



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

Aug 18 2022

STATE CLEARINGHOUSE

August 17, 2022

Ellen McDowell
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448
emcdowell@healdsburg.gov

Subject: Dry Creek Commons Project, Mitigated Negative Declaration,
SCH No. 2022070272, City of Healdsburg, Sonoma County

Dear Ms. McDowell:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of a Mitigated Negative Declaration (MND) for the Dry Creek Commons Project (project) pursuant to the California Environmental Quality Act (CEQA).¹

CDFW is submitting comments on the MND to inform the City of Healdsburg (City), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive biological resources associated with the 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 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 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

¹ CEQA is codified in the California Public Resources Code in Section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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species, early consultation is encouraged, as significant modification to the project and mitigation measures may be required in order to obtain a CESA Permit. **CESA listed as endangered plants that may be impacted by the project include Burke's goldfields (*Lasthenia burkei*), and Sonoma Sunshine (*Blennosperma bakeri*) as further described 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, & 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. **The project would impact unnamed wetland tributaries to Foss Creek; therefore, an LSA Notification is warranted, 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 CESA Incidental Take Permit (ITP)) until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: Burbank Housing Development Corporation

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Objective: Design and construction of a 58-unit, four-story, 100% affordable apartment building and associated amenities on an undeveloped lot. The project includes 104 parking spaces and is accessed from Dry Creek Road. The project requests waivers under the State Density Bonus Law for additional height to accommodate the maximum height of 56 feet at the penthouse stairwells, elimination of covered parking requirements, reduced lighting and landscaping requirements, and reduced open space requirements. The project also proposes to protect the Foss Creek watershed and riparian corridor by avoiding impacts within the 35-foot setback and mitigate for wetland impacts of 0.25 acres on-site at a ratio slightly greater than 1.64:1.

Location: The project is located at 155 Dry Creek Road, City of Healdsburg, County of Sonoma. It is centered at approximate coordinates 38.626983 degrees latitude and - 122.874825 degrees longitude; Assessor Parcel Number 089-071-002.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist City of Healdsburg 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 recommendations, CDFW concludes that an MND is appropriate for the project.

Environmental Setting and Mitigation Measures

Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Comment 1: Section 2.4.3.a, page 32

Issue: The MND does not identify potential impacts to including Burke's goldfields and Sonoma Sunshine.

Specific impact and why impact would occur: The project would remove 0.25 acres of seasonal wetland habitat, which is potential habitat for Burke's goldfields and Sonoma sunshine. The MND does not require adequate surveys for the above species prior to the commencement of project activities. Although one year of protocol level plant surveys was conducted according to the MND, a second year of surveys is necessary as further described below.

Evidence impact would be potentially significant: Removal of wetland habitat may result in direct mortality of Burke's goldfields and Sonoma sunshine and substantially reduce their number and restrict their range. Burke's goldfields and Sonoma sunshine

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are designated as endangered plants under CEQA because they are listed as endangered under CESA and the federal Endangered Species Act (ESA) (CEQA Guidelines, § 15380). Therefore, if Burke's goldfields and Sonoma sunshine are present on or adjacent to the site, project impacts to these species would be considered a mandatory finding of significance.

Recommended Mitigation Measures: To reduce impacts to Burke's goldfields and Sonoma sunshine to less-than-significant, CDFW recommends including the following mitigation measure:

Pre-Project Special-Status Plant Surveys: A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period for Burke's goldfields and Sonoma sunshine, which have the potential to occur in or near the project site, prior to the start of construction. Surveys shall be conducted following CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>). A minimum of **two years of surveys** shall be conducted as recommended in the Santa Rosa Plain Conservation Strategy Appendix D and pursuant to the above survey protocols to establish that the above plant species are absent. Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If Burke's goldfields or Sonoma Sunshine are detected the project shall:

- 1) avoid all direct and indirect impacts to Burke's goldfields and Sonoma Sunshine, **and**
- 2) prepare and implement an avoidance plan that is approved in writing by CDFW prior to project start, **or**
- 3) obtain a CESA ITP from CDFW including providing habitat compensation at a minimum 3:1 mitigation to impact ratio unless otherwise approved in writing by CDFW and consult with the U.S. Fish and Wildlife Service (USFWS) pursuant to the ESA.

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?

Comment 2: Section 2.4.3.a, page 32

Issue: The MND does identify potential impacts to foothill yellow-legged frog (*Rana boylei*) Northwest/North Coast Clade.

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Specific impact and why impact would occur: The project would result in the removal of seasonal wetland and grassland habitat, which are potential dispersal habitat for foothill yellow-legged frog and could result in direct mortality of the species. After breeding occurs in the spring, juvenile frogs can migrate long distances and occupy seasonal wetland and moist grassland habitat. The MND does not require a survey for foothill yellow-legged frog prior to the commencement of project activities.

Evidence impact would be potentially significant: Removal of wetland and grassland habitat adjacent to Foss Creek could result in direct mortality of foothill yellow-legged frog. Foothill yellow-legged frog is as a California Species of Special Concern (SSC). The SSC designation is given to species native to California satisfying one or more of the following criteria: 1) is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; 2) is listed as Federally-, but not State threatened or endangered; 3) meets the State definition of threatened or endangered but has not formally been listed; 4) is experiencing, or formerly experienced, serious (nonscyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; or 5) has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status. Therefore, if foothill yellow-legged frog is present on-site, project impacts to this species would be potentially significant.

Recommended Mitigation Measures: To reduce impacts to foothill yellow-legged frog less-than-significant, CDFW recommends including the following mitigation measure:

Foothill Yellow-Legged Frog - Survey Methodology: A CDFW-approved Qualified Biologist shall provide a foothill yellow-legged frog survey methodology for CDFW review and written approval at least 30 days prior to conducting project activities, unless otherwise approved in writing by CDFW. Project activities shall not begin until foothill yellow-legged frog surveys have been completed using a methodology approved by CDFW. Survey methodology is not required if the stream is dry and there are no areas of persistent summer moisture present in or within 500 feet upstream and downstream of the project area. Survey methodology shall target all life stages and shall include carefully searching under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed, where appropriate, and at least 500 feet upstream and downstream of the project area. Surveys should be conducted at different times of day and under variable weather conditions, if possible. Surveys should avoid windy days (15 miles per hour or greater), as ripples in the water make it more challenging to detect frogs.

Foothill Yellow-Legged Frog Surveys: Prior to starting project activities, a CDFW-approved Qualified Biologist shall conduct surveys for foothill yellow-legged frog

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using a CDFW-approved methodology. The results of the surveys shall be emailed to a CDFW representative and the project shall receive written acceptance of the survey results from CDFW prior to starting project activities. The Permittee shall install exclusionary fencing and prepare and implement a Foothill Yellow-Legged Frog Relocation and Habitat Improvement Plan if foothill yellow-legged frog or their eggs are found, if required and approved by CDFW.

If documentation is provided to CDFW that the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project site, then surveys for foothill yellow-legged frogs are not necessary.

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

Comment 3: Section 2.4.3.b, page 33

Issue: Mitigation Measure (MM) BIO-3 may not reduce impacts to riparian habitat to less-than-significant.

Specific impact and why impact would occur: The project would result in permanent impacts to 0.25 acres of wetland swales that drain into Foss Creek. As the wetland swales are hydrologically connected to Foss Creek, they are considered jurisdictional for CDFW pursuant to Fish and Game Code section 1600 et seq.

Evidence impact would be potentially significant: Riparian habitat including connected wetland tributaries is of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. Removing connected wetland habitat may result in the degradation of riparian habitat. Therefore, if the above impacts to riparian habitat occur, project impacts to riparian habitat would be potentially significant.

Recommended Mitigation Measures: To reduce impacts to riparian habitat to less-than-significant, CDFW recommends including the following mitigation measures:

The project shall submit to CDFW a Lake and Streambed Alteration Notification for the impacts to wetlands connected to Foss Creek and comply with the Final Agreement, if issued, prior to commencement of project activities. The notification shall include habitat restoration or preservation at a minimum ratio of 3:1 based on area and linear distance of permanent impacts to wetlands connected to Foss Creek. Habitat restoration or preservation shall occur in the same calendar year as the impact on-site or as close to the site as possible

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within the same stream or watershed and may consist of restoration or enhancement of riparian habitat, unless otherwise approved in writing by CDFW. If mitigation is not possible within the same stream or watershed, mitigation ratios may increase at the discretion of CDFW.

The Permittee shall monitor and maintain, as necessary, all plants for five years to ensure successful revegetation. Planted trees and other vegetation shall each have a minimum of 85 percent survival at the end of five years. If revegetation survival and/or cover requirements do not meet established goals as determined by CDFW, Permittee is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

Please be advised that an LSA Agreement obtained for this project would likely require the above recommended mitigation measures, as applicable.

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 California Natural Diversity Database (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/CMNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

CDFW anticipates that the project will 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 environmental document filing 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

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 in the final CEQA document for the project. CDFW

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appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to James Hansen, Environmental Scientist, at (707) 576-2869 or James.Hansen@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

ec: State Clearinghouse #2022070272