



State of California – Natural Resources Agency  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 5, 2020

Governor's Office of Planning & Research

**Jun 08 2020**

## **STATE CLEARINGHOUSE**

Ms. Suzie Azevedo, Planner I  
City of Rohnert Park  
130 Avram Avenue  
Rohnert Park, CA 94928  
[sazevedo@rpcity.org](mailto:sazevedo@rpcity.org)

Subject: Dowdell Industrial Park Project, Mitigated Negative Declaration, SCH #2020050324,  
City of Rohnert Park, Sonoma County

Dear Ms. Azevedo:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Rohnert Park (City) for the Dowdell Industrial Park Project (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND 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 permits issued under the California Endangered Species Act (CESA), the Lake or Streambed Alteration (LSA) Program, 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 Permit 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.

*Conserving California's Wildlife Since 1870*

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### *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:** Jim Damrell, Panattoni Development Company Inc.

**Objective:** Construct two concrete buildings for light manufacturing, warehouse, or research and development uses on a 10.3-acre site. Each building would be approximately 90,000 square feet (sf) for a total of approximately 180,000 sf of building space. A total of 289 parking spaces and landscaping would be constructed.

**Location:** The Project is in the City of Rohnert Park, Sonoma County on the southwest corner of the Dowdell Avenue and Business Park Drive intersection. It is centered at approximately 38.356581 degrees latitude and -122.719069 degrees longitude on APN: 143-040-134.

**Timeframe:** The Project is anticipated to take approximately seven months to complete.

## **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 an MND is appropriate for the Project.

### **Mitigation Measures**

#### **Comment 1: MND Page 33, Mitigation Measure BIO-3**

The Project is located within grassland habitat that is likely suitable for the state and federally listed as threatened and endangered California tiger salamander (CTS, *Ambystoma californiense*). The California Natural Diversity Database (CNDDB) documents records of breeding CTS approximately 3,000 feet north of the Project site per the MND, and the species may travel up to 1.3 miles (Orloff 2007). Potentially suitable breeding habitat also occurs within approximately 740 feet of the Project site in the parcel north of Business Park Drive. Therefore, CDFW concludes that CTS may occur at the Project site. To ensure that the species is excluded from the site, the MND Mitigation Measure (MM) BIO-3 indicates that a qualified biologist would conduct a CTS habitat assessment to verify the absence of suitable small mammal burrows,

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large cracks, or other suitable refugia. However, there is a high likelihood that suitable refugia such as pocket gopher (*Thomomys bottae*) burrows occur within the 10.3-acre Project site. Additionally, small mammals could excavate burrows after the habitat assessment rendering it obsolete, and CTS could travel across the Project site during fall/winter rains or in the early summer regardless of the presence of refugia.

Therefore, CDFW recommends removing the above refugia assessment from MM BIO-3, and adding the requirement to obtain authorization from the U.S. Fish and Wildlife (USFWS) for impacts to CTS as it is both federally and state listed as described above..

**Comment 2: MND Pages 30-33, MM BIO-3**

The MND indicates the Project would impact 0.005 acres of wetland habitat for state and federally listed plants and that a 2017 botanical survey did not detect any listed or other special-status plants. The MND also indicates that MM BIO-3 would ensure that Project conflicts with the Santa Rosa Plain Conservation Strategy (Conservation Strategy) would be less-than-significant. Appendix D of the Conservation Strategy requires two years of botanical surveys to document absence of listed plants; the MND states that only one year of surveys was completed. The MND should include the above information and plant mitigation requiring: 1) two years of botanical surveys, 2) CDFW's written acceptance of each year of survey results, and 3) the Project proponent to obtain an ITP from CDFW for state listed plants if they may be impacted by the Project as determined by CDFW's review of the survey results. Surveys should follow CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (see above link).

CDFW requests a copy of the 2017 plant survey report and will review it for acceptance as one year of the two-year requirement. CDFW is also aware that a 2014 botanical survey from the adjacent Dowdell Avenue Extension Project may help meet the second-year botanical survey requirement. Please coordinate with CDFW and USFWS on this issue to determine if the two-year survey requirement has been met or if additional surveys are needed.

The Conservation Strategy does require habitat compensation for impacts to suitable listed plant habitat regardless of species presence; the compensation rate is lower if the species is absent. Therefore, the MND should include a mitigation measure requiring habitat compensation for listed plants consistent with the Conservation Strategy and require authorization from USFWS for impacts to habitat for federally listed plants.

Please note there is a typo in MM BIO-3 indicating a replacement of "0.0005 acre of wetland habitat" which should be corrected to state "0.005 acre...."

**Comment 3: MND Page 33, MM BIO-3**

The Project is located within grassland habitat suitable to support burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC). MM BIO-3 indicates that surveys for burrowing owl will be conducted at the Project site and a 300-foot buffer zone consistent with Appendix D of the 2012 California Department of Fish and Game (now CDFW) *Staff Report on Burrowing Owl Mitigation* (Staff Report). However, owls may be disturbed up to 1,640 feet (500

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meters) from a project per Page 9 of the Staff Report. Therefore, the buffer area surveyed should be increased commensurate with the type of disturbance anticipated as outlined in the Staff Report.

MM BIO-3 also indicates that for non-nesting owls, a CDFW-approved eviction plan will be implemented. Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of evicting burrowing owls to less-than-significant, MM BIO-3 should require habitat compensation with the acreage amount identified in the eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction; therefore, eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

#### **Comment 4: MND Appendix Biological Assessment**

The MND indicates that American badger (*Taxidea taxus*), an SSC, was excluded from potential occurrence due to lack of suitable burrows. The MND also acknowledges that the species digs its own burrows, which makes it possible for a badger to occupy the Project site before construction. CDFW recommends that the MND analyze the potential for this species to occur at the Project site and include mitigation measures to ensure impacts are reduced to less-than-significant, such as avoiding occupied burrows including a sufficient buffer and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the Project site.

#### **Comment 5: MND Pages 32-33, MM BIO-2**

MM BIO-2 is not protective enough of nesting birds. MM BIO-2 should be adjusted to include the following:

- 1) Surveys for nesting birds within seven days before construction and if a lapse of seven days or more in construction occurs, 2) surveys within 500 feet of the Project site for raptors, and 3) biological monitoring of any active nests to ensure it is not disturbed, and that buffers are adjusted by a qualified biologist as needed to avoid disturbance. For all identified nests, prior to construction activities a qualified biologist shall conduct a survey to establish a behavioral baseline of birds using each nest. Once construction begins, the biologist shall continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, Project activities causing that change shall 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 shall 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 shall remain in place until the breeding

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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.

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native nesting birds and other wildlife. The removal of habitat for birds from human activities has contributed to the loss of a significant proportion of birds in the United States and Canada since the 1970s. According to a study published in 2019 entitled *Decline of the North American Avifauna* authored by Kenneth V. Rosenberg et al., ninety percent of the total loss is attributable to 12 bird families including sparrows, warblers, blackbirds, and finches, which may all utilize the trees that would be removed by the Project for breeding and foraging. Planting native trees and shrubs is an opportunity to improve conditions for them.

## 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 MND to assist the City 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 [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,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH# 2020050324)

## REFERENCES

Orloff, S.G. 2007. Migratory movements of California tiger salamander in upland habitat – A five-year study, Pittsburg, California. Prepared for Bailey Estates LLC. 47 + pp.