



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 9, 2021

Governor's Office of Planning & Research

September 10 2021

STATE CLEARINGHOUSE

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

Subject: Windsor Chevron Station, Mitigated Negative Declaration,
SCH No. 2021080159, 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 Windsor Chevron Station (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 ITP 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

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 2

mitigation measures may be required in order to obtain a CESA ITP. **Surveys were conducted for special-status plants including Sebastopol meadowfoam (*Limnanthes vinculans*), Burke's goldfields (*Lasthenia burkei*) and Sonoma sunshine (*Blennosperma bakeri*), CESA listed as endangered species, with negative findings. CDFW requests additional information to support the negative findings as described in further detail below.**

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 and a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC 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: Redwood Oil Company

Objective: Demolish the existing 2,300-square-foot convenience store and car wash building, as well as one existing signage island. A new 5,475-square-foot convenience store and restaurant building would be constructed on the adjacent vacant lot. Two additional pumps would be added to the existing six-station fueling area, and a canopy extension would be constructed over the new pumps. The project would result in an increase of impervious surfaces from 23,592 square feet to 25,392 square feet; landscaping of 2,426 square feet to 17,246.12 square feet; and building coverage of 5,321 square feet to 12,960 square feet.

The project would also include a 9,500-square-foot easement on the northwestern edge of the property for a future pedestrian promenade and overhead pedestrian bridge. This

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 3

easement would include maintenance clearing of 1,720 square feet between the edge of the future overhead pedestrian bridge and the development, which would result in a 10-foot setback.

Location: The project is located at 9120 and 9200 Old Redwood Highway; approximately 300 feet north of the intersection of Old Redwood Highway and Windsor River Road, in the Town of Windsor, Sonoma County. It is on Assessor Parcel Numbers 161-070-034 and 161-070-035 and centered at approximate coordinates 38.54852°, - 122.8107°.

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 implementation of CDFW's below recommendations, CDFW concludes that an MND is appropriate for the project.

Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Environmental Setting

Comment 1: MND Attachment B

Issue: According to the MND, the project is located within and adjacent to mesic grassland habitat supporting wetlands. Such habitat may support Sebastopol meadowfoam, Burke's goldfields and Sonoma sunshine, CESA and federally listed as endangered species. Special-status plant surveys were conducted March 13, April 27, and May 22 in 2015 and April 4, April 17, and May 7, 2018. While the Appendix B Biological Assessment states that the surveys were conducted following the U.S Fish and Wildlife Service (USFWS) and CDFW protocols, not enough information regarding survey methodology is presented to determine the degree of conformance with the aforementioned protocols.

Recommendation: To adequately describe the environmental setting and reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure.

Prior to the initiation of project activities, the project proponent shall provide CDFW with reports for at least two years of botanical surveys at the project site and any adjacent habitat in conformance with CDFW's 2018 *Protocols for Surveying and*

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 4

Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities for CDFW review and written approval (see: <https://wildlife.ca.gov/Conservation/Plants>). If CESA listed plants are detected and may be impacted by the project, including Sebastopol meadowfoam, Burke's goldfields, and Sonoma sunshine, or if CDFW is unable to accept the survey results in writing, the project applicant shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP. Impacts may include direct and indirect impacts (e.g., hydrological modifications).

The project proponent shall obtain authorization from USFWS for impacts to suitable habitat for federally listed plant species. Impacts to unoccupied suitable habitat shall be mitigated according to the Santa Rosa Plain Conservation Strategy and 2020 USFWS programmatic Biological Opinion for projects on the Santa Rosa Plain, which require a 1:5:1 ratio for mitigation within the same core area as the impact, and a 3:1 ratio if within a different core area. Impacts to occupied habitat may require a different mitigation ratio.

Please be advised that for CDFW to accept the results of the two years of surveys, they must be completed in conformance with the CDFW protocol survey requirements, including but not limited to conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts. Surveys conducted during drought conditions may not be acceptable.

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 USFWS?

Mitigation Measures

Comment 2: MND Page 33

Issue: The project would result in removal of trees and buildings that may support roosting special-status and common bat species, such as pallid bat (*Antrozous pallidus*), a California Species of Special Concern. The MND Mitigation Measure (MM) 4.4 requires a pre-construction survey and other protection measures for bats; however, these may not be adequate.

Recommendation: To reduce impacts to less-than-significant, CDFW recommends that MND MM 4.4 be replaced with the following mitigation measure.

Prior to any tree or building removal, a qualified biologist with demonstrated substantial experience surveying for bats shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 5

to tree or building removal and shall include a visual inspection of potential roosting features. (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species).

If bats are detected in a building that will be removed, an exclusion plan shall be submitted to the Town for approval and then implemented. The Town shall seek CDFW's input on the exclusion plan. The plan shall recognize that both the maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm, and (2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat, such as artificial bat houses, prior to project construction, and include an associated management and monitoring plan with implementation funding. Bat exclusion devices shall be installed as late in the day as possible (ideally after evening emergence) and consist of materials allowing one-way egress such that bats may exit the roost but not re-enter.

If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. Trees may be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergency surveys or complete visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed. If a bat roosting or maternity colony cannot be avoided, the project shall prepare and implemented a bat mitigation and monitoring plan approved by CDFW.

Environmental Setting

Comment 3: MND Attachment B

Issue: The Biological Assessment and MND do not describe potential impacts to western burrowing owl (*Athene cunicularia*) as a result of project activities. The project is within the wintering distribution of burrowing owl and within grasslands that may be suitable foraging and wintering habitat for the species (Klute et al. 2003). The MND

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 6

indicates that the project contains burrowing owl foraging but suitable burrows were not observed during surveys conducted in 2020. However, suitable burrows may be excavated within a single day by fossorial mammals. Therefore, burrowing owls could occupy the project site or adjacent habitat prior to project construction.

The California Natural Diversity Database (CNDDDB) documents a burrowing owl observed in 2017 approximately two miles south of the project site, confirming the species has occurred in the vicinity of the project site and could occupy suitable refugia in and adjacent to it.

Specific impacts and why they may occur and be potentially significant: The project may result in reduced health and vigor, or mortality, of owls resulting from removal of wintering burrows, or wintering burrow abandonment caused by audio and visual disturbances from project construction activities. Burrowing owl is a California Species of Special Concern and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act (Klute et al. 2003). 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: (1) further analyze the potential for burrowing owl to occur on and adjacent to the project site, and (2) include a mitigation measure requiring a qualified biologist to conduct a habitat assessment, and surveys if habitat is present, following the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report) habitat assessment and survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) prior to project activities occurring during the burrowing owl wintering season from September 1 to January 31. The habitat assessment and surveys shall encompass the project site and a sufficient buffer zone (up to 500 meters or 1,640 feet) to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent surveys, as determined by a qualified biologist, 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. 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

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 7

a conservation easement and preparation and implementation of a long-term management plan.

Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Mitigation

Comment 4: MND Page 33

Issue: The MND identifies 0.015 acres of permanent impacts to an intermittent stream (referred to as drainage ditch in the MND). MM 4.5 notes “the project applicant shall ensure that the project will result in no net loss of federally protected waters through impact avoidance, impact minimization, and/or compensatory mitigation, as determined in Clean Water Act Section 404 and 401 permits and/or a [Fish and Game Code] 1602 Streambed Alteration Agreement,” but does not explicitly require notification to CDFW of Lake or Streambed Alteration. Permanent impacts to the drainage may be substantial and therefore would be subject to notification pursuant to Fish and Game Code section 1600 et seq.

Recommendation: To reduce impacts to less-than-significant, CDFW recommends that the MND include a mitigation measure requiring the project proponent to submit an LSA Notification to CDFW pursuant to Fish and Game Code section 1600 et seq. and comply with the LSA Agreement if issued, *prior* to the initiation of project activities. Please be advised that an LSA Agreement would likely include the recommendations in this letter, as applicable.

Impacts to stream or riparian habitat shall be mitigated at the below mitigation to impact ratios.

- 1:1 restoration based on area and linear feet for temporary impacts
- 3:1 restoration based on area and linear feet for permanent impacts

Habitat restoration shall occur on-site or as close to the site as possible within the same stream or watershed, and may consist of restoration or enhancement of riparian habitat. If mitigation is not possible within the same stream or watershed, mitigation ratios may increase at the discretion of CDFW.

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?

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 8

Mitigation

Comment 5: MND Page 32

Issue: Project activities could have significant impacts on nesting birds if they are conducted during the nesting bird season (identified as February 1 through September 15 in the MND). MND MM 4.2 requires preconstruction nesting surveys 14 days prior to the initiation of construction and shall be repeated if construction activities are delayed for more than 30 days. For many passerines, 14 days is more than enough time to establish a nest; therefore, impacts to active nests may not be mitigated to less-than-significant by surveys at 14- or 30-day intervals prior to construction.

MND MM 4.2 also prescribes a 250-foot setback for all active raptor nests and a 150-foot setback for all active migratory bird nest sites. Depending on the species, nest stage, and site conditions (e.g., line of sight, type and proximity of activities conducted, baseline ambient noise), 250 feet may not be sufficient to prevent disturbance-related nest failure.

Recommendation: To ensure impacts are reduced to less-than-significant, CDFW recommends that MND MM 4.2 require nesting bird surveys to be conducted no more than seven days prior to the initiation of project activities. Surveys should be repeated if there is a lapse in project activities of seven days or more. No-disturbance nest buffers should be determined by a CDFW approved qualified biologist based on species, nest stage, and site conditions. Nests shall be monitored daily during project-related activities by a qualified biologist to determine the sufficiency of the buffer and whether it should be expanded to protect the nest based on disruptions to an individual bird's natural nesting behaviors.

Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Mitigation

Comment 6: MND Page 33

Issue: Project activities could have significant impacts to trees, including oak species (*Quercus* sp.). MND MM 4.6 requires compliance with the Town of Windsor Tree Preservation and Protection Ordinance and other protection measures for oak trees, however these may not be adequate to mitigate impacts to less-than-significant.

Recommendation: To reduce impacts to less-than-significant, CDFW recommends that the following language be incorporated into MND MM 4.6.

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 9

Trees removed or impacted as a result of the project shall be replaced pursuant to the below mitigation to impact ratios.

Oak trees:

- 3:1 replacement for trees 5 to 8 inches diameter at breast height (DBH)
- 5:1 replacement for trees 8 inches to 16 inches DBH
- 15:1 replacement for trees greater than 16-inch DBH, which are considered old-growth oaks

Replacement oaks shall come from nursery stock grown from locally sourced acorns, preferably from the same watershed in which they are planted.

Other trees:

- 1:1 replacement for non-native trees
- 3:1 replacement for trees up to 6-inch DBH
- 6:1 replacement for trees greater than 6-inch DBH

Planted trees shall be monitored for a minimum of five years to ensure survival. The trees must survive the last two years of the minimum five-year monitoring period without irrigation. Replanted trees shall have the same five-year monitoring requirements.

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 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>.

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).

Ms. Kim Voge
Town of Windsor
September 9, 2021
Page 10

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. Jennifer Rippert, Senior Environmental Scientist (Specialist), at Jennifer.Rippert@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

CF047D7F8D234E1...
Stephanie Fong
Acting Regional Manager
Bay Delta Region

ec: State Clearinghouse (SCH No 2021080159.)
Vincent Griego, U.S. Fish and Wildlife Service, Vincent.Griego@fws.gov

REFERENCES

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTP-R6001-2003, Washington, D.C