



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 15, 2020

Governor's Office of Planning & Research

Sep 16 2020

STATE CLEARINGHOUSE

Mr. Frank Girardi
San Joaquin County
Community Development Department
1810 E Hazelton Avenue
Stockton, CA 95205
FGirardi@sjgov.org

Subject: PA-2000126 – Major Subdivision for Neighborhood D of Mountain House, Initial Study/Mitigated Negative Declaration, SCH No. 2020080263, San Joaquin County

Dear Mr. Girardi:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) for the PA-2000126 – Major Subdivision for Neighborhood D of Mountain House (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the IS/MND as a means to inform San Joaquin County Community Development Department (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 a California Endangered Species Act (CESA) Incidental Take Permit (ITP), and/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 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 (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project

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will impact CESA listed species, early consultation is encouraged, as potential 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 the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subdivision (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 Fish and Game Code section 2080.

PROJECT DESCRIPTION SUMMARY

Proponent: Shea Mountain House, LLC / Mountain House Developers / Shea Homes

Objective: A Major Subdivision application of a 13.31-acre parcel near the southern portion of Mountain House, San Joaquin County.

Location: The Project site is located east of, and adjacent to, Central Parkway; and is bounded on the north, east, south, and west by Ramsey Drive, Tradition Street, Phelps Drive, and Central Parkway; Mountain House, San Joaquin County. (APN/Address: 209-450-39/1401 South Tradition Street, Mountain House) (Supervisory District: 5)

Timeframe: Unknown

Description: The development and conversion of a 13.31-acre ruderal grassland to a residential housing area with 171 individual lots. Each lot is proposed to have a two-story single-family home built on it. Density of the development will be at 12.85 dwelling units per acre. This Project area is Parcel 'Q', or Tract 4047 of Neighborhood D and is currently zoned as residential high-medium density.

COMMENTS AND RECOMMENDATIONS

Comment 1: Environmental Setting of the Project needed to be included

The IS/MND currently does not include a description of the environmental setting. To correct this, CDFW recommends the County revise and recirculate the IS/MND to provide, in brief form, a description of the physical environmental conditions in the vicinity of the Project as an identification of the environmental setting. Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. Moreover, this is a requirement for IS/MNDs under CEQA section 15063 subsection (d)(2).

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Comment 2: Revisions needed to Section IV Biological Resources

The IS/MND indicates in Section IV, Biological Resources that subsections a through f are less-than-significant impact. CDFW does not concur with this assertion as the Project has potential significant impacts to biological resources that can be reduced to less-than-significant with mitigation incorporated. The IS/MND acknowledges this fact through the discussion regarding mitigating through the San Joaquin Multi Species Conservation Plan (SJMSCP or Plan).

To correct this, CDFW recommends revising the check boxes in these subsections to correctly reflect the use of mitigation to reduce the Project's impacts to less-than-significant and recirculating the IS/MND.

Comment 3: Revisions needed to mitigate to a level of less-than-significant in the event the SJMSCP does not approve coverage

The statement presented in the Impact Discussion in Section IV. Biological Resources of the IS/MND does not mitigate potential impacts to a level of less-than-significant. The IS/MND states that the San Joaquin Council of Governments (SJCOG) determined the Project is subject to and may participate in the Plan and that the Project Proponent has confirmed participation in the Plan; however, this information is not stated as an enforceable mitigation measure within the section. The IS/MND also does not propose or identify specific, sufficient, and enforceable mitigation in the event the SJMSCP does not approve coverage or the Proponent chooses to not participate based on this lack of an enforceable measure. Because participation in the Plan is voluntary, the IS/MND must include: 1) an evaluation and discussion of potential direct and indirect impacts of the Project to biological resources including fish, wildlife, and their habitats, 2) avoidance and minimization mitigation measures to decrease those impacts, and 3) specific and sufficient compensatory mitigation in the event the avoidance and minimization measures do not mitigate to less-than-significant or in the event the SJMSCP does not provide coverage of the Project in whole or part to mitigate to less-than-significant.

To correct this, CDFW recommends updating the IS/MND to include an impacts analysis that provides an evaluation and discussion of potential quantified impacts of the Project to biological resources including fish, wildlife, and their habitats. Based on this impact analysis, please update the section to include mitigation measures that will ensure Project impacts are less-than-significant in the event SJMSCP does not provide of coverage of the Project in whole or part, or in the event the Proponent opts-out of participation in the SJMSCP.

If the impacts analysis indicates there will be direct or indirect take of CESA-listed species, and the Project cannot fully avoid take of CESA-listed species and SJMSCP

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does not offer take coverage, then CDFW recommends the IS/MND include language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

Comment 4: Revisions needed to mitigate impacts to Swainson's hawks to a level of less-than-significant

The IS/MND does not mitigate potential impacts to Swainson's hawk (*Buteo swainsoni*) to less-than-significant because the IS/MND lacks an evaluation of impacts to Swainson's hawks and does not include mitigation measures requiring 1) pre-construction surveys conducted according to CDFW's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000) (see <https://wildlife.ca.gov/conservation/survey-protocols#377281284-birds>), 2) avoidance measures determined by CDFW if and when Swainson's hawks are discovered at or within a half-mile of the Project site, and 3) a measure requiring participation in SJMSCP if coverage is approved. The IS/MND does not define avoidance measures in the event Swainson's hawks are discovered or reduce impacts from permanent loss of foraging habitats or indirect impacts to nesting hawks from increased construction activity to a level of less-than-significant as it does not offset those impacts with a compensatory mitigation requirement. Swainson's hawks are designated as a State of California Threatened Species and impacts to the species and its habitat is prohibited without meeting certain conditions. The loss and conversion of native grasslands and agricultural lands to urbanization and orchard and vineyard agriculture is the primary threat to Swainson's hawk populations throughout California, and about 80 percent of the Central Valley population of Swainson's hawks are located with the Sacramento, San Joaquin, and Yolo counties region. The Project's potential impacts to this historically denser population is a significant impact that warrants mitigation to less-than-significant through the IS/MND.

To correct this, CDFW recommends the IS/MND be revised and recirculated to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to Swainson's hawks and their habitats according to CDFW's *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California* (1994). If impacts are identified, CDFW recommends the IS/MND be revised and recirculated to include adherence to the mitigation strategies defined in the *Staff Report* in addition to adherence to *CDFW's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000) survey protocol, or require participation in the SJMSCP if coverage is approved. If the IS/MND does not include a measure that requires participation in the SJMSCP, CDFW recommends the IS/MND be updated to include a measure requiring compensatory mitigation for impacts to Swainson's hawk nesting and foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts, as well as language defining the project's obligation to obtain take coverage through an ITP issued by CDFW.

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In the event SJMSCP does not cover the Project or the Proponent elects to not participate in the SJMSCP, CDFW recommends the following specific and enforceable measures for Swainson's hawk be incorporated into a revised and recirculated IS/MND to minimize and avoid impacts:

“Pre-Construction Surveys for Swainson’s Hawk: If work is to be conducted during the nesting season, focused surveys for active Swainson’s hawk nests shall be conducted by a qualified biologist in a manner consistent with the Recommended Timing and Methodology of Swainson’s Hawk Nesting Surveys in California’s Central Valley (2000). At least two surveys shall be completed within two survey periods immediately prior to the Project’s initiation. If a lapse in Project-related work of 15 days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. Surveys shall be conducted in all suitable habitat located at the Project work site, in staging, storage, and stockpile areas, and along transportation routes. Surveys shall be conducted within ½-mile of the Project area. If any active Swainson’s hawk nests are found within ½-mile of the Project site, CDFW shall immediately be contacted and additional survey measures may be required for Project activities.”

Comment 5: Revisions needed to mitigate impacts to burrowing owl to a level of less-than-significant

Although not identified in the IS/MND, burrowing owl (*Athene cunicularia*) has the potential to occur within the vicinity of the proposed Project.

The burrowing owl is listed by the State of California to be a Species of Special Concern, defined as a species with declining population levels, limited ranges, and/or continuing threats which make them vulnerable to extinction (<https://wildlife.ca.gov/Conservation/SSC>). Habitat loss, degradation, and fragmentation are the greatest threats to burrowing owls in California. Loss of agricultural and other open lands (such as grazed landscapes) also negatively affect burrowing owl populations. Because of their need for open habitat with low vegetation, burrowing owls are unlikely to persist in agricultural lands dominated by vineyards and orchards or urbanized lands. Also, fossorial mammal burrows are important habitat to burrowing owl.

The Project has the potential to adversely impact the species through permanent and temporary losses of nesting and foraging habitat. The Project may also result in additional impact to burrowing owl through nest abandonment, loss of young, and reduced health and vigor of chicks (resulting in reduced survival rates) and breeding and foraging disturbance through Project activities. The IS/MND should evaluate the potential for burrowing owls to be present within and adjacent to the Project area by documenting the extent of fossorial mammals that may provide burrows used by owls during the nesting and/or wintering seasons. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. If potential burrowing

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owl habitat is present, CDFW recommends that surveys be conducted following the methodology described in *Appendix D: Breeding and Non-breeding Season Surveys* of the CDFW *Staff Report on Burrowing Owl Mitigation* (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

“Pre-construction surveys for burrowing owl should be conducted by a qualified CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to ground disturbance with a final survey conducted within 24 hours prior to ground disturbance. Any impacts to burrowing owl and occupied burrows during the breeding season must be avoided. CDFW recommends that any burrows occupied during the non-breeding season by migratory or non-migratory resident burrowing owls also be avoided. CDFW recommends the IS/MND be revised and recirculated to update the IS/MND with burrowing owl habitat assessment/survey results.

If suitable burrowing owl nest sites are present within or adjacent to the Project area, then the IS/MND should include “take” avoidance and minimization measures for the owl. Please refer to the Staff Report, section on Mitigation Methods, on avoiding disturbance of occupied burrows through establishment of exclusion zones. Please be advised that CDFW does not consider exclusion of burrowing owls or “passive relocation” as a “take” avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take.” While active relocation is not considered “take” avoidance, minimization, or mitigation, if avoiding impacts to burrowing owls is not possible, active relocation of burrowing owls can be performed as a tool in conjunction with mitigation. Active relocation will require a relocation plan that includes owl banding, success criteria, long-term monitoring, management, and reporting in order to evaluate the success of this technique and determine the survival rate of relocated owls.

To ensure impacts to burrowing owls are mitigated to less-than-significant, the IS/MND should incorporate specific and enforceable avoidance and minimization measures to avoid and minimize take of burrowing owls, eggs, chicks, and nesting and foraging habitat. These measures should include: a restricted work window; biological monitoring throughout the course of the Project; and inclusion of compensatory mitigation in the form of conserved lands for burrowing owl habitat impacts. At a minimum, mitigation ratios for these habitat impacts should be at 3:1 (conservation to loss) for permanent

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impacts, and a 1:1 ratio for temporary impacts. Conserved lands for owls should include presence of burrowing owls and ground squirrel burrows, well-drained soils, abundant and available prey within proximity to burrows, as well as foraging, wintering, and dispersal areas. The location of mitigation areas for burrowing owls should be approved by CDFW prior to the start of project-related activities. Conservation lands should be placed under a Conservation Easement with CDFW listed as a third-party beneficiary and an endowment should be funded for managing the lands for the benefit of the species in perpetuity. Additionally, a long-term management plan should be prepared and implemented by a land manager and approved by CDFW. The Grantee of the Conservation Easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.”

Comment 6: Revisions needed to mitigate impacts to nesting birds to a level of less-than-significant

Section IV. Biological Resources of the IS/MND does not include nesting survey protocols or avoidance measures for nesting birds that may be utilizing the Project site prior to start of Project activities.

To ensure impacts to nesting birds are mitigated to a level of less-than-significant, CDFW recommends that the IS/MND be revised and recirculated to include the addition of the following specific and enforceable nesting bird assessment and avoidance mitigation measure in the event nesting birds are detected:

“Nesting Bird Assessment and Avoidance: Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a qualified biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The qualified biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review 48 hours prior to the initiation of the Project. If a lapse in Project activity of seven days or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the Project site shall be monitored by the qualified biologist daily throughout the duration of Project activities for changes in

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bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable.

The Permittee or representatives of the Permittee shall not disturb or destroy the nests or eggs of fully protected species or of other birds as per Fish and Game Code section 3503.”

Comment 7: Revisions needed to mitigate impacts from Project phasing to less-than-significant

The IS/MND does not include a description of timeframe or period during which construction will occur.

Project activities may have additional significant biological impacts due to Project phasing over time. Phasing and the additional impacts from phasing are not discussed, analyzed, or mitigated for in the IS/MND. Projects that include multiple phases with different sections or parcels built out at different time periods or phasing that includes whole-site grading with separate sections or parcels developed at later dates have impacts over a period longer than one year. This delay in full build out of a Project allows wildlife to utilize resources that develop post-grading on vacant sections or parcels. These resources include, but are not limited to; ruderal grassland and brush that provide nesting habitat for passerine birds and burrowing owls; infrastructure installed but not utilized that provide burrowing habitat for ground squirrels, burrowing owls, and short-eared owls; additional indirect impacts to nesting and foraging raptors with roost and nest trees adjacent to the Project site and access routes; and pooling of rainwater on parcels that provide temporary habitat for amphibians. CDFW is unable to analyze these impacts without inclusion of a description of the Project's timing and implementation in relation to site preparation, infrastructure installation, and complete buildout.

To correct this, please revise and recirculate the IS/MND with a description of the Project's phasing and estimated timeframes from start of construction to complete buildout. If the Project's timeframe from start of construction to complete build out includes breaks in construction longer than 15 days or periods of inactivity that could allow establishment of habitat elements such as burrows and vegetation, then impacts to wildlife utilizing vacant sections or parcels of the Project not built out must be included in the impacts analysis to ensure the Project mitigates impacts to less-than-significant. When and if such a delay occurs, and to ensure the Project is mitigating to less-than-significant, CDFW recommends revising the IS/MND to include a mitigation measure that meets the following criteria: 1) a qualified biologist shall conduct a habitat assessment survey to determine what potential wildlife and habitat elements are present that may be utilizing the vacant sections and/or parcels prior to Project related activities taking place

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when there is a break in these activities greater than 15 days; 2) if unbuilt or fallow sections and/or parcels are being utilized, avoidance and minimization measures (including the measures discussed in this letter) shall be used to prevent impacts and take, and if impacts and take are not fully avoidable, additional compensatory mitigation shall be discussed and agreed upon with CDFW's approval prior to the re-initiation of construction activities.

Comment 8: The IS/MND does not define floristic survey protocol

Section IV Biological Resources of the IS/MND does not include defined survey protocols for floristic surveys or require a qualified botanist to conduct the surveys.

To correct this, CDFW recommends Section IV. Biological Resources be revised and recirculated to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009), including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols.

Comment 9: CDFW recommends additional mitigation measures for Project construction be included in the IS/MND

CDFW recommends the following avoidance and minimization measures to be included in the IS/MND:

“Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a qualified biologist.

Fence and Signpost Restriction: Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

Open Trenches: Any open trenches, pits, or holes with a depth greater than one foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (i.e. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each trench, hole or pit that is capable of allowing large (i.e. deer) and small (i.e. snakes) wildlife from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of the workday any open trench, pit, or hole shall be inspected for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord or relocated by a qualified biologist.”

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ENVIRONMENTAL DATA

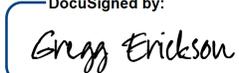
CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/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 Mr. Andrew Chambers, Environmental Scientist, at (707) 428-2002 or Andrew.Chambers@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2020080263)
Steve Mayo, San Joaquin Council of Governments – Mayo@sjcog.org