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October 3, 2019

Governor's Office of Planning & Research

OCT 03 2019

Ms. Meily Sheehan, Associate Planner
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Community Development Department
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STATE CLEARINGHOUSE

Subject: Green Valley II Mixed-Use Project, Draft Environmental Impact Report,
SCH #2018082002, City of Fairfield, Solano County

Dear Ms. Sheehan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Fairfield (City) for the Green Valley II Mixed-Use Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the draft EIR to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

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 or 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 ITP 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 ITP.

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 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.

PROJECT DESCRIPTION SUMMARY

Proponent: The Spanos Corporation

Objective: Develop a residential and commercial project on an approximately 13.32-acre site, including 270 rental apartment units in four-story tall buildings and four structures for commercial space.

Location: The Project is located at the southwestern corner of Business Center Drive and Suisun Valley Road, City of Fairfield, Solano County. It is centered at approximately 38.226455 latitude and -122.130611 longitude on APN 0148-540-300.

Timeframe: Unspecified

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. Based on the Project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that the proposed draft EIR is appropriate for the Project.

Environmental Setting

Mandatory Findings of Significance Does the Project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Comment 1: Draft EIR Page 4.2-5

Issue: The draft EIR does not identify Swainson's hawk (*Buteo Swainsoni*) as a species that may be impacted by the Project.

Specific impact: 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. As such, a CESA ITP from CDFW may be warranted (see recommended Mitigation Measure below).

Additionally, the Project would result in the loss of 13.32 acres of potential Swainson's hawk foraging habitat.

Why impact would occur: Swainson's hawk may nest within the Project site or within 0.25-mile of the Project site, the distance at which audio and visual impacts to active nests may occur. Additionally, the Project would remove approximately 13.32 acres of potentially suitable Swainson's hawk foraging habitat.

- The draft EIR documents one oak tree within the Project site and indicates that it has not been a nest tree in the past. However, absent annual survey data it cannot be determined if Swainson's hawk have used the oak tree for nesting, and it may also be used in the future.
- The draft EIR indicates that no other nest trees occur within 7 miles of the Project site. However, based on current aerial imagery it appears there are numerous potentially suitable nest trees within this distance, including many trees within 0.25-mile of the Project site. Suitable nesting habitat includes trees within mature riparian forest or corridors, lone oak trees and oak groves, and mature roadside trees (CDFW 2016).
- The draft EIR indicates that the California Natural Diversity Database (CNDDDB) documents: 1) one previous observation of an adult Swainson's hawk within 5 miles of the Project site, and, and 2) a nest tree, which has been inactive for more than 14 years, within one mile of the Project site. However, CNDDDB also documents a 2013 record of nesting Swainson's hawk approximately 3.6 miles northeast of the Project site, and CDFW has received two additional 2018 records of nesting Swainson's hawk approximately 2 miles northwest of the Project site. Furthermore, absent annual survey data it cannot be concluded that the nest tree within one mile of the Project site has been inactive for 14 years, and it may also be used in the future. The above information demonstrates that Swainson's hawk utilize the vicinity of the Project site for nesting and therefore may nest in suitable habitat within the Project site or 0.25-mile of it.
- The draft EIR indicates that the Project site is regularly disked which reduces the suitability of the site for small mammal prey. However, small mammals may persist or recolonize areas following disking (Salmon et al. 1987). The Swainson's hawk diet also consists of insects such as grasshoppers and crickets, toads, snakes, lizards, and small birds (Woodbridge 1998; Bechard et al. 2010). CDFW concludes that the Project site provides suitable foraging habitat for Swainson's hawk.

Evidence impact would be significant: Swainson's hawk qualifies as a threatened animal under CEQA because it is listed as threatened under CESA [CEQA Guidelines, § 15380, subd. (c)(1)]. The Swainson's hawk population in California has significantly declined largely due to habitat loss. It is thought that the historic population was as many as 17,136 pairs. A 1979 CDFW (then California Department of Fish and Game) report estimated 375 pairs of Swainson's hawks remaining. Population estimates have increased but are still far below the

original estimates. The 2016 CDFW Swainson's Hawk Five-Year Status Report found that the species should remain listed as threatened under CESA due to an overall reduction in the hawk's breeding range, ongoing cumulative loss of foraging habitat, and significantly reduced abundance throughout much of the breeding range compared to historic estimates. Based on the foregoing, Project impacts would potentially substantially reduce the number of Swainson's hawk and restrict its range. Therefore, Project impacts to Swainson's hawk would be **potentially significant**.

Mitigation Measure 1A: Swainson's hawk surveys

To reduce impacts to less-than-significant: CDFW recommends conducting the Project outside of the breeding season for Swainson's hawk (breeding season is March 1 to September 15). Alternatively, a qualified biologist should conduct 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 mile 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 be required to obtain a CESA ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

Mitigation Measure 1B: Swainson's hawk foraging habitat preservation

To reduce impacts to less-than-significant: Impacts to Swainson's hawk foraging habitat should be mitigated by preserving off-site habitat at a 1:1 impact-to-mitigation ratio through either purchasing Swainson's hawk foraging credits at a CDFW approved conservation bank (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Approved-Banks>), or by placing a conservation easement over lands providing foraging habitat, including funding an endowment for managing the lands for the benefit of Swainson's hawk in perpetuity, and preparation and implementation of a long-term management plan by the land manager.

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

Comment 2: Draft EIR Page 4.2-4

Issue: The Project may substantially adversely impact burrowing owl (*Athene cunicularia*).

Specific impact: The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent loss of breeding, overwintering, and foraging habitat.

Why impact would occur: Burrowing owl may nest or overwinter within the Project site or adjacent lands up to several hundred feet from the Project site where they could be disturbed. Additionally, the Project would remove approximately 13.32 acres of potentially suitable burrowing owl foraging habitat.

- The draft EIR states that there is no potential for burrowing owl to occur on the Project site based on the following information: 1) there are no recorded occurrences of the species on or near the Project site, 2) no evidence of the species was observed during the field assessment, and 3) no ground squirrel burrows were observed as the site was disked. However, the draft EIR also indicates that there are documented occurrences of the species within 5 miles of the Project site. CNDDDB documents 1987 and 2002 occurrences approximately 3.4 miles east and 4.8 miles south of the Project site, respectively. This demonstrates that the species occurs in the Project vicinity and within its mobility range, and therefore may nest within or near the Project site or utilize it for foraging. Signs of burrowing owl may have been missed during the field assessment absent a protocol burrowing owl survey, and owls may occur on adjacent unsurveyed lands. Furthermore, sign of ground squirrels may have been missed as described above, and the species could recolonize the area as indicated above (see Comment 1).

Evidence impact would be significant: Burrowing owl is a special-status species because it is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. Based on the foregoing, Project impacts would potentially substantially adversely affect burrowing owl. Therefore, Project impacts to burrowing owl would be **potentially significant**.

Mitigation Measure 2A: Burrowing owl surveys

To reduce impacts to less-than-significant: CDFW recommends that a qualified biologist conduct surveys following the Department of Fish and Game (DFG) *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 DFG 2012 survey methodology resulting in detections. Detected burrowing owls should be avoided pursuant to the buffer zone prescribed in the DFG 2012 Staff Report and any passive relocation plan should be subject to CDFW review.

Mitigation Measure 2B: Burrowing owl habitat preservation

To reduce impacts to less-than-significant: Permanent loss of burrowing owl foraging or overwintering habitat should be mitigated at a 1:1 impact-to-mitigation through either purchasing burrowing owl overwintering and foraging credits at a CDFW-approved conservation bank, or by placing a conservation easement over lands providing such habitat, including funding an endowment for managing the lands for the benefit of burrowing owl in perpetuity, and preparation and implementation of a long-term management plan by the land manager. The DFG 2012 report states, “*current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal...*” Impacts to any breeding sites used by burrowing owls within the last three years should be mitigated by permanent preservation of two known breeding sites with appropriate foraging habitat within Solano County utilizing the same methods described for foraging habitat preservation. Alternatively, the Project proponent should provide another method for preserving breeding sites approved by the Lead Agency in consultation with CDFW.

Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or USFWS?

Comment 3: Draft EIR Page 4.2-14

Issue: The Project may substantially adversely impact riparian habitat including a stream.

Specific impact: The Project could result in the removal of riparian vegetation and filling of a stream.

Why impact would occur: A stream potentially supporting riparian habitat appears to be present within the Project site.

- The draft EIR states: “*no sensitive plant communities or riparian habitat is present on the project site,*” and “*no impact would occur and no wetlands or other federally or state protected water features were observed on the project site during the site survey. There would be no impact.*” However, current aerial imagery and the California Aquatic Resources Inventory mapping indicate that a stream with potential riparian habitat occurs just west of Suisun Valley and Neitzel Roads within the Project site. It appears the stream may be culverted south of the Project site along a portion of Neitzel Road in front of the Partnership Health Plan of California building, and then it daylightes again before draining into Green Valley Creek.

Evidence impact would be significant: The Project could substantially adversely affect riparian and associated aquatic habitats by resulting in loss or degradation of this vulnerable habitat type, therefore impacts would be **potentially significant**.

Recommended Mitigation Measure 3: LSA Notification

To reduce impacts to less-than-significant: CDFW recommends that the potential stream be further evaluated for stream characteristics and connectivity. If stream characteristics and connectivity is present, the City should require restoration of another portion of the stream on-site, a nearby stream and or off-site and within the same watershed. The farther the restoration or enhancement is from the Project site the greater the mitigation ratio may be. The City should also require an LSA Notification to CDFW to address and reduce impacts to the stream and any associated riparian habitat so that CDFW can issue an LSA Agreement (see <https://www.wildlife.ca.gov/Conservation/LSA>). The LSA Agreement would rely on the CEQA document, and if the creek were to be culverted or impacted, it would require restoration on-site at potentially a 1:1 ratio and if off-site, a ratio of 3:1 for the linear distance of stream removed, and a restoration and enhancement plan approved by CDFW.

Mitigation Measures

Comment 4: Draft EIR Page 4.2-13

For compliance with Fish and Game Code section 3503 et seq. and the federal Migratory Bird treaty Act, and protection of nesting birds, MM BIO-1 should be revised to include: 1) nesting bird surveys by a qualified biologist within 500 feet of the Project site if the Project occurs between February 1 and August 31, 2) surveys should occur no more than 7 days before Project construction begins and anytime a lapse of 7 days or more in construction occurs, and 3) monitoring of any active nest to ensure it is not disturbed and that buffers are adjusted by a qualified biologist as needed to avoid disturbance. Additionally, the draft EIR references a CDFW "protocol" nesting bird survey; however, CDFW has not promulgated a general nesting bird protocol survey therefore the "protocol" reference should be removed.

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, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Ms. Meily Sheehan
City of Fairfield
October 3, 2019
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Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Specialist), at (707) 428-2092 or Melanie.Day@wildlife.ca.gov; or Karen Weiss, Senior Environmental Scientist (Supervisory), at Karen.Weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH# 2018082002)

SF Bay Regional Water Quality Control Board
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California Department of Fish and Wildlife
Craig Weightman, Bay Delta Region
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