, and 2) provision of an endowment for long-term management. The CDFG 2012 report states, "current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal..."

Would the Project have a substantial adverse effect on any riparian habitat or sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or the U.S. Fish and Wildlife Service?

Comment 2: Biological Resources Setting, Page 31

Issue: The Project may substantially adversely impact riparian habitat.

Specific impact: The Project may result in the loss riparian habitat on the southwest perimeter of the Project site.

Why impact would occur: Project construction activity would remove the potential riparian habitat. The MND appears to identify the habitat as an isolated ditch; however, based on current aerial imagery it appears that the “ditch” may be connected to a roadside ditch and Washoe Creek, and supports mature trees.

Evidence impact would be significant: The Project could substantially adversely affect riparian and associated aquatic habitats by resulting in loss or degradation of this vulnerable habitat type, therefore impacts would be potentially significant.

To reduce impacts to less-than-significant:

Recommended Mitigation Measure 2: LSA Notification

CDFW recommends that the “ditch” be further evaluated to determine connectivity. If connectivity to roadside ditches and/or Washoe Creek is present, the City should require an LSA Notification to CDFW for impacts to the ditch and associated riparian habitat so that CDFW can ensure impacts are reduced to less-than-significant through the issuance of an LSA Agreement. The LSA Agreement would likely require off-site restoration at a ratio of 3:1 for the linear distance of stream removed, and a restoration plan approved by CDFW. The restoration plan should include the below elements.

- Tree plantings shall consist of 5-gallon or greater saplings, unless otherwise approved in writing by CDFW, and locally-collected seeds, stakes, or other suitable nursery stock as appropriate, and shall be native species to the area adapted to the lighting, soil, and hydrological conditions at the planting site.
- The applicant shall monitor and maintain, as necessary, all plants for a minimum of five years. At the end of the five years of monitoring, with at least three years without supplemental irrigation, the plantings shall attain:
- If revegetation survival and/or cover requirements do not meet established goals as determined by CDFW, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these

requirements, unless otherwise approved in writing by CDFW. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

Mitigation Measures

MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Comment 3: Mitigation Measure BIO-4, Page 39

The MND indicates that California tiger salamander (CTS, *Ambystoma californiense*), a CESA listed species, was found on the Project site in 2004 and may currently occupy the site. Mitigation Measure BIO-4 indicates that a CESA ITP is required prior to Project construction; however, the measure should be revised to more clearly articulate that the Project proponent should seek an ITP for CTS.

Additionally, the measure states that a 10(a)(1)(A) federally permitted and state permitted CTS biologist may move trapped CTS found on-site. Federal 10(a)(1)(A) recovery permits, and similar 2081(a) Memoranda of Understanding issued by CDFW, are for specific scientific research and recovery activities. A Qualified biologist may be approved to handle and relocate CTS under the federal Biological Opinion (Section 7 of the Endangered Species Act) and CESA ITP issued for the Project.

Comment 4: Mitigation Measure BIO-5, Page 40

Mitigation Measure BIO-5 should require that the City review and approve the resumes of qualified biologists proposing to conduct surveys for special-status bat species. Resumes should reflect: 1) at least 2 years of experience conducting bat surveys that resulted in detections for the relevant species such as pallid bat (*Antrozous pallidus*), and 2) the types of equipment used to conduct surveys. Ideally, the resume should also indicate that the biologist possesses a state-issued Scientific Collecting Permit for the relevant species. A survey methodology should also be submitted to the City for approval. CDFW staff is available to assist the City with resume and survey methodology review. An initial habitat assessment and survey should occur several weeks or months before Project construction to avoid last minute delays.

Comment 5: Mitigation Measure BIO-6, Page 40

Mitigation Measure BIO-6 should require: 1) surveys within 500 feet of the Project site for raptors, 2) that surveys occur no more than 7 days before Project construction begins, and 3) biological monitoring of any active nests to ensure it is not disturbed, and that buffers are adjusted by a qualified biologist as needed to avoid disturbance, in addition to existing Mitigation Measure BIO-5 requirements.

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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

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Specialist), at (707) 428-2092 or Melanie.Day@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2019079007)