



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



April 27, 2020

Governor's Office of Planning & Research

**APR 27 2020**

## STATE CLEARINGHOUSE

Mr. Peyman Behvand, City Planner  
City of Vacaville  
650 Merchant Street  
Vacaville, CA 95688  
[peyman.behvand@cityofvacaville.com](mailto:peyman.behvand@cityofvacaville.com)

Subject: Home 2 Suites Hotel, Initial Study/Mitigated Negative Declaration,  
SCH #2020049010, City of Vacaville, Solano County

Dear Mr. Behvand:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Vacaville (City) for the Home 2 Suites Hotel (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments 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 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) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### PROJECT DESCRIPTION SUMMARY

**Proponent:** Reza Kabul, ARK Studio Inc.

**Objective:** The Project would subdivide a single 3.41-acre parcel into two parcels and develop the larger approximately 2.26-acre parcel. The proposed development includes constructing a 4-story hotel, 128 surface parking spaces, approximately 30,959 square feet of landscaping, and installation of utilities.

**Location:** The Project is located at the intersection of East Ackerly Drive and New Horizons Way within the Vaca Valley Business Park, City of Vacaville, Solano County. The Project site occurs near Latitude 38° 23' 13.39" N, Longitude 121° 56' 31.51" W, current Assessor's Parcel Number 0133-120-380.

**Timeframe:** 12 months.

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## ENVIRONMENTAL SETTING

The Project will occur on a vacant lot that has received frequent disking and tilling and is composed of exposed soil and non-native grasses and forbs that have colonized the site. There are no watercourses or wetlands within the Project area; however, Horse Creek, a perennial stream, is located approximately 135 feet south of the Project. The Project area is surrounded by undeveloped lots and developed business parks with ornamental vegetation. Much of the undeveloped area near the Project is slated for future development, potentially leading to cumulatively significant impacts to special-status species that rely on this habitat. The site falls within the valley floor grassland habitat identified by the draft Solano Habitat Conservation Plan.

Special-status species with potential to occur in or near the Project area include: Swainson's hawk (*Buteo swainsoni*), burrowing owl (*Athene cunicularia*), and white-tailed kite (*Elanus leucurus*). Five active Swainson's hawk nests have been reported in the California Natural Diversity Database (CNDDDB) between 2001 and 2016, within approximately one mile of the Project site. Potentially suitable nesting trees occur near the Project site along Horse Creek and along nearby roadways with ornamental trees. Suitable nesting habitat includes trees within mature riparian forest or corridors, lone oak trees and oak groves, and mature roadside trees<sup>1</sup>. The Project site contains grasslands that may be used for burrowing owl foraging. Two CNDDDB burrowing owl occurrences from 2002 and 2005 are less than 0.5 miles from the Project site, which is well within dispersal distance.

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

### Mitigation Measures

***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: MND Page 3-135**

*Issue:* Mitigation Measure (MM) BIO-1 would not reduce potential impacts to Swainson's hawk (*Buteo swainsoni*) to less-than-significant.

*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 Incidental Take Permit (ITP)

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<sup>1</sup> California Department of Fish and Wildlife. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, Five-year Status Report. Fish and Game Commission.

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from CDFW may be warranted (see recommended Mitigation Measure 1 below). Additionally, the Project will remove potential foraging habitat for Swainson's hawk by developing a vacant lot within the valley floor grassland habitat region.

*Why impact would occur.* Mitigation Measure (MM) BIO-1 states that the survey area will only cover a 300-foot radius around the Project site; however, Swainson's hawk active nests may be impacted up to 0.25 miles (1,320 feet) from the Project site. Additionally, no method for surveying specifically for Swainson's hawk is identified. Nesting Swainson's hawks can be difficult to detect, particularly if surveys are conducted later in the nesting season. Therefore, current survey requirements for Swainson's hawk nests would be highly unlikely to detect active nests that could be impacted by the Project.

The location of nests nearby provide evidence that the combination of disturbed vacant lots and business parks provide potentially suitable habitat for Swainson's hawk. It is unclear if any Swainson's hawk surveys have been completed at the Project site, so Swainson's hawks may be present closer to the Project area than identified in CNDDDB.

*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. Therefore, Project impacts to Swainson's hawk would be potentially significant.

*To reduce impacts to less-than-significant.*

### **Mitigation Measure 1: Swainson's Hawk Surveys**

CDFW recommends that, if Project activities occur during the Swainson's hawk nesting season (March 1 to September 15), a qualified biologist 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

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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 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.

***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 2: MND Page 3-30**

*Issue:* Mitigation Measure (MM) BIO-1 would not reduce potential impacts to burrowing owl (*Athene cunicularia*) to less-than-significant.

*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:* MM BIO-1 does not require protocol surveys for the species. As written, survey requirements for special-status bird species would be unlikely to detect nesting or overwintering burrowing owls that could be impacted by the Project because burrowing owls are less likely to be detected if the protocol are not followed. Project construction activities may disturb or remove breeding or overwintering burrowing owls resulting in nest abandonment, loss of young, reduced health and vigor of chicks, injury, mortality, shelter abandonment, and exposure to predation and other adverse impacts. As two CNDDDB owl occurrences are within 0.5 miles, the grassland areas proposed to be converted may be used for burrowing owl foraging habitat.

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

*To reduce impacts to less-than-significant:*

**Mitigation Measure 2: Burrowing Owl Surveys**

CDFW recommends that a qualified biologist conduct surveys following CDFW's *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

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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.

If there will be impacts to breeding sites used by burrowing owls within the last three years, each breeding site should be mitigated by permanent preservation of two known breeding sites with appropriate foraging habitat within Solano County, through a conservation easement, and provision of an endowment for long-term management prior to Project impacts. Alternatively, the Project proponent should provide another method for preserving breeding sites approved by the Lead Agency in consultation with CDFW.

### **Comment 3: MND Page 3-30**

*Issue:* The Project may adversely impact Swainson's hawk and burrowing owl through removal of habitat.

*Specific impact:* The Project will develop and permanently remove approximately 2.26 acres of potential foraging and/or overwintering habitat for Swainson's hawk and burrowing owl.

*Why Impact would occur:* The MND does not propose any mitigation to reduce this loss of potential habitat to less-than-significant.

*Evidence Impact would be significant:* The 2012 CDFW Staff Report on Burrowing Owl Mitigation 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..." At the same time, the CDFW's 5-year status report on Swainson's hawk emphasizes that "the primary threat to the Swainson's hawk population in California continues to be habitat loss, especially the loss of suitable foraging habitat." Providing mitigation for removal of foraging/overwintering habitat also aligns with the conclusions in the draft Solano Habitat Conservation Plan. Permanently removing this habitat would have potentially significant impacts on Swainson's hawk and burrowing owl.

*To reduce impacts to less-than-significant:*

### **Mitigation Measure 3: Swainson's Hawk & Burrowing Owl Habitat Compensation**

Permanent loss of Swainson's hawk foraging habitat and burrowing owl overwintering and foraging habitat should be mitigated by permanent preservation of 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 (<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 both species in perpetuity, and preparation and implementation of a long-term management plan by the land manager.

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## 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 the California Natural Diversity Database (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](mailto: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>

## REGULATORY REQUIREMENTS

### *California Endangered Species Act*

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take<sup>2</sup> of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA ITP is warranted (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 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

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<sup>2</sup> Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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(Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **FILING FEES**

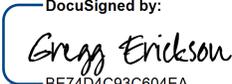
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 MND to assist the City of Vacaville in identifying and mitigating project impacts on biological resources.

If you have any questions, please contact Ms. Amanda Culpepper, Environmental Scientist, at [amanda.culpepper@wildlife.ca.gov](mailto:amanda.culpepper@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at [karen.weiss@wildlife.ca.gov](mailto:karen.weiss@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH #2020049010)