



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



October 9, 2019

Governor's Office of Planning & Research

**OCT 09 2019**

## STATE CLEARINGHOUSE

Mr. Eric Wilberg, Planner Associate  
Solano County Department of Resource Management  
Planning Services Division  
675 Texas Street  
Fairfield, CA 94533  
[EJWilberg@solanocounty.com](mailto:EJWilberg@solanocounty.com)

Subject: Monroe Ranch Use Permit U-18-03, Initial Study/Negative Declaration,  
SCH #2019069044, Solano County

Dear Mr. Wilberg:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Negative Declaration (ND) from Solano County (County) for the Monroe Ranch Use Permit U-18-03 Project (Project) pursuant the California Environmental Quality Act (CEQA). The public comment period ended on July 12, 2019; however, CDFW requests that the County consider our below comments. On September 19, 2019, CDFW notified the County via email of our concerns and sought your agreement to accept late comments; however, we haven't received a response.

CDFW is submitting comments on the ND to inform the County, 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 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 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:** Gary and Ying Bacon

**Objective:** Construct a 4,000-square-foot barn-styled accessory structure and a parking area.

**Location:** The Project is located at 4400 Suisun Valley Road, two miles west of the City of Fairfield, Solano County. The precise boundaries of the Project site are unknown as the ND does not clearly show them. The Project is located at approximately 38.256397 latitude and -122.113405 longitude on APNs 0027-020-030, -080, and -090.

**Timeframe:** The ND does not specify a timeframe.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations to assist the County 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 a Mitigated Negative Declaration would be more 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: ND Pages 20-21**

*Issue:* The ND 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), including take as defined under Fish and Game Code, from construction activities during nesting season.<sup>1</sup> As such, a CESA ITP from CDFW may be warranted (see recommended Mitigation Measure below).

Additionally, the Project may result in the loss 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 it, the distance at which audio and visual impacts to active nests may occur. Additionally, the Project may remove potentially suitable Swainson's hawk foraging habitat within grasslands just west of Suisun Creek.

- The California Natural Diversity Database (CNDDDB) documents a 2013 record of nesting Swainson's hawk approximately 1.4 miles northeast of the Project site, and CDFW has received two additional 2018 records of nesting Swainson's hawk approximately 4 miles southwest of the Project site. 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.
- Based on current aerial imagery, it appears that there are numerous potentially suitable nest trees on the Project site, adjacent to it along Suisun Creek, and within 0.25-mile of it. Suitable nesting habitat includes trees within mature riparian forest or corridors, lone oak trees and oak groves, and mature roadside trees (CDFW 2016).

*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**.

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<sup>1</sup> Fish and Game Code section 86 defined "take" as hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

### **Recommended 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 resulting in detections.

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.

### **Recommended Mitigation Measure 1B: Take authorization**

CDFW may issue an ITP authorizing take of Swainson's hawk, pursuant to Fish and Game Code section 2081, subdivision (b). Take authorization is issued only when take is incidental to an otherwise lawful activity, the impacts of the take are minimized and fully mitigated, the applicant ensures there is adequate funding to implement any required measures, and take is not likely to jeopardize the continued existence of the species. Please be advised that CDFW cannot issue an ITP without an approved CEQA document for the Project that analyzes all impacts to Swainson's hawk and identifies feasible, measurable avoidance, minimization, and mitigation measures that reduces impacts to less-than-significant.

### **Recommended Mitigation Measure 1C: 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.

## **Comment 2: ND Pages 20-21**

*Issue:* The ND does not identify foothill yellow-legged frog (FYLF, *Rana boylei*) as a species that may be impacted by the Project.

*Specific impact:* The Project may result in impacts to FYLF including habitat degradation and take as defined under Fish and Game Code. As such, a CESA ITP from CDFW may be warranted (see proposed Mitigation Measures 2c and 2d below).

*Why impact would occur:* FYLF may occur within the Project site where they could be injured or killed during Project construction. CNDDDB documents a 2012 occurrence of FYLF approximately 3.3 miles north of the Project site along Suisun Creek, which is well within the species mobility range. FYLF occur in streams and adjacent uplands, and the Project site may provide suitable upland habitat for the frog particularly during the rainy season (October 15 to June 14). Different life stages of FYLF use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about FYLF terrestrial movements and the species may travel farther from streams.

*Evidence impact would be significant:* FYLF may be considered a rare species under CEQA (CEQA Guidelines, § 15380) because the species is nearly endemic to California and has been extirpated from a large portion of its historical range, and individual population sizes have declined (Thompson et al. 2016). Additionally, Thompson et al. (2016) designated the species as a Priority 1 species due to the magnitude of threats it is facing. FYLF is also a CESA candidate species.

Based on the foregoing, Project impacts would potentially substantially reduce the number and/or restrict the range of FYLF. Additionally, the Project could result in substantial adverse impacts on FYLF as a special-status species, regardless of whether it is considered rare, endangered, or threatened pursuant to CEQA Guidelines section 15380. (CEQA Guidelines, Appendix G). Therefore, Project impacts to FYLF would be **potentially significant**.

### **Recommended Mitigation Measure 2A: FYLF surveys**

*To reduce impacts to less-than-significant:* For any groundwork near Suisun Creek, CDFW recommends that focused visual encounter surveys be conducted by a qualified biologist during appropriate survey period(s), typically April – October, in areas where potential habitat exists. CDFW should review and accept the survey methodology prior to any surveys. CDFW advises that these surveys generally follow the methodology described in pages 5–7 of “Considerations for Conserving the Foothill Yellow-Legged Frog” including that surveyors adhere to “The Declining Amphibian Task Force Fieldwork Code of Practice” (CDFW 2018). If any life stage of FYLF (adult, metamorph, larvae, egg mass) is found, CDFW recommends consulting with CDFW to develop avoidance measures and evaluate permitting needs.

### **Recommended Mitigation Measure 2B: Reporting survey results**

Submission of survey results to CDFW is recommended. For negative findings, CDFW recommends that consultation with CDFW include documentation demonstrating FYLF are unlikely to be present in the vicinity of the Project site. Information submitted may include, but is not limited to, a full habitat assessment and survey results. If any life stage of FYLF is detected, consultation with CDFW is advised to determine if take of FYLF can be avoided.

### **Recommended Mitigation Measure 2C: Take authorization**

CDFW recognizes there may be circumstances where take of FYLF during candidacy may be unavoidable. CDFW may issue an ITP authorizing take of FYLF, pursuant to Fish and Game Code section 2081, subdivision (b). Take authorization is issued only when take is incidental to an otherwise lawful activity, the impacts of the take are minimized and fully mitigated, the applicant ensures there is adequate funding to implement any required measures, and take is not likely to jeopardize the continued existence of the species. Please be advised that CDFW cannot issue an ITP without an approved CEQA document for the Project that analyzes all impacts to FYLF and identifies feasible, measurable avoidance, minimization, and mitigation measures that reduces impacts to less-than-significant.

### **Recommended Mitigation Measure 2C: Daily inspections**

At the beginning of each workday near suitable habitat, the Project area and nearby vicinity shall be surveyed by a Qualified Biologist, including searching cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks. If FYLF or other species listed pursuant to CESA are encountered during Project activities, all work shall cease and CDFW shall immediately be notified. Work shall not proceed without written approval from CDFW. Presence of FYLF may require a CESA ITP before Project activities may resume. If no FYLF or other species listed pursuant to CESA are encountered during the daily inspection by the qualified biologist, installation of an exclusion fence around the surveyed work area may be appropriate.

### **Recommended Mitigation Measure 2E: Boot sterilization**

To prevent the spread of diseases and pathogens to amphibian populations such as the chytrid fungus (*Batrachochytrium dendrobabdis*), responsible for amphibian population declines worldwide, all persons entering suitable FYLF habitat shall sterilize boots and any equipment used by scrubbing surfaces with a 70 percent ethanol solution (or sodium hypochlorite 3 to 6 percent) and rinsing clean with sterilized water before entering the creek. Staff shall avoid cleaning equipment in the immediate vicinity of the creek.

***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?***

### **Comment 3: ND Pages 20-21**

*Issue:* The ND does not identify burrowing owl (*Athene cunicularia*) as a species that may be impacted by the Project.

*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 may remove potentially suitable burrowing owl foraging habitat within grasslands just west of Suisun Creek. CNDDDB documents a 2006 record of a burrowing owl pair at a burrow, indicating nesting, approximately 3.6 miles southeast of the site demonstrating that the species utilizes habitat in the vicinity.

*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**.

### **Recommended Mitigation Measure 3A: 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.

### **Recommended Mitigation Measure 3B: 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 interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?***

**Comment 4: ND Pages 20-21**

*Issue:* The ND does not identify nesting birds as potentially impacted by the Project.

*Specific impact:* The Project could result in bird nest abandonment, loss of young, and reduced health and vigor of young including take or needless destruction of nests or eggs, which are prohibited under Fish and Game Code section 3503 et seq. and the federal Migratory Bird Treaty Act.

*Why impact would occur:* Birds may nest within the Project site or adjacent lands up to several hundred feet from the Project site where they could be disturbed.

*Evidence impact would be significant:* A significant proportion of birds have been lost in the United States and Canada since the 1970s due to human activities. Over 90 percent of the total loss is attributable to 12 bird families including sparrows, warblers, blackbirds, and finches, which all may nest on or near the Project site (Kenneth et al. 2019). Therefore, Project impacts to nesting birds would be **potentially significant**.

**Recommended Mitigation Measure 4A: Nesting bird surveys**

*To reduce impacts to less-than-significant:* CDFW recommends that Project construction occur outside of the bird nesting season (nesting season is February 1 through September 15). The Project proponent is responsible for ensuring that implementation of the Project does not result in violation of relevant Fish and Game Code sections or the Migratory Bird Treaty Act or referenced above.

If Project construction will occur during nesting season, CDFW recommends that a qualified biologist conduct surveys for active nests no more than 7 days prior to the start of construction. Surveys should cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project and should be a minimum of 500 feet from the Project site. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment may affect nests.

For all identified nests, prior to construction activities a qualified biologist should conduct a survey to establish a behavioral baseline of birds using each nest. Once construction begins, the biologist should continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, Project activities causing that



change should halt and no-disturbance buffers should be implemented as described below; however, continuous monitoring may allow less conservative buffer distances as the biologist will be on-site to detect behavioral changes.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, conservative no-disturbance buffers should be implemented and set around the nest by a qualified biologist, with the buffer distance based on the tolerance level of the non-listed bird or raptor species. These buffers should remain in place until the breeding season has ended or until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest or parental care for survival.

### **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 ND to assist the County in identifying and mitigating Project impacts on biological resources.

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](mailto:Melanie.Day@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at [Karen.Weiss@wildlife.ca.gov](mailto:Karen.Weiss@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH# 2019069044)  
Mike Yankovich, Solano County – [MYankovich@solanocounty.com](mailto:MYankovich@solanocounty.com)  
Craig Weightman, CDFW Bay Delta Region  
Karen Weiss, CDFW Bay Delta Region  
Melanie Day, CDFW Bay Delta Region

## REFERENCES

- CDFW. 2018. Considerations for Conserving the Foothill Yellow-Legged Frog. An electronic copy of this recovery plan is available at:  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>
- CDFW. 2016. Swainson's Hawk (*Buteo swainsoni*) Five-Year Status Review. Retrieved online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>
- Kenneth V. Rosenberg, Adriaan M. Dokter, Peter J. Blancher, John R. Sauer, Adam C. Smith, Paul A. Smith, Jessica C. Stanton, Arvind Panjabi, Laura Helft, Michael Parr, Peter P. Marra. 2019. Decline of the North American avifauna. Science Magazine.
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- Zweifel, R. G. 1955. Ecology, distribution, and systematics of frogs of the *Rana boylei* group. University of California Publications in Zoology 54 (4):207–292.