

September 11 2023

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STATE CLEARINGHOUSE

From: Kearns, Zachary@Wildlife
Sent: Thursday, September 21, 2023 5:26 PM
To: jdellamonica@lodi.gov
Cc: Rippert, Jennifer@Wildlife; Wilson, Billie@Wildlife; Sheya, Tanya@Wildlife; Wildlife R2 CEQA
Subject: CDFW Comments - Lakehouse Mixed Use Development - San Joaquin County

Hi John Della Monica,

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Lakehouse Mixed Use Development (project). CDFW is responding to the DEIR as a Trustee Agency for fish and wildlife resources (Fish & G. Code, §§ 711.7 & 1802, and CEQA Guidelines, §§ 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for incidental take of endangered, threatened, and/or candidate species (California Fish and Game Code Sections 2080 and 2080.1).

The project is located at approximately Latitude: 38.146667, Longitude: -121.301389, in San Joaquin County. The project consists of the development of 150 apartment units, a 96-suite hotel, associated hospitality-related facilities, and approximately 18,500 square feet of retail commercial space.

CDFW recommends the following items be addressed in the future planning of the project:

1. **Nesting Birds.** Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

CDFW recommends that nesting bird surveys be conducted if project activities are scheduled to occur between February 1 and August 31, to fully encapsulate the potential nesting season. The survey should take place no more than 15 calendar days prior to ground disturbing activities. CDFW typically recommends a minimum of a 500-foot radius for migrating birds, and a ½ mile radius for nesting raptors.

2. **Moving out of Harm's Way:** The proposed project is anticipated to result in disturbances to natural habitats that support native species. To avoid direct mortality, a qualified biologist who is approved by CDFW to handle special status species may be retained to be onsite prior to and during all project-related activities to move out of harm's way special status species or other wildlife of low or limited mobility, that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far a necessary to ensure their safety.

Please note, if it is determined the Project may have the potential to result in "take," as defined in the Fish and Game Code, section 86, of a CESA-listed species, then the City of Lodi Community Development Department (City) should disclose that an incidental take permit (ITP) or a consistency determination (Fish & G. Code, §§

2080.1 & 2081) may be needed prior to starting construction activities. The DEIR should include all avoidance and minimization to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures should be proposed to fully mitigate the impacts to CESA-listed species (Cal. Code Regs., tit. 14, § 783.2, subd. (a)(8)). If the City does not pursue CESA authorization and encounters any CESA-listed species during project activities, work should be suspended, and CDFW notified. Work should not re-initiate until the City has consulted with CDFW and can demonstrate compliance with CESA.

- A. The DEIR indicates that take coverage will proactively be obtained through the San Joaquin County Multi-Species Habitat Conservation Plan (SJMSCP). If take coverage is not available for the project through the SJMSCP, CDFW recommends early consultation to ensure potential permitting delays do not affect project timelines.
3. **Tree Roosting Bats:** The document states that project activities will occur in likely habitat of tree roosting bats. If roost trees are removed during the colder months, bats may be in hibernation and unable to escape. To avoid potential impacts to both maternity colonies and hibernating bats, CDFW recommends that tree removal be scheduled either in the spring between approximately March 1 (or when evening temperatures are above 45°F) and April 15, or in fall between approximately September 1 and October 15 (or prior to evening temperatures dropping below 45°F and the onset of rainfall greater than one-half inch in 24 hours). If bats must be captured or relocated, a qualified biologist should capture injured bats by hand-capture or other methods approved by CDFW. CDFW does not authorize the use of mist nets or harp traps as capture techniques.
 4. **Burrowing Owl.** If construction activities are planned in suitable Burrowing Owl (*BUOW*, *Athene cunicularia*, Species of Special Concern) habitat, a designated biologist(s), approved by CDFW, should conduct a survey for burrowing owl following the methodology described in the [Staff Report on Burrowing Owl Mitigation](#), within 1-2 weeks prior to the start of construction. If BUOW or signs of BUOW presence such as whitewash, feathers, animal dung, etc. are not detected, no further mitigation will be required. If burrowing owls are observed within 500 feet of the project area, the project proponent should develop an Impact Assessment consistent with the Staff Report on Burrowing Owl Mitigation and submit the Impact Assessment to CDFW prior to construction work. The final avoidance and mitigation measures will be determined in coordination with CDFW, but the Impact Assessment should at a minimum include the following mitigation measure:
 - a. Occupied burrows will not be disturbed. If occupied burrows are found, the biologist will ensure active nests are avoided and a no disturbance or destruction buffer be established by a biologist. The buffer shall be kept in place until after the breeding nesting season or biologist confirms the young have fledged, and the nest is no longer active for the season. The extent of these buffers shall be determined by the biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.
 5. **Swainson's Hawk.** Swainson's hawk (*Buteo swainsoni*) (SWHA) is a species listed as threatened under CESA and has the potential to occur on the project area. California Natural Diversity Database (CNDDB) has records of at least 29 previous SWHA occurrences within five (5) miles of the project area. Review of aerial imagery also suggests that there may be suitable nesting trees and foraging habitat on mixed habitat.

If the project is to occur without coverage through the SJMSCP, CDFW recommends a qualified biologist conduct SWHA surveys within a minimum 1/2-mile radius around the project area. Surveys should be conducted according to the following the five-period schedule in accordance with the "[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, the project proponent 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.

6. **Passive Relocation and Entrapment Prevention:** At the end of each workday, any structures where wildlife may become trapped (e.g. open pipes, pits, trenches, etc.) should be tightly covered with hard material to prevent wildlife from entering, or an escape ramp should be placed at each end of any open excavation to allow wildlife that may become trapped to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than thirty (30) degrees. A qualified biologist or construction monitor should survey the project area prior to work each day to ensure wildlife incidentally trapped due to project activities are allowed to escape prior to project commencement.

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the project. Written notifications may be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the project and recommends that the County address CDFW’s comments and concerns in the forthcoming CEQA document. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Zach Kearns, Environmental Scientist at (916) 358-1134 or zachary.kearns@wildlife.ca.gov.

Sincerely,

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