

May 03 2024

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STATE CLEARINGHOUSE

From: Stanfield, Melissa@Wildlife
Sent: Friday, May 3, 2024 11:30 AM
To: Mike Sawley
Cc: Wildlife R2 CEQA; Boyd, Ian@Wildlife; Taylor, Brooks@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; melfig@californiaopenlands.org
Subject: PT 2024-0109 - CDFW's Comments on the IS/MND for the Parcel Map 18-01 (Eshoo) Project

Dear Mike Sawley,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from City of Chico (City) for the Parcel Map 18-01 (Eshoo) (Project) 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, native plants, and their habitat. 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.

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. (Fish & G. Code, § 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 on the northwest corner of Bruce Road at State Route 32 in Chico, California. Assessor Parcel Number (APN): 002-160-076. The Project will subdivide a 20-acre parcel into four separate parcels that coincide with existing zoning district boundaries within the site. The four resultant parcels will consist of the following: (1) Parcel 1 (11.8 acres) includes a 6.6-acre portion of the site zoned R3 (Medium-High Density Residential) and 4.7 acres of R4 (High Density Residential). Parcel 1 will also include fractions of other

zoning districts, totaling 0.5 acres, to accommodate a new private road and new bridge over Dead Horse Slough to provide access to Parcel 1; (2) Parcel 2 is 2.2 acres and includes a portion of the site zoned CC (Community Commercial), located at the corner of the project at Bruce Road and SR 32; (3) Parcel 3 is 0.6 acres and includes a portion of the site zoned CC (Community Commercial), located between the new entrance/extension of Sierra Sunrise Terrace; and (4) Lot A is 5.5 acres and comprises 3.1 acres of OS1 (Primary Open Space) and 2.4 acres of OS2 (Secondary Open Space). Lot A is proposed to be preserved by a conservation easement.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW is primarily concerned with the project impacts to Butte County meadowfoam (*Limnanthes floccosa ssp. californica*) (BCM) and western spadefoot (*Spea hammondi*).

COMMENT 1: Mitigation BIO-1 (Butte County Meadowfoam)

Issue: Butte County meadowfoam is listed as an endangered species under CESA and as such 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.). Take is defined as "hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture or kill" (Fish & G. Code § 86). The MND correctly identifies the Project site as containing occupied BCM habitat. The MND accurately outlines the need for the Project to comply with CESA by obtaining an Incidental Take Permit (ITP) from CDFW and to fully mitigate impacts to BCM prior to the start of construction. CDFW appreciates the City identifying the minimum mitigation ratio of 19:1 required to fully mitigate impacts and aid in BCM's recovery. CDFW concurs with the requirement to conduct additional protocol level BCM surveys prior to issuance of a grading permit or other authorization for ground disturbance. As described in the United States Fish and Wildlife Service's (USFWS) Biological Opinion (Corps File Number SPK-2005-00063), based on the 2018, 2020 and 2022 BCM survey results, CDFW understands there is at least 0.49 acre of occupied BCM habitat on the Project site. CDFW notes however that the 2020 and 2022 surveys did not include the entire 20-acre parcel; therefore, the total acreage of occupied BCM habitat onsite may be more than 0.49 acre.

Recommendation: CDFW recommends the City update the required compensatory mitigation acreage in the Mitigation BIO-1 (Butte County Meadowfoam) measure from 0.893 acre to 9.31 acres to accurately reflect the minimum compensatory mitigation needed to fully mitigate impacts to 0.49 acres of occupied BCM habitat. Additional compensatory mitigation may be required if subsequent surveys detect additional occupied BCM habitat onsite. In addition, CDFW recommends the City revise BIO-1 to require additional protocol level BCM surveys throughout the entire 20-acre parcel, not just proposed Parcel 1. Surveying the entire parcel is required to inform accurate impacts analysis and proposed mitigation.

COMMENT 2: Mitigation BIO-5 (Western Spadefoot)

Issue: The MND acknowledges that the Project contains suitable upland aestivation and aquatic breeding habitat for western spadefoot, a California Species of Special Concern and candidate for listing under the federal Endangered Species Act. Impacts to western spadefoot from ground disturbing activities onsite may be considered potentially significant unless adequate mitigation is incorporated. Western spadefoot is a primarily terrestrial fossorial species. They spend most of the year in underground burrows and are rarely found on the surface (Stebbins 1972) (Dimmitt and Ruibal 1980a). Spadefoots emerge from their underground burrows to

breed and forage during and following relatively warm rains during late winter-spring (Morey 2000). Aquatic habitat is used for breeding and developing larvae and typically includes temporary vernal pools, sand or gravel washes, and small streams that are often seasonal (Stebbins and McGinnis 2012). However, eggs and larvae of western spadefoot have been observed in a variety of permanent and temporary wetlands, both natural and altered, including rivers, creeks, artificial ponds, livestock ponds, sedimentation and flood control ponds, irrigation and roadside ditches, roadside puddles, tire ruts, and borrow pits (CNDDDB 2024).

For mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will reduce the environmental impacts from the project to a less than significant level. Proposed Project mitigation for western spadefoot is limited to Mitigation BIO-5 which states, "Within 14 days prior to the start of grading or construction, the developer shall hire a qualified biologist to conduct preconstruction surveys for western spadefoot within the limits of construction to detect adults, larvae, and/or egg masses. If no western spadefoots are found, no further action is required for this mitigation measure. If adults, larvae, or egg masses are found, they will be relocated to suitable habitat within an onsite or offsite preserve, in consultation with CDFW." This mitigation measure is ineffective for determining western spadefoot absence or presence at the site as it fails to account for western spadefoot life history, seasonal movements, or cryptic nature. To determine whether the Project may have a significant impact on this species, the Project proponent must first determine whether they occur on the site. Western spadefoot can only be detected while they are above ground during their breeding season (late winter-early spring). Performing preconstruction surveys outside the breeding season when spadefoots are aestivating underground will result in potentially false negative findings. False negative survey results could result in unidentified and unmitigated significant impacts on this biological resource.

Recommended Mitigation Measure: To mitigate potential impacts to western spadefoot to a less-than-significant level, CDFW recommends the following language be incorporated into the MND:

"Western Spadefoot Surveys. Prior to the City's issuance of a grading permit or other authorization for ground disturbance, a qualified biologist shall conduct a minimum of three nighttime visual encounter and acoustic detection (i.e., listening for male breeding call) surveys and one day time egg mass survey. Surveys shall be timed during late winter and early spring, generally February 15-April 1, but shall not begin until the site has received adequate rainfall to form breeding ponds and daytime temperatures are consistently greater than 60 degrees. Surveys shall be conducted no more than 24 hours following a rain event with at least 7 calendar days between each survey. Survey methods and results shall be provided to CDFW upon request. If any life stage of western spadefoot is encountered, CDFW shall be consulted to determine appropriate avoidance, minimization, and compensatory mitigation measures. Compensatory mitigation in the form of habitat preservation on or off-site may be required. Ground disturbing activities shall not commence until written approval is received from CDFW."

For all future projects within the City of Chico or its sphere of influence, CDFW recommends a qualified biologist be retained to perform western spadefoot surveys, over multiple years if feasible, prior to the public comment period. This will allow the City of Chico time to consult with CDFW if spadefoot are present, develop effective feasible mitigation, and incorporate the survey methods, results, and proposed mitigation into the environmental document for public review and comment.

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 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 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 § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the MND for the Parcel Map 18-01 (Eshoo) to assist the City in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Melissa Stanfield, Senior Environmental Scientist (Supervisor) at melissa.stanfield@wildlife.ca.gov or (916) 597-6417.

REFERENCES

- CDFG. 2003. Special Animals. State of California, The Resources Agency, Department of Fish and Game, Natural Heritage Division, Natural Diversity Data Base, January 2003 update.
- [CNDDDB] California Natural Diversity Database. California Department of Fish and Wildlife. Accessed April 26, 2024.
- Dimmitt, M. A. 1975. Terrestrial ecology of spadefoot toads (*Scaphiopus*): Emergence cues, nutrition, and burrowing habits. PhD Dissertation, University of California, Riverside, California.
- Jennings, Mark R. and Marc P. Hayes. 1994. Amphibian and Reptile Species of Special Concern in California. Final report submitted to California Department of Fish and Game. Contract No. 8023.
- Morey, S.R. and David Reznik 2000. A comparative analysis of plasticity in larval development in three species of spadefoot toads. Ecological Society of America: Volume 81, Issue 6, pages 1736-1749.
- Stebbins, R. C. 1985. *Western Reptiles and Amphibians., 2nd Ed.* Houghton-Mifflin Company. Boston, Massachusetts.
- Stebbins, R.C., and S.M. McGinnis. 2012. *Field Guide to Amphibians and Reptiles of California: revised edition.* University of California Press.

Regards,

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