

Haggerty, Nicole@Wildlife



From: Hosea, Robert@Wildlife
Sent: Monday, June 19, 2023 10:37 AM
To: rhickel@buttecounty.net
Cc: Wildlife R2 CEQA
Subject: Comments on IS/MND for Enterprise Rancheria Housing Project (UP22-0003) (State Clearing House No. 2023050622)

Dear Mr. Hickel:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from Butte County for the Enterprise Rancheria Housing Project (project) in the county of Butte pursuant 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, plants, and their habitats. Likewise, we appreciate 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 (Fish & G. 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.). 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 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.

PROJECT DESCRIPTION SUMMARY

The project site is located off Crane Avenue, 500 feet east of Melrose Drive and 2,000 feet west of Oakvale Avenue, and approximately 1-mile southeast of the City of Oroville; Assessor Parcel Number: 079-150-001 in Butte County, CA at Latitude 39.492867° North and Longitude 121.501706° West.

The project consists of the rezoning of a 64.1-acre undeveloped parcel, construction of 12 affordable housing units, as well as construction of necessary roadways and other support infrastructure on 4.31 acres of the parcel.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the Butte County Department of Development Services in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed project with respect to impacts on biological resources. CDFW recommends that the IS/MND address the following:

PERMITTING REQUIREMENTS

The IS/MND notes that stream crossings will be required for two of the three streams located on the parcel as part of the infrastructure to support the overall project. The IS/MND also notes that CDFW would need to be notified under the Lake and Streambed Alteration Program (Fish and G. Code, § 1602) prior to constructing either of the crossings. In addition to the notification requirement for the stream crossings, CDFW would require notification for any construction resulting in impacts to riparian areas within the project and any wetlands that are directly connected to any of the three streams crossing the parcel.

SURVEY TIMING TO DETERMINE WILDLIFE AND SPECIAL STATUS PLANT PRESENCE

The IS/MND appears to rely entirely on biological resource surveys conducted during daylight hours. The presence of bats and other nocturnal and crepuscular wildlife would not necessarily have been identified during these surveys.

BAT SURVEYS

The project site appears to contain habitat that may be suitable for tree roosting bats. Disturbance of roost sites during the maternity and hibernation seasons are considered primary factors that may negatively impact bats and have the potential to result in take. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). During the hibernation period, bats are very slow to respond to disturbance during torpor and can lose fat stores needed to survive the winter, while pups in a maternity colony may not have the ability to fly. The disturbance and removal of roost sites may have a significant adverse effect on resident or migratory bat species. CDFW recommends the following to reduce impacts to a less than significant level:

- Habitat Assessment. A qualified biologist with education and experience in bat biology and identification, conducts a habitat assessment for potentially suitable bat habitat within six months of project activities. If the habitat assessment reveals suitable bat habitat, then a qualified bat biologist should conduct a presence/absence survey during the peak activity periods. If bats are present, then the qualified biologist should prepare a Bat Avoidance Plan.
- Bat Avoidance Plan. The bat avoidance plan should identify: 1) the location of the-roosting sites; 2) the number of bats present at the time of assessment (count or estimate); 3) species of bats present; 4) the type of roost (e.g., day/night, maternity, hibernaculum, bachelor); and 5) species specific measures to-avoid and minimize impacts to bats. The bat avoidance plan should evaluate the length of time of disturbance, equipment noise, and type of habitat present at the project.
- No Disturbance Buffer. If during the habitat assessment the qualified bat biologist identifies a bat roost within the project boundary that is not proposed for demolition or removal, then a no disturbance buffer should be established around the roost in consultation with CDFW. The width of the buffer should be determined by the qualified bat biologist based on the bat species, specific

site conditions, and level of disturbance. The buffer should be maintained until the qualified bat biologist determines that the roost is no longer occupied.

- Replacement Structures. If the bat roost cannot be avoided, replacement roost structures (bat houses or other structures) are recommended to accommodate the bat species impacted by the project. Replacement roost structures should be in place for a minimum of one full year prior to implementing the project. The replacement structures should be monitored to document bat use. Ideally, the project would not be implemented unless and until replacement roost structures on site are documented to be acceptable and used by the bat species of interest.
- Roost Removal Timing. Project activities that result in the loss or modification of the original roost structure should be implemented outside hibernation and maternity seasons, Nov 1 – Feb 1 and April 1 – August 31 respectively.
- Bat Exclusion. If an active bat roost is found in a tree or structure that must be removed, the qualified bat biologist should prepare a Bat Exclusion Plan for the passive exclusion of the bats from the roost. CDFW recommends that exclusion devices are installed either (1) between March 1 and March 31, prior to parturition of pups; or (2) between September 1 and October 31 prior to hibernation (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours). The qualified bat biologist should confirm the absence of bats prior to the start of construction.
- Tree Removal. Tree removal shall be scheduled either (1) between approximately March 1 March 31, prior to parturition of pups; or (2) between September 1 and October 31 prior to hibernation (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours). Removal of trees containing suitable bat habitat should be conducted under the supervision of a qualified bat biologist.

NESTING MIGRATORY BIRD SPECIES

With the large percentage of the project site consisting of Oak Woodland, all preconstruction nesting bird surveys should include protocols to identify the presence of tree cavity nesting species.

SPECIAL-STATUS SPECIES

GIANT GARTER SNAKE (*Thamnophis gigas*)

The IS/MND states that habitat within the project is suitable to support giant garter snakes (GGS). The IS/MND additionally states that if GGS are determined to be present within the project area that they will be allowed to exit the area prior to the initiation of construction related activities and it includes mitigation measures such as installation of exclusionary fencing for GGS around the outer edge of the project area to exclude the snakes.

GGS is listed as a threatened species under CESA and as such it is afforded full protection under the act. It is unlawful to take a State-listed endangered or threatened species (Fish & G. Code, §2050 et seq.). Handling of any GGS found within the confines of the project area during any phase of the project, even for purposes of relocation outside of the project area would be considered take. GGS spend a great deal of time below ground in burrows of fossorial mammals, in rock crevices, or under downed vegetation even during the “active period”, typically between April and October, particularly as ambient temperatures climb during the summer months. As such, simply allowing any GGS encountered above ground prior to the start of construction to

leave the area may not be sufficient to avoid take. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including GGS, pursuant to CESA. CDFW recommends that a CESA ITP be obtained if the project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of State-listed CESA species.

CALIFORNIA RED-LEGGED FROG (*Rana draytonii*)

The IS/MND does not specifically identify that targeted surveys for red-legged frogs (RLF) were conducted throughout the entirety of suitable habitat within the 64.1-acre parcel for the presence of larval or adult forms of this amphibian species. CDFW recommends the targeted surveys be conducted by a qualified biologist during the appropriate time(s) of the year and methodology described in the United States Fish and Wildlife Service (USFWS) survey guidance (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83914&inline>) and the IS/MND be amended as appropriate following completion of the surveys. If the species is identified as present within the parcel, then CDFW would recommend the project proponent to consult with the USFWS for this federally threatened species prior to the onset of construction related activities as installation of exclusion/silt fencing alone may not be considered adequate mitigation for permanent or temporary impacts to habitat that could in turn have an adverse impact on the species.

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 effect on fish and 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 sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the IS/MND for the Enterprise Rancheria Housing Project and recommends that the Butte County Department of Development Services address CDFW’s comments and concerns. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this email, or wish to schedule a meeting and/or site visit, please contact Robert Hosea, Environmental Scientist at (530) 708-1199 or by email at robert.hosea@wildlife.ca.gov.

Sincerely:

-Robert (Bob) Hosea

Environmental Scientist

Habitat Conservation Program

North Central Region

California Department of Fish and Wildlife

(530) 708-1199