



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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May 16, 2019

Governor's Office of Planning & Research

MAY 17 2019

STATE CLEARINGHOUSE

Mr. Jordan Davis, Senior Planner
City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
jdavis@ci.pittsburg.ca.us

Dear Mr. Davis:

Subject: 2018 Alves Ranch Project, Supplemental Environmental Impact Report,
SCH #2004012097, City of Pittsburg, Contra Costa County

The California Department of Fish and Wildlife (CDFW) received a draft Supplemental Environmental Impact Report (SEIR) from the City of Pittsburg (City) for the 2018 Alves Ranch Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the SEIR to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Pittsburg

Description and Location: The Project site is located in the City of Pittsburg, Contra Costa County, California. The Project is located within the incorporated limits of the City of Pittsburg, north of West Leland Road between San Marco Boulevard and Bailey Road. The Project is a revised portion of the 2004 Alves Ranch Project, later amended in 2009. The Project consists of the development of 346 single-family dwelling units and 10 accessory dwelling units on approximately 25.93 acres, and the rezoning of approximately 12 acres of the Project site for up to 140,000 square feet of commercial uses.

COMMENTS AND RECOMMENDATIONS

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

Western Burrowing Owl (*Athene cunicularia*)

The SEIR should evaluate the potential for burrowing owls to be present within and adjacent to the Project area by documenting the extent of fossorial mammals that may provide burrows used by owls during the nesting and/or wintering seasons. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. If suitable burrowing owl habitat is present, CDFW recommends that surveys be conducted following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

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Burrowing owl surveys should be conducted by a qualified biologist (i.e. someone with multiple years of experience conducting species-specific surveys). In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

Please be advised that CDFW does not consider exclusion of burrowing owls or "passive relocation" in and of itself sufficient to reduce the permanent loss of habitat to a level of less-than-significant. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid "take".

The CEQA document for the Project should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitats that cannot be fully avoided. Please note that the permanent loss of habitat (foraging, nesting, etc.) is considered significant in and of itself, and should be mitigated regardless of current level of disturbance or reconnaissance survey results. To offset this significant permanent impact, the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio (or a minimum mitigation ratio of 3:1 if active burrows or winter roosts are identified on-site) or as a condition of Project approval. If active burrows or winter roosts are found on-site or take cannot be avoided, the mitigation ratio should be increased to a minimum of 3:1 (mitigation: loss).

Swainson's Hawk (*Buteo swainsoni*)

CDFW recommends that a qualified biologist conduct surveys prior to any construction activities that may impact Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted: 1) within a minimum 0.25-mile radius of the Project area or a larger area if necessary to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.25-mile buffer shall be maintained around the nest until the young fledge. If Swainson's hawk activity (foraging or courtship, not just nests) is noted within 0.25 miles of the project site and a non-disturbance buffer of 0.25 miles cannot be implemented,

the Project proponent should be required to obtain a CESA ITP and pursue further compensatory mitigation as a condition of Project approval.

Avoidance and minimization measure *MM BIO-1b* indicates that Swainson's hawk foraging habitat shall be mitigated at a 1:1 ratio for each acre developed if nests are located and determined to be occupied. However, the Project site is within 10 miles of documented Swainson's hawk nests and provides suitable foraging habitat for the species and other special-status raptors [e.g., golden eagle (*Aquila chrysaetos*)]. Nesting Swainson's hawks will travel up to 10 miles to suitable foraging habitat, but the likelihood of both adult and nest survival decreases with greater travel distances to suitable foraging habitat (Briggs et al. 2011). Therefore, the permanent loss of habitat is considered significant and should be mitigated for, regardless of current level of disturbance or reconnaissance survey results. Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

Migratory and Nesting Birds

Avoidance and minimization measure *MM BIO-1c* (page 11) specifies a 300-foot non-disturbance radius around an active raptor nest and a 50-foot non-disturbance radius around an active migratory bird nest. Depending on the species, nest stage, and site conditions, 50 to 300 feet may not be sufficient to prevent disturbance-related nest failure. If nests are found in or near the Project area, CDFW can provide guidance on establishing appropriate buffers to minimize the potential for take and to reduce potential impacts to less-than-significant. As such, CDFW recommends *MM BIO-1c* be revised to require nest buffer approval from the State's trustee for fish and wildlife (CDFW) **prior** to Project construction.

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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the SEIR to assist the City in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or Jennifer.Rippert@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

Cc: State Clearinghouse

REFERENCES

Briggs, C.W., B. Woodbridge, and M.W. Collopy. 2011. Correlates of Survival in Swainson's Hawks Breeding in Northern California. *Journal of Wildlife Management* 75 (6): 1307-1314.