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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

Mar 12 2021

STATE CLEARINGHOUSE

March 12, 2021

Ms. Zoe Merideth
City of Antioch
Post Office Box 5007
Antioch, CA 94531
zmerideth@antiochca.gov

Subject: Deer Valley Estates Project, Draft Environmental Impact Report,
SCH No. 2020120352, City of Antioch, Contra Costa County

Dear Ms. Merideth:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from the City of Antioch (City) for the Deer Valley Estates Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the draft EIR to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

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) Permit, a Lake and Streambed Alteration (LSA) Agreement, 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

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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 Permit.

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 Fish and Game Code section 2080.

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: Blue Mountain Communities

Description and Location: The Project is located at 6100 Deer Valley Road in the southern portion of the City of Antioch, Contra Costa County, Assessor's Parcel Numbers (APN) 055-071-026 and 057-022-013. The Project involves the construction of 121 new single-family homes on the Project site, as well as open space, roadway, and utility improvements. The Project is a phase of the Deer Valley Estates Master Development Plan Project, for which an Initial Study/Mitigated Negative Declaration was adopted in 2008 (2008 IS/MND; SCH No. 2007112021).

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

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California Tiger Salamander (*Ambystoma californiense*)

California tiger salamander (CTS) is both federally listed and state listed as threatened. The draft EIR identifies suitable habitat for CTS within the Project site but determined that there would be no new impacts relative to the 2008 IS/MND and thus defers to the mitigation measures of the 2008 IS/MND. The 2008 IS/MND identified Mitigation Measures BIO-1a through 1c—which propose protocol surveys, compensatory mitigation at a ratio of 1:1 (loss:mitigation) and permits from the U.S. Fish and Wildlife Service (USFWS) for incidental take—as sufficient to reduce impacts to less-than-significant. If CTS have the potential to be on-site and take cannot be avoided, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any 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 Permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>. CDFW recommends that the City, as the Lead Agency, require the Project proponent to apply for an ITP for CTS as a condition of Project approval.

Western Burrowing Owl (*Athene cunicularia*)

Western burrowing owl is designated as a California Bird Species of Special Concern. The draft EIR states that burrowing owls are known to be present within and adjacent to the Project area but determined that there would be no new impacts relative to the 2008 IS/MND and thus defers to the mitigation measures of the 2008 IS/MND. The 2008 IS/MND identified Mitigation Measures BIO-2a through 2d—which propose protocol surveys and passive relocation to mitigate impacts to occupied burrows within the Project site—as sufficient to reduce impacts to less-than-significant. Please be advised that CDFW does not consider exclusion of burrowing owls or “passive relocation” in and of itself sufficient to reduce the permanent loss of habitat to a level of less-than-significant. 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”. If temporary or permanent exclusion and closure of burrows cannot be avoided, the Project proponent should ensure that suitable, conserved burrowing owl habitat of equal or greater value is present within 100 meters of the destroyed burrows for all exclusions. If no such habitat exists, CDFW recommends that the Project proponent be required to obtain written approval of a Burrowing Owl Exclusion and Mitigation Plan from both CDFW and USFWS as a condition of Project approval.

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The CEQA document for the Project should also include quantifiable and enforceable measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. The permanent loss of habitat for this species is considered significant in and of itself, and the draft EIR should require compensatory mitigation regardless of current level of disturbance or reconnaissance survey results. To offset this significant permanent impact to a level of less-than-significant, the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio (or a minimum mitigation ratio of 3:1 if active burrows or winter roosts are identified on-site and take cannot be avoided) as a condition of Project approval. Mitigation lands shall be within 210 meters of an active breeding colony at minimum and shall have an active breeding colony if burrowing owls will be evicted from the Project site. Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

San Joaquin Kit Fox (*Vulpes macrotis mutica*)

San Joaquin Kit Fox (SJKF) is state listed as threatened. The draft EIR identifies suitable habitat for SJKF within the Project site but determined that there would be no new impacts relative to the 2008 IS/MND and thus defers to the mitigation measures of the 2008 IS/MND. The 2008 IS/MND identified Mitigation Measures BIO-3a through 3c—which propose protocol surveys, compensatory mitigation at a ratio of 1:1 (loss:mitigation) and permits from the USFWS for incidental take—as sufficient to reduce impacts to less-than-significant.

If SJKF are identified on-site and take cannot be avoided, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any 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 Permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

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Swainson's Hawk (*Buteo swainsoni*)

Swainson's Hawk is state listed as threatened and known to nest near and forage on the Project site. The draft EIR identifies suitable habitat for Swainson's Hawk within the Project site that was not contemplated in the 2008 IS/MND. The proposed Mitigation Measure BIO-5 prescribes a nesting bird survey of suitable nesting habitat within 250 feet of the Project site no more than 14 days prior to the start of work if construction activities will occur during the bird nesting season. If raptor nests are found, Mitigation Measure BIO-5 prescribes a 250-foot protective buffer around the nest. A single nesting bird survey with a 250-foot radius around the Project site is insufficient to detect and fully mitigate impacts to Swainson's hawk nests. CDFW recommends that prior to the initiation of construction activities, the Project proponent should have a qualified biologist conduct surveys for Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. Survey methods should be closely followed by starting early in the nesting season to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted within a minimum 0.25-mile radius of the Project area or a larger area, if necessary, to identify potentially impacted active nests. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.25-mile protective buffer should be maintained around the nest until the young fledge. The protective buffer should be clearly marked and be an area where no Project-related activities or personnel are allowed while in place. If the 0.5-mile buffer must be reduced the Project proponent should be required to obtain a CESA ITP as a condition of Project approval.

If Swainson's hawk activity (foraging, not just nests) is identified on or near the Project site, the Project proponent should mitigate for the permanent loss of foraging habitat at a minimum of a 1:1 mitigation ratio (mitigation:loss). Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

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Nesting Bird Surveys

Mitigation Measure BIO-5 indicates nesting bird surveys will be conducted no more than 14 days prior to the initiation of construction activities. For many birds, 14 days is more than enough time to establish a nest and begin rearing young. Therefore, CDFW recommends that nesting bird surveys are conducted no more than **5 days** prior to the initiation of construction. If construction activities lapse for a period of 7 days or more during the nesting bird season, another nesting bird survey should be conducted no more than 5 days prior to the re-initiation of construction activities.

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, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or Jennifer.Rippert@wildlife.ca.gov; or Ms. Melissa Farinha, Acting Environmental Program Manager, at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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