



Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 North Central Region  
 1701 Nimbus Road  
 Rancho Cordova, CA 95670  
 www.wildlife.ca.gov

GAVIN NEWSOM, Governor  
 CHARLTON H. BONHAM, Director



April 21, 2020

Scott DeLeon  
 Interim Community Development Director  
 County of Lake  
 255 N. Forbes Street  
 Lakeport, CA 95453

Governor's Office of Planning & Research

APR 21 2020

STATE CLEARINGHOUSE

Dear Mr. DeLeon:

Subject: Guenoc Valley Mixed-Use Planned Development Project  
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) SCH# 2019049134

The California Department of Fish and Wildlife (CDFW) received and reviewed a Notice of Availability of a DEIR from the County of Lake (County) for the Guenoc Valley Mixed-Use Planned Development (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, and their habitat. 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.

CDFW is also submitting comments 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, portions of the Project will 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 proposes phased development of resort facilities including low density residential, preserved open space, neighborhood serving retail and restaurants, and several boutique hotels. The Project site is proposed on approximately 16,000 acres located in southern Lake County, approximately 2 miles southeast of Middletown and 15 miles north of Calistoga, CA. The Project would involve a General Plan amendment, creation of a new zoning district pursuant to Policy 6.3.1b of the Middletown Area Plan, rezoning, subdivision, and project-specific approvals.

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

## COMMENTS AND RECOMMENDATIONS

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

### *Lake and Streambed Alteration*

Pursuant to Fish & G. Code, § 1600 et seq., notification to CDFW is required if a project proposes activities that may substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. In these cases, the DEIR should propose mitigation measures to avoid, minimize, and mitigate impacts to fish and wildlife resources from these activities. The Project encompasses activities that include, but are not limited to: the installation or replacement of bridges, culverts, outfalls, grading, and riparian vegetation removal, which are subject to Notification under Section 1602 of the Fish and Game Code. CDFW recommends the DEIR clearly state that notification under Fish and Game Code 1602 is required. CDFW encourages project proponents to notify as early as possible to ensure adequate time to process future permits.

CDFW's ability to issue Lake and Streambed Alteration Agreements in a timely manner is facilitated when the environmental document specifically describes project impacts and proposes measures to avoid, minimize, and mitigate impacts to perennial, intermittent, and ephemeral rivers, streams, and lakes, and any associated biological resources/habitats present within the project study area. The DEIR should identify impacts to fish and wildlife resources dependent on those hydrologic features and habitat types. The analysis should overlay all Project activities over the habitat types and hydrologic features to determine where and to what extent they overlap. And finally, use the overlapping areas to estimate, by habitat type, the acreages that will be temporarily and/or permanently directly, indirectly or cumulatively impacted by the proposed Project. CDFW relies on the Lead Agency environmental analysis when acting as a responsible agency when issuing a Lake or Streambed Alteration Agreement for a project.

### *Threatened, Endangered, Candidate Species*

The Project area as shown in the DEIR includes occurrences and habitat for state listed species including the following:

Tricolored blackbird (*Agelaius tricolor*)  
Bald eagle (*Haliaeetus leucocephalus*)

If preconstruction surveys detect presence of state listed species and the Project is likely to result in "take", as defined in the Fish & G. Code, section 86, an Incidental Take Permit (ITP)(Fish & G. Code, § 2081) may be obtained prior to starting construction activities.

### *Fully Protected Species*

The classification of Fully Protected (Fish & G. Code §§ 3511, 4700, 5050 and 5515) was the State's initial effort in the 1960's to identify and provide additional protection to those animals that were rare or faced possible extinction. Lists were created for fish, mammals, amphibians and reptiles, birds and mammals. Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock.

The DEIR states that several Fully Protected Species have been detected within the Project area including:

Ring-tailed cat (Ringtail) (*Bassariscus astutus*)  
Golden eagle (*Aquila chrysaetos*)

White-tailed kite (*Elanus leucurus*)  
American peregrine falcon (*Falco peregrinus anatum*)  
Bald eagle (*Haliaeetus leucocephalus*)

Because of the species' status, any impact could be considered significant under CEQA. Construction noise and disturbance could result in impacts to these Fully Protected Species or their nests. Therefore, a combination of avoidance measures or design considerations can be effective in reducing impacts to the species. CDFW is not able to authorize the take of Fully Protected Species. The DEIR should describe how the Project will avoid take and coordinate with CDFW if Fully Protected Species are present.

#### *Migratory Birds*

Migratory bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the section 3513 of the Fish and Game Code. Fish and Game Code sections 3503, 3503.5, and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present adjacent to the proposed Project footprint. CDFW recommends the DEIR analyze potential activities that may impact migratory and local nongame birds. Appropriate avoidance, minimization, and/or mitigation measures to reduce impact should also be included. Measures to avoid the impacts can include species-specific work windows, bird surveys, biological monitoring, installation of noise attenuation barriers, etc. As a part of the DEIR, CDFW recommends identifying any trees slated for removal and said trees be properly analyzed for potential impacts to nesting birds. Likewise, any plans for the plantings of new trees should also be included with the number and species to be planted. CDFW recommends using native California species to the greatest extent possible.

Additionally, all measures to protect nesting birds should be performance-based. The CDFW recommends including performance-based protection measures instead of set buffers for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. Below is an example of a performance-based protection measure:

Should project 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 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, are feeding independently and are no longer dependent on the nest as determined by a qualified biologist.

#### *Reduction of Human and Wildlife Conflict*

Conflict between humans and wildlife is a growing concern in developing areas, where the conflict results in mortality of native species<sup>2</sup>. CDFW suggests the following recommendations in order to reduce occurrences of human and wildlife conflict:

##### *Wildlife Friendly Fencing*

All perimeter or residential fencing that is not protecting crops, pasture, or grazing land should be constructed with wildlife friendly fencing to reduce the potential of incidental take or movement prevention. Please consult the attached paper (*A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind*) for recommendations on construction and use of wildlife friendly fencing.

##### *Deer Watering and Feeding*

CDFW recommends local code prevent the feeding and watering of deer. Other county communities have flourishing suburban and rural deer populations which has led to dense and diseased herds.

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<sup>2</sup> A.J. Dickman, *Complexities of conflict: the importance of considering social factors for effectively resolving human-wildlife conflict* (2010)

*Potential Bear Depredation*

Bear and human conflict may occur in the form of nuisance bears in trash cans. CDFW recommends local code be developed and enforced for anyone who repeatedly leaves trash, pet food, bird food, or other food accessible to bears.

*Potential Domestic Cat Depredation*

Depredation by domestic cats is a significant issue in developments where urban and suburban areas border wildlife habitat<sup>3</sup>. Residents should be encouraged to keep domestic cats indoors to reduce their depredation of native fauna. CDFW recommends local code and enforcement be developed and enforced to encourage this behavior. Reducing the amount and duration of outdoor domestic cats is shown to correlate to a meaningful reduction in the level of depredation of fauna in urban and suburban environments<sup>4</sup>.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, the DEIR should require the reporting of any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov) and [R2CEQA@wildlife.ca.gov](mailto:R2CEQA@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](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**

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](mailto:R2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the DEIR to assist the County 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 Zach Kearns, Environmental Scientist at 916-358-1134 or [zachary.kearns@wildlife.ca.gov](mailto:zachary.kearns@wildlife.ca.gov).

Sincerely,

Kevin Thomas  
Regional Manager

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<sup>3</sup> Kerrie Loyd, Sonia Hernandez, John Carroll, Kyler Abernathy, Greg Marshall, *Quantifying free-roaming domestic cat predation using animal-borne video cameras* (2013)

<sup>4</sup> Wayne Linklater, Mark Farnworth, Yolanda van Heezik, Kevin Stafford, Edith MacDonald, *Prioritizing cat-owner behaviors for a campaign to reduce wildlife depredation* (2019)

Attachment:

A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind. 2012

ec: Jeff Drongesen, [jeff.drongesen@wildlife.ca.gov](mailto:jeff.drongesen@wildlife.ca.gov)  
Billie Wilson, [billie.wilson@wildlife.ca.gov](mailto:billie.wilson@wildlife.ca.gov)  
Zach Kearns, [zachary.kearns@wildlife.ca.gov](mailto:zachary.kearns@wildlife.ca.gov)  
*Department of Fish and Wildlife*

Mark Roberts  
Principal Planner  
[guenocvalleycomments@lakecountyca.gov](mailto:guenocvalleycomments@lakecountyca.gov)  
*County of Lake*

Office of Planning and Research, State Clearinghouse, Sacramento