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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

Oct 15 2020

STATE CLEARINGHOUSE

October 15, 2020

Ms. Katrina Braehmer, Planner II
Sonoma County Permit and Resource Management Department
2550 Ventura Avenue
Santa Rosa, California 95403
Katrina.Braehmer@sonoma-county.org

Subject: MNS19-0003 Judge Subdivision Project, Mitigated Negative Declaration,
SCH No. 2020090337, Sonoma County

Dear Ms. Braehmer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Sonoma County (County) for the MNS19-0003 Judge Subdivision 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), 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) 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 and a Statement 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: Linda R. Judge

Objective: Subdivide a 13.11-acre parcel into two parcels, 8.11 and 5.00 acres in size. Construct a new driveway and 12-foot wide road for access to the building envelope on Lot 1.

Location: The project is located at 657 Formschlag Lane, Penngrove, California 94951 approximately 1,400 feet west of the Formschlag Lane and Petaluma Hill Road intersection in unincorporated Sonoma County. It is centered at approximately Latitude, Longitude: 38.309149, -122.672287 on Assessor Parcel Number 047-061-025.

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 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.

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Project Description

Comment 1: MND Section II Project Description and Figure 1 Tentative Map

The MND states: “No specific development proposals are included with this application” and “The applicant proposes a new driveway and 12-foot wide road for access to the building envelope on Lot 1.” It also indicates that buildings would be demolished. These statements appear inconsistent; Figure 1 Tentative Map shows additional proposed development as two proposed septic sites in Lot 1 and a proposed septic expansion area in Lot 2. Please clarify if development is proposed, describe all development features and project activities including building demolition, and depict them on an aerial-based map. This will allow CDFW and the public to understand the locations and extent of environmental impacts.

Environmental Setting and Mitigation Measures

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 U.S. Fish and Wildlife Service (USFWS)?

Comment 2: MND Section V, Page 18 and 21

The project is located within grassland habitat that may be suitable for California tiger salamander (CTS, *Ambystoma californiense*), a State and federally listed as threatened and endangered species, respectively. The MND concludes: “CTS are unlikely to occur within the project area” and Mitigation Measure BIO-4 requires the applicant to obtain an ITP from CDFW pursuant to CESA for take of CTS, unless determined to be unwarranted by CDFW.

There is potential breeding habitat within a pond approximately 0.50 miles to the east at Latitude, Longitude: 38.310570, -122.662266, and there seem to be no significant intervening barriers. Therefore, CTS could disperse from the pond onto the project site. There are other potential breeding ponds within the dispersal distance of the species, and a California Natural Diversity Database (CNDDDB) 1975 record of an adult CTS on East Railroad Avenue approximately 0.27 miles north of the project (Occurrence Number 531).

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND include:

- A thorough analysis of the potential for CTS within the project area. The MND should describe the potential for CTS occurrence at a greater likelihood based on the above information.

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- Mitigation measures such as implementing seasonal work restrictions, pre-construction surveys by a qualified biologist, and biological monitoring, in addition to the existing requirements outlined in MND Mitigation Measure BIO-4. The MND should also reference the current Santa Rosa Plain Programmatic Biological Opinion, as it was reissued this year.

Comment 3: MND Section V Biological Resources, Pages 18 and 22

The MND identifies five special-status plant species with a moderate or high potential to occur on the project site without naming the status of the plants. Mitigation Measure BIO-1 requires plant surveys if initial ground disturbance occurs during the flowering period of the special status plants, and if special status plants are observed, contacting CDFW to determine appropriate mitigation measures to avoid impacts.

Please note that CEQA does not allow formulation of mitigation measures to be deferred until some future time [Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1)(B)].

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND:

- Describe the methodology used to identify special-status plants with the potential to occur, and identify the status of each special-status plant. For California Rare Plant Rank species, Ranks 1 and 2 and in some cases 3 and 4, should be evaluated under CEQA (see <https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).
- Require surveys following CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* and include habitat that may be indirectly impacted by the project from, for example, hydrological modifications (see <https://wildlife.ca.gov/conservation/survey-protocols>). Surveys should be required during the appropriate season prior to project construction. More than one year of surveys may be necessary as conditions may not be optimal for detection in some years.
- Require an analysis of potential indirect impacts from hydrological modifications to any observed special-status plants.
- Include mitigation measures to avoid impacts to any observed special-status plants, such as a qualified biologist on-site to ensure that construction activities avoid impacts to special-status plants and delineating a buffer area around special-status plants with high visibility fencing for avoidance. If special-status plants cannot be avoided, off-site compensatory mitigation or another method to ensure impacts are mitigated to less-than-significant should be provided.

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Comment 4: MND Section V Biological Resources, Pages 21 and 23

The MND indicates that buildings would be demolished that are suitable habitat for bats but that pallid bat (*Antrozous pallidus*), a California Species of Special Concern, are unlikely to be impacted because no trees would be removed. MND Mitigation Measure BIO-3 requires pre-construction bat surveys if ground disturbance or building demolishing occurs during the bat maternity roosting season and avoiding any maternity roosts until they are no longer active.

Pallid bats are known to inhabit man-made structures and have been documented roosting in buildings in Sonoma County (CDFW California Wildlife Habitat Relationships System (CWHR).; Baker et al. 2008; Tatarian 1999). If roosting bats do not migrate in the winter months to regions where they can remain active or to hibernacula, they will typically enter winter torpor, rousing only occasionally to drink water or opportunistically feed on insects. Many bats overwinter in building roosts, particularly near and along the coast of Northern California and Southern Oregon, where winter temperatures are more temperate than further inland (Greg Tatarian, personal communication, August 13, 2020). Bats are particularly vulnerable to disturbance during hibernation, when arousal from torpor costs critical energy stores at a time when food is not available (Gervais 2016).

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND Mitigation Measure BIO-3 be replaced as follows:

- A qualified bat biologist shall conduct surveys for pallid bats prior to project construction. The survey methodology shall include an initial habitat assessment and survey **several months** before project construction, to facilitate sufficient time to implement the exclusion plan described below, and the types of equipment used for detection.
- Biologist resumes and a survey methodology shall be submitted to the County for approval prior to implementing surveys. Biologist resumes shall reflect at least two years of experience conducting bat surveys that resulted in detections of pallid bat including the project name, dates, and person who can verify the experience. Ideally, the resume should also indicate that the biologist possesses a state-issued Scientific Collecting Permit for the relevant species.
- An exclusion plan shall be submitted to the County for approval if bats are detected during the above survey. The plan shall: 1) recognize that both the maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, 2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat for the bats, such as artificial bat houses, and an associated management and monitoring plan, and

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3) be implemented prior to project construction and allow bats to leave the building unharmed.

CDFW staff may be available to assist the County with review of the above-referenced materials.

Comment 5: MND Section V Biological Resources

The project is located within grassland habitat that may be suitable for American badger (*Taxidea taxus*), a California Species of Special Concern. There are CNDDDB records of the species along Highway 101 approximately 1.8 miles west and south of the project, respectively. A single badger can dig many burrows in a single day (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). CDFW is concerned that further review of the environmental setting is needed.

The project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, project impacts to American badger would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND:

- Describe the methodology used to identify special-status wildlife with the potential to occur.
- Analyze the potential for American badger to occur at and adjacent to the project site and include a mitigation measure to ensure impacts are reduced to less-than-significant. These measures could include a qualified biologist surveying for the species including adjacent habitat prior to construction, avoiding occupied burrows including a sufficient buffer approved by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the project site.

Comment 6: MND Section V Biological Resources, Page 23

The project is located within and adjacent to grassland habitat that may be suitable foraging, overwintering, and nesting habitat for burrowing owls (*Athene cunicularia*), a California Species of Special Concern and also protected under Fish and Game Code section 3503, 3503.5, and the federal Migratory Bird Treaty Act (MBTA). The MND Mitigation Measure BIO-2 requires that if a burrowing owl or occupied burrow is found, CDFW will be contacted to determine the appropriate mitigation measure to avoid impacts on the species, which may include relocating the owl or burrow to a safe location.

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CNDDDB documents a 2002 burrowing owl approximately 2.7 miles north of the project site. 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. Therefore, project impacts to burrowing owl would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND include a mitigation measure requiring a qualified biologist to 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. Off-site habitat compensation shall also be required for any nest burrows used within the last three years that would be removed. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific conditions, and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.

Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

Comment 7: MND Page 35

The MND Mitigation Measure BIO-2 includes protective measures for nesting birds.

Recommendation: CDFW recommends the following additions to Mitigation Measure BIO-2: 1) nesting bird surveys no more than seven days before project construction begins and anytime a lapse of seven days or more in construction occurs, and 2) biological monitoring of any active nest to ensure it is not disturbed.

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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; 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# 2020090337)

REFERENCES

Baker, Michael D., Michael J. Lacki, Greg A. Falxa and others. 2008. Habitat Use of Pallid Bats in Coniferous Forests of Northern California. Northwest Science: Vol. 82, No. 4.

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