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From: Tran, Harvey@Wildlife
Sent: Tuesday, December 10, 2024 3:38 PM
To: Ron Bess
Cc: Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA
Subject: 2024-0385-0000 Silver Eagle Road at Western Subdivision Project ISMND - CDFW CEQA comments

Good afternoon Ron:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Draft Initial Study/Mitigated Negative Declaration (MND) from the City of Sacramento, for the Silver Eagle Road at Western Subdivision Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

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 agreement (LSAA) 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

This proposed Project is located at three vacant, undeveloped parcels totaling approximately 6.67 acres in the City of Sacramento, California in Sacramento County. The Project site is bounded by Silver Eagle Road to the north, Western Avenue to the west, and Ford Road to the south. The Project would involve the development of 41 single-family residential lots. Other site improvements would include construction of road connections from existing streets, installation of utility lines, landscaping improvements, and off-site improvements to the existing sanitary sewer line in Ford Road. Development of the proposed Project would require the approval of a Tentative Subdivision Map to subdivide the project site and a Site Plan and Design Review of the proposed subdivision layout and project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Sacramento 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 recommends the following items be addressed in the draft CEQA document:

Comment 1: Special-Status Wildlife, Burrowing Owl, page 35

The burrowing owl (BUOW) is listed as a State Species of Special Concern in the MND. On October 10, 2024, the California Fish and Game Commission granted the western burrowing owls candidate species protections under CESA. The candidacy designation temporarily affords the BUOW broad CESA protections (including prohibitions against "take" without permit authorization) throughout the entirety of California over the next 12-18 months while CDFW conducts a species status review to confirm whether (and where) listing is warranted and to recommend management and recovery actions. In the event that the Fish and Game Commission does confirm that listing is warranted for the BUOW in the future when the Project's construction phase is to occur and take of BUOW and its nest is unavoidable, the Project proponent will be required to comply with CESA.

To address this comment, CDFW recommends the relevant MND section be modified to note the recent CESA candidate status of the BUOW. If take of BUOW cannot be avoided, then CDFW recommends the Project proponent obtain an ITP and provide suitable mitigation that fully mitigates the Project impacts.

Comment 2: Mitigation Measure IV-3 and IV-4 Burrowing Owl, pages 37-38

The MND states that if overwintering BUOW are located in the Project area and cannot be avoided, the Project proponent may exclude any BUOW and collapse any burrows or remove the debris in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012), which requires a Burrowing Owl Exclusion Plan to be developed and approved by CDFW prior to burrow exclusion and/or closure. The MND further states that mitigation for permanent loss of burrowing owl foraging habitat shall be preserved at a 1:1 ratio and be consistent with the Staff Report. The Staff Report was written before the BUOW became a state candidate species for listing, so the guidance provided on exclusion, translocation, and mitigation should consider the change to the listing status. Exclusion and translocation activities may result in take of the BUOW and will require the Project proponent to fully comply with CESA (e.g., obtain an ITP from CDFW). CDFW also recommends mitigation for permanent impacts to BUOW habitat to be at least a 3:1 ratio.

To address this comment, CDFW recommends that the MND modify the Mitigation Measures to include language to demonstrate that all feasible avoidance measures will be exhausted before allowing for passive relocation as a last resort after obtaining an ITP from CDFW and compensatory mitigation for permanent impacts to BUOW habitat will be at least a 3:1 ratio for suitable habitat created to suitable habitat lost. Example recommended language is provided below:

"1. Burrowing Owl Surveys. Project proponent shall conduct a burrowing owl survey over all suitable habitat present within Project area. Burrowing owl surveys shall be conducted by a qualified biologist in accordance with the protocol described in the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012). If possible, surveys should be conducted

during both the breeding (February 1 – August 31) and non-breeding seasons (September 1 – January 31) immediately preceding the planned start of construction activities to ascertain the seasonal residency status of any owls occupying the site. The presence of burrowing owl or their sign anywhere on the site or within a 500-foot accessible radius around the Project site shall be recorded and mapped. Surveys shall disclose all burrows and occurrence of sign of burrowing owl on the Project site and within the 500-foot buffer. Results of the survey shall be submitted to the City.

2. Burrowing Owl Take Avoidance. During the breeding season (February 1 to August 31), surveys shall document whether BUOW are nesting in or within 500 feet of the Project area. During the non-breeding season (September 1 to January 31), surveys shall document whether BUOW are using habitat in or directly adjacent to any area to be disturbed. Survey results shall only be valid for the season (breeding or non-breeding) during which the survey was conducted. If a lapse in Project-related work of fifteen (15) calendar days or longer occurs, another focused survey and consultation with the City and CDFW shall be required before Project work can be reinitiated. If a BUOW or evidence of presence at or near a burrow entrance is found to occur within 500 feet of the Project site, the following measures shall be implemented:

2.1 If BUOW are found during the non-breeding season (approximately September 1 to January 31), the Project applicant shall establish a minimum 160-foot (50-meter) buffer zone around active burrows. The buffer zone shall be flagged or otherwise clearly marked. Measures such as visual screens may be used to further reduce the buffer with CDFW approval and provided a qualified biologist confirms that such measures do not cause agitated behavior.

2.2 If BUOW are found during the breeding season (approximately February 1 to August 31), the Project applicant shall:

a. Avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging).

b. Establish a minimum 500-foot non-disturbance buffer zone around nests, unless otherwise approved by the City in writing, in consultation with CDFW. The buffer zone shall be flagged or otherwise clearly marked. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer will be increased such that activities are far enough from the nest so that the bird(s) no longer display this agitated behavior. Construction shall only occur within the 500-foot buffer zone during the breeding season if a qualified biologist monitors the nest and determines that the activities do not disturb nesting behavior, or the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged and moved off site. Any modifications to this buffer shall be approved by the City, in consultation with CDFW prior to its implementation. The buffer reduction request shall include relevant

information and/or propose new measures to justify the buffer reduction. The buffer area must be clearly marked to prevent Project-related activities from occurring within the buffer zone.

3. Passive Exclusion of Burrowing Owls. If after all applicable avoidance and minimization measures are implemented and Project proponent needs to passively exclude BUOW, an ITP shall be obtained for the activity and a BUOW exclusion plan shall be developed by a qualified biologist for the City's review and approval, in consultation with CDFW. This plan, including its proposed mitigation, shall be consistent with the most recent available guidelines (e.g., *2012 Staff Report on Burrowing Owl Mitigation*). Burrow exclusion shall only be conducted during the non-breeding season for burrows located in the Project footprint, and in limited instances within a buffer zone around the Project site, as determined by the City in consultation with CDFW after all avoidance and minimization measures have been exhausted.

4. Mitigation for Permanent Impacts. The Project proponent shall mitigate for permanent impacts to nesting, occupied and satellite burrows and BUOW habitat with (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for BUOW nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area (3:1 ratio), and (b) sufficiently large acreage, and presence of fossorial mammals. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors."

Comment 3: Mitigation Measure IV-5 Nesting Raptors and Other Migratory Birds, page 38

The MND states that a pre-construction nesting bird survey shall be performed within 500 feet of the Project area to locate any nesting raptors and other migratory birds and active nest shall be protected with 100-foot buffers (other migratory birds) and 500-foot buffers (raptors) within three days prior to commencement of project construction activities and if there is a break in construction activity of more than two weeks. A larger survey buffer of 0.5-mile for raptors, conducting subsequent surveys no more than seven (7) calendar days if there is a break in construction activity, and performance-based buffers would be more protective for species that rebuild nest quickly.

To address this comment, CDFW recommends the MND describes how the considerations identified below will be implemented and incorporated into the appropriate MND section(s):

1. CDFW recommends Project proponent add specific avoidance and minimization measures to the Mitigation Measures section. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The MND should include appropriate preconstruction surveys for non-listed migratory birds at a minimum radius of 500 feet (for migratory birds) and 0.5-mile (for raptors) around the Project area that can be accessed by Project proponent. The MND should include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is a nest buffer radius which can be determined by having a qualified

biologist monitor the active nests and determine the distance that activities will disturb the nesting birds.

2. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. While some birds may tolerate disturbance within 100 or 500 feet of construction activities, other birds may have a different disturbance threshold and “take” could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. It is the Project proponent's responsibility to confirm that avoid take/nest failure with a sufficient buffer.
3. CDFW recommends a final preconstruction survey be required no more than seven (7) calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed in earlier surveys. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1). If a lapse in Project-related work of seven (7) calendar days or longer occurs, the qualified biologist should complete another focused survey before Project work can be reinitiated. It is the Project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.
4. CDFW recommends that any removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat. If any nests observed are of raptor species that have a special-status, CDFW recommends further consultation prior to any removal of nests.

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 Silver Eagle Road at Western Subdivision Project to assist the City of Sacramento 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 email or further coordination should be directed to Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@wildlife.ca.gov.

Thank you.

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