



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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July 3, 2020

Governor's Office of Planning & Research

Jul 06 2020

STATE CLEARINGHOUSE

Ms. Kim Voge, Planner
Town of Windsor
9291 Old Redwood Highway
Windsor, CA 95492
kvoge@townofwindsor.com

**Subject: Heritage Park Apartments Project, Mitigated Negative Declaration,
SCH No. 2020060369, Town of Windsor, Sonoma County**

Dear Ms. Voge:

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 Heritage Park Project (Project) pursuant 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), 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. 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.

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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 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: Michael Weyrick

Objective: Construct a three-story, 33-unit apartment building for affordable to low- and very low-income households on a 1.66-acre site. The Project includes frontage improvements, a new access road at the south end of the site, and demolishing an existing single family residence and barn.

Location: The Project is in the Town of Windsor, Sonoma County southwest of the Old Redwood Highway and Courtyards East intersection, at 8685 Old Redwood Highway. It is centered at approximately 38.544985 degrees latitude and -122.804812 degrees longitude on Assessor Parcel Number 164-100-023.

Timeframe: Unspecified.

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

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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 on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or the U.S. Fish and Wildlife Service (USFWS)?

Comment 1: MND Page 17

Issue: According to the MND and Appendix B Biological Resources Analysis, the Project would result in the permanent loss of mature valley oak trees (*Quercus lobata*) and coast live oak trees (*Quercus agrifolia*), which may be considered a sensitive natural community and provide bird nesting habitat.

Specific impacts and why they would occur: The Project would remove several valley oak and coast live oak trees in preparation for site development.

Evidence impact would be significant: Valley oak woodland is an endemic, CDFW-designated rare natural community (CDFG 2010; Standiford et al. 1996; CIWTG). Rare natural communities have limited distribution and are often vulnerable to project impacts (CDFW 2009). Only remnant patches of valley oak woodland remain, of which a fraction consists of the valley oak/coast live oak alliance (CIWTG). When oak woodlands are removed, it is not only the trees that are missing; all the associated functions and habitat are lost as well (Dagit et al. 2015).

Additionally, 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.

Based on the foregoing, the Project could substantially adversely affect a sensitive natural community identified by CDFW and nesting bird habitat; therefore, impacts would be *potentially significant*.

To reduce impacts to less-than-significant, CDFW recommends that the MND:

- 1) Evaluate whether the trees that would be removed are part of a sensitive natural community, see CDFW's Natural Communities List available on CDFW's webpage at: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>

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- 2) Clearly describe within a mitigation measure the applicable Town of Windsor Tree Preservation and Protection policies and regulations, including associated tree replacement, monitoring, maintenance, and annual reporting.
- 3) Require that trees part of a sensitive natural community shall be replaced at a 10:1 mitigation to impact ratio for trees less than 15 inches at diameter breast height (DBH) and a 15:1 ratio for larger trees using locally procured trees of the same species. Trees shall be planted as close to the Project site as possible and maintained and monitored for a minimum of five years with an 85 percent survival rate at the end of five years. Annual monitoring reports shall be provided to the lead agency. If tree plantings have not achieved at least an 85 percent survival rate after 5 years, new trees shall be planted and monitored for an additional 5 years to achieve the survival rate.

Planted trees shall be irrigated for at least the first two years either via hand-watering or drip irrigation. CDFW recommends that cages be placed around planted oak trees to avoid deer browse and that weeding occur within and around caged oak trees, until the trees become well-established. Once the oaks become a sufficient size the cages should be removed.

- 4) Require that trees *not* part of a sensitive natural community shall be: 1) replaced at the ratios outlined below; and 2) monitored, and maintained in the same manner described above and achieve an 80 percent survival rate.
 - Non-oak native trees - 3:1
 - Non-native trees – 1:1
 - Oak trees provide a diversity of ecological benefits and because oak trees have slow growth rates, it would take several decades for planted oaks to grow to a size that could provide the same ecological benefits that old-growth oaks provide. Therefore, the below higher ratios are required.
 - Oaks 5 to 10 inches DBH – 4:1
 - Oaks 10 to 15 inches DBH – 5:1
 - Oaks greater than 15 inches DBH – 15:1

Mitigation Measures

Comment 2: MND Page 19

According to the MND Mitigation Measure (MM) BIO-3 and Appendix B Biological Assessment, the Project would mitigate for impacts to suitable but unoccupied habitat, based on special-status plant surveys conducted in 2008, 2009, and 2018, for the following federally listed as endangered plants: Burke's goldfields (*Lasthenia burkei*), Sonoma sunshine (*Blennosperma bakeri*), many-flowered navarretia (*Navarretia*

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leucocephala ssp. *plieantha*), and Sebastopol meadowfoam (*Limnanthes vincularis*), through preserving off-site habitat at a 1.5:1 mitigation to impact ratio for the former two species.

To reduce impacts to less-than-significant, CDFW recommends that the MND:

- 1) Clearly acknowledge that the above plant species are also State listed as endangered under CESA.
- 2) Require preserved habitat to be: 1) purchased from a CDFW and U.S. Fish and Wildlife Service (USFWS) approved conservation bank, or 2) placed under a conservation easement and implementing and funding in perpetuity a long-term management plan.
- 3) Provide a sound basis for not requiring mitigation for many-flowered navarretia and Sebastopol meadowfoam as the Project would impact suitable habitat for them or provide for mitigation in the same manner as described above.
- 4) Require providing the plant survey reports to CDFW for acceptance to ensure surveys were properly implemented, prior to Project start. If CDFW is unable to accept the survey results due to improper implementation, additional surveys shall be required in coordination with CDFW and USFWS or the Project may be required to obtain an ITP as determined through consultation with CDFW.

Comment 3: MND Page 19

According to MND MM BIO-4 and Appendix B Biological Assessment, the Project would remove several trees suitable for special-status bats and surveys and potential bat eviction would be required.

To reduce impacts to less-than-significant, CDFW recommends that the MND:

- 1) Require that the Town review and approve the resumes of biologists proposing to conduct surveys for special-status bats to ensure each biologist possesses the appropriate specialized qualifications. Resumes shall 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 shall also indicate that the biologist possesses a state-issued Scientific Collecting Permit for the relevant species. A survey methodology shall 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 shall occur several weeks or months before Project construction to avoid last minute delays.

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- 2) Require surveys of the existing single-family residence and barn if they may be occupied by bats before demolishment.

Comment 4: MND Page 18

CDFW offers the below measure as a replacement for MM BIO-2. We have found that replacing certain measures can facilitate better interpretation and implementation; however, recognize that the existing measure has thoughtful and important protective elements included below. The recommended measure below will also facilitate compliance with Fish and Game Code section 3503 et seq. and the federal Migratory Bird treaty Act.

To reduce impacts to less-than-significant, CDFW recommends replacing MM BIO-2 with the following language:

- 1) If the Project occurs between February 1 and August 31, a qualified biologist shall conduct nesting bird surveys within 500 feet of the Project site no more than 7 days before Project construction begins and anytime a lapse of 7 days or more in construction occurs.
- 2) For all identified active nests, prior to construction activities a qualified biologist shall conduct a survey to establish a behavioral baseline of birds using each nest. The qualified biologist shall provide training for all Project site personnel regarding nesting bird protection measures and State and federal laws.
- 3) The qualified biologist shall establish a minimum no-disturbance buffer around active nests with the buffer distance based on the tolerance level of the species. The buffer area shall include clear visual markers for Project site personnel such as high visibility fencing and posted signs. These buffers shall remain in place until the breeding season has ended or until the qualified biologist determines that the young have fledged and are no longer reliant upon the nest or parental care for survival.
- 4) Once Project activities begins, the qualified biologist shall continuously monitor active nests to detect behavioral changes resulting from the Project. If behavioral changes occur, Project activities causing that change shall halt and no-disturbance buffers shall be increased to ensure the birds are not disturbed. If continuous monitoring of active nests by a qualified wildlife biologist is not feasible, more conservative no-disturbance buffers shall be established by the qualified biologist.

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

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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.

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:


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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH No. 2020060369)

REFERENCES

California Department of Fish and Game (CDFG). 2010. List of Vegetation Alliances and Associations. Vegetation Classification and Mapping Program, Sacramento, CA.

California Department of Fish and Wildlife (CDFW). 2009. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities.

California Interagency Wildlife Task Group (CIWTG). California Wildlife Habitat Relationship System. California Department of Fish and Game. Valley Oak Woodland.

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Standiford, R.B et al. 1996. Sustainability of Sierra Nevada hardwood rangelands. In: Status of the Sierra Nevada: Volume III Sierra Nevada Ecosystem Project Report, UC Div. of Ag. and Nat. Res. Wildland Resources Center Report 38:637-680.