State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
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Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

April 23, 2019

Michael Wheeler
Senior Planner
Humboldt County Planning and Building Department
3015 H Street
Eureka, CA 95501

Subject: Notice of Preparation for the North McKay Tract Subdivision Environmental Impact Report SCH# 2019049034

Dear Mr. Wheeler:

On April 4, 2019, the California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) for a draft Environmental Impact Report (DEIR) from the Humboldt County Planning and Building Department (Lead Agency) for the North McKay Tract Subdivision (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines (Public Resources Code § 21000 *et seq* and California Code of Regulations Title 14 § 1500 *et seq*). The proposed Project is in the unincorporated area of Humboldt County, California (Township 5 North, Range 1 West, in the Northwest quarter of Section 36) and is within the United States Geological Survey (USGS) 7.5-minute Eureka topographic quadrangle.

CDFW Role

CDFW is the Trustee Agency for the State's fish and wildlife resources and holds those resources in trust by statute for all the people of the State, pursuant to Fish and Game Code sections 711.7 (a) and 1802; Public Resources Code section 21070; and CEQA Guidelines section 15386 (a). CDFW, in its Trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat. CDFW is also a Responsible Agency pursuant to CEQA. As such, CDFW administers the California Endangered Species Act ([CESA] Fish & G. Code § 2050 *et seq*), the Lake or Streambed Alteration program (Fish & G. Code § 1600 *et seq*) and other provisions of Fish and Game Code that conserve the State's fish and wildlife public trust resources.

CDFW offers the following comments and recommendations on this Project in our role as a Trustee and Responsible Agency pursuant to CEQA. CDFW's primary concerns with this Project are its potential impacts to on-site wetlands and headwater streams, and off-site stormwater runoff affecting the Ryan Creek watershed.

Project Description

The Project consists of the subdivision of seven parcels of land, approximately 81 acres total in size, into 154 mixed-use lots including single-family dwellings, multifamily dwellings, and commercial space. The Project would occur in nine phases over approximately 20 years and includes open space, access roads, parking lots, utilities, landscaping, and stormwater infrastructure. The Project proposes road extensions which will necessitate filling of 35,506 square feet of wetlands and installation of road crossings over two headwaters tributaries to Ryan Creek. The Project proposes to implement a 100-foot buffer from the 30 percent break in slope to reduce impacts to Ryan Creek and its tributaries.

Ryan Creek Biological Resources

Ryan Creek and its tributaries and adjacent wetland areas provide habitat for sensitive aquatic species including the southern torrent salamander (*Rhyacotriton variegatus*), the western pond turtle (*Actinemys marmorata*) and northern red-legged frog (*Rana aurora*), both State Species of Special Concern (SSC).

CDFW designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Though not listed pursuant to the federal Endangered Species Act (ESA) or CESA, the goal of designating taxa as SSC is to halt or reverse these species' decline by calling attention to their plight and addressing the issues of conservation concern early enough to help secure their long-term viability. Hence, the ultimate goal of the SSC designation is to avoid CESA or ESA listing.

Ryan Creek is also a fish-bearing stream that supports Coho Salmon (*Oncorhynchus kisutch*) a State and federally-threatened species, coastal cutthroat trout (*O. clarki clarki*), a SSC, and steelhead (*O. mykiss*) a federally-threatened species.

Ryan Creek is within the Eureka Plain Hydrologic Unit (EPHU), and is named as a "*key population to maintain or improve*" in CDFW's 2004 Coho Recovery Strategy (CDFG 2004). According to the Coho Recovery Strategy, impairments in the EPHU include "*high instream sediment levels, stream channel aggradation and widening, lack of stream habitat structure (i.e., deep pools), high water temperatures, and loss of functioning estuary habitat.*" Watershed recommendations for the EPHU include assessment and remediation of sediment inputs, reduction of fine sediment inputs, prevention of point and non-point source pollution, maintaining open space lands, and limiting addition of impervious surfaces in the watershed.

Comments and Recommendations

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

1. **Impacts to Wetlands**

   The NOP states that the Project will impact approximately 37,000 square feet of wetlands and proposes to mitigate for wetland loss at a 1:1 ratio. CDFW recommends avoidance of wetlands when feasible. A 1:1 wetland mitigation ratio is not typically effective in mitigating for wetland loss due to the significant lag time for created wetland vegetation, soils, and hydrology to develop and provide functional wildlife habitat values.

   The NOP states that compensatory wetlands will be constructed prior to the Project filling wetlands, however, it remains unlikely a 1:1 mitigation ratio will effectively mitigate for wetland loss and meet CDFW's and the State's no-net-loss wetland policies. The DEIR should analyze in detail the Project's impacts to wetlands, how mitigation approaches will meet a no-net-loss standard for these impacts and should prioritize avoidance of wetlands. Mitigation proposals should also include mitigation from impacts of any fill associated with installation of crossings as described in comment #2 below. CDFW does not support the use of constructed mitigation wetlands for stormwater treatment.

2. **Impacts to Headwaters Streams**

   The Project will directly impact two headwaters tributaries of Ryan Creek via installation of stream crossings for access roads. These streams and adjacent wetland areas provide habitat for sensitive aquatic species including the southern torrent salamander and northern red-legged frog, both State SSC. Impacts to the stream/wetland areas should be minimized when designing the crossings. The stream crossings should be designed to provide passage for wildlife and should minimize fill and loss of riparian habitat to the greatest extent feasible. CDFW recommends the Project analyze installation of bridges or arch culverts with natural bottoms to best maintain stream habitat and wildlife crossing capabilities. Stream crossings will require a Lake or Streambed Alteration Agreement (LSAA) with CDFW pursuant to Fish and Game Code section 1602.

3. **Low Impact Development**

   Given the importance of Ryan Creek watershed and surrounding habitats, the Lead Agency should require that no-net-increase in stormwater runoff results from the Project, in addition to the requirements of the State Water Resources

Control Board's 2013 Waste Discharge Requirements for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) General Permit. CDFW recommends that the Project use Low Impact Development (LID) strategies such as permeable pavement, vegetated stormwater bio-swales and retention basins to treat, retain and infiltrate stormwater runoff on site. CDFW supports the use of LID strategies because they minimize impacts to aquatic habitats by filtering out pollution, preventing increased peak flows and related erosion, and because they increase ground water recharge and therefore help maintain biologically-important summer low flows.

4. **Impacts to Nesting Birds**

The Project has the potential to impact nesting birds. CDFW recommends that tree removal and any vegetation clearing associated with the Project be conducted outside of the bird breeding season (generally no work during March 1 – August 15) in order to avoid 'take' as defined and prohibited by Fish and Game Code sections 3503, 3503.5, 3513, and by the Federal Migratory Bird Treaty Act (16 U.S. Code 703 *et seq.*). If trees, other vegetation, or any other nesting bird habitat is proposed to be removed or disturbed within the bird nesting season, CDFW recommends, as a condition of approval for the Project, that the Project proponent consult with CDFW prior to vegetation removal, to assess the potential for take of active nests. CDFW may recommend that the Project proponent hire a qualified biologist to survey the area no more than five days prior to disturbance to determine if any birds are nesting in the area. However, some areas may be too difficult to adequately survey, and disturbance should be avoided in these areas until after the nesting season. CDFW strongly recommends scheduling any ground disturbing work or vegetation or tree removal outside of the nesting season whenever possible. Please note that the March 1 – August 15 work window is not all-inclusive, and it is incumbent upon the Lead Agency and Project proponent to ensure that take of active nests is avoided if nests are encountered during Project work.

5. **Impacts to Special Status Plants and Sensitive Natural Communities**

Because of the phased implementation of the Project over 20 or more years, additional surveys will be required to ensure impacts to special status plant species and Sensitive Natural Communities (plants with a California Rare Plant Rank of 1 or 2; Natural Communities with a rank of S1-S3) are avoided. Typically, results of surveys for special status plants are only considered to be valid for 3 – 5 years. Thus, if ground disturbance will occur in an area identified as potential habitat for special status plants that has not been surveyed within the prior five years, a new floristic level survey should be conducted using CDFW's 2018 "*Protocols for Surveying and Evaluating Impacts to Special Status Native*

Plant Populations and Natural Communities," or the most current CDFW protocol at the time of survey, and results should be submitted to CDFW for review and concurrence prior to ground disturbing work.

6. Impacts of Night Lighting

Artificial night lighting is an unavoidable consequence of development and has well-documented adverse effects on a wide variety of fish, wildlife, and plants (CDFW 2014). The Project should minimize outdoor lighting to the greatest extent feasible. CDFW recommends the Project's exterior light fixtures and street standards be fully-shielded and designed and installed to minimize off-site glare and photo-pollution.

7. Invasive Species Management

The project site contains several invasive plant species such as Himalayan blackberry (*Rubus armenaicus*), Scotch broom (*Cytisus scoparius*), Spanish heather (*Erica lusitanica*), pampas grass (*Cortaderia selloana*), and cotoneaster (*Cotoneaster* spp.). The Lead Agency should require as a condition of approval of the Project that invasive plants are eradicated and/or controlled for the life of the Project via an Integrated Pest Management Plan (IPM), or similar approach. This plan should also require use of appropriate native plants in Project-provided landscaping. More information on IPM is available here: https://www2.ipm.ucanr.edu/What-is-IPM/. The California Invasive Plant Council has resources that will aid in developing an IPM or similar plan, see https://www.cal-ipc.org.

8. Domestic and Feral Cats

Free-roaming cats in the United States are estimated to kill billions of birds, mammals, amphibians and reptiles each year, including threatened and endangered species. Predation by feral and free-ranging house cats is likely the single greatest source of anthropogenic mortality for birds and mammals in the United States (Loss et al. 2013). Additionally, free roaming cats have been documented to carry and transmit diseases such as rabies, toxoplasmosis, and plague, which may affect native wildlife as well as humans (Gerhold and Jessup 2013). CDFW recommends that as a condition of approval, the Lead Agency require the Project prohibit outdoor domestic housecats as well as prohibiting support of feral cat colonies (e.g., prohibit supplemental feeding and trap-neuter-return programs) on the Project site for the life of the Project.

Environmental Data

CEQA requires that information developed in Environmental Impact Reports and negative declarations be incorporated into a database that 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 (CNDDB). The online submission and PDF CNNDB field survey forms, as well as information on which species are tracked by the CNDDB, can be found under their corresponding tabs at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data.

Summary of Comments and Recommendations

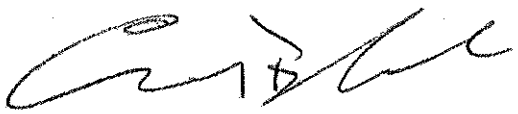
1. The DEIR should include a detailed analysis of Project impacts to all onsite wetlands, prioritizing avoidance of wetlands, and proposing mitigation sufficient to meet a no-net-loss standard when avoidance is not feasible. 1:1 mitigation ratios are typically insufficient to meet this standard.
2. CDFW recommends the Project analyze installation of bridges or arch culverts with natural bottoms to best maintain stream habitat and wildlife crossing capabilities. Stream crossings will require a LSAA with CDFW pursuant to Fish and Game Code section 1602.
3. The Lead Agency should require that no-net-increase in stormwater runoff results from the Project. CDFW supports the use of LID strategies to achieve this goal and to minimize impacts to aquatic habitats.
4. CDFW recommends, as a condition of approval for the Project, that the Project proponent consult with CDFW prior to vegetation removal, to assess the potential for take of active nests if trees, other vegetation, or any other nesting bird habitat is proposed to be removed or disturbed between March 1 and August 15.
5. If ground disturbance will occur in an area identified as potential habitat for special status plants that has not been surveyed within the prior five years, a new floristic level survey should be conducted using the most current CDFW protocol at the time of survey, and results should be submitted to CDFW for review and concurrence prior to ground disturbing work.
6. CDFW recommends the Project's exterior light fixtures and street standards be fully-shielded and designed and installed to minimize off-site glare and photo-pollution.
7. The Lead Agency should require as a condition of approval of the Project that invasive plants are eradicated and/or controlled for the life of the Project via an IPM, or similar approach, and should require use of native plants in Project-provided landscaping.
8. CDFW recommends that as a condition of approval, the Lead Agency require the Project prohibit outdoor domestic housecats as well as prohibiting support of feral

cat colonies (e.g., prohibit supplemental feeding and trap-neuter-return programs) on the Project site for the life of the Project.

Conclusion

CDFW appreciates the opportunity to comment on the NOP to assist the Lead Agency in identifying and mitigating potentially significant impacts of the Project on biological resources. Questions regarding this letter or requests for further coordination should be directed to Jennifer Olson, Environmental Scientist at (707) 445-5387 or jennifer.olson@wildlife.ca.gov.

Sincerely,



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References

California Department of Fish and Game. 2004. Recovery Strategy for California Coho Salmon. Report to the California Fish and Game Commission, Sacramento, CA.

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