



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 9, 2024

Chuck Beatty
Planning Director
Amador County
810 Court Street
Jackson, CA 95642
planning@amadorgov.org

Subject: Wicklow Way Specific Plan
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2023010563

Dear Chuck Beatty:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from Amador County for the Wicklow Way Specific Plan (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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. (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

¹ 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.

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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 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 site is located at Rock Creek and Jackson Creek, in the City of Jackson, in Amador County, at approximately Latitude: 38.355695 and Longitude: -120.801346.

The EIR concerning the Wicklow Way Specific Plan (WWSP) is the primary land use, policy, and regulatory document used to guide the overall development of the 201-acre site. The WWSP establishes a development framework for land use, circulation, utilities and services, resource protection, and implementation. All subsequent development projects and related activities are required to be consistent with the WWSP.

The WWSP would provide a potential new County administrative office/civic center, and a total of 700 residential units with a range of densities on approximately 80 acres that would accommodate approximately 1,800 residents. Proposed land uses also include approximately 26 acres for community commercial and civic uses; 46 acres of open space; 6.9 acres for parks and recreation; and 42 acres for public uses. To preserve options, the land use plan assumes a 9.7-acre site for an onsite wastewater treatment plant, should it be needed in the future.

COMMENTS AND RECOMMENDATIONS[^]

CDFW offers the comments and recommendations below to assist Amador County in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

CDFW is primarily concerned with the Project impacts to riparian habitat along Rock Creek and its associated tributaries.

COMMENT 1: MM BIO-1 Special-Status Plants, 4.4.6 Mitigation Measures, page 4.4-26

Issue: MM BIO-1 states that, "At a minimum, offsite mitigation shall occur at a 1:1 ratio..." While this is stated to be a minimum, a 1:1 minimum compensatory mitigation ratio is likely not appropriate for offsite mitigation as it will not appropriately ensure no-net-loss.

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Recommendation or Recommended Mitigation Measure: MM BIO-1 should set a higher minimum compensatory mitigation ratio with defined success criteria that ensures the created or purchased habitat constitutes no-net-loss at the end of the project.

COMMENT 2: MM BIO-3 Special-Status Birds, 4.4.6 Mitigation Measures, page 4.4-26 and 4.4-27

Issue: MM BIO-3 states that if raptor or other migratory birds are identified in pre-construction surveys, a 500-foot buffer or a 200-foot buffer, respectively, will be established. While these buffers may be appropriate for most California species, these buffers may not fully avoid nest disturbances for all species and may result in unlawful take or nest disturbances.

Recommendation or Recommended Mitigation Measure: The measure should state that active nests should be avoided, and a no disturbance or destruction buffer shall be determined and established by a qualified biologist. The buffer shall be kept in place until after the breeding nesting season or the qualified biologist confirms the young have fledged, are foraging independently, and the nest is no longer active for the season. If a lapse in project-related work of fourteen (14) calendar days or longer occurs, a qualified biologist shall complete another focused survey before project work can be reinitiated.

COMMENT 3: MM BIO-6 Aquatic Habitats, 4.4.6 Mitigation Measure, page 4.4-28

Issue: MM BIO-6 states that, "...a CDFW LSAA shall be obtained, pursuant to Section 1602 of the Fish and Game Code, for each stream crossing or other activities affecting the bed, bank, or associated riparian vegetation of a creek." This language does not fully encompass activities requiring Notification under Fish and Game Code 1602.

Recommendation or Recommended Mitigation Measure: The language in this measure should be adjusted to include that an entity must notify prior to commencing any activity that may substantially divert or obstruct the natural flow of any river, stream, or lake, substantially change or use any material from the bed, channel or bank of any river, stream, or lake, or deposit debris, waste or other materials where it may pass into any river, stream or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the floodplain of a body of water.

COMMENT 4: MM BIO-6 Aquatic Habitats, 4.4.6 Mitigation Measure, page 4.4-28

Issue: MM BIO-6 states that, "The Project applicant shall be responsible for mitigating impacts to riparian habitat by either creating suitable onsite habitat (2:1 replacement ratio) and/or acquiring mitigation credits at a CDFW-approved mitigation bank. Mitigation credits shall be purchased at a 1:1 ratio." These compensatory mitigation ratios may not be

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sufficient to ensure no-net-loss of habitat or may not be deemed sufficient during the Notification process.

Recommendation or Recommended Mitigation Measure: MM BIO-6 should set a higher compensatory mitigation ratio for created habitat that includes a defined success criteria to ensure there is no-net-loss of habitat at the end of the project.

COMMENT 5: Swainson's Hawk Surveys, 9.3 Vegetation and Wildlife, page 9-6

Issue: The Vegetation and Wildlife section states that, "The grassland habitat supports several raptor species, including Swainson's hawk, by providing foraging habitat." The project area includes isolated oak woodland, and riparian habitats, which may provide suitable nesting habitat for Swainson's Hawk (SHWA, *Buteo swainsoni*). The Mitigation Measures do not include detailed considerations to ensure that nests are identified and the species is either fully avoided, or how the Project will comply with CESA.

Recommendation or Recommended Mitigation Measure: A Mitigation Measure should be included that will survey for SWHA in accordance with the five-period schedule detailed in "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Tech. Advis. Comm., 5/2000):"

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

If an occupied nest is found and may be impacted by project activities, Amador County should consult with CDFW and demonstrate compliance with CESA. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species, either through construction or over the life of 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: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed

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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 DEIR for the Wicklow Way Specific Plan to assist Amador 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.

Sincerely,

DocuSigned by:

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Morgan Kilgour, PhD
Regional Manager

ec: Billie Wilson, Senior Environmental Scientist (Supervisory)
Zach Kearns, Environmental Scientist
Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento