



DEPARTMENT OF FISH AND WILDLIFE

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June 21, 2024

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Subject: Tuscan Ridge Planned Development Project
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2022020536

Dear Mark Michelena;

The California Department of Fish and Wildlife (Department) received and reviewed the DEIR from Butte County Development Services (County) for the Tuscan Ridge Planned Development Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on Projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species

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protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Program, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project is located at 3100 Skyway Road on what was formerly the Tuscan Ridge Golf Course, located on the southeast side of Skyway in an unincorporated area of Butte County, between Chico and Paradise, California, and is identified by Assessor's Parcel Numbers 040-520-104 through -111.

The Project consists of a Planned Development and Vesting Tentative Subdivision Map to subdivide the parcels into 165 single-family residential lots, six commercial use lots, with 36.7 acres of open space, 4.1 acres of landscaped areas, 20.5 acres of roadway, and 49 acres of special utility district associated with the on-site water and sewer systems. As currently designed, the proposed commercial uses would include an approximately 3,600-square-foot (sf) gas station/convenience store with up to 16 fuel dispensers and up to approximately 76,000 sf of commercial space, across one- and two-story buildings, along the primary site entrance, as well as a mini-storage use with outdoor RV and boat storage in the eastern portion of the project site. The proposed Project would require County approval of a Planned Development Rezone, Vesting Tentative Subdivision Map, and a Minor Use Permit for development within the Scenic Highway Overlay Zone.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Lead Agency in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

Comment 1. Crotch's Bumblebee

Crotch's Bumblebee (CBB) (*Bombus crotchii*) is currently a candidate species under the CESA. As a candidate species, it receives the same legal protections afforded to CESA-listed endangered and threatened species. The DEIR should include an analysis of the potential presence of this species within the project site beyond the potential to occur table when suitable foraging habitat is known to occur throughout the area between known occurrences and the area of proposed disturbance. Without appropriate avoidance and minimization measures for CBB and its habitat, project-related activities

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involving ground and vegetation disturbance could result in significant impacts, including loss of foraging resources, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young, and/or queens, and direct mortality of individuals. CDFW recommends CBB specific surveys be conducted by qualified biologists possessing CESA take authorization (i.e., CESA Memorandum of Understanding, Fish and G. Code, § 2081(a)), specific to CBB surveys, to determine if this species is present within the project site. The timing and number of the surveys should be appropriate to make a valid determination of presence or absence. CDFW believes a single survey for this species would not be sufficient to determine presence/absence and recommends utilizing the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species for guidance on developing survey protocols (CDFW 2023). CDFW recommends the DEIR analyze the project's potentially significant impacts if the species is determined to be present during surveys and propose additional avoidance, minimization, and mitigation measures to reduce impacts to a less-than significant level. Measures may include, but are not limited to, the following: multiple field surveys to determine bumble bee presence and site utilization for nesting and foraging habitat, avoidance of nesting sites and foraging habitat, timing of grading, or planting of pollinator plant species.

Comment 2. Oak Woodlands

Based on the Arborist report for the Project, the parcel proposed for development contains 13.4 acres of mature blue oak woodland with a total of 748 blue oak trees (*Quercus douglasii*), 7 interior live oak (*Quercus wislizeni*), and 74 California foothill pine trees (*Pinus sabiniana*). The blue oak woodland on site has been fragmented due to previous site development and fire. Blue oak woodland is an endemic, CDFW-designated sensitive natural community. Sensitive natural communities have limited distribution and are often vulnerable to project impacts (CDFW 2018). The Project proposed the removal of 322 blue oak trees, 2 interior live oak and 42 California foothill pine trees with the following mitigation proposed: *All native trees with a diameter at breast height (DBH) 5 inches or greater shall be replaced at a 3:1 ratio. Trees shall be sourced from seed stock within the planting site's watershed (preferred) or County to the extent practicable. If container grown trees that were grown from seed sources located in the southern Cascade foothills.*

These mitigation ratios are inadequate for the replacement of mature native oak trees. Oak trees typically have a very slow growth rate. The mitigation ratios proposed by the DEIR, would not adequately replace the habitat value that would be lost as a result of the removal of these tree species, especially since the proposed project area and the surrounding land have already been significantly stressed from surrounding development and the Camp Fire. There would be a temporal loss of this habitat, due to the replacement oak trees not reaching comparable size and structure until many decades or more. CDFW recommends the DEIR provide mitigation at a ratio of 10:1 to compensate for loss of blue oak woodlands. In addition, the DEIR should include specifics of where the mitigation trees will be planted and establish success criteria for

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mitigation plantings. CDFW recommends these oak mitigation areas be permanently protected via a conservation easement to ensure the perpetual existence of oak woodland within the Project site.

Additionally, the DEIR defers the mitigation for impacts to blue oak woodlands and the removal of mature trees based on future unspecified success criteria for onsite restoration. CEQA Guidelines §15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. Because there are no specified success criteria for the onsite restoration, the mitigation measure is unenforceable and may not reduce the impacts to biological resources to a less-than-significant level. The mitigation measure should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measure should also describe when it will be implemented and explain why it is feasible. Therefore, CDFW recommends that the DEIR include measures that are enforceable and do not defer the details of the mitigation to the future.

Comment 3. Migratory Birds, Birds of Prey, Fully Protected Birds

The Project may result in adverse impacts to several species of songbirds and migratory ground-nesting raptors such as the western burrowing owl (*Athene cunicularia*) (Species of Special Concern), western horned lark (*Eremophila alpestris*), northern harrier (*Circus cyaneus*), and western meadowlark (*Sturnella neglecta*). Grassland foraging migratory birds that may be impacted include the white-tailed kite (*Elanus leucurus*) (Fully Protected) and northern shrike (*Lanius excubitor*).

Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implements the MBTA per Fish and Game Code, section 3513. Fish and Game Code, sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Additionally, Fish and Game Code, section 3511, prohibits take of birds designated as Fully Protected.

Potential habitat for nesting birds, birds of prey and Fully Protected birds is present within the Project area. The environmental document should disclose all potential activities that may have direct or indirect take to nongame native nesting birds within the project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the document. Measures to avoid the impacts should include nesting bird surveys, species specific work windows, biological monitoring, and installation of noise attenuation barriers.

Comment 4. Impacts to Hydrologic Features and Associated Habitats

The DEIR identified one ephemeral drainage, though it is not clear if that is the only hydrologic feature within the Project footprint. The environmental analysis should

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identify all perennial, intermittent, and ephemeral rivers, streams, and lakes within the Project footprint and any habitats supported by these features such as wetlands and riparian habitats. The environmental document should identify any potential impacts to fish and wildlife resources dependent on those hydrologic features and estimate the footprint area that will be temporarily and/or permanently impacted by the proposed Project, by hydrologic feature and habitat type. Notification to CDFW may be required pursuant to Fish and Game Code section 1602, if the Project proposes to: divert, obstruct, or change the natural flow or the bed, channel or bank of any river, stream, or lake; use material from a streambed; or result in the disposal or deposition of debris, waste, or other material where it may pass into any river, stream, or lake. In these cases, the environmental document should propose mitigation measures to avoid, minimize, and mitigate impacts to fish and wildlife resources.

If upon review of an entity's notification, CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the EIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. All LSA Notification types must be submitted online through CDFW's Environmental Permit Information Management System (EPIMS). For more information about EPIMS, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>. More information about LSA Notifications, paper forms and fees may be found at <https://www.wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, CDFW does not recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction (such as United States Army Corps of Engineers) when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

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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 can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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 & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to provide comments on the DEIR for the Project to assist the County in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. If you have any questions, please contact Brooks Taylor, Senior Environmental Scientist (Specialist), at (916) 907-3782 or brooks.taylor@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

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California Department of Fish and Wildlife

REFERENCES

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>. Accessed June 2024.

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>. Accessed June 2024.