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DEPARTMENT OF FISH AND WILDLIFE
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June 13, 2024

Sage Schaan, Planning Director
Town of Woodside
2955 Woodside Road
Woodside, CA 94062
SSchaan@woodsideca.gov

Subject: Town of Woodside Housing Element Update, Draft Environmental Impact Report, SCH No. 2023050549, Town of Woodside, San Mateo County

Dear Mr. Schaan:

The California Department of Fish and Wildlife (CDFW) has reviewed the Town of Woodside (Town) Draft Environmental Impact Report (EIR) for the Town of Woodside Housing Element Update (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect fish and wildlife resources of the State. Please be advised, by law, CDFW may be required to carry out or approve aspects of the Project through the exercise of 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. (*Id.*, § 1802). For purposes of CEQA, CDFW is charged by law to provide, 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 is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed

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.

Sage Schaan
Town of Woodside
June 13, 2024
Page 2

Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in “take” as defined by State law of any species 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.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86). CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. **The draft EIR identifies that the Project location contains stream corridors, floodplains, and riparian habitat that could be impacted by the Project (p. 3.3-7).** 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such

Sage Schaan
Town of Woodside
June 13, 2024
Page 3

aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

Migratory Birds and Raptors

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

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: Town of Woodside

Objective: The objective of the Project is to amend the Town's General Plan Housing Element to demonstrate the capacity to permit "...up to 423 new housing units..." in the Town to comply with state law (draft EIR 2024, p. ES-3). The Project proposes to promote the development of a variety of residential housing types, specifically to focus on "smaller scale infill development" within mostly existing residential neighborhoods, including some higher density multifamily type housing and accessory dwelling units (ADUs) (draft EIR 2024, E-3). The infill alternative proposes a focus on new higher density housing including 29 multifamily type housing units at the Town Center area and 15 at the Skylonda Center area for a total of 303 new units. Additionally, the Project proposes the infill alternative option will result in 120 new ADU type housing units (draft EIR 2024).

Location: Town of Woodside, townwide

Timeframe: 2023-2031

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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 with

Sage Schaan
Town of Woodside
June 13, 2024
Page 4

implementation of mitigation measures, including those recommended by CDFW below, CDFW concludes that a Program EIR is appropriate for the Project.

COMMENT 1: Mitigation Measures

Issue, specific impacts, why they may occur and be potentially significant:

The draft EIR does not provide a mitigation checklist or procedure for evaluating subsequent Project impacts. Therefore, it is unclear if implementation of MM-BIO-1 through MM-BIO-10 would reduce impacts to less-than-significant or if subsequent environmental review would be required. The draft EIR found that at least 36 special-status species have the potential to occur in the Planning Area (Tables 3.3-1 and 3.3-2, pp.3.3-3 - 3.3-4), that “a range of special-status species have been documented in and around the Planning Area” (p. 3.3-16), and “...given the extent of biological resources that exist in the Planning Area, the potential for impacts to some particular special-status species remains” (p. 3.3-18). The draft EIR identifies that development facilitated by the Project could have a substantial adverse effect, either directly or through habitat modifications, on candidate, sensitive, or special-status species. The draft EIR acknowledges that significant impacts both direct and indirect may result in significant impacts, “take”, and/or habitat degradation (p. 3.3-18). To address the foreseeable potential impacts to less-than-significant, the draft EIR states that the “Mitigation Measures” (MM-BIO-1 – MM-BIO-10) will reduce potential impacts to fish, wildlife, and sensitive and critical habitats (p. 3.3-18).

Recommendations to reduce impacts to less-than-significant: The draft EIR should include a mitigation checklist and procedure for evaluating subsequent Project impacts. The procedure should include an evaluation of habitat and species occurrences based on a current habitat assessment and species data. The procedure should also include consultation with CDFW when threatened, endangered or fully protected species are present or have the potential to be present.

COMMENT 2: Roosting Bats

Issue: Mitigation Measure BIO-4 (Disturbance to Bat Species) allows deferred and undefined mitigation measures. The measure does not include post-construction/post-development monitoring to ensure mitigation was adequate and successful. The draft EIR states: “If special-status bat species are detected during surveys, species and roost specific mitigation measures shall be developed by the qualified biologist. Such measures may include postponing removal of trees, snags, or structures until the end of the maternity roosting season...” (p. 3.3-21).

There are 25 known bat species in California, such as the little brown bat (*Myotis lucifugus*), the Mexican free-tailed bat (*Tadarida brasiliensis*), the hoary bat (*Lasiurus cinereus*), and California’s state bat the pallid bat (*Antrozous pallidus*), a CDFW species

Sage Schaan
Town of Woodside
June 13, 2024
Page 5

of special concern (CDFW 2024, SSC). Bat maternity season varies across species, location, regional climate, and weather patterns, therefore defining maternity roosting season as April 1 – August 31 and requiring surveys only during this timeframe may be inadequate to identify bat maternity roosting sites present in a proposed development area (Caltrans Bat Mitigation 2019).

Recommendations to reduce impacts to less-than-significant: CDFW recommends the draft EIR require a developer to use a qualified biologist² to survey (year round) all proposed development areas for evidence of bat roosts where there is suitable habitat present within 200 feet of the disturbance area, including: culverts, snags, attics, warehouses, outbuildings, barns, siding or roofs of houses and other buildings, bridges, parking garages, woodpiles, trees, bat houses, caves, mines, talus, and cliff and rock crevices.

Recommended Mitigation Measure BIO-4B (Bat Protection): If surveys identify a bat maternity roost or potential bat maternity roost that cannot be avoided then a bat maternity roost mitigation plan shall be developed prior to removal of roosts habitat. The plan shall, at a minimum: 1) Require a maternity roost replacement ratio of 2:1; 2) Success criteria based on roost occupancy; 3) A five-year post-development monitoring program. The post-development monitoring program should include the following elements contained in the Caltrans Bat Mitigation 2019, <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/caltrans-bat-mitigation-guide-a11y.pdf>.

- Quantification of the average number of bats present by species and season;
- Comparison of replacement habitat within a structure if placement varies, or if more than one habitat type, such as hanging boxes, is provided; and
- Long-term temperature monitoring from a subsample of replacement habitat features with temperature data loggers. Wireless data loggers can be used to limit the disturbance to roosting bats” (p. 7-20).

COMMENT 3: Bumble Bees

Issue: Mitigation Measure BIO-5 (Disturbance to Bumble Bee Species) is inadequate to reduce potential direct and indirect impacts to candidate bumble bee

² A qualified biologist is an individual who has a combination of education and experience that demonstrates 1) they have knowledge and experience in the biology and natural history of local fish and wildlife resources present at the Project site; 2) have experience identifying, capturing, handling, and relocating the fish and/or wildlife species; 3) be familiar with relevant survey protocols and recent scientific literature; and 4) be knowledgeable of state and federal laws regarding the protection of sensitive species.

Sage Schaan
Town of Woodside
June 13, 2024
Page 6

species to less-than-significant. Mitigation Measure BIO-5 states that the Project proponent “shall conduct a take avoidance survey for active special-status bumble bee [such as Crotch’s bumble bee (*Bombus crotchii*)] colony nesting sites in any previously **undisturbed** [emphasis CDFW] area[s]...” (3.3-21). Solely conducting surveys for bumble bee nests and restricting avoidance surveys to “undisturbed” areas is too narrow a condition to reduce potential direct and indirect impacts to candidate bumble bee species to less-than-significant. Additionally, Crotch’s bumble bee is currently a Candidate Endangered species under CESA and as a candidate species, unauthorized take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant or to minimize significant impacts:

CDFW recommends including the following mitigation measures for Crotch’s bumble bee:

Mitigation Measure #1: Habitat Assessment: A habitat assessment shall be conducted prior to subsequent project construction.

The habitat assessment should be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch’s bumble bee. The habitat assessment should include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment should be conducted during peak bloom period for floral resources on which Crotch’s bumble bee feed. Further guidance on habitat surveys can be found within Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (<https://wildlife.ca.gov/Conservation/CESA>).

Mitigation Measure #2: Survey Plan: If Crotch’s bumble bee habitat is present within the Project area, the subsequent project shall include a pre-construction survey plan. The survey plan should be submitted to CDFW for review. Surveys should be conducted by a qualified entomologist familiar with the behavior and life history of Crotch’s bumble bee. If CESA candidate bumble bees will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding (MOU) from CDFW.

Surveys shall be conducted during the colony active period (i.e. April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year, therefore, surveys should be conducted each year that Project work activities will occur.

Sage Schaan
Town of Woodside
June 13, 2024
Page 7

Further guidance on presence surveys can be found within Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species (<https://wildlife.ca.gov/Conservation/CESA>).

Mitigation Measure #3: Crotch's Bumble Bee Avoidance or Take Authorization: If Crotch's bumble bee are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan shall be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal.

If full take avoidance is not feasible, the subsequent project shall apply to CDFW for take authorization under an ITP.

COMMENT 4: Amphibians

Issue: Foothill yellow-legged frog population 4 (*Rana boylei* pop 4) has the potential to occur within the Project area and is an Endangered species under CESA. Unauthorized take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

Recommendations to reduce impacts to less-than-significant: Update Mitigation Measure BIO-6 to include a provision that if Foothill yellow-legged frog cannot be avoided then a CESA ITP shall be obtained by the subsequent project prior to take occurring.

COMMENT 5: Special-status Small Mammals

Mitigation Measure BIO-10 (Disturbance to Santa Cruz Kangaroo Rat and San Francisco Dusky-Footed Woodrat) states a preconstruction survey will be conducted "...within 30 days of the start of work activities." As proposed, the preconstruction survey may not detect individuals and nests within the disturbance zone. Establishment of 10-foot buffers may not be sufficient to reduce impacts to less-than-significant.

Recommendations to reduce impacts to less-than-significant: The draft EIR should update preconstruction survey measure(s) for San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) midden and Santa Cruz kangaroo rat (*Dipodomys venustus venustus*) nests to identify surveys will be conducted within the Project footprint and a 50-foot buffer of the Project. Surveys should be conducted by a qualified biologist at least two weeks prior to the start of any ground-disturbing activities. In the event a San Francisco dusky-footed woodrat midden or Santa Cruz kangaroo rat nest is found in the proposed development area, the developer/Project proponent shall submit results of surveys to CDFW. Surveys results shall include locations of any detected middens or nests, sighted individuals or carcasses on a base map or maps. Maps shall include aerial imagery of the work site, predicted disturbed areas and protective buffer

Sage Schaan
Town of Woodside
June 13, 2024
Page 8

distances. The map or maps shall use an appropriate scale to depict an individual midden and/or nest sites.

COMMENT 6: Fully Protected Species: San Fransico Garter Snake

Issue: San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) has potential to occur within the Project area and is a state fully protected species. CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code §§ 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited. CDFW cannot authorize incidental take of fully protected species unless the take is for scientific purposes pursuant to Fish and Game Code Section 2081(a) or a project has an approved Natural Communities Conservation Plan pursuant to Fish and Game Code Section 2800.

Recommendations to reduce impacts to less-than-significant: CDFW recommends the draft EIR update MM-BIO-7 to include a condition avoid construction activities in all areas where a qualified biologist determines San Francisco garter snake is present.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to prepare subsequent CEQA documents or to make supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (d) & (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online here: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found here: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

CDFW anticipates that the proposed Project, will have an impact on fish and/or wildlife, and assessment of environmental document 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. (See: Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR in order to assist the Town of Woodside in identifying and mitigating Project impacts on biological resources.

Sage Schaan
Town of Woodside
June 13, 2024
Page 9

Questions regarding this letter or further coordination should be directed to Jason Teichman, Environmental Scientist at 707-210-5104 or Jason.Teichman@wildlife.ca.gov; or Wesley Stokes, Senior Environmental Scientist, (Supervisory), at 707-944-5554 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023050549)

REFERENCES

Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions Manual, H.T. Harvey, July 2019. Available at: <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/caltrans-bat-mitigation-guide-a11y.pdf>

California Department of Fish and Wildlife (CDFW). 2023. Survey Considerations for California Endangered Species Act (CESA), Candidate Bumble Bee Species, June 6, 2023. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline>

California Department of Fish and Wildlife (CDFW). 2024. Human-Wildlife Conflicts: Bats. Retrieved May 22, 2024 from <https://wildlife.ca.gov/HWC/Bats>

Town of Woodside. Housing Element Update, Environmental Impact Report, Volume 1, Public Review Draft, May 3, 2024. Prepared for the Town of Woodside, by Dyett & Bhatia Urban and Regional Planners, in association with Salter, H.T. Harvey & Associates, and Parsisi Transportation Consulting.