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April 08, 2024

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Governor's Office of Planning & Research

Apr 08 2024
STATE CLEARINGHOUSE

**Subject: Vista Lucia Project – Vista Lucia Specific Plan & Tentative Map for
Neighborhood #1 (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2020039056**

Dear Taven Kinison Brown:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the City of Gonzales for the 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. While the comment period may have ended, CDFW respectfully requests that the City of Gonzales still consider our comments.

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, section 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 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 (*Id.*, section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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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, section 21069; CEQA Guidelines, section 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, section 1600 et seq.). Likewise, to the extent implementation of the 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, section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include Sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

PLAN DESCRIPTION SUMMARY

Proponent: Cielo Grande Ranch LLC c/o Pembroke Development

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Objective: The proposed Project would facilitate development of a portion of the City's growth area, anticipated since the General Plan was adopted in 2010. The requested entitlements include a general plan amendment (specific plan), pre-zoning, annexation, and the first of several anticipated tentative maps. Up to 3,498 dwelling units at various densities; 96,000 square feet of local serving retail (mixed use), 79 acres of parks, promenades and village greens; two elementary and one middle school on a total of 48 acres; and roads, stormwater detention, agricultural buffers and other open space. Individual future projects that implement the specific plan will be subject to CEQA review that may be streamlined based on CEQA Guidelines sections 15183 and/or 15182.

Location: The Project comprises approximately 768 acres of actively farmed agricultural lands, and is located on the east side of the City of Gonzales, between Fanoe Road, Associated Lane, Iverson Road, and Johnson Creek Road. Current land use consists primarily of actively farmed agricultural land. The following Assessor's Parcel Numbers (APNs) comprise the Project Area: 223-032-024, 223-032-026, 223-032-027.

Timeframe: Not specified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Gonzalez 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 CEQA document prepared for this Project.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State and federally threatened California tiger salamander - central California DPS (*Ambystoma californiense* pop. 1); and the State fully protected white-tailed kite (*Elanus leucurus*). CDFW is also concerned regarding potential impacts to special-status plant species, including the California Rare Plant Ranked (CRPR) 1B.1 Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*).

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California Tiger Salamander

Table 7-2 in the DEIR states that California tiger salamander (CTS) is “absent” as “Genetic testing indicates that salamanders found on the property are almost completely non-native”. CDFW is concerned by the conclusions drawn in the DEIR for several reasons.

The DEIR notes that CTS was documented on the Johson Canyon Landfill property in 1995 and that larval salamanders were collected from four ponds on the Project site in 2006. The DEIR continues to state that, “results of the genetic testing indicate that salamanders found on the property are almost completely non-native”, and that U.S. Fish and Wildlife Service (USFWS) concluded the tiger salamanders on the property were not CTS. The DEIR also states that early consultation occurred with CDFW in 2019 and additional site assessment and genetic studies were completed. Appendix C of the DEIR was referenced to provide the results of the 2019 studies and subsequent correspondence with CDFW. Based on a thorough review of Appendix C of the DEIR, it does not appear that documentation of early consultation with CDFW or the 2019 study results were provided. In addition to the lack of information in Appendix C, CDFW would like to note that hybrid CTS are still protected under CESA as there are no definitions within Fish and Game Code that exempt or exclude the protection of listed species that might hybridize and/or have the genetic traits of multiple species, subspecies, or varieties.

Based on the positive occurrence data documented in the Project site, the lack of documentation of early consultation discussions with CDFW, and the potentially inaccurate conclusions on CTS presence, CDFW recommends the following:

Comment 1: Consultation with CDFW

Consultation is recommended with CDFW to review the 2019 correspondence and surveys, determine when surveys following “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) guidance document were last conducted, and to assist with determining whether the Project can avoid take.

Comment 2: CTS Surveys Prior to Project Implementation

CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS the survey season(s) immediately prior to Project implementation using the “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) guidance document. CDFW advises that the survey include a 100-foot buffer around the Project in all areas of wetland and upland habitat that could support CTS.

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Comment 3: CTS Take Authorization

If through consultation with CDFW, or surveys, it is determined that CTS are occupying the Project and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP, pursuant to Fish and Game Code section 2081(b). In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and immediately focus on obtaining an ITP. For information regarding ITPs, please see the following link: <https://www.wildlife.ca.gov/Conservation/CESA>. Included in the ITP would be measures required to avoid and/or minimize direct take of CTS in the Project area, as well as measures to fully mitigate the impact of the take.

Special-Status Plants

The DEIR states on page 179, under impact 7-1, “Prior to approval of a tentative map(s) for the project area and grading permits for the off-site wastewater main and off-site circulation improvements, a qualified biologist or native plant specialist shall perform seed collection from all special status plants located within the impact areas and implement seed installation at the mitigation area at the optimal time. Additionally, topsoil from the special-status species occurrence area(s) shall be salvaged (where practical) for use in the mitigation area”. CDFW would like to note that, for State listed or rare plants, any take, including collection of their seeds, would require an incidental take permit, pursuant to Fish and Game Code § 2081(b). If State listed or rare plants are documented during surveys for the Project, and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code § 2081(b). Consultation with CDFW is also recommended for non-listed special-status plants prior to initiation of seed collection.

The DEIR states on page 178, “Prior to approval of any tentative map and prior to approval of grading permits for the off-site wastewater main and off-site circulation improvements, a biologist qualified in botany shall conduct a focused survey for Congdon’s tarplant in accordance with current CDFW and CNPS rare plant survey protocols (CDFW 2018 and CNPS 2001). The survey shall occur during the peak blooming period for this species to determine its presence or absence (typically August through September). If possible, a known reference population of the target species in the project vicinity shall first be visited to verify that the species is observable, and the focused survey shall be conducted within two weeks of observing the reference population in full bloom”. CDFW concurs with this measure and strongly recommends that a reference population be used to ensure the highest probability of finding Congdon’s tarplant.

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White-tailed kite

Table 7-2 of the DEIR states that white-tail kite presence is “unlikely” and that, “Species may fly over site; however active agricultural land is not considered suitable habitat”. CDFW would like to note that more natural habitats are located adjacent to the Project area, and agricultural lands, if suitable trees are present within or surrounding the Project site, could be used for foraging. As such, CDFW recommends the following:

Comment 4: White-tailed Kite Avoidance

In the event a white-tailed kite nest is found within ½ mile of the Project site, CDFW recommends that a ½-mile no-disturbance buffer be implemented. If the ½-mile no-disturbance buffer cannot feasibly be implemented, consultation with CDFW is recommended. Fully addressing potential impacts to fully protected raptor species and requiring measurable and enforceable mitigation in the IS/MND is recommended.

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, Section 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during any future project surveys to the 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 mailed electronically to CNDDDB at the following email address: CNDDDB@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, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

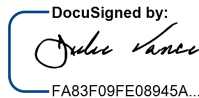
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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Gonzalez in identifying and mitigating this Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to Evelyn Barajas-Perez, Environmental Scientist, at (805) 503-5738 or evelyn.barajas-perez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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REFERENCES

U.S. Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.

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**RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
 (MMRP)**

**PROJECT: Vista Lucia Project – Vista Lucia Specific Plan & Tentative Map for
 Neighborhood #1 (Project) Draft Environmental Impact Report (DEIR)**

SCH No.: 2020039056

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation measure: California Tiger Salamander (CTS)	
Consultation with CDFW	
CTS Surveys Prior to Project Implementation	
CTS Take Authorization	
Mitigation measure: White-tailed Kite	
White-tailed kite avoidance	