State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

August 23, 2023

Ms. Sarah Wikle
City of Scotts Valley
1 Civic Center Drive
Scotts Valley, CA 95066
Swikle@scottsvalley.gov

Subject: Sandraya Heights Land Division, Mitigated Negative Declaration, SCH No. 2023070477, City of Scotts Valley, Santa Cruz County

Dear Ms. Wikle:

The California Department of Fish and Wildlife (CDFW) has received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by the City of Scotts Valley (City) for the Sandraya Heights Land Division (Project), located in Santa Cruz County, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

CDFW submits these comments on the IS/MND to inform the City, as the CEQA Lead Agency, of potentially significant impacts to biological resources associated with the Project.

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 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 these 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

[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.

Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (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.), related authorization as provided by the Fish and Game Code will be required.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) 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. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). If the Project will impact CESA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any such project modifications and mitigation measures must be incorporated into the IS/MND's analysis, discussion, and mitigation monitoring and reporting program.

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 lakes, streams, rivers, or 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such 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 MND and complied with its responsibilities as a responsible agency under CEQA.

Raptors and Other Nesting Birds

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 SUMMARY

Proponent: Granite Ridge Properties

Objective: The Project consists of a minor subdivision to create nine single-family residential lots, on an existing 5.88-acre lot. A new access road would be created to connect Grace Way and Casa Way. The Project would require cut of 2,300-cubic yards of soil and fill of 9,700-cubic yards. Storm drainage from impervious surfaces would consist of underground storage and infiltration chambers located under the new access road.

Timeframe: No timeframe listed in the IS/MND.

ENVIRONMENTAL SETTING AND LOCATION

The Project is located on a 5.88-acre parcel, north of the Casay Way and Sandraya Heights Road intersection in the City of Scotts Valley (Assessor's Parcel Number 023-113-36). The Project site is currently vacant, surrounded by single-family residences, with existing dirt trails used for recreation. Vegetation communities on the property include California annual grassland, coast live oak, arroyo willow woodland, and coyote brush scrub. The site also has sandstone-derived soils and outcroppings which can provide habitat for sensitive plant species.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

COMMENT 1: Scotts Valley Polygonum (*Polygonum hickmanii*) and Rare Vegetation Communities

Issue: The IS/MND does not disclose the degree to which the Project could significantly impact state and federally endangered Scotts Valley polygonum (*Polygonum hickmanii*) through direct take and/or removal of habitat. The IS/MND also does not disclose the degree to which the Project could significantly impact other rare and endangered plant species or sensitive natural communities through removal of habitat.

Occurrences: Scotts Valley polygonum is a narrow endemic species and only two populations across three properties have ever been identified (U.S. Fish and Wildlife Service (USWFS), 2020). The populations include the Polo Ranch population and the Glenwood population which are separated by Highway 17, approximately one mile apart (USFWS, 2020; also see California Natural Diversity Database (CNDDB) Occurrence #1 and #2 respectively). The total area inhabited by the plant is estimated to be less than one acre (USFWS, 2020; CDFW, 2014).

Habitat for the species consists of undeveloped grasslands in Scotts Valley. The plant is commonly found on shallow soil over mudstone and sandstone outcroppings within annual grasslands (USWFS, 2020).

The Project site is within 750 feet of the Glenwood population and 0.75-mile from the Polo Ranch population. In addition, as stated in the IS/MND, suitable habitat consisting of unshaded grassland with sandstone-derived soil exists on the Project site.

Evidence the impact would be significant: Scott's Valley polygonum is an endangered species under CESA (Fish & G. Code, § 2050 et seq.). Species listed under CESA may not be taken at any time except under the provisions of a Natural Communities Conservation Plan (NCCP), (Fish & G Code § 2081.7), a Memorandum of Understanding for scientific education or management purposes (Fish & G. Code §2081, subd. (a)), or an ITP (Fish & G. Code § 2081 (b)).

The Biological Evaluation Report (Appendix A) does not provide sufficient baseline data to assess the potential for impact to Scotts Valley polygonum or other sensitive plant species. The methods for identifying and mapping vegetation communities on the Project site was not disclosed. The rare plant survey, conducted March 8, April 23, and June 7, 2022, did not visit a reference population for Scotts Valley polygonum or any other potentially occurring rare plant species in advance of surveys, expect for federally endangered Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*), which was found on-site. In addition, the rare plant survey was only conducted in one year (2022), which is insufficient to accurately describe rare annual plant species. Scotts Valley polygonum has been documented to not germinate every year, making the species undetectable in years without germination (USFWS, 2020). Furthermore, Santa Cruz

County was experiencing severe drought[2] during the period surveys were conducted. The only way to accurately detect and disclose the presence of Scotts Valley polygonum and many other rare plant species is after multiple consecutive years of appropriately timed botanical surveys to account for variances in weather and other disturbances that may impact germination. Without sufficient baseline data, the IS/MND cannot accurately determine the potential for significant impacts to Scotts Valley polygonum and/or other rare and sensitive plant species or communities.

Scotts Valley polygonum is a critically endangered species. Since 2009, the population has declined significantly at each of the properties where the species is found (USFWS, 2020). Only the Polo Ranch population had individuals observed in 2019, and individuals were last seen at the Glenwood population in 2015 (USFWS, 2020). Scotts Valley polygonum is at risk of extinction because of its small and fragmented populations, proximity to existing development, habitat alteration and removal, competition from native and non-native plant species, recreational use of habitat, and climate change (USFWS, 2020; CDFW, 2014).

For the reasons described above, any loss of habitat that supports Scotts Valley polygonum may contribute to the extinction of the species. Furthermore, loss of habitat that supported the species in the past or may support the species in the future has the potential to significantly hinder efforts to prevent the recovery of the species. The IS/MND has not provided sufficient information to disclose whether or not Scott's Valley polygonum is present or potentially present, or the degree to which the Project will result in a cumulative impact to the species, when considered with other impacts that have already occurred to the species. This Project therefore has the potential to substantially adversely affect Scotts Valley polygonum through the removal of potential habitat and could impact efforts to recover the species. The Project may also significantly impact other rare plant species including Scotts Valley spineflower by permanently removing habitat and vegetation communities that support rare and endangered plant species.

CDFW recommends that the results of the following two measures be included in a revised IS/MND to ensure that all impacts to Scotts Valley polygonum and rare vegetation communities are disclosed and can be mitigated to a level of less-than-significant.

Recommended Measure 1 – Multiple Focused Rare Plant Surveys: A qualified botanist, familiar with the native plant communities of Santa Cruz County shall conduct focused rare plant surveys over multiple consecutive years, targeting the specific blooming period of each rare plant species with potential to occur on the Project site. In

[2] See Drought Conditions for Santa Cruz County
https://www.drought.gov/states/california/county/Santa%20Cruz

advance of surveys each year, the surveyor shall visit and document appropriate reference populations for each potentially occurring rare plant species on the Project site. Surveys shall occur throughout the entire area where potential habitat has been identified and the results shall be included in the Project environmental document. Surveys shall be 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.

Recommended Measure 2 – Fine Scale Vegetation Community Mapping and Biological Evaluation: The methodology for identifying and mapping vegetation communities on the Project site shall be identified. A qualified botanist shall map the potential for rare plant occurrence and vegetation communities using data collected from the surveys and other sources such as aerial imagery; historical survey data; field reconnaissance; scientific literature and reports; findings from positive occurrence databases such as the CNDDB; and sensitive natural community information available through the Vegetation Classification and Mapping Program (VegCAMP). In addition, Project biological documents shall address the potential for the presence of seeds of all potentially occurring rare plant species on the Project site. Based on the data and information collected from the surveys, mapping, and biological evaluation, the Project environmental document shall address whether Scotts Valley polygonum or other rare plant species may occur on or near the Project site, and the extent to which the Project would cumulatively significantly impact these species.

Recommended Mitigation Measure 3 – Appropriate Mitigation Based on Assessment of Impacts to Rare Plants: Using data and information collected from implementation of Mitigation Measure 1 and Mitigation Measure 2, the Project proponent shall develop a mitigation plan to fully mitigate the level of significant impact to rare native plant communities from the Project. The Project proponent shall submit the mitigation plan for review and approval by relevant regulatory agencies including the USFWS and CDFW and the plan shall be included as part of the Project environmental document. Appropriate mitigation may include the following:

1. Avoidance of existing rare plant communities, populations, and habitat on the Project site;

2. Placement of a conservation easement and creation of a management endowment to be held and implemented by a land management entity over existing Scotts Valley spineflower and Scotts Valley polygonum populations where a conservation easement and endowment fund does not exist; and

3. Establishing and funding long-term management of existing Scotts Valley spineflower, Scotts Valley polygonum, and other rare plant populations where additional management needs exist.

Recommended Mitigation Measure 4 – Obtain a CESA Incidental Take Permit: In addition, the Project proponent shall obtain an ITP pursuant to Fish and Game Code § 2081, subd., (b) for potential take of Scotts Valley polygonum or any other state listed plant species. More information on the ITP process is available at https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits. CDFW recommends continued coordination to develop additional measures which may include work stoppage, flagging and avoidance of occurrences, collection of propagation material, and on and off-site restoration.

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 CNDDB. The CNDDB online field survey form and other methods for submitting data can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plantsand-Animals.

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, § 711.4; Pub. Resources Code, § 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.

CONCLUSION

Thank you for the opportunity to comment on the Project's IS/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
B77E9A6211EF486...

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023070477)

REFERENCES

[CDFW] California Department of Fish and Wildlife. 2014. Scotts Valley Polygonum(*Polygonum hickmanii*). California Department of Fish and Wildlife. Accessed August 17, 2023. https://wildlife.ca.gov/Conservation/Plants/Endangered/Polygonum-hickmanii

[USFWS] U.S. Fish and Wildlife Service. 2020. Scotts Valley polygonum (*Polygonum hickmanii*) 5-Year Review: Summary and Evaluation. U.S. Fish and Wildlife Service, Ventura, California.