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

March 3, 2022

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STATE CLEARINGHOUSE

Ms. Hannah Spencer, Supervising Planner
Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403
Hannah.Spencer@sonoma-county.org

Subject: MNS18-0004 Chalk Vista Minor Subdivision, Mitigated Negative Declaration, SCH No. 2022020177, Sonoma County

Dear Ms. Spencer:

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 MNS18-004 Chalk Vista Minor Subdivision (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. **The project has the potential to result in take of Sebastopol meadowfoam (*Limnanthes vinculans*), Burke's goldfields (*Lasthenia burkei*) and Sonoma sunshine (*Blennosperma bakeri*), CESA listed as endangered species, as described in further detail below.** Issuance

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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 mitigation measures may be required in order to obtain a CESA ITP.

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. **The project would impact a drainage and riparian habitat, and CDFW appreciates that the MND includes a mitigation measure indicating that the project would obtain an LSA Agreement from CDFW, however an LSA Notification should be clearly required as further described below.** 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: Cort Munselle

Objective: Subdivide the existing 38-acre undeveloped parcel into three parcels: Parcel 1 at 11.92 acres, Parcel 2 at 10.78 acres, and Parcel 3 at 15.34 acres. Additional project elements include the proposed construction of two septic lines and one culvert upgrade associated with the development of a 650-foot private roadway to provide access to each of the three parcels.

Location: The project is located at 1276 Jenson Lane, in the Town of Windsor, Sonoma County. It is on Assessor Parcel Number 162-020-007 and centered at approximate coordinates 38.55319°, -122.78184°.

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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.

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 pages 18-21; Biological Assessment pages 3, 7-16

Issue: According to the MND, the project is located within grassland habitats adjacent to wetlands. Wetlands provide habitat that may support Sebastopol meadowfoam, Burke's goldfields, and Sonoma Sunshine, CESA and federally listed as endangered species. Though a reconnaissance survey was conducted on July 12, 2017 with a negative finding for special-status plant species, the Biological Assessment (BA) indicates that this site visit did not constitute a protocol-level survey. The MND identifies 12 special-status plants, in addition to the species listed above, that have a moderate potential to occur onsite, and prescribes Mitigation Measure BIO-1, which requires a rare plant survey for those species. CDFW's 2018 Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities specifies that "botanical field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. 'Focused surveys' that are limited to habitats known to support special status plants or that are restricted to lists of potential special status plants are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special-status plants." Surveys should be broad enough to identify both direct and indirect impacts (e.g., hydrological modifications, herbicide application, and invasive species) as a result of project activities.

Additionally, BIO-1 states "if special-status plants are observed, their locations shall be mapped and CDFW shall be contacted to determine the appropriate mitigation measure to avoid impacts on the species." The MND should include fully enforceable measures to mitigate potentially significant impacts and should not defer these measures to a future time (CEQA Guidelines, § 15126.4).

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Recommendation: To adequately describe the environmental setting and reduce impacts to less-than-significant, CDFW recommends revising Mitigation Measure BIO-1 to include the following language.

Prior to the initiation of project activities, the project proponent shall conduct botanical surveys for special-status plants at the project site, and adjacent to the project if indirect offsite impacts may occur, in conformance with CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (see: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>) to determine if special-status plants are present or substantiate absence of these species. Surveys shall be conducted during appropriate conditions and more than one year of surveys may be necessary per the protocol. If non-CESA listed special-status plants, including but not limited to California Rare Plant Rank plants, are detected and may be impacted by project activities, the project proponent shall mitigate offsite for impacts at a 3:1 mitigation to impact ratio. Mitigation lands shall be occupied by the impacted species, protected in perpetuity under a conservation easement, and managed in perpetuity through an endowment with an appointed land manager.

To avoid impacts to CESA listed plants including Sebastopol meadowfoam, Burke's goldfields and Sonoma Sunshine, the project shall avoid direct impacts to on-site and off-site wetlands by implementing a clearly marked minimum 50-foot non-disturbance buffer. Prior to the initiation of project activities, the project shall provide CDFW with a hydrological assessment of the site to determine if on-site and off-site wetlands may be indirectly impacted by project activities, and obtain CDFW's written acceptance of the assessment. If indirect impacts to wetlands cannot be avoided, botanical surveys shall be expanded to encompass all impacted wetlands on-site and off-site, and shall be conducted for at least two years to be consistent with the Santa Rosa Plain Conservation Strategy Appendix D (see: <https://www.fws.gov/sacramento/es/Recovery-Planning/Santa-Rosa/santa-rosa-strategy.php>). If CESA listed plants are detected or if CDFW is unable to accept the survey results, the project shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP, including but not limited to providing compensatory habitat mitigation. In addition, the project shall obtain authorization from the U.S. Fish and Wildlife Service (USFWS) for impacts to federally listed plant species.

Impacts to unoccupied suitable habitat for federally listed plant species 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 requires 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 requiring an ITP may require a different mitigation ratio.

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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 Measures

Comment 2: MND, pages 26-28

Issue: The MND page 29 states: “the project is designed to avoid streams and wetlands”, however on page 27 the MND indicates that the project would obtain permits from CDFW, Army Corps of Engineers, and Regional Water Quality Control Board for impacts to aquatic habitat. The MND should clearly describe if any streams or associated riparian habitat or wetlands would be impacted by the project.

Recommendation: For project activities that may substantially alter the bed, bank, or channel of streams, including associated riparian habitat and connected wetlands, Mitigation Measure BIO-3 should be revised to clearly require the project to submit an LSA Notification to CDFW pursuant to Fish and Game Code section 1602 prior to project construction. If CDFW determines that an LSA Agreement is warranted, the project shall comply with all required measures in the LSA Agreement, including but not limited to requirements to mitigate impacts to stream and riparian habitat and protect special-status and other species that may be impacted. Permanent impacts to stream and riparian habitat shall be mitigated by restoration of riparian habitat at a minimum 3:1 mitigation to impact ratio based on acreage and linear distance as close to the project site as possible and within the same watershed. Temporary impacts shall be restored on-site in the same year as the impact.

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?

Environmental Setting

Comment 3: MND and BA

Issue: The BA and MND do not describe potential impacts to western burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC), as a result of project activities. The project is within the wintering distribution of burrowing owl and within and adjacent to grasslands that may be suitable foraging and wintering habitat for the species (Klute et al. 2003). There is a California Natural Diversity Database (CNDDB) 2017 documented occurrence of burrowing owl approximately 2.8 miles southwest of the project.

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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 an SSC and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act (Klute et al. 2003). Therefore, these project impacts to burrowing owl would be potentially significant if burrowing owl occupied the project site or adjacent habitat.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) 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 a conservation easement and preparation and implementation of a long-term management plan.

Comment 4: BA, page 12

Issue: The project is within and adjacent to grassland habitat that may be suitable to support American badger (*Taxidea taxus*), an SSC and the BA acknowledges potential for American badger to occur within the project site; however, the MND does not analyze potential impacts to badgers. The CNDDDB documents an American badger observed in 2011 approximately 4.6 miles northeast of the project site. This record

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confirms the species has occurred in the vicinity of the project site and could use it and adjacent habitat.

The project may result in injury or mortality to adult or young badgers, or burrow abandonment. American badger is an SSC. Therefore, these project impacts to American badger would be potentially significant if American badger occupied the project site or adjacent habitat.

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 American badger to occur on and adjacent to the project site, and (2) include mitigation measures to ensure impacts are reduced to less-than-significant. These measures may 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.

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 CNNDDB 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).

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.

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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 (707) 799-4210; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

ec: State Clearinghouse (SCH No. 2022020177)

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.