



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
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December 6, 2019

Governor's Office of Planning & Research

DEC 09 2019

STATE CLEARINGHOUSE

Ms. Angelica Garcia, Planning Technician
City of Vacaville
650 Merchant Street
Vacaville, CA 95688

Subject: Vaca Valley Hotel Project, Initial Study/Mitigated Negative Declaration,
SCH #2019119050, City of Vacaville, Solano County

Dear Ms. Garcia:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Vacaville (City) for the Vaca Valley Hotel Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. 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 a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Agreements, and 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

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of Swainson's hawk (*Buteo swainsoni*) or any listed 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

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

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

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.

Migratory Birds and Raptors

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 SUMMARY

Proponent: A2R Architects

Objective: The Project would construct a four-story, 84,970-square-foot hotel, a 4,600-square-foot restaurant, a 1,500-square-foot office building, a parking lot with 242 spaces, a culvert that discharges to Horse Creek storm drain canal, and associated landscaping on a currently vacant lot. The total Project site is 5.43 acres.

Location: The Project is located at the southwest corner of Vaca Valley Parkway and E. Monte Vista Avenue in northwestern City of Vacaville, Solano County. The 5.43-acre Project site occurs at Latitude 38° 23' 37.6" N, Longitude 121° 57' 16.1" W, Assessor's Parcel Number 133-210-280.

Timeframe: Project construction is anticipated to take 13 months from the time the Project is approved.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below 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. Editorial comments or other suggestions may also be included to improve the document.

Swainson's Hawk

The Biological Constraints Report (BCR) referenced in the IS/MND states that trees on-site may provide potential habitat for sensitive bird species such as Swainson's hawk and white-tailed kite (*Elanus leucurus*), and further that no nests were observed during the January 2019 site visit. Swainson's hawk is a threatened species under CESA and white-tailed kite are fully protected species. Two active Swainson's hawk nests are recorded in the California Natural Diversity Database (CNDDDB) from 2001 and 2016 approximately 0.25 miles north of the Project site. Due to the proximity of these occurrences to the Project and suitable on-site trees, CDFW believes that the Project could result in Swainson's hawk nest abandonment, loss of young, and reduced health and vigor of chicks (resulting in reduced survival rates) due to construction activities during nesting season.

The IS/MND classifies the site as "valley floor grassland," which CDFW considers the Project site potential foraging habitat for Swainson's hawk. While the IS/MND describes the site as disturbed habitat, such sites can still be colonized by small mammals, insects, or other suitable prey items for Swainson's hawk.

CDFW recommends including the following Mitigation Measures to reduce potential impacts to Swainson's hawk to less-than-significant:

- If construction activities will occur within the nesting season (March 1 to September 15), then a qualified biologist shall conduct Swainson's hawk surveys 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 site or a larger area if needed 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 a Swainson's hawk active nest is detected within 0.25 miles of the Project site, construction should not proceed unless a qualified biologist provides a written determination, including supporting information, to CDFW that construction is unlikely to disturb the nest and written approval from CDFW is obtained. If take of Swainson's hawk cannot be avoided, the Project proponent should obtain a CESA ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

- In accordance with the draft Solano Habitat Conservation Plan, valley floor grassland habitat (Swainson's hawk foraging habitat) should be mitigated at a 1:1 ratio to reduce impacts to Swainson's hawk to less-than-significant.

Burrowing Owl

The BCR states that burrowing owl occurrences are north of the Project site, yet no burrows or small mammal activity was observed during the January 2019 survey. Burrowing owl (*Athene cunicularia*) is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. Burrowing owls are known to occur within the vicinity of the Project, including from a presumed extant CNDDDB occurrence approximately 1.1 miles to the north and a potentially extirpated occurrence approximately 0.5 miles to the east (occurrences dated 2006 and 2004 respectively). Due to the proximity of these occurrences to the Project and classification of the site as "valley floor grassland," CDFW considers the Project site potential foraging habitat for burrowing owl. While the IS/MND describes the site as disturbed habitat, such sites can still be colonized by small mammals, insects, or other suitable prey items for burrowing owl.

CDFW recommends including the following Mitigation Measures to reduce potential impacts to burrowing owl to less-than-significant:

- A qualified biologist shall conduct surveys following the CDFW, then Department of Fish and Game, Staff Report on Burrowing Owl Mitigation (2012) survey methodology. Surveys should encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or Project activities should trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist should have a minimum of two years of experience implementing the CDFW 2012 survey methodology resulting in detections. Detected burrowing owls should be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan should be subject to CDFW review.
- In accordance with the draft Solano Habitat Conservation Plan, valley floor grassland habitat (burrowing owl habitat) shall be mitigated at a 1:1 ratio to reduce impacts to burrowing owl to less-than-significant.

Special-Status Plants

The IS/MND references the BCR which describes the site based on a January 2019 site visit, and states that that "no focused presence/absence surveys for special-status plant or wildlife species were conducted." Because the site visit was conducted outside of the appropriate blooming period and no surveys were conducted for any special-status plants that have the potential to occur on-site, CDFW recommends that a qualified biologist conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018. The protocol can be found here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>. If special-status plants are found during surveys, the IS/MND should outline how the Project would be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, the IS/MND should outline mitigation if impacts still occur.

Pipes, Holes, and Trenches

The use of hollow fence posts, open pipes, holes and trenches during Project construction can pose a risk of wildlife entrapment and mortality. These structures mimic the natural cavities preferred by various wildlife species for shelter, nesting, and roosting. CDFW recommends the following measures to minimize risk of harm to wildlife:

- All pipes, culverts, or similar structures that are stored at the site for one or more overnight periods should be thoroughly inspected for wildlife by a qualified biologist prior to use at the Project site. All hollow pipes or posts installed as part of the Project and exposed to the environment should be capped, screened, or filled with material prior to the end of the work day in which the installation occurs.
- Any open trenches, pits, or holes with a depth of larger than one (1) foot should be covered at the conclusion of work each day with a hard, non-heat conductive material (e.g., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife should be used to cover open trenches. If use of a hard cover is not feasible, CDFW recommends creating earthen or wooden ramps to allow both small and large wildlife species to exit the trench of their own accord. All trenches, pits, or holes should be inspected daily by a qualified biologist or biological monitor prior to the initiation of construction. If wildlife is discovered, it should be allowed to leave of its own accord.

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 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 emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

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

CDFW appreciates the opportunity to comment on the IS/MND to assist the City of Vacaville in identifying and mitigating Project impacts on biological resources.

Ms. Angelica Garcia
City of Vacaville
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Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or amanda.culpepper@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregg Erickson".

Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2019119050)