

SEP 12 2019

STATE CLEARINGHOUSE

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To: tom.purciel@edcgov.us
Cc: [Wildlife R2 CEQA](#); [OPR State Clearinghouse](#)
Subject: CDFW's comments on the NOP for the Dorado Oaks Project (SCH 2019071041)
Date: Thursday, September 12, 2019 5:12:02 PM

Dear Mr. Purciel,

The California Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Notice of Preparation (NOP) for the Dorado Oaks Project (project)[SCH 2019071041]. The Department is responding to the NOP as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (i.e., biological resources); and administers the Natural Community Conservation Planning Program (NCCP Program). The Department offers the comments and recommendations presented below to assist the El Dorado County Planning Department (County; the CEQA lead agency) in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable the Department to adequately review and comment on the proposed project with respect to impacts on biological resources. The Department recommends that the forthcoming CEQA document address the following:

Assessment of Biological Resources

Knowledge of the regional setting of a project is critical to the assessment of environmental impacts and special emphasis should be placed on environmental resources that are rare or unique to the region. To enable Department staff to adequately review and comment on the project, the CEQA document should include a complete assessment of the flora and fauna within and adjacent to the project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats. The Department recommends that the CEQA document specifically include:

1. An assessment of the various habitat types located within the project footprint, and a map that identifies the location of each habitat type. The Department recommends that floristic, alliance-and/or association based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are

present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the project. The Department's California Natural Diversity Database (CNDDDB) in Sacramento may be contacted at (916) 322-2493 or bdb@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed project. The Department recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that the Department's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. The Department recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the project area and should not be limited to resident species. The CEQA document should include the results of focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service, where necessary. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if the project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.
4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following the Department's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://www.wildlife.ca.gov/Conservation/Plants>).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The CEQA document should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the project. To ensure that project impacts to biological resources are fully analyzed, the following information should be included in the CEQA document:

1. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by zoning of development projects or other project activities adjacent to

natural areas, exotic and/or invasive species, and drainage. The latter subject should address project-related changes on drainage patterns and water quality within, upstream, and downstream of the project site, including: volume, velocity, and frequency of existing and post-project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-project fate of runoff from the project site.

2. A discussion of potential indirect project impacts on biological resources, including resources in areas adjacent to the project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

The Department encourages project design that avoids and preserves onsite features that contribute to habitat connectivity. The CEQA document should include a discussion of both direct and indirect impacts to wildlife movement and connectivity, including maintenance of wildlife corridor/movement areas to adjacent undisturbed habitats.

3. A cumulative effects analysis developed as described under CEQA Guidelines § 15130 (if an Environmental Impact Report is required). Please include all potential direct and indirect project related impacts to riparian areas, wetlands, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Mitigation Measures for Project Impacts to Biological Resources

The CEQA document should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the project. When proposing measures to avoid, minimize, or mitigate impacts, the Department recommends consideration of the following:

4. *Fully Protected Species*: Several Fully Protected Species (Fish and Game Code § 3511) have the potential to occur within or adjacent to the project area, including, but not limited to: white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*). Fully protected species may not be taken or possessed at any time. Project activities described in the CEQA document should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the project area. The Department also recommends that the CEQA document fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. The Department recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species.
5. *Sensitive Plant Communities*: The Department considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and

associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The CEQA document should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.

6. *Mitigation*: The Department considers adverse project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the CEQA document should include mitigation measures for adverse project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

The CEQA document should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

7. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in California Sierra foothills ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

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The Department recommends that local onsite propagules from the project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in

areas affected by the project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

8. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders *Falconiformes* or *Strigiformes* (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

The Department recommends that the CEQA document include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The CEQA document should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. The Department recommends that pre-construction nesting bird surveys be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

9. *Moving out of Harm's Way*: The proposed project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, a qualified biologist may be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., the Department does not recommend relocation to other areas). Please note that the temporary relocation of onsite wildlife does not constitute effective mitigation for project impacts associated with habitat loss. The Department generally does not support the use of relocation, salvage, and/or translocation as the sole form of mitigation for impacts to rare, threatened, or endangered species as these efforts are often experimental in nature and largely unsuccessful.

California Endangered Species Act

The Department is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). The Department recommends that a CESA Incidental Take

Permit (ITP) be obtained if the project has the potential to result in “take” (California Fish and Game Code Section 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species, either through construction or over the life of the project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. The Department encourages early consultation, as significant modification to the proposed project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP.

Lake and Streambed Alteration Program

Fish and Game Code section 1602 requires an entity to notify the Department prior to commencing 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 that could 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 and seasonal streams. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, the Department determines if the proposed project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake or Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

The Department’s issuance of an LSA Agreement is a “project” subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the CEQA document should fully identify the potential impacts to the lake, stream, and/or riparian vegetation, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. The Department recommends that the CEQA document include a delineation of onsite lakes and streams, associated riparian and/or wetland vegetation communities, and areas of impact. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

Further Coordination

The Department appreciates the opportunity to comment on the NOP for the Dorado Oaks Project (SCH 2019071041) and recommends that the County address the Department’s comments and concerns in the forthcoming CEQA document. The Department is available to meet with the County early in the planning process, and attend a site visit for this project.

If you have any questions regarding this letter or wish to schedule a meeting and/or site visit, please contact me at (916) 358-2955 or at gabriele.quillman@wildlife.ca.gov.

Sincerely,

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