



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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GAVIN NEWSOM, Governor

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November 24, 2020

Governor's Office of Planning & Research

November 24, 2020

STATE CLEARINGHOUSE

Ms. Susie Murray, Senior Planner
City of Santa Rosa
Planning and Economic Development Department
100 Santa Rosa Avenue, Room 3
Santa Rosa, CA 95404
smurray@srcity.org

Subject: In-N-Out Restaurant Project City Project File# PRJ18-086, Mitigated
Negative Declaration, SCH No. 2020110065, Sonoma County

Dear Ms. Murray:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Santa Rosa (City) for the In-N-Out Restaurant Project City Project File# PRJ18-086 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), Lake and 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

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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) and 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 and a Statement of Overriding Consideration (SOC). 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: Jim Lockington

Objective: Construct an In-N-Out Burger restaurant, single lane drive-through, parking stalls, and other associated site improvements on approximately 1.87 acres. The proposed restaurant building is approximately 3,900 square feet and includes 76 indoor seats. An additional 19 tables with 76 seats are proposed outdoors. Existing on-site structures will be demolished.

Location: The project is located at 2532 Santa Rosa Avenue, immediately northeast of the Santa Rosa Avenue and Yolanda Boulevard intersection, in the City of Santa Rosa. It is centered at approximately Latitude, Longitude: 38.414340, -122.712087 on Assessor Parcel Numbers 044-041-010 and 044-071-002.

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

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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.

Project Description

Comment 1: MND Figure 2 and Appendix D Biological Constraints Analysis

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 the CDFW or U.S. Fish and Wildlife Service (USFWS), or on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

The MND Appendix D Biological Constraints Analysis, Exhibit A identifies a "Potential Linear Wetland" on the east perimeter of the "Project Site." This feature appears potentially subject to Fish and Game Code section 1602 notification requirements based on Google Earth aerial imagery and street view. The MND Figure 2 "Project Site" is smaller than the project site depicted in Exhibit A and does not include the "Potential Linear Wetland." Please clarify the extent of the project site and whether it includes the "Potential Linear Wetland."

If the project site includes the above "Potential Linear Wetland", please provide additional information characterizing it including: (1) the presence of a bed, bank, and channel, and (2) vegetation communities present including wetland or riparian vegetation. It appears that mature trees occur along the feature which may constitute riparian vegetation. According to the MND Page 42, the feature is culverted at its downstream end and connects directly with the City's storm drain system. Please be advised that artificial drainages may be subject to Fish and Game Code section 1602. If the feature may constitute a stream per Fish and Game Code, the MND should require submitting an LSA Notification to CDFW and complying with the LSA Agreement upon issuance.

Mitigation Measures

Comment 2: MND Page 43

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?

MND Mitigation Measure (MM) BIO-1 for nesting bird protection indicates that nesting bird surveys may be conducted up to 15 days prior to construction. However, the MND should clearly require surveys to be conducted no more than 7 days prior to

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construction to reduce the likelihood of the birds nesting between survey completion and construction start. A survey immediately prior to construction is also recommended.

MM BIO-1 requires surveys within 300 feet of the project for nesting reports, however it requires a construction buffer zone of 500 feet. The survey area should be consistently increased to 500 feet.

MM BIO-1 states: *“The buffer should be staked with 4-foot orange construction fencing.”* CDFW recommends replacing “should” with “shall” to ensure this important protective measure is binding.

The following language regarding bat protection in MM BIO-1 should be moved to MM BIO-2 for bats: *“The applicant shall provide resume(s) of qualified biologist(s) conducting bat surveys to the City for review and approval in advance of pre-construction surveys. Resumes shall reflect: 1) at least 2 years of experience conducting bat surveys that resulted in detections for the relevant species such as pallid bat, and 2) the types of equipment used to conduct surveys.”*

Comment 3: MND Page 43

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 USFWS?

MM BIO-2 for special-status bats should be revised to add the below requirements. Note that it is important for surveys to occur several months before project construction to avoid delays as implementing the bat exclusion plan described below should occur during the specified months.

- A qualified bat biologist shall conduct an initial bat habitat assessment and survey several months before project construction, to facilitate sufficient time to implement the exclusion plan described below.
- If bats are detected, an exclusion plan shall be submitted to the City for approval. The City shall seek CDFW’s input on the exclusion plan. The plan shall: (1) recognize that both the maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm, and (2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat, such as artificial bat houses, prior to project construction, and include an associated management and monitoring plan with implementation funding.

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FILING FEES

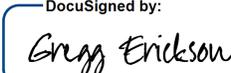
The project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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; or Mr. Craig Weightman, Environmental Program Manager, at Craig.Weightman@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH No. 2020110065)