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April 14, 2022

Ms. Lezanne Jeffs
Santa Cruz County Planning Department
701 Ocean Street, 4th Floor
Santa Cruz, CA 95060
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Subject: 9041 Soquel Drive, Aptos, Mitigated Negative Declaration, SCH No. 2022030430, Santa Cruz County

Dear Ms. Jeffs:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) prepared by the Santa Cruz County Planning Department (County) for the 9041 Soquel Drive, Aptos Project (Project), located in Santa Cruz County. CDFW is submitting comments on the MND regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines § 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological 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), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

California Endangered Species Act

Please be advised that a CESA Permit 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 Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and CEQA Guidelines §§ 15380, 15064, 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, § 2080.

Fully Protected Species

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take, except for collecting these species for necessary scientific research and relocation of a fully protected bird species for the protection of livestock. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under the provisions of a Natural Communities Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding for scientific research purposes. "Scientific Research" does not include an action taken as part of specified mitigation for a project, as defined in § 21065 of the Public Resources Code.

Lake and Streambed Alteration Program

The Project has the potential to impact resources including but not limited to Valencia Creek. Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code, § 1600 et. seq.) for any Project-related activities that will 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. CDFW considers work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the Responsible Agency.

PROJECT DESCRIPTION

The Project consists of the construction of a 10,981-square-foot three-story, mixed-use building which will include an office space on the first floor, residential units on the second floor, and a basement below. The Project will include carports underneath the building and a parking lot with a retaining wall on the eastern side of the parcel.

ENVIRONMENTAL SETTING AND LOCATION

The Project is located at 9041 Soquel Drive in the community of Aptos, just north of Highway One between Rio Del Mar Boulevard and Trout Gulch Road, in unincorporated Santa Cruz County. The surrounding neighborhood consists of small-scale commercial businesses and residential units. The parcel is approximately 32,000 square feet. The

site is mostly flat except for a 50% slope where Valencia Creek crossed the northern end of the parcel.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following 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 biological resources.

COMMENT 1: Riparian Encroachment

Issue: The MND states that the proposed parking area and associated retaining wall will be located within the riparian corridor where the parcels slopes toward Valencia Creek. Although the MND states that no riparian vegetation will be removed, encroaching into the riparian corridor can negatively impact sensitive species that rely on an appropriately sized riparian buffer between development and the stream zone. Valencia creek supports federally threatened steelhead – central California coast DPS (*Oncorhynchus mykiss irideus* pop. 8), which relies on the riparian zone for cool water temperatures, low turbidity, and invertebrate food sources. Encroaching on the riparian zone may also lead to deleterious materials, including wastewater discharge and other pollutants, entering the stream.

Because natural stream processes are complex and dynamic, development too close to stream channels can result in threats to property from erosion due to lateral and/or vertical channel adjustments over time. Incorporation of a sufficient riparian buffer into the Project design is necessary to avoid the potential need for stream channel stabilization solutions in the long-term. CDFW discourages use of hardscape material such as cement retaining walls in streams as a result of insufficient riparian buffer set-backs.

Evidence the impact would be significant: Riparian habitats are importance to watershed integrity because they perform many ecological functions such as enhancing water quality/quantity, biodiversity, habitat connectivity, and flood capacity. Impacts to riparian habitats have potential to cause a wide range of adverse effects to fish and wildlife resources for the following reasons.

Remaining riparian habitat is substantially reduced from historic levels. An estimated 2 to 7 percent of California's habitat remains unconverted to other land uses (Katibah 1984, Dawdy 1989). Development within and adjacent to riparian habitat areas is a principal cause of habitat loss and degradation. Loss and degradation of additional riparian habitat occurs in the context of cumulatively significant losses.

Riparian vegetation improves stream water quality by removing sediment, organic and inorganic nutrients, and toxic materials (Belt and O'Laughlin 1994, Mitsch and Gosselink

2000, USDA 2000, Mayer et al. 2006). Riparian buffers help keep pollutants from entering adjacent waters through a combination of processes including dilution, sequestration by plants and microbes, biodegradation, chemical degradation, volatilization, and entrapment within soil particles. As buffer width increases, the effectiveness of removing pollutants from surface water runoff increases (Castelle et al. 1992). There is substantial evidence showing narrow buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers (Castelle et al. 1992, Brosofske et al. 1997, Dong et al. 1998, Kiffney et al. 2003, Moore et al. 2005).

Riparian trees and vegetation, and associated floodplains provide many essential benefits to stream and river fish habitat (Moyle 2002, CDFG 2007). Riparian forests provide thermal protection, shade, and large woody debris. Large woody debris stabilizes substrate, provides shelter and cover from predators, facilitates pool establishment and maintenance, maintains spawning bed integrity, and creates habitat for aquatic invertebrate prey. Riparian areas also provide critical fish habitat in the form of off-channel and back-water winter-rearing sites and floodwater refugia (CDFG 2007). Few fishes have been more significantly impacted by loss and alteration of habitat than Pacific salmon and anadromous trout (Moyle 2002).

Riparian habitats also contribute to bank stability and provide flood protection. Development which includes increases in impervious surfaces and installation of stormwater systems and storm drain outfalls can modify natural streamflow patterns by increasing the magnitude and frequency of high flow events and storm flows (Hollis 1975, Konrad and Booth 2005). Riparian habitat and adjacent wetlands and floodplains are critical to lessening these impacts because they store and meter floodwaters, recharge groundwater aquifers, trap sediment, filter pollution, help minimize erosion, lessen peak flow velocities, and protect against storm surges (Mitsch and Gosselink 2000, Tockner et al. 2008). In doing so, they protect adjacent upland, down-stream, and coastal properties from loss and damage during flooding and help maintain surface and groundwater during summer months.

In addition to direct habitat loss, development adjacent to a riparian zone has three principal indirect effects: 1) fragmentation of habitat into smaller, non-contiguous areas of less-functional habitat by structures, roads, driveways, yards and associated facilities; 2) the introduction or increased prevalence of exotic species or species that are habitat generalists, termed “human adapted” or “urban exploiters,” and 3) decreases in native species abundance and biodiversity and the loss of “human-sensitive” species that require natural habitats (Davies et al. 2001, Hansen et al. 2005, CDFG 2007).

Recommendation: CDFW recommends that the Project establish and the MND incorporate a riparian buffer zone and limit development outside of the riparian area. CDFW is available to coordinate with the County to determine appropriate site-specific

buffer riparian buffer to limit impacts to sensitive species. At a minimum, CDFW recommends a 50-foot riparian buffer as measure from the top of streambank to the nearest Project infrastructure.

COMMENT 2: Dudley's Lousewort

Issue: The MND does not disclose how the surveys were conducted for Dudley's lousewort (*Pedicularis dudleyi*). The MND states that multiple site visits were conducted in 2020 and 2021 to determine the presence of sensitive species. While CDFW commends the County for conducting site visits over multiple years, it is important that an appropriate survey protocol was followed to accurately determine presence on-site, which includes conducting surveys during the blooming period of the species.

Recommendation: CDFW recommends the County specify when the sites visits were conducted and the survey protocol that was followed to determine presence of Dudley's lousewort. CDFW recommends that surveys are conducted according to: *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (CDFW 2018), available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline.

COMMENT 3: Nesting Birds

Issue: The MND does not include minimization or avoidance measures addressing impacts to nesting birds from Project construction related disturbances.

Evidence the impact would be significant: Grading, vegetation removal, and other ground disturbances could result in direct mortality, disturbance to breeding behavior, or nest abandonment. Noise can impact bird behavior by masking signals used for bird communication, mating, and hunting (Bottalico et al., 2015). Birds hearing can also be damaged from noise and impair the ability of birds to find or attract a mate and prevent parents from hearing calling young (Ortega, 2012). All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. § 10.13). Sections 3503, 3503.5 and 3513 of the Fish and Game Code prohibit take of birds and their active nests, including raptors and other migratory nongame birds as listed under the MBTA. The Project would include grading activities directly adjacent to a vegetated riparian zone which may directly impact, or indirectly impact through habitat modifications, native bird species, which would be considered significant.

Recommendation: To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures into the Project's MND, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1 Nesting Bird Surveys: If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist shall conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day and during appropriate nesting times.

Recommended Mitigation Measure 2 Active Nest Buffers: If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, a species appropriate buffer between the nest and active construction shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist shall have the authority to cease all construction work in the area until the young have fledged, and the nest is no longer active.

COMMENT 4: Santa Cruz Long-Toed Salamander

Issue: The MND does not discuss the potential for Santa Cruz long-toed salamander *mbystoma macrodactylum croceum;* SCLTS) presence on-site even though the Valencia SCLTS breeding pond is approximately 0.5 miles from the Project site and within dispersal distance.

Evidence the impact would be significant: Santa Cruz long-toed salamander may disperse through the area through suitable upland habitat, such as riparian woodland (U.S. Fish and Wildlife Service (USFWS) 2009). If SCLTS disperse into the area, the Project has the potential cause direction take of SCLTS through ground excavation, use of heavy machinery, and clearing habitat.

The Santa Cruz long-toed salamander is a threatened species under CESA (Fish & G. Code, § 2050 et seq.) and a Fully Protected species (Fish & G. Code § 5050). A fully protected species may not be taken or possessed at any time and no license or permits may be issued for their take except for collecting these species for necessary scientific research.

Recommendation: CDFW recommends that the Project completely avoid impacts to SCLTS. CDFW recommends that the County includes a discussion on the potential for presence of SCLTS in the MND. To determine the likelihood of SCLTS presence on site, CDFW recommends conducting a full habitat assessment by gathering information from multiple sources including aerial imagery and topographic lidar maps, historical and recent survey data, field reconnaissance, scientific literature and "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Survey and monitoring protocols and guidelines for the SCLTS are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocols. Based on the data and information from the habitat assessment, the MND can then adequately assess if SCLTS is likely to occur in the Project vicinity.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Serena Stumpf, Environmental Scientist, at (707) 337-1364 or Serena.Stumpf@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

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

ec: State Clearinghouse # 2022030430

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