



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



June 20, 2024

Albert Enault, Senior Planner

City of Vacaville

650 Merchant Street, Community Development Department

Vacaville, CA 95688

Albert.Enault@cityofvacaville.com

Subject: McMurry Creek Estates Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024051142, City of Vacaville, Solano County

Dear Mr. Enault:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the McMurry Creek Estates Project (Project).

CDFW is providing City of Vacaville (City), as the Lead Agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (See: Cal. Code Regs., tit. 14, § 15082, subd. (b).).

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT LOCATION AND DESCRIPTION

The Project site is located at approximately 38.40217° N and -121.98848° W at the northern terminus of McMurry Lane, Vacaville, CA 95688 in Solano County and on Assessor's Parcel Numbers 0105-200-150 and 0105-200-140. The Project would annex 15.73 acres of land from Solano County into the City of Vacaville to develop a subdivision consisting of 20 single-family residential estate lots, along with associated roadway and utility improvements and a new multi-use path. The residential estate lots

Albert Enault
City of Vacaville
June 20, 2024
Page 2

would accommodate executive-style custom homes ranging in lot area from 12,412 to 63,749 square feet. The Project would require a General Plan Amendment to change the General Plan designation from Hillside Agriculture (HA) to Residential Estates (RE) and apply the Residential Estate (RE-12) pre-zoning district to the Project site.

The CEQA Guidelines (See: Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description:

- Land use changes resulting from, for example, rezoning certain areas.
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground-disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection 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 or candidate species under CESA or NPPA, either during construction or over the life of the Project. **The Project has the potential to impact tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsonii*), which are both state listed as threatened species; and Crotch's bumble bee (*Bombus occidentalis*), a state candidate species.** Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, such as those identified in **Attachment 1**, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (Pub.

Albert Enault
City of Vacaville
June 20, 2024
Page 3

Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq. is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will 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, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. **The Project has the potential to impact Horse Creek and other streams, in which case an LSA Notification would be warranted.** CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

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

Fully Protected Species

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Albert Enault
City of Vacaville
June 20, 2024
Page 4

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (See Fish & G. Code § 2081.15.). Project proponents should consult with CDFW early in the Project planning process.

The Project has the potential to impact golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), which are both state fully protected species.

ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including, but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities

see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City may require.

Fully protected, threatened or endangered, candidate, and other special-status species and sensitive natural communities that are known to occur, or have the potential to occur in or near the Project site, include but are not limited to those listed in

Attachment 1.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System, California Aquatic Resources Inventory (CARI), and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at:

<https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Albert Enault
City of Vacaville
June 20, 2024
Page 5

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all

Albert Enault
City of Vacaville
June 20, 2024
Page 6

feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable project conditions to reduce potential impacts to biological resources to less-than-significant levels.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 online field survey form and other methods for submitting data can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/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 & G. 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.

If you have any questions, please contact Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or Nicholas.Magnuson@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory) at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

B77E9A6211EF486

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024051142)

Albert Enault
 City of Vacaville
 June 20, 2024
 Page 7

ATTACHMENT 1: Special-Status Species

Scientific Name	Common Name	Status
Amphibians and Reptiles		
<i>Rana boylei pop. 1</i>	Foothill yellow-legged frog	SSC
<i>Emys marmorata</i>	western pond turtle	SSC
Birds		
<i>Buteo swainsoni</i>	Swainson's hawk	ST
<i>Agelaius tricolor</i>	tricolored blackbird	ST, SSC
<i>Circus hudsonius</i>	northern harrier	SSC
<i>Lanius ludovicianus</i>	loggerhead shrike	SSC
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Aquila chrysaetos</i>	golden eagle	FP, WL, BGEPA
<i>Elanus leucurus</i>	white-tailed kite	FP
Invertebrates		
<i>Bombus crotchii</i>	Crotch's bumble bee	SC
<i>Lepidurus packardii</i>	vernal pool tadpole shrimp	FE
<i>Branchinecta lynchi</i>	vernal pool fairy shrimp	FT
<i>Desmocerus californicus dimorphus</i>	valley elderberry longhorn beetle	FT
Mammals		
<i>Taxidea taxus</i>	American badger	SSC
Plants		
<i>Trifolium amoenum</i>	two-fork clover	FE, CRPR 1B.2
<i>Lasthenia conjugens</i>	Contra Costa goldfields	FE, CRPR 1B.1
<i>Sidalcea keckii</i>	Keck's checkerbloom	FE, CRPR 1B.1

Albert Enault
 City of Vacaville
 June 20, 2024
 Page 8

Scientific Name	Common Name	Status
<i>Astragalus tener</i> var. <i>tener</i>	alkali milk-vetch	CRPR 1B.2
<i>Atriplex cordulata</i> var. <i>cordulata</i>	heartscale	CRPR 1B.2
<i>Delphinium recurvatum</i>	recurved larkspur	CRPR 1B.2
<i>Downingia pusilla</i>	dwarf downingia	CRPR 1B.2
<i>Extriplex joaquinana</i>	San Joaquin spearscale	CRPR 1B.2
<i>Hesperolinon breweri</i>	Brewer's western flax	CRPR 1B.2
<i>Legenere limosa</i>	legenere	CRPR 1B.1
<i>Navarretia leucocephala</i> ssp. <i>bakeri</i>	Baker's navarretia	CRPR 1B.1
<i>Plagiobothrys hystriculus</i>	bearded popcornflower	CRPR 1B.1
<i>Astragalus tener</i> var. <i>tener</i>	alkali milk-vetch	CRPR 1B.2
<i>Trifolium hydrophilum</i>	saline clover	CRPR 1B.2
<i>Fritillaria pluriflora</i>	adobe-lily	CRPR 1B.2
<i>Hesperevax caulescens</i>	hogwallow starfish	CRPR 4.2

FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; ST = state listed as threatened under CESA; SC = State Candidate Species; WL = CDFW Watch List; BGEPA = federal Bald and Golden Eagle Protection Act; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank¹

¹ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere; CRPR 2B plants are rare, threatened, or endangered in California but more common elsewhere. CRPR 4 plants are of limited distribution or infrequent throughout a broader area in California, and their status should be monitored regularly. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/california-rare-plant-ranks>).