

From: [Oswalt, Caitlyn@Wildlife](mailto:Oswalt.Caitlyn@Wildlife)
To: tom.purciel@edcgov.us
Cc: [OPR State Clearinghouse](#); [Wildlife R2 CEQA](#)
Subject: DEIR Comment Letter for Montano De El Dorado Phase I and II Master Plan Project SCH#2017072027
Date: Friday, July 10, 2020 4:29:48 PM

Tom Purciel
El Dorado County Associate Planner
El Dorado County
2850 Fairlane Court
Placerville, CA 95667
tom.purciel@edcgov.us

7/28/2020

Governor's Office of Planning & Research

Jul 13 2020

STATE CLEARINGHOUSE

Dear Mr. Purciel:

Montano De El Dorado Phase I and II Master Plan (Project)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH# 2017072027

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from El Dorado County for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of 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. (*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.

PROJECT DESCRIPTION SUMMARY

-

Proponent: El Dorado County

Objective: The objective of the Project is to expand the existing Montano de El Dorado retail center in Phase I to include additional retail space, an office building, hotel, and a small amphitheater. Phase II will consist of a total of 10 buildings for a total floor area of approximately 75,400 square

feet and 143,900 square feet of commercial and office uses.

Location: The City of El Dorado Hills, in El Dorado County, at the cross streets of Latrobe Road and White Rock Road, 38°38'39.9"N 121°3'59.2"W.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist El Dorado County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Deferred Mitigation

CEQA Guidelines §15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. The environmental document lists a number of mitigation measures for biological resources that rely on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance. Because there is no guarantee that these approvals or cooperation with all of the involved entities will ultimately occur, the mitigation measures are unenforceable and do not reduce the impacts to biological resources to a less-than-significant level.

Mitigation Measure 3.3-1 relies on future consultation with CDFW for designation of no-disturbance buffers and development of appropriate mitigation measures for direct and indirect impacts to prevent loss of big-scale balsamroot plants. It is the recommendation of CDFW that a botanist meeting all qualifications under, *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018), provide measures to avoid, minimize, and mitigate impacts to big-scale balsamroot within the Mitigation, Monitoring, and Reporting Program. These measures should be enforceable and not reliant on CDFW approval for implementation.

Mitigation Measure 3.3-2 relies on future consultation with CDFW for determining protection buffers for occupied burrows. CDFW recommends avoiding deferred mitigation by developing appropriately sized buffers as deemed by a qualified biologist mitigation in conjunction with the, *CDFW Staff Report on Burrowing Owl Mitigation* (CDFW 2012). For example, the Staff Report contains the following table for reference.

Location	Time of Year	Level of Disturbance		
		Low	Medium	High
Nesting Sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting Sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting Sites	Oct 16-Mar 31	50 m	100 m	500 m

*meters (m)

Mitigation Measure 3.3-3 relies on future consultation with CDFW for determining the size of no-disturbance buffers for nesting birds. The proposed Project should disclose all potential activities that may incur a direct or indirect take to non-game nesting birds within

the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the environmental document. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

All measures to protect nesting birds should be performance-based. While some birds may tolerate disturbance within 250 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. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish & G. Code. The buffer may need to be increased based on the birds’ tolerance level to the disturbance. Below is an example of a performance-based protection measure:

Should construction activities cause the nesting migratory bird or raptor to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, then a qualified biologist shall increase the exclusionary buffer such that activities are far enough from the nest to stop this agitated behavior by the migratory bird or raptor. The exclusionary buffer should remain in place until the chicks have fledged or as otherwise determined by a qualified biologist.

Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented and explain why the measure is feasible. Therefore, the CDFW recommends that the environmental document include measures that are enforceable and do not defer the details of the mitigation to the future.

Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

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:

http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link:

http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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

CDFW appreciates the opportunity to comment on the DEIR to assist El Dorado County in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Caitlyn Oswald, Environmental Scientist at 916-358-4315 or Caitlyn.Oswalt@wildlife.ca.gov.

Sincerely,

Caitlyn Oswald

Environmental Scientist | 916.358.4315

North Central Region – Region 2

California Department of Fish and Wildlife