



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

February 8, 2021

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STATE CLEARINGHOUSE

Ms. Katrina Braehmer, Planner II
Sonoma County Permit and Resource Management Department
Planning and Economic Development Department
2550 Ventura Avenue
Santa Rosa, CA 95403
katrina.braehmer@sonoma-county.org

Subject: DRH19-0014 Los Pinos Apartments, Mitigated Negative Declaration,
SCH No. 2021010137, Sonoma County

Dear Ms. Braehmer:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Sonoma (County) for the DRH19-0014 Los Pinos Apartments Project (project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND 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 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. The project has the potential to result in take of California tiger salamander (CTS, *Ambystoma californiense*), a listed as threatened species. Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation

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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) 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 SOC 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: Alexander Diaz Santana

Objective: Construct a 50-unit apartment complex on 2.49 acres.

Location: The project is located at 3496 Santa Rosa Avenue, approximately 815 feet south of East Robles Avenue, south of the City of Santa Rosa in an unincorporated area of Sonoma County. It is on Assessor Parcel Number 134-132-015 and at approximately 38.391906 degrees latitude and -122.712163 degrees longitude.

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 an MND is appropriate for the project.

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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 the U.S. Fish and Wildlife Service (USFWS)?

Environmental Setting

Comment 1: MND Page 23

Issue: The project is located within and adjacent to grassland habitat that may be suitable foraging, overwintering, and nesting habitat for burrowing owls (*Athene cunicularia*), a California Species of Special Concern and also protected under Fish and Game Code sections 3503 and 3503.5, and the federal Migratory Bird Treaty Act (MBTA). The MND states that burrows suitable for burrowing owl were not identified during a survey of the project site. However, suitable burrows can be excavated by American badgers within a single day; therefore, burrowing owl could occupy the project site prior to project construction (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Furthermore, burrowing owls may be adversely impacted up to several hundred feet from the project site from auditory and visual disturbances, and may also use artificial burrow surrogates located on- or off-site. Per the MND, CNDDDB documents a burrowing owl approximately 3.5 from the project site, confirming the species has occurred in the vicinity of the project site and could use it and adjacent habitat.

Specific impacts and why they may occur: The project may result in burrowing owl nest or wintering burrow abandonment, loss of young, and reduced health and vigor of adults or young from audio and visual disturbances caused by construction activities. Therefore, project impacts to burrowing owl would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND include a mitigation measure requiring a qualified biologist to conduct surveys following the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Surveys shall encompass the project site and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent surveys, as determined by a qualified biologist, including but not limited to a final survey within 24 hours prior to ground disturbance before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 survey methodology resulting in detections.

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Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Off-site habitat compensation shall also be required for any nest burrows used within the last three year that would be removed. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific conditions, and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.

Comment 2: MND Page 23

Issue: The project is located within grassland habitat that may be suitable for monarch butterfly (*Danaus plexippus plexippus*), a California Terrestrial and Vernal Pool Invertebrate of Conservation Priority and candidate species under the federal Endangered Species Act (ESA).¹ There are scattered records of adult monarch butterflies and milkweed, the species host plant, in Santa Rosa and Rohnert Park (see: <https://www.monarchmilkweedmapper.org/>, confirming the species occurs in the vicinity of the project and may use the project site. In addition, the Western Association of Fish and Wildlife Agencies identifies the project site within a Crucial Habitat Assessment Tool Rank 2 area, with 1 representing the most crucial habitat and 6 representing the least crucial habitat (see: <https://wafwaprojects.maps.arcgis.com/apps/webappviewer/index.html?id=3d8dc6f6c4434ce1be32fe352d355ffb>) (WAFWA 2019).

Specific impacts and why they may occur: The project may result in injury or mortality to monarch butterfly and loss of breeding or migration habitat. Therefore, project impacts to monarch butterfly would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND analyze potential impacts to monarch butterfly including, but not limited to, evaluating the presence of milkweed on the project site. If impacts may occur, mitigation measures should be included such as planting, maintaining, and monitoring milkweed within a protected, off-site location.

¹ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW’s Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

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Comment 3: MND Page 24

Issue: The project is located within grassland habitat that may be suitable for American badger, a California Species of Special Concern. As stated above, badgers can dig burrows in a single day; therefore, the species may occupy the project site and adjacent habitat prior to project construction. Per the MND, CNDDDB documents a badger record approximately 5.5 miles from the project site. Additionally, CDFW unprocessed CNDDDB records include 2015 badger occurrence 1.6 miles to the southwest. These records confirm the species has occurred in the vicinity of the project site and could use it and adjacent habitat.

Specific impacts and why they may occur: The project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, project impacts to American badger would be potentially significant.

Recommendation: For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for American badger to occur on and adjacent to the project site, and (2) include mitigation measures to ensure impacts are reduced to less-than-significant. These measures may include a qualified biologist surveying for the species including adjacent habitat prior to construction, avoiding occupied burrows including a sufficient buffer approved by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the project site. Off-site habitat compensation shall be required for any impacts to occupied habitat. Habitat compensation acreages shall be approved by CDFW and completed before project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.

Mitigation Measures

Comment 4: MND Page 27

Mitigation Measure (MM) BIO-1 for nesting bird protection indicates that an active nest is present if a bird is sitting in a nest, a nest has eggs or chicks in it, or adults are observed carrying food to the nest. CDFW recommends adding that the nest is also considered active if the young are dependent on parental care within the nesting territory.

MM BIO-1 states: *“The nest buffer, where it intersects the project site, should be staked with orange construction fencing or orange lath staking.”* CDFW recommends replacing “should” with “shall” to ensure this important protective measure is binding.

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Comment 5: MND Page 27

MM BIO-2 requires surveys for bats, including special-status bats, and potential eviction of bats. CDFW recommends adding the below requirements to ensure surveys and eviction are appropriately implemented, and compensatory habitat provided, thereby reducing impacts to less-than-significant.

- The bat survey methodology shall include an initial habitat assessment and survey several months before project construction, to ensure sufficient time to implement the eviction plan, and the types of equipment used for detection.
- As bat surveys are complex requiring significant experience, the applicant shall provide resume(s) of qualified biologist(s) conducting bat surveys to the County for review and approval prior to surveys. Resumes shall reflect: 1) at least 2 years of experience conducting bat surveys on suitable tree habitat that resulted in detections for the relevant species, and 2) the types of equipment used to conduct surveys.
- The exclusion plan shall be submitted to the County for approval if bats are detected during the survey. 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 and 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.

Comment 6: MND Page 28

MM BIO-3 requires surveys, avoidance, and relocation of western pond turtle (*Actinemys marmorata*), a California Species of Special Concern. CDFW recommends adding the below requirements to ensure relocation is appropriately implemented, thereby reducing impacts to less-than-significant.

- The survey shall include the identification of western pond turtles and their nests. If relocation is necessary, a relocation plan shall be prepared and approved by the County prior to implementation. The plan shall include disinfection and handling protocols, animal care during relocation, suitable areas for relocations, and reporting requirements.

Comment 7: MND Page 28

MM BIO-4 includes CDFW permitting requirements for impacts to California tiger salamander, a State threatened and federally endangered species. MM BIO-6 includes off-site compensation for impacts to suitable habitat for State and federally endangered

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plants. CDFW recommends adding the requirement for USFWS authorization for impacts to California tiger salamander and endangered plant habitat to ensure compliance with the federal ESA, and 2) pursuant to the Santa Rosa Plain Conservation Strategy and 2020 USFWS Programmatic Biological Opinion for *Section 404 Permits by the U.S. Army Corps of Engineers on the Santa Rosa Plain*.

FILING FEES

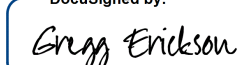
The project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH No. 2021010137)

REFERENCES

Brehme, C.S., S.A. Hathaway, R. Booth, B.H. Smith and R.N. Fisher. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix)

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Western Association of Fish and Wildlife Agencies (WAFWA). 2019. Western Monarch Butterfly Conservation Plan, 2019-2069. Version 1.0. https://wafwachat-s3.s3.us-east-2.amazonaws.com/monarch_chat/WAFWA+Monarch+Conservation+Plan.pdf