



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
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January 15, 2020

Governor's Office of Planning & Research

**JAN 15 2020**

## STATE CLEARINGHOUSE

Ms. Sabrina Sihakom, Planner  
Marin County Community Development Agency  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903

Subject: Dipsea Ranch Land Division, Initial Study/Mitigated Negative Declaration,  
SCH #2019129035, Marin County

Dear Ms. Sihakom:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of an Initial Study/Mitigated Negative Declaration (IS/MND) from the Marin County Community Development Agency (CDA) for the Dipsea Ranch Land Division (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### CDFW ROLE

CDFW is a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), 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 trust resources.

### REGULATORY REQUIREMENTS

#### *California Endangered Species Act*

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take<sup>1</sup> of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

<sup>1</sup> Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

#### *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.

#### *Migratory Birds and Raptors*

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Daniel Weissman, property owner

**Objective:** The Project would subdivide a single 8.29-acre parcel into three parcels of 2.22, 0.89, and 5.18 acres. An existing single-family home will remain on-site and two new residences with two associated accessory dwelling units will be built on two of the new parcels. The Project will construct road improvements and new road segments leading to the new buildings. Associated water and sewer lines will be constructed. Two existing buildings, a four-car garage and a detached accessory building, may or may not remain on-site.

**Location:** The Project is located at 455 Panoramic Highway, unincorporated Mill Valley, Marin County. The Project site occurs near Latitude 37° 53' 59" N, Longitude 122° 33' 52.36" W, Assessor's Parcel Number 046-161-11.

**Environmental Setting:** The Project occurs in a lightly developed residential area within the wildland urban interface. The residential area is bordered by the City of Mill Valley to the east, Mount Tamalpais State Park and John Muir National Monument to the west, and various open space or lightly developed areas to the north and south. Two ephemeral streams, tributaries to Redwood Creek, flow on the eastern and western edges of the Project site. Portions of the Project site are dominated by a mix of non-native invasive grasslands, ornamental shrubs and trees, and native trees and shrubs. Three non-native trees are proposed for removal. Special-status species with the potential to occur in or near the Project area include: northern spotted owl (*Strix occidentalis caurina*), congested-headed hayfield tarplant (*Hemizonia congesta* ssp. *congesta*), nesting birds, roosting bats, western pond turtle (*Actinemys marmorata*), Central



California Coast Evolutionarily Significant Unit Coho salmon (*Oncorhynchus kisutch*), and Central California Coast Distinct Population Segment steelhead (*Oncorhynchus mykiss irideus*).

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist CDA in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

### *Northern Spotted Owl*

The IS/MND identifies northern spotted owl (NSO) as a potential sensitive species in the Project area and states that NSO is unlikely to be present within the Project area; no Mitigation Measures or pre-construction surveys for NSO are proposed (page 48). NSO is a threatened species pursuant to CESA and the federal Endangered Species Act and is known to occur in the vicinity of the Project, as disclosed in the IS/MND (page 50). While the Project does not propose to remove NSO habitat, noise and activities at the Project site could potentially disturb NSO during nesting season and interrupt breeding or lead to nest failure. Population levels and vital rates for NSO continue to decline<sup>2</sup>, so any reduction in successful nesting is a potentially significant impact.

CDFW recommends including the Mitigation Measure BIO-5 to reduce potential impacts to NSO to less-than-significant:

Mitigation Measure BIO-5: Northern Spotted Owl. If Project activities will occur during the NSO nesting season (February 1 to July 31), then a CDFW-approved Qualified Biologist shall conduct surveys for NSO following the United States Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (Revised) January 9, 2012<sup>3</sup>. Surveys shall be conducted in accordance with section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If NSO are detected during surveys, Project activities within 0.25 miles of a nest site shall be avoided until the end of the breeding season or until a Qualified Biologist determines the nest is no longer active. A Qualified Biologist should be familiar with NSO ecology, have proven success identifying NSO aurally and visually, and have at least two seasons of experience surveying for NSO using the USFWS protocol.

If Project-generated sound will not exceed ambient nest conditions by over 20 decibels *and* total combined sound (ambient and Project-generated) during Project activities does not exceed 90 decibels, then noise impacts would likely be less-than-significant and surveys may not be necessary (USFWS 2006<sup>4</sup>). Pre-Project sound conditions should be accurately measured and documented to justify a no-survey outcome.

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<sup>2</sup> California Department of Fish and Wildlife. 2016. Report to the Fish and Game Commission: A Status Review of the Northern Spotted Owl (*Strix occidentalis caurina*) in California.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

<sup>3</sup> <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83977&inline>

<sup>4</sup> United States Fish and Wildlife Service. 2006. Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California.

### *Bats*

The IS/MND identifies that common and special-status bats may occur on the Project site (page 55), and that pruning and tree removal could result in significant impacts to roosting bats (page 56). The proposed Mitigation Measure BIO-2 appears to adequately reduce potential impacts to tree-roosting bats to less-than-significant. However, additional impacts to roosting bats could occur if buildings are demolished on-site. Bats may roost in roofs, attics, sheds, or other building spaces throughout the year. Building demolition could result in death or disturbance to bats if they are roosting within the building, a potentially significant impact. Bats are especially vulnerable during the spring/summer when maternity colonies are raising their pups, and during the winter when resources are less available and bats may hibernate. Disturbance to bats during these periods could result in death to pups or adults.

CDFW recommends adding the following to Mitigation Measure BIO-2: Special-Status and Common Bats, to reduce potential impacts to bats to less-than-significant:

Mitigation Measure BIO-2: Special-Status and Common Bats. Buildings shall be surveyed for bats by a Qualified Bat Biologist within 15 days prior to any building demolition. Demolition plans shall cease if bats are found roosting within the buildings until proper eviction and exclusion plans have been implemented. Eviction and exclusion of bats shall consist of daytime installation of blockage material or one-way exits between March 1 and April 15 or September 1 and October 15 (outside of maternity season and hibernation season). Exclusion materials shall be re-evaluated for effectiveness by the Qualified Biologist up to two weeks prior to building demolition.

### *Special-Status Plants*

The IS/MND identifies 23 special-status plants that occur in the vicinity of the Project area, but rules out the presence of all but one species, congested-headed hayfield tarplant (*Hemizonia congesta* ssp. *congesta*), due to lack of habitat (page 44). The IS/MND also states that "the site was surveyed on September 22, 2015 during its [congested-headed hayfield tarplant] reported blooming period and this plant was not detected" (page 45). Acceptable botanical surveys must be systematic, floristic surveys, and should occur multiple times within the blooming period of potential special-status plants on-site. Based on the IS/MND, it is unclear what level of botanical survey was conducted, and therefore difficult to conclude that special-status plants are absent. In addition, this survey is outdated as it was conducted five years ago. Potentially significant impacts to special-status plants, such as crushing and burying, are more likely to occur without sufficient survey information.

CDFW recommends including the Mitigation Measure BIO-6 to reduce potential impacts to special-status plants to less-than-significant:

Mitigation Measure BIO-6: Special Status Plant Surveys. A Qualified Biologist shall conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site the season prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-*



*Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018<sup>5</sup>. If special-status plants are found during surveys, the IS/MND should outline how the Project would be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, the IS/MND should outline adequate compensatory mitigation.

A Qualified Biologist in this context should be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols.

### *Nesting Birds*

The IS/MND identifies the legal protections for nesting bird species provided by Fish and Game Code and the federal Migratory Bird Treaty Act (page 44). The IS/MND notes, “potential impacts on nesting birds could result from destruction of eggs or occupied nests, mortality of young, and abandonment of nests with eggs or young birds prior to fledging. Such potential impacts on protected nesting birds could be significant” (page 56). To reduce these potential impacts to less-than-significant, the IS/MND states that the Project will adhere to Marin County Development Code Section 22.20.040 (F), which establishes nesting bird protection measures (page 56). CDFW agrees with the proposed protection measures, but recommends identifying a specific window prior to construction activities within which nesting bird surveys will occur. If pre-construction surveys are completed too early (e.g., greater than seven days prior to Project activities), then birds could establish nests after surveys have been completed but before Project activities begin, allowing for significant impacts to nesting birds. CDFW recommends identifying nesting bird protections as Mitigation Measure BIO-7 to ensure implementation of the protection measures:

Mitigation Measure BIO-7: Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season of protected raptors and migratory birds, February 1 to August 15, a focused survey for active nests of such birds shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with USFWS and CDFW regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall be required before Project work can be reinitiated.

### *Mitigation Measure BIO-1: Special-Status Wildlife and Habitat*

The IS/MND proposes Mitigation Measure BIO-1 to avoid potentially significant impacts to sensitive habitat and special-status species (page 59). The first bullet under BIO-1 describes a worker awareness training for “all supervisory field staff.” Educating workers to accurately recognize the special-status species and sensitive habitats that may occur on-site is key to preventing significant impacts to them, such as crushing, burying, disturbing, or otherwise injuring them during Project activities. CDFW recommends providing this training to all on-the-ground workers that may come across sensitive habitats or special-status species in order to reduce impacts to less-than-significant. Therefore, CDFW recommends striking the word “supervisory” from the first bullet point of Mitigation Measure BIO-1.

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<sup>5</sup> <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

Ms. Sabrina Sihakom  
Marin County Community Development Agency  
January 15, 2020  
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*Editorial Comments*

On page 9, the IS/MND assumes that the existing single-family home “would remain in newly created lot 1, and that the new residences would be built on newly-created lots 2 and 3.” The IS/MND does not state whether the additional two existing buildings (detached garage and accessory dwelling unit) will remain or be demolished. The IS/MND should clarify whether demolition will occur and include any additional biological impacts and mitigation measures related to demolition (e.g., noise disturbance or removal of habitat).

On page 2 of the IS/MND, second paragraph of the Introduction and Summary section, a sentence describing the access to the future residences remains unfinished: “The Applicant proposes to provide access to the new lots via the existing entry driveway at 455 Panoramic Highway, which would be improved and.”

**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 emailed to CNDDDB at the following email address: [cnddb@wildlife.ca.gov](mailto: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>

**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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

**CONCLUSION**

CDFW appreciates the opportunity to comment on the IS/MND to assist the CDA in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or [amanda.culpepper@wildlife.ca.gov](mailto:amanda.culpepper@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at [karen.weiss@wildlife.ca.gov](mailto:karen.weiss@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH #2019129035)