



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

AUG 27 2019

August 26, 2019

STATE CLEARINGHOUSE

Mr. Jason R. Hade
Napa County Planning, Building, and Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559

Subject: Anda Residence, Viewshed Permit #P15-00420, Draft Mitigated Negative Declaration, SCH #2019079071, Napa County

Dear Mr. Hade:

The California Department of Fish and Wildlife (CDFW) received a draft Mitigated Negative Declaration (MND) for the Anda Residence (Project). CDFW is submitting comments on the draft MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA) and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

Regulatory Requirements

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to foothill yellow-legged frogs or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Lake and Streambed Alteration Agreement

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602; and CDFW may require an LSAA with the applicant, pursuant to Section 1600 *et seq.* of the Fish and Game Code.

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Issuance of an LSAA is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSAA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lisa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

CDFW also 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 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Project Description and Environmental Setting

The Project site is on a 17.4-acre parcel located at 4129 Dry Creek Road, approximately 1.5 miles northwest of the City of Napa, Napa County; Assessor's Parcel Number: 035-390-001. The dominant vegetation community on-site is mixed oak woodland and is comprised mostly of the following species: coast live oak (*Quercus agrifolia*), Pacific madrone (*Arbutus menziesii*), bay laurel (*Laurus nobilis*), Douglas-fir (*Pseudotsuga menziesii*), and coast redwood (*Sequoia sempervirens*). An unnamed tributary to Salvador Creek and thence the Napa River flows from west to east on the western portion of the parcel; and a small unnamed ephemeral drainage flows west to east parallel to the existing driveway and eventually into Dry Creek, which lies approximately 0.25 miles north of the Project site. Surrounding land use is rural residences to northeast and east, vineyard development to the west, and undisturbed mixed oak woodland forest to the north and south.

The Project is to develop two residences, approximately 4,653 square feet and 1,193 square feet in size. Additionally, the Project includes the construction of an approximately 612-square-foot carport; construction of a pool; improvements to approximately 1,600 linear feet of driveway that spans multiple properties; and the installation of a wastewater system and 10,000-gallon water storage tank.

Comments and Concerns

The Biological Resources section of the draft MND states, "No sensitive plant or animal species were identified during biological surveys of the subject site." CDFW is concerned about both sensitive plants and animal species on-site.

Northern Spotted Owl (Strix occidentalis caurina; NSO)

The Biological Assessment (BA) titled, *3rd Addendum to Botanical and Biological Assessments and Surveys for Fabian Anda Conversion Project*, prepared by Jacobszoon and Associates, dated September 27, 2017, includes a consultation letter addressed to the U.S. Fish and

Wildlife Service (USFWS) Arcata office, dated June 1, 2015, which states that surveys for NSO were conducted on April 27, 2015, for the Project and one NSO was detected. According to the BA, the Project will develop approximately five acres of oak woodland habitat, which is potential NSO foraging habitat; however, the draft MND does not discuss these impacts. CDFW recommends that the draft MND specify how many acres of NSO foraging and breeding habitat will be impacted as a result of the Project. The MND should include mitigation for the permanent loss of suitable foraging habitat for NSO by preserving like habitat of equal or greater habitat value on-site at a minimum ratio of 2:1 per acre impacted. If the mitigation lands will be on-site, the draft MND should include a detailed map showing the preserved land and it should specify that the preserved land area will be protected in perpetuity under a conservation easement or deed restriction. If there are impacts to nesting habitat, the project proponent may need to seek a CESA ITP. To reduce impacts to less-than-significant, the MND should clearly outline the impacts and mitigation to nesting habitat. CDFW is available for guidance on impacts to nesting habitat.

Mitigation Measure BIO-2 states that prior to the commencement of vegetation removal and earth disturbing activities, a qualified biologist will conduct one survey during the breeding season for NSO, using the USFWS *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (2012)*. Please note that the abovementioned survey protocol requires a minimum of 2 years of surveys with 6 complete survey visits each year, for projects that will be removing NSO habitat. Section 9 of the survey protocol states that if a project will not modify spotted owl habitat but will result in disturbance (e.g. noise disturbance) then a one year six visit survey may be sufficient; and each survey should include all NSO habitat within 0.25 miles of the project area. CDFW recommends that Project activities start after August 1, to avoid potential take¹ of NSO. If breeding NSO are detected during surveys, a qualified biologist should prepare an avoidance and minimization plan in consultation with CDFW that includes suitable buffer distances from all active nest sites. If suitable buffer distances from Project activities cannot be established in order to avoid disturbance, the Project should either wait until August 1 or until a qualified biologist has determined NSO young have fledged or until the nest is no longer active, whichever comes first. Alternatively, the Project proponent can get a CESA ITP from CDFW prior to the start of Project activities.

Special-Status Plants

Surveys for special-status plants were conducted on the Project site by Jacobszoon and Associates in 2015 and no special-status plants were found during surveys. However, because the surveys are over four years old, CDFW recommends that the MND require a qualified botanist to conduct additional special-status plant surveys prior to construction during the appropriate blooming periods of all special-status plants that could potentially occur on the Project site. Surveys should follow the updated CDFW survey protocol titled, *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018. The survey protocol can be found here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. If special-status plants are found during surveys CDFW recommends that they be avoided to the greatest extent feasible. If the Project cannot completely avoid impacting special-status plants, a qualified

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

botanist should prepare a mitigation and monitoring plan in consultation with CDFW to minimize impacts to special-status plants to a level of less-than-significant.

Oak Woodland and Impacts to Native Vegetation

The draft MND states that up to 38 oak trees will be removed as a result of the Project and proposes to implement Mitigation Measure BIO-6, which requires the Project to replant two times the number of oak trees that will be removed. Removal of old-growth oak trees, i.e., native oak trees that are greater than 15 inches in diameter, is a significant impact. Old-growth oaks provide food and shelter for a variety of native species; and because oak trees have slow growth rates, it would take many years for planted oaks to grow to a size that could provide the same ecological benefits that old-growth oaks provide. Due to this, the proposed mitigation ratio of 2:1 is inadequate. CDFW recommends the following tree replanting ratios for removal of oak trees in order to reduce impacts to a level of less-than-significant:

- *4:1 replacement for impacted oaks 5-10 inches in diameter*
- *5:1 replacement for impacted oaks 10-15 inches in diameter*
- *Trees greater than 15 inches in diameter are considered old-growth oaks and should be mitigated at a ratio of 15:1*

Planted oaks should be irrigated for at least the first two years either via hand-watering or drip irrigation; and they should be monitored for a minimum of five years to ensure the plantings achieve at least 80% survival. CDFW recommends that cages be placed around planted oak trees to avoid deer browse and that weeding occur within and around caged oak trees, until the trees become well-established. Once the oaks become a sufficient size, the cages should be removed. If oak plantings have not achieved at least 80% survival after 5 years of monitoring, new oaks should be planted; and they should be monitored for an additional 5 years to ensure a minimum of 80% survival.

Nesting Migratory Birds and Raptors

Mitigation Measure BIO-1 of the draft MND requires that a qualified biologist conduct a survey for nesting birds and/or raptors within 14 days prior to the start of Project activities, if Project activities are to begin during the bird breeding season (typically February 15 to August 31). Because many birds can construct nests within a matter of days, CDFW recommends that a nesting bird survey be conducted within 5 days prior to the start of Project activities, to avoid having a bird/raptor begin nesting in the Project area between the time of the survey and the start of construction. If a lapse in work of 5 days or greater occurs, a qualified biologist should conduct another nesting bird survey prior to the start of construction. If an active bird nest is discovered during surveys the area around the tree with the active nest should be marked with high visibility fencing or flagging and the qualified biologist shall determine a suitable buffer distance to avoid nest disturbance during Project activities. The qualified biologist should supervise nest activity during the first couple of days of construction to ensure construction activities are not disturbing the nest. Alternatively, construction can wait until September 1 or until the young have fledged; or until a qualified biologist has determined the nest is no longer active, whichever comes first.

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Erosion Control

The Project includes development on slopes ranging from 5% to greater than 30%; however, the draft MND does not discuss erosion control measures or implementation of a Project specific Erosion Control Plan. Because of the proposed development on steep slopes, CDFW recommends that Project specific erosion control measures be developed, implemented, and monitored during all phases of construction to prevent sediment from entering waters of the State. All erosion control devices should be free of plastic monofilament netting and should be composed of biodegradable materials (e.g. coir logs, coconut fiber blanket, jute netting) to minimize impacts to fish and wildlife.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse