



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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GAVIN NEWSOM, Governor
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Governor’s Office of Planning & Research

August 17, 2020

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STATE CLEARINGHOUSE

Steve Karamitros
 Senior Planner
 Inyo County Planning Department
 168 N. Edwards St., PO Drawer L
 Independence, CA 93526

Subject: Tentative Parcel Map 422; Zone Reclassification 2019-02; General Plan Amendment 2019-01; Conditional Use Permit 2020-03/Olancha Lake RV (PROJECT) MITIGATED NEGATIVE DECLARATION (MND)
 SCH# 2020039074

Dear Mr. Karamitros:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Inyo County Planning Department (County, Lead Agency) for the Tentative Parcel Map 422; Zone Reclassification 2019-02; General Plan Amendment 2019-01; Conditional Use Permit 2020-03/Olancha Lake RV Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 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.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 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, § 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, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Olancha Lake, LLC

Objective: The six parcels combined by Tentative Parcel Map 422 (033-500-03, 033-500-04, 033-500-14, 033-500-15, 033-500-16, 033-500-17), and an additional parcel (033-080-37), will facilitate conditional use permit (CUP) 2020-03/Olancha Lake RV, which will develop a tent and RV camping business. The Project buildout includes 30 tent-camping sites and 95 RV camping spots. The Project also includes five cabins for rental, a star gazing area for campers, an amphitheater, a tennis/basketball court, showers, a restaurant, a skateboarding area, a store, and kayaking rentals for use on Olancha Lake. The lake will be filled and reserved for swimming and kayaking. Three pre-existing permitted groundwater wells will supply water for domestic use and to fill the lake. The proposed zone reclassification and general plan amendment are being requested, pursuant to the CUP, to align the Project property's land use designation with commercial recreation.

Location: The proposed Project is located on the southern tip of the Owens Dry Lake where United States (U.S.) Route 395 (U.S. 395) meets State Route (SR) 190, immediately southeast of the unincorporated community of Olancha, CA and can be accessed by both U.S. 395 and SR 190. The proposed Project buildout is to be located on 80 acres of private land owned by Olancha Lake, LLC with the Assessor's Parcel Numbers: 033-500-03, 033-500-04, 033-500-14, 033-500-15, 033-500-16, 033-500-17, 033-080-37.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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. Editorial comments or other suggestions may also be included to improve the document.

To adequately analyze potential Project impacts, CDFW requests a more detailed Project description, as well as a map of the Project location. While the analysis in the MND applies to the actions required by the County for the applicant to have commercial use at this

location, the analysis should provide more details as to how the Project would be built out, as well as existing site conditions and the potential impacts of the development. Such details would help inform any recommendations CDFW would have to include as Conditions of Approval in the CUP.

CDFW is concerned that the MND does not identify or discuss all potential project-related impacts to biological resources, as it lacks sufficient and specific information on the existing habitat and potential species at the Project site. The MND states that “the Project site has potential to support special-status species and non-sensitive species generally protected by federal and state laws” but does not identify all the potential species or how they may be impacted. According to the MND, biological analysis was conducted by Geode Environmental, Inc. on July 23, 2019 and May 10, 2020 to determine the presence of special-status biological and wildlife species, but does not identify targeted species, state whether species-specific protocols were followed, or include detailed results of the surveys, nor is a biological report included with the MND. CDFW appreciates that the Biological Report and Addendum were made available upon request; however, please note that while the Biological Report may provide supplemental information to support findings in the MND, it should not act as a substitute for information that should be included in the MND to justify a less-than-significant finding. Given time constraints by the time the Biological Report was received, CDFW is only able to provide comments and recommendations based on what was included in the MND.

Please note that while reconnaissance surveys are appropriate to help evaluate potential habitat suitability in general, they are not sufficient to determine absence of a species. In order to declare absence of potentially occurring special-status species, focused, species-specific surveys using established protocols (<https://wildlife.ca.gov/Conservation/Survey-Protocols>), which includes performing the surveys during the times established by each protocol, must be conducted. In addition, CDFW does not generally support the same people conducting surveys concurrently for multiple species because protocols have different seasonal and timing requirements, and it increases the chance that a species can be overlooked.

The MND mentions that four invasive/non-native species were identified during surveys, but does not identify what they are, discuss how Project activities could facilitate their spread, or identify any avoidance and minimization measures to address such potential impacts. CDFW recommends that the CUP include avoidance and minimization measures to prevent the introduction, spread and propagation of noxious weeds and other invasive species.

The MND states “the Project site area shall be surveyed for plants with blooming seasons prior to or after the reconnaissance surveys, conducted during May 2020 and July 2019”. CDFW assumes that this is intended to be a Condition of Approval in the CUP. CDFW recommends revising this measure for clarity. Botanical field surveys should follow protocols set forth in the ‘Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities’ (CDFW 2018), or similar, accepted rare-plant survey protocols. The MND also states “it is strongly advised that

CDFW protocols are followed...to determine the presence/absence of State-listed species”, and “preconstruction biological surveys and bird-nesting surveys shall be performed to confirm absence”. However, surveys alone are not sufficient avoidance and minimization measures to justify a less than significant finding. CDFW recommends the MND include information describing how the Project will avoid impacts should sensitive species’ presence be confirmed, or provide detailed measures on how the Project will minimize and mitigate impacts.

Please also note that it is the Project proponent’s responsibility to comply with all applicable laws related to nesting birds and birds of prey. Section 3503 of the Fish and Game Code states that “it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by this code or any regulation adopted pursuant thereto (usually requiring a license or permit.” Section 3505.5 of the Fish and Game Code further says 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 this code or any regulation adopted pursuant thereto (usually requiring a license or permit).” Fish and Game Code Section 3513 prohibits any take or possession of birds that are designated by the Migratory Bird Treaty Act (MBTA) as migratory nongame birds except as allowed by federal rules and regulations promulgated pursuant to the MBTA.

CDFW recommends that the CUP include a mitigation measure requiring a nesting bird survey prior to the removal of any vegetation to ensure that the Project complies with all federal, state, and local laws. CDFW recommends that surveys focus on all suitable nesting habitats within the Project area, including the ground, and the pre-construction surveys be required no more than three days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner. The MND should also include specific avoidance and minimization measures that will be implemented should a nest be located with the Project site.

California Endangered Species Act

The proposed Project is within the range of the Mohave ground squirrel (*Xerospermophilus mohavensis*) and the desert tortoise (*Gopherus agassizii*), both of which are listed as Threatened under the California Endangered Species Act (CESA). While the MND acknowledges that the Project footprint is within the range of the Mohave ground squirrel, it does not include an analysis of potential Project impacts, and the desert tortoise is not considered in the assessment.

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW 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.

While compensatory habitat requirements and corresponding ratios are identified through the ITP process, specific measures to avoid and minimize take should not be deferred to a future action, such as the issuance of an ITP. CEQA Guidelines section 15126.2, subdivision (a)(1)(B) states that formulation of feasible mitigation measures should not be deferred until some future time. Please also note that issuance of an ITP is subject to CEQA documentation; therefore, CDFW recommends that the CEQA document identify and analyze potentially significant impacts, propose measures to mitigate impacts to less than significant levels, and include a mitigation and monitoring reporting program.

The MND states that surveys and trappings for Mohave ground squirrel shall be conducted. Please note that trapping constitutes a form of take and warrants the need for CESA authorization prior to undertaking trapping activities; no desert tortoises or Mohave ground squirrel may be moved or handled without CSA authorization.

CDFW encourages early consultation in the ITP application process, as significant modification to the proposed Project and mitigation measures may be required to obtain an ITP. More information on the CESA permitting process can be found on the CDFW website: <https://www.wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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.)

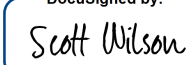
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CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating Project impacts on biological resources. CDFW recommends that Conditions of Approval in the CUP to develop the proposed Project include thorough and detailed analysis of the Project's potential impacts on biological resources, in particular special-status plants, Mohave ground squirrel and desert tortoise; avoidance and minimization measures; and appropriate and enforceable mitigation measures to reduce the potential impacts to a level that is less than significant if impacts cannot be avoided.

Questions regarding this letter or further coordination should be directed to Rose Banks, Environmental Scientist, at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

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

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