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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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June 3, 2020

Governor's Office of Planning & Research

Jun 03 2020

STATE CLEARINGHOUSE

Mr. Alejandro Perez, Senior Civil Engineer
Town of Windsor
8400 Windsor Road, Building 100
Windsor, CA 95492
aperez@townofwindsor.com

Subject: Jaguar Way Extension Project, Mitigated Negative Declaration, SCH #2020050302,
Town of Windsor, Sonoma County

Dear Mr. Perez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Town of Windsor (Town) for the Jaguar Way Extension Project (Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND to inform the Town, 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 permits issued under the California Endangered Species Act (CESA), the Lake or Streambed Alteration (LSA) Program, 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.

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, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency

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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: Town of Windsor

Objective: Extend a 0.5-mile-long section of Jaguar Way to provide two vehicle travel lanes, access for pedestrian and bicycles, and connectivity to existing and planned uses along Jaguar Way. This will include a free span bridge over Starr Creek.

Location: The project is in the Town of Windsor, Sonoma County on Jaguar Way between Starr Road and Windsor Road. It is centered at approximately 38.543626 degrees latitude and -122.8206 degrees longitude on Assessor Parcel Numbers 066-180-060, 066-180-064, 164-030-052, 164-440-006, 164-440-005, and 066-180-GAP.

Timeframe: Construction is anticipated to take 18 to 24 and the earliest completion year would be 2023.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the Town 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 an 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 species in local or regional plans, policies, or regulations, or by CDFW or the U.S. Fish and Wildlife Service?

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Comment 1: MND Appendix D Biological Resources Analysis, Table 4

Issue: Land adjacent to the Project area includes nonnative grassland habitat that is potentially suitable for foraging, overwintering, and nesting burrowing owls (*Athene cunicularia*), a California Species of Special Concern and also protected under Fish and Game Code section 3503.5 and the federal Migratory Bird Treaty Act (MBTA). The MND indicates that there is no potential for impacts to burrowing owl due to lack of suitable burrows. However, burrows or artificial burrow surrogates may occur in habitat adjacent to the Project area and burrowing owls may be impacted up to several hundred feet away. Per the MND, the California Natural Diversity Database (CNDDDB) documents a 2017 wintering burrowing owl approximately 1.8 miles south of the Project area at the Charles M. Schulz Airport property; a burrowing owl was observed near the same location in November 2019 (Omar Daaboul, Assistant Airport Manager, personal communication, November 2, 2019).

Specific impacts and why they would occur: The Project may result in burrowing owl nest or wintering burrow abandonment, loss of young, and reduced health and vigor of adults or young from audio and visual disturbances caused by construction activities.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern due to population decline and breeding range retraction. Breeding owls are likely extirpated from Sonoma County (Burridge 1995); however, they could be rediscovered and there have been efforts to promote their recolonization within the county. Based on the foregoing, Project impacts would potentially substantially adversely affect burrowing owl. Therefore, Project impacts to burrowing owl would be potentially significant.

Recommended Mitigation Measure 1: Burrowing owl surveys

To reduce impacts to less-than-significant, CDFW recommends that a qualified biologist conduct surveys following the California Department of Fish and Game (now CDFW) 2012 *Staff Report on Burrowing Owl Mitigation* survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Surveys shall encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or Project activities shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 survey methodology resulting in detections. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan.

Comment 2: MND Appendix D Biological Resources Analysis, Table 4

Issue: Starr Creek and adjacent uplands within the Project area include habitat that is potentially suitable for western pond turtle (*Emys marmorata*), a California Species of

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Special Concern. The MND indicates that the species would not occur in the Project area due to a lack of perennial pools within Starr Creek and the species is limited to the Central Valley and Contra Costa County. Starr Creek was identified as suitable western pond turtle habitat by the Sonoma County Water Agency (Cook 2008). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015). Per the MND, CNDDDB documents a 2017 western pond turtle occurrence approximately 0.4 miles southeast of the Project area within the Town's Water Reclamation Facility. A 2016 occurrence approximately 1.1 miles south of the Project area at Windsor Creek near its confluence with Starr Creek was submitted to CNDDDB by Sonoma County Water Agency. Western pond turtles can move more than four miles up or down stream; therefore, the Project area is within the mobility range of the Windsor Creek occurrence (Holland 1994).

Specific impacts and why they would occur. The Project may result in the loss of western pond turtle adults, young, or their nests, or disturbance to the species from construction activities.

Evidence impact would be significant. Western pond turtle is a California Species of Special Concern and declining throughout its range, primarily due to loss of habitat via urbanization and conversion to agriculture (Spinks et al. 2003). Recent prolonged drought has exacerbated species declines (Purcell et al. 2017). Based on the foregoing, Project impacts would potentially substantially adversely affect western pond turtle. Therefore, Project impacts to western pond turtle would be potentially significant.

Recommended Mitigation Measure 2: Western pond turtle habitat assessment, surveys, and relocation

To reduce impacts to less-than-significant, CDFW recommends that a qualified biologist conduct a habitat suitability assessment to determine where western pond turtles may occur in the Project area. In areas of suitable habitat, the qualified biologist shall conduct a pre-construction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for western pond turtles with detections. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for acceptance, and then implement the plan. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the biologist.

Mitigation Measures

Comment 3: MND Pages 28-29 and Page 42, Mitigation Measure AES-1

The MND indicates that 75 to 98 trees will be removed along the Project right-of-way which may qualify as protected trees under the Town's Tree Preservation and Protection Ordinance. According to the MND Appendix A Tree Survey, this will include several large oak trees and other native and nonnative species. These trees may provide nesting, sheltering, and roosting habitats for birds, bats, and small mammals. They also may be part

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of a Sensitive Natural Community according to CDFW's Natural Communities List available on CDFW's webpage at: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>.

CDFW recommends that the MND evaluate if trees that would be removed are part of a Sensitive Natural Community and therefore constitute impacts to a Sensitive Natural Community.

Mitigation Measure AES-1 indicates that trees will be replaced according to a Tree Preservation and Protection Plan identifying protected trees and appropriate replacement planting pursuant to the Town of Windsor Tree Technical Manual. Please provide more details on the replacement ratios, maintenance, and monitoring of the replacement trees. For removed trees that do not qualify as "protected" trees, please evaluate if a replacement ratio should apply; if the tree is part of a Sensitive Natural Community or provides habitat for nesting birds or bats, replacement should be required. Sufficient trees should be planted to offset: 1) the lost biomass and canopy of the removed trees, and 2) the substantial temporal loss of older growth habitat structure and diversity. The removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s. According to a study published in 2019 entitled Decline of the North American Avifauna authored by Kenneth V. Rosenberg et al., 90 percent of the total loss is attributable to 12 bird families including sparrows, warblers, blackbirds, and finches, which may all utilize the trees that would be removed by the Project for breeding and foraging.

Comment 4: MND Page 43, Mitigation Measure BIO-1

Mitigation Measure BIO-1 should require: 1) surveys within 500 feet of the Project area for raptors, and 2) 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-1 requirements. For all identified nests, prior to construction activities a qualified biologist should conduct a survey to establish a behavioral baseline of birds using each nest. Once construction begins, the biologist should continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, Project activities causing that change should halt and no-disturbance buffers should be implemented as described below; however, continuous mentoring may allow less conservative buffer distances as the biologist will be on-site to detect behavioral changes.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, conservative no-disturbance buffers should be implemented and set around the nest by a qualified biologist, with the buffer distance based on the tolerance level of the non-listed bird or raptor species. These buffers should remain in place until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest or parental care for survival.

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Comment 5: MND Pages 43-44, Mitigation Measure BIO-2

Mitigation Measure BIO-2 should require that the Town review and approve the resumes of biologists proposing to conduct surveys for special-status bat species to ensure each biologist possesses the appropriate specialized qualifications. 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*) including the Project name, dates, and person who can verify the experience, 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 Town for approval. CDFW staff is available to assist the Town 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 6: MND Page 45, Mitigation Measure BIO-4

Thank you for including the requirement for notification to CDFW pursuant to Fish and Game Code 1602 as a mitigation measure (BIO-4), and the related habitat protection measures for the proposed bridge over Starr Creek, particularly replanting and monitoring requirements. CDFW looks forward to receiving the notification and a detailed revegetation plan. As CDFW anticipates issuing an LSA Agreement for the Project, we will be acting as a Responsible Agency under CEQA, in addition to acting as a Trustee Agency. Please be advised that often tree replacement ratios in LSA Agreements are 1:1 for nonnative trees, 3:1 for trees less than 6 inches (at diameter breast height), 6:1 for trees 6 inches or greater, and 10:1 for oaks. Please consider these ratios when identifying tree planting locations within or near the Project area.

Please be advised that CDFW will likely include the all of the above recommended mitigation measures in the LSA Agreement for the Project, as applicable.

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

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 Town in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH# 2020050302)

REFERENCES

Burridge, Betty. 1995. Sonoma County Breeding Bird Atlas. Madrone Audubon Society.

Cook, David. 2008. Foothill yellow-legged frog and western pond turtle habitat evaluation, stream maintenance program. Sonoma County Water Agency.

Holland, Dan C. 1994. The western pond turtle: habitat and history. Unpublished final report, U. S. Dept. of Energy, Portland, Oregon.

Purcell, Kathryn L.; McGregor, Eric L.; Calderala, Kathryn. 2017. Effects of drought on western pond turtle survival and movement patterns. *Journal of Fish and Wildlife Management*. 8(1): 15-27.

Spinks, Phillip Q.; Pauly, Gregory B.; Crayon, John J.; Bradley Shaffer, H. 2003. Survival of the western pond turtle (*Emys marmorata*) in an urban California environment. *Biological Conservation*. 113(2): 257-267.

Zaragoza, George; Rose, Jonathan P.; Purcell, Kathryn.; Todd, Brian. 2015. Terrestrial habitat use by western pond turtles (*Actinemys marmorata*) in the Sierra Foothills. *Journal of Herpetology*. 49(3): 437-441.