



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Ave
Fresno, CA 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

April 30, 2021

April 29, 2021

STATE CLEARINGHOUSE

Anna Quenga
Senior Planner
Monterey County Housing and Community Development- Planning
1441 Schilling Place South 2nd Floor
Salinas, California 93601

**Subject: Post Ranch Inn LLC & Onesimo Parcel C LLC PLN160047
MITIGATED NEGATIVE DECLARATION (MND)
SCH No.: 2021030671**

Dear Ms. Quenga:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Monterey County Housing and Community Development- Planning for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

Conserving California's Wildlife Since 1870

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Laura Lawrence C/O Law Offices of Aengus L Jeffers, Agent

Objective: The objective of the Project is to improve the existing visitor serving and employee facilities, and internal infrastructure facilities for the Post Ranch Inn Resort. Primary Project activities include an amendment to the 2002 General Development Plan to allow improved operations desired by the applicant. This would allow the applicant to convert existing guest units into spa rooms, serving units, and construction of new serving and employee housing units. Also, on site clearing will occur, grading of 2,150 cubic yards of cut and 900 cubic yards of fill, removal of six California bay laurel trees, one Coast redwood, and one stump.

Location: 47900 Highway 1, Big Sur California, 93920. APN Numbers: 419-311-038 and 419-311-042

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Monterey County Housing and Community Development- Planning in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

There is habitat present within and near the Project site where special status resources may be present. Post creek and a freshwater pond is within the vicinity of the Project. These resources may need to be evaluated and addressed prior to any approvals that

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would allow ground-disturbing activities or land use changes. The MND indicates there is potentially significant impact unless mitigation measures are taken but the measures listed are general and non-specific and/or may be inadequate to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the State endangered foothill yellow-legged frog (*Rana boylei*) and the federally threatened and State species of special concern California red-legged frog (*Rana draytonii*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

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 United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Foothill Yellow-Legged Frog (FYLF) and California Red-Legged Frog (CRLF)

Issue: FYLF are primarily stream dwelling and require shallow, flowing water in streams and rivers with at least some cobble-sized substrate such as Post Creek; CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). The MND states CRLF have been documented on the Project site, and FYLF have been documented to occur in the Project vicinity (CDFW 2021). The Project site contains habitat that may support both species. Avoidance and minimization measures are necessary to reduce impacts to FYLF and CRLF to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for FYLF and CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: FYLF and CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water

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quality, and introduced predators, such as bullfrogs are the primary threats to FYLF and CRLF (Thomson et al. 2016, USFWS 2017). Project activities have the potential to significantly impact both species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to FYLF and CRLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the MND prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: FYLF and CRLF Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for FYLF and CRLF in accordance with the USFWS “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if FYLF and CRLF are within or adjacent to the Project area; while this survey is designed for CRLF, the survey may be used for FYLF focusing on stream/river habitat.

Recommended Mitigation Measure 2: FYLF and CRLF Avoidance

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF and CRLF are most likely to be moving through upland areas (October 15 and May 1). When ground-disturbing activities must take place between October 15 and May 1, CDFW recommends a qualified biologist monitor construction activity daily for FYLF and CRLF.

Recommended Mitigation Measure 3: FYLF Take Authorization

If any FYLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization would be necessary prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

II. Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys 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. In addition to direct

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impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CRLF. Take under FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 mailed electronically to CNDDDB at the following email address: CNDDDB@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>.

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,

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vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Monterey County Housing and Community Development- Planning in identifying and mitigating Project impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist at (559) 243-4014 extension 243 or aimee.braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachment

A. MMMRP for CDFW Recommended Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Jeff Cann, CDFW

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REFERENCES

California Department of Fish and Wildlife (CDFW), 2018a. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.

CDFW. 2018. Considerations for Conserving the Foothill Yellow-Legged Frog. California Department of Fish and Wildlife. May 14, 2018.

CDFW. 2021. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 25, 2021.

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

USFWS, 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

USFWS, 2017. Species Account for California Red-legged frog. March 2017. 1 pp.

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

PROJECT: Post Ranch Inn LLC & Onesimo Parcel C LLC

SCH No.: 2021030671

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: FYLF and CRLF Surveys	
Mitigation Measure 2: FYLF Take Avoidance	
<i>During Construction</i>	
Mitigation Measure 3: FYLF and CRLF Authorization	