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September 6, 2024

Bret Sampson, Planning Manager
El Dorado County Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667
TownAndCountryElDorado@edcgov.us

Subject: Town and Country Village El Dorado Project
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2023070297

Dear Bret Sampson,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from El Dorado County Planning and Building Department for the Town and Country Village El Dorado Project (Project) in El Dorado County pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

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, 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 (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

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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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 in El Dorado County, California, approximately 500 feet north of U.S. Highway 50 (US 50), east of Bass Lake Road. The approximately 60.5-acre site is identified by Assessor's Parcel Numbers (APNs) 119-080-12, -021, and -023.

The Project consists of two areas: the first area called the Project Development Area is on the northernmost and southernmost 30.3 acres of the project site, would be developed with two hotels, retail services, two restaurants, a museum, an event center, associated parking, 56 residential cottages for employee housing, and an additional 56 residential cottages that may be rented on a daily or extended basis. The second area called the Program Study Area will consist of the central and easternmost 30.2 acres of the project site and may include future development of additional hotels, medical facilities, senior housing, townhomes and cottages, and other uses allowed by the proposed zoning districts.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the El Dorado County Department of Transportation in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources.

CDFW is primarily concerned with the Project impacts to existing fish and wildlife resources including foothill yellow-legged frog (*Rana boylei*) (FYLF), western pond turtle (*Actinemys marmorata*), and other aquatic and terrestrial plant and wildlife species. CDFW is also concerned with impacts on riparian habitat and impacts to downstream aquatic resources. CDFW provides the following comments for the County's consideration.

Comment 1: Impacts to Foothill yellow-legged frog (*Rana boylei*; FYLF)

4.3-5 Impacts to foothill yellow-legged frog either directly or through substantial habitat modifications.

Issue: Some construction activities will occur near Carsen Creek. The DEIR indicates that the Project Site is within the range of the Northeast/Northern Sierra clade (North Sierra

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Distinct Population Segment) of foothill yellow-legged frog (*Rana boylei*; FYLF); this clade is listed as threatened under the California Endangered Species Act (CESA). A season of operation that avoids FYLF presence does not exist; FYLF may be encountered in various life stages year-round. The DEIR describes that a Qualified Biologist will conduct pre-construction surveys for FYLF but does not provide sufficient detail on survey methods or timing.

Per CDFW's recommendations below, a Qualified Biologist is defined as a person who is knowledgeable and experienced in the biology, life stages, natural history, and identification of local fish and wildlife resources present at the Project Site.

Recommendation 1.1: CDFW recommends the Proponent provide additional detail on FYLF bioassessment survey methods and timing. The Proponent should review CDFW's Considerations for Conserving the Foothill Yellow-Legged Frog available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>.

To increase the likelihood of detection, surveys should include at least one visual encounter survey (VES) during the breeding and/or oviposition period (generally April–June), a tadpole survey four to eight weeks after the breeding survey(s), and a subadult survey in late summer/early fall (generally late August–early October). VES conducted during the late summer are often the easiest method for determining presence (generally late August to early October); subadults and occasionally adults are often observed along river margins, and subadult and adult frogs will likely also be observed in tributary streams (Crump and Scott 1994).

If any survey fails to detect FYLFs within suitable habitat, a follow-up survey should be conducted two to four weeks after the initial survey.

Recommendation 1.2: Regardless of whether FYLF are detected during the bioassessment surveys (described above in Recommendation 1.1), CDFW recommends the Proponent prepare a Pre-Construction Survey Plan (Plan) for FYLF and submit it to CDFW for review at least 30 calendar days prior to commencing ground-disturbing or in-water work activities.

A Qualified Biologist should develop the Plan for FYLF. Prior to preparing the Plan, CDFW recommends the Proponent review CDFW's Considerations for Conserving the Foothill Yellow-Legged Frog available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>. CDFW recommends the following survey and species considerations be incorporated into the Plan and final DEIR:

- a. The Plan should include what life-stage(s) shall be surveyed for, survey method(s), and timing of survey(s).
- b. The Plan should provide justification for timing and methodology of survey design (e.g., watershed characteristics, regional snowpack, timing and rate of spring runoff, day length, average ambient air and water temperatures, local and seasonal conditions).

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- c. If the Project Site has suitable frog breeding habitat, the Plan should include performing egg mass/larval surveys.

Within 3 to 5 calendar days prior to ground-disturbing and in-water activities at the Project Site, the Qualified Biologist should perform a pre-construction survey, as specified in the Plan, within the boundaries of the Project Site, plus a minimum 500-foot buffer zone upstream and downstream of the Project Site. The survey should include a description of any standing or flowing water. The Proponent should provide Pre-Construction Survey results, notes, and observations to CDFW prior to commencing ground disturbing and in-water activities. Conducting surveys prior to maintenance work may allow avoidance of incidental take. If the Proponent encounters any life stages of FYLF during pre-construction surveys, ground-disturbing or in-water activities, work should be suspended at the Project Site, and CDFW should be notified within 24 hours. Work may not re-initiate in the Project Site until the Proponent demonstrates compliance with CESA.

Recommendation 1.3: CDFW recommends that a CESA Incidental Take Permit (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 CESA-listed species, including FYLF, either through construction or over the life of the Project. No relocation shall be done for special status species or CESA listed species without the proper handling permits and/or CESA take coverage (e.g., an ITP).

Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code § 2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the DEIR include measures to minimize and fully mitigate the impacts to any CESA-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service to coordinate specific measures if both state and federally listed species may be present within the Project vicinity.

Comment 2: Impacts to Special-Status Plants

4.3-1 Impacts to special-status plant species either directly (e.g., threaten to eliminate a plant community) or through substantial habitat modifications.

Issue: Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. The DEIR should include a recent complete assessment of the flora and fauna within and adjacent to the Project footprint, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

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Project-specific mitigation measures to be implemented include transplantation and propagation. The DEIR should cover a range of possibilities for mitigation. The use of relocation, salvage, and/or transplantation as the sole mitigation for impacts to special status, rare, threatened, or endangered species are generally experimental in nature and largely unsuccessful. Therefore, the DEIR should describe additional mitigation measures utilizing habitat restoration, conservation, and/or preservation, in addition to avoidance and minimization measures, if it is determined that there may be impacts to special status, rare, threatened, or endangered species.

Recommendation: CDFW recommends the DEIR specifically include a thorough, recent (within the last two years), floristic-based assessment of special-status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (see www.wildlife.ca.gov/Conservation/Plants).

COMMENT 3: Impacts to Northwestern Pond Turtle*4.3-6 (Northwestern Pond Turtle [Actinemys marmorata])*

Issue: The DEIR states that a Qualified Biologist will conduct surveys for northwestern pond turtle (*Actinemys marmorata*) prior to construction but does not provide sufficient detail on survey methods.

Recommendation: CDFW recommends the following language be added to Mitigation Measure 4.3-6 to clarify survey details and minimize impacts to northwestern pond turtle:

Prior to ground-disturbing activities near Carsen Creek a Qualified Biologist will survey the Project Site where suitable habitat (including nest sites) occurs for northwestern pond turtle. Surveys will be performed within 30 days prior to starting Project activities and conducted within a minimum of 500 feet upstream and downstream of the Project activity where accessible. If detected during surveys, a site-specific avoidance, minimization, and/or relocation plan will be prepared and implemented by a Qualified Biologist with proper handling permits. The plan will include daily construction monitoring. The plan shall be submitted to CDFW.

Comment 3: Impacts to Nesting Birds*Mitigation Measure 4.3-7*

Issue: The proposed Project activities could result in significant habitat loss for a variety of bird species. The significance of the impact of habitat clearing is not reduced by virtue of the abundance of similar or equivalent adjacent habitat to the Project Site; vegetation trimming and clearing may reduce available habitat for wildlife and, potentially, for special-status species which may use these forest stands. Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such

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bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA).

Recommendation: CDFW recommends that nesting bird surveys be conducted if project activities are scheduled to occur between February 1 and August 31, to fully encapsulate the potential nesting season. The survey should take place no more than 15 calendar days prior to ground disturbing activities. CDFW typically recommends a minimum of a 500-foot radius for migrating birds, and a ½ mile radius for nesting raptors. If any special-status species are encountered during project activities, work should be suspended, CDFW notified, and conservation measures should be developed in agreement with CDFW prior to re-initiating the activity. Conversely, if during project activities, any species listed pursuant to the CESA are encountered, work shall be suspended, and CDFW notified. Work may not re-initiate until the Project proponent has consulted with CDFW and can demonstrate compliance with CESA.

Please note that the MBTA and Fish and Game Code apply regardless of the time of year. Therefore, if an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

Comment 4: Moving out of Harm's Way.

Issue: The proposed Project activities could result in both direct or indirect mortality of wildlife.

Recommendation: To avoid direct mortality, the El Dorado County Planning and Building Department should state in the DEIR a requirement for a Qualified Biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities that have the possibility to cause harm to wildlife species. Furthermore, the DEIR should describe that the Qualified Biologist with the proper permits may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities, as needed. The DEIR should also describe Qualified Biologist qualifications and authorities to stop work to prevent direct mortality of special-status species. CDFW recommends fish and wildlife species be allowed to move out of harm's way on their own volition, if possible, and to assist their relocation as a last resort. It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.

Comment 5: Notification for Lake and Streambed Alteration Agreement

Issue: Carsen Creek passes directly through the project area. Depending on the Project activities a notification to CDFW pursuant to Section 1602 of the Fish and Game Code may be required. Notification is required for any activity that may do one or more of the following:

- a. Substantially divert or obstruct the natural flow of any river, stream, or lake;

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- b. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
- c. Deposit debris, waste, or other materials where it may pass into any river, stream, or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW will determine if the Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement will include measures necessary to protect existing fish and wildlife resources.

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, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, minimization, mitigation, and monitoring and reporting commitments.

Recommendation: CDFW recommends that the El Dorado County Planning and Building Department notify pursuant to Section 1602 of the Fish and Game Code as early as possible to determine if an LSA is needed.

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 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 El Dorado County Planning and Building Department 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.

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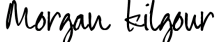
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Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the Notice of Availability of the DEIR for the Town and Country Village El Dorado Project and recommends that the El Dorado County Planning and Building Department 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 letter, or wish to schedule a meeting and/or site visit, please contact Caitlyn Oswalt, Environmental Scientist at (916) 358-4315 or Caitlyn.Oswalt@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

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Caitlyn Oswalt, Environmental Scientist
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

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Literature Cited

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