



State of California – Natural Resources Agency  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



6/26/2020

Governor's Office of Planning & Research

June 22, 2020

**Jun 24 2020**

## STATE CLEARINGHOUSE

Mr. Scott Orr, Interim Deputy Director of Planning  
Sonoma County, Permit and Resource Management Department  
2550 Ventura Avenue  
Santa Rosa, California 95403  
[Scott.Orr@sonoma-county.org](mailto:Scott.Orr@sonoma-county.org)

Subject: PLP13-0023 Woody's Red Rocket Fuel Project, Mitigated Negative Declaration, SCH #2020050536, Sonoma County

Dear Mr. Orr:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Sonoma (County) for the PLP13-0023 Woody's Red Rocket Fuel Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND to inform the County, 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 and 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.<sup>1</sup> 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

<sup>1</sup> Pursuant to Fish and Game Code section 86, "'take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

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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) and 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency 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:** George and Marlene Young

**Objective:** Construct and operate a gasoline fuel station, convenience market, car wash, and recreational vehicle storage facility on a 2.94-acre site that currently includes a contractor's yard, 6,500-square-foot building, and a Goodwill drop-off trailer.

**Location:** The Project is in Sonoma County on the southeast corner of the Sebastopol Road (Highway 12) and Llano Road intersection, at 5300 Sebastopol Road. It is centered at approximately 38.411771 degrees latitude and -122.793733 degrees longitude on Assessor Parcel Number 060-040-033.

**Construction timeframe:** Unspecified.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations 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. Based

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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**

### **Comment 1: MND Pages 25-27**

The Project is located within grassland habitat that may be suitable for the state and federally listed as threatened and endangered California tiger salamander (CTS, *Ambystoma californiense*), and the MND proposed to mitigate for impacts to CTS habitat as described below. The species may travel in uplands up to 1.3 miles from its aquatic breeding habitat (Orloff 2007). The MND recognizes that CTS may be on the Project site, but that there is a low likelihood for this as residential development, agricultural fields, and Highway 12 are barriers to the species' movement. California Natural Diversity Database (CNDDDB) documented CTS breeding habitat is 0.6 miles north-northwest of the Project site, and other potential breeding habitat is within 1.3 miles of the Project site. Based on aerial imagery it does not appear that full barriers to dispersal are present. CTS have been documented moving across roads and agricultural fields, for example CNDDDB documents an adult CTS moving across an annually disked field in 2003 approximately 0.5 miles northwest of the Project site, and the residential development is sporadic. CNDDDB also includes a 2006 record of CTS breeding habitat approximately one mile southeast of the Project site with no significant intervening barriers. Furthermore, there are several areas of potential breeding habitat closer to the Project site to the south, for example, aerial imagery shows a seasonal swale approximately 0.34 miles southeast of the Project site (coordinates 38.411573, -122.786256) and a seasonal pond approximately 0.5 miles to the south (coordinates 38.407206, -122.786541). CDFW concludes that CTS may occur within upland habitat on the Project site based on the proximity of known and potential breeding habitat.

The MND also indicates that no suitable small mammal burrows were observed within the Project site during a February 2019 survey, and that recent disking likely precludes burrows. However, the MND also states that CTS can be difficult to detect and that more "in depth formal" surveys are needed; therefore, it is unclear if thorough small mammal burrows surveys were conducted. Also, small mammals may persist or recolonize areas following disking (Salmon et al. 1987).

CDFW recommends that the MND conclude that CTS may occur at the Project site at a greater likelihood based on the above information.

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## Mitigation Measures

### Comment 2: MND Page 30

The MND Mitigation Measure (MM) BIO-5 requires surveys according to the protocol in the *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding on of the California Tiger Salamander* (U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (now CDFW) 2003). Surveys are proposed to be implemented by a qualified biologist with a USFWS-issued 10(a)(1)(A) recovery permit to avoid take of CTS and reduce impacts to less-than-significant. It also indicates that any detected CTS would be relocated off-site to suitable habitat.

*CDFW recommends that the MND:*

- 1) Clarify that two years of drift fence surveys will be completed according to the above 2003 protocol.
- 2) Require the qualified biologist to also be authorized by CDFW to conduct the protocol surveys pursuant to Fish and Game Code section 2081, subdivision (a).
- 3) Unless appropriate permits are obtained, remove the language about the qualified biologist relocating CTS outside of the Project site, as Federal 10(a)(1)(A) recovery permits and similar 2081(a) Memoranda of Understanding issued by CDFW are for specific scientific research and recovery activities. Qualified biologists may be approved to relocate CTS under a CESA ITP and Biological Opinion (Section 7 of the Endangered Species Act) or other USFWS authorization for the Project.
- 4) Require coordination with CDFW and USFWS prior to conducting the protocol surveys to facilitate acceptance of the results, and require that the results of either the burrow or protocol surveys be accepted by the agencies.
- 5) Require an ITP from CDFW if: 1) the protocol surveys detect CTS, or 2) protocol surveys are not completed and small mammal burrows or other refugia that may be occupied by CTS would be impacted by the Project. To determine if burrows or other CTS refugia are present, the Project site shall be mowed to a vegetation height of six inches. Following mowing, a qualified biologist shall conduct transect surveys of the entire site and an adjacent 10-foot buffer area searching for burrows, soil mounds, or soil cracks.
- 6) Require consultation with USFWS to identify and obtain any required federal authorizations for impacts to CTS.

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### **Comment 3: MND Page 29**

The MND MM BIO-4 requires the permanent protection of CTS habitat at a 1:1 impact to mitigation through purchasing 2.31 acres of CTS habitat from a CDFW and USFWS approved conservation bank or preserving the same amount of habitat pursuant to the *Programmatic Biological Opinion for the U.S. Army Corps of Engineers Permitted Projects that May Affect California Tiger Salamander and Three Endangered Plant Species on the Santa Rosa Plain, California*, and implies consultation with USFWS to determine the appropriate mitigation amount. The MND also describes the Project site as 2.94 acres that is mostly developed, and it also describes a 5.86 study area of which 2.31 acres is undeveloped. It states that future construction may occur adjacent to the 2.94-acre Project site. It is unclear if the Project evaluated under the MND is the 2.94-acre Project site or the 5.86 study area.

*CDFW recommends that the MND:*

1. Clarify the acreage and provide aerial based mapping for the Project area and area of CTS habitat that would be impacted.
2. Clarify the amount of required CTS habitat mitigation.
3. Clarify that consultation with USFWS is required.
4. Require permanent habitat preservation to include placement of a conservation easement and implementing and funding in perpetuity a long-term management plan.

Please be advised that a CESA ITP may require additional habitat mitigation. To issue the ITP, CDFW must find that the applicant will fully mitigate the impacts of the take authorized under the permit, among other findings. [Cal. Code Regs., tit. 14, § 783.4, subd. (a)(2)].

### **Comment 4: MND Pages 34-35**

The MND MM BIO-7 requires obtaining authorizations pursuant to Sections 401 and 404 of the Clean Water Act for any alterations or discharges into waters of the U.S. and State.

CDFW recommends that the MND clarify if Naval Creek or associated riparian vegetation, or roadside ditches that may constitute a stream, may be impacted by the project and if so, require an LSA Notification to CDFW for these impacts and compliance with Fish and Game Code section 1602. If impacts south of the currently fenced site would occur, the MND should also evaluate potential impacts to aquatic and semi-aquatic species that may occur in Naval Creek, such as western pond turtle (*Actinemys marmorata*), a California Species of Special Concern. Western pond turtles may use

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uplands adjacent to streams and are documented in CNDDDB to occur downstream in the Laguna de Santa Rosa, which is well within the species' mobility range.

## 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 County in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH# 2020050324)

## REFERENCES

Orloff, S.G. 2007. Migratory movements of California tiger salamander in upland habitat – A five-year study, Pittsburg, California. Prepared for Bailey Estates LLC. 47 + pp.

Salmon, T.P., R.E. Marsh, and D. Stroud. 1987. Influence of burrow destruction on recolonization by California ground squirrels. Wildl. Soc. Bull. 15(4):564-568.