



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

May 3, 2021

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STATE CLEARINGHOUSE

Mr. Peyman Behvand
City of Vacaville
650 Merchant Street
Vacaville, CA 95688
peyman.behvand@cityofvacaville.com

Subject: Hampton Inn and Suites Project, Mitigated Negative Declaration,
SCH No. 2021040317, 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 Hampton Inn and Suites Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA 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) or Native Plant Protection Act, the 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Mahavir Investment, LLC

Objective: The Project will construct a five-story hotel with meeting rooms, dining area, swimming pool, gym, and 109 hotel rooms, as well as associated infrastructure such as a parking lot, walking paths, and outdoor seating areas. Primary Project activities

¹ CEQA is codified in the California Public Resources Code in Section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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include grading, excavation, trenching, building construction, concrete pouring, and landscaping.

Location: The Project is located at 1000 Mason Street, adjacent to the Mason Street exit from westbound Interstate 80, immediately south of Mason Street, in the City of Vacaville. The Project will occur on Assessor's Parcel Number 0130-250-350. The approximate Project centroid is Latitude 38.35437°N, Longitude 121.97993°W.

Timeframe: The Project is anticipated to take 18 months to complete with a tentative start date of July 2021.

ENVIRONMENTAL SETTING

The Project site is located on a 2.26-acre undeveloped lot dominated by ruderal vegetation. Eight scattered trees are located on the site, including one Arroyo willow (*Salix lasiolepis*), three almond trees (*Prunus dulcis*), two valley oaks (*Quercus lobata*), one Fremont cottonwood (*Populus fremontii*), and one unknown pine (*Pinus* sp.). Immediately adjacent to the southeast side of the Project site, between the Project site and Interstate 80, an unnamed ephemeral stream with a riparian canopy flows northeast to Ulatis Creek. A seasonal wetland adjacent to the unnamed stream covers approximately 480 square feet of the Project site's southeastern edge. The site is immediately surrounded by commercial development and infrastructure, including a Texaco gas station and convenience store to the west, Interstate 80 to the east and south, and a strip mall to the north. Special-status species with the potential to occur in or near the Project site include, but are not limited to, Swainson's hawk (*Buteo swainsoni*), listed as threatened pursuant to CESA, burrowing owl (*Athene cunicularia*), a California Species of Special Concern, and white-tailed kite (*Elanus leucurus*), a Fully Protected Species.

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, such as Swainson's hawk, either during construction or over the life of the Project. Issuance of an ITP 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 an 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

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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.

Lake and Streambed Alteration Agreement

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. The MND identifies an ephemeral drainage that occurs just outside of the Project site, and a seasonal wetland that is partially on-site covering approximately 480 square feet (page 3-27 and Appendix D). Please be advised that the off-site ephemeral drainage is subject to LSA notification requirements if it will be impacted. It appears that the on-site seasonal wetland is hydrologically connected to the off-site ephemeral drainage and would be considered associated wetland resources. Therefore, activities that could substantially alter the seasonal wetland may also be subject to LSA notification requirements. Activities that could indirectly impact the seasonal wetland, e.g., through changes in hydrology and on-site drainage, could also be considered substantial. In that case, CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

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 sections 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as white-tailed kite, may not be taken or possessed at any time (Fish and Game Code, §§ 3511, 4700, 5050, and 5515).

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COMMENTS AND RECOMMENDATIONS

CDFW offers the 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.

Environmental Setting and Related Impact Shortcoming

Swainson's Hawk

The MND identifies that Swainson's hawk, listed as threatened pursuant to CESA, may occur within the Project site, which provides low quality foraging habitat (page 3-29, Appendix D). Potentially suitable nesting trees exist in the riparian areas near the Project site, and the undeveloped lots and parks near the Project provide potentially suitable foraging habitat. In addition, there is a California Natural Diversity Database (CNDDDB) occurrence of nesting Swainson's hawk approximately 1.3 miles east of the Project, and the California Wildlife Habitat Relationships Predicted Habitat Suitability for the site is High Suitability. The MND does not require Swainson's hawk protocol surveys prior to Project activities, relying instead on the general pre-construction nesting bird surveys identified in Mitigation Measure BIO-2. This measure requires nesting bird surveys to occur within the Project area and the 500 feet surrounding the Project site. It also requires these surveys within 5 days before commencing Project activities. Mitigation Measure BIO-2 does not provide adequate survey techniques to effectively identify nesting Swainson's hawk in and near the Project area.

The breeding population of Swainson's hawks in California has declined by an estimated 91% since 1900 and the species continues to be threatened by on-going and cumulative loss of foraging habitat (CDFW 2016). Swainson's hawks could be disturbed by Project activities, resulting in potentially significant impact to Swainson's hawk through nest abandonment or reduced health and vigor of young. In addition, the MND does not propose compensatory mitigation for removal of Swainson's hawk foraging habitat. To reduce impacts to less-than-significant, CDFW recommends including the following Mitigation Measure.

Mitigation Measure BIO-5: Swainson's Hawk Surveys

If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on this Project, a qualified biologist shall survey for Swainson's hawk nesting activity. The qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*.² Survey methods should be closely

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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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 shall be conducted: 1) within a minimum 0.25-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.25-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

Mitigation Measure BIO-6: Swainson's Hawk Habitat Mitigation

Loss of foraging habitat shall be mitigated at the appropriate ratio following CDFW's (then Fish and Game) *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California*³ prior to Project construction. The Project shall be assumed to be within one mile of an active nest tree and mitigate at a 1:1 mitigation to impact ratio, unless protocol-level Swainson's hawk surveys are conducted demonstrating that Swainson's hawks are not nesting within one mile of the Project. Habitat mitigation shall include permanent preservation of foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity.

Burrowing Owl

The MND identifies that burrowing owl, a California Species of Special Concern, may occur within the Project site, which provides low quality foraging habitat and potential refuge via debris piles (page 3-29, Appendix D). There is a documented occurrence of burrowing owl within two miles northeast of the Project site according to the CNDDDB, and the California Wildlife Habitat Relationships Predicted Habitat Suitability for the site is High Suitability. The MND does not require burrowing owl protocol surveys prior to Project activities, identifying instead in Mitigation Measure BIO-3 that a survey consisting of inspecting debris piles within the Project site shall occur no more than five days prior to Project activities. In addition, Mitigation Measure BIO-3 requires that if burrowing owls are present, then CDFW will be consulted on a burrowing owl exclusion plan. Mitigation Measure BIO-3 does not provide adequate survey techniques to effectively identify nesting or roosting burrowing owls in and near the Project area. In

³ CDFW, 1994. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

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accordance with CDFW's *Staff Report on Burrowing Owl Mitigation, Appendix C: Habitat Assessment and Reporting Details*⁴ (CDFW 2012 Staff Report), owls may be disturbed up to 1,640 feet (500 meters) from a project.

The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults. Additionally, the Project would result in a permanent reduction of burrowing owl habitat in Solano County. Burrowing owls are a California Species of Special Concern due to population decline and breeding range retraction. Based on the above, the Project may potentially significantly impact burrowing owls. To reduce impacts to less-than-significant CDFW recommends the following Mitigation Measures.

Mitigation Measure BIO-7: Burrowing Owl Habitat Assessment, Surveys, and Avoidance

Prior to Project activities, a habitat assessment shall be performed following Appendix C: Habitat Assessment and Reporting Details of the CDFW 2012 Staff Report. The habitat assessment shall extend at least 150 meters (492 feet) from the Project area boundary and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the CDFW 2012 Staff Report on Burrowing Owl Mitigation survey methodology. Surveys shall encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. 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. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections. Detected nesting burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan for non-nesting owls shall be subject to CDFW review.

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 potentially evicting burrowing owls to less-than-significant, Mitigation Measure BIO-8 outlined below should be implemented with habitat compensation with the acreage amount identified in any 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

⁴ Department of Fish and Wildlife (then Fish and Game), 2012.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

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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.”

Mitigation Measure BIO-8: Burrowing Owl Habitat Mitigation

If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow where a non-nesting owl would be evicted as described above, the following habitat mitigation shall be implemented prior to Project construction:

Impacts to each nesting site will be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.

Impacts to burrowing owl foraging habitat shall be mitigated by permanent preservation of foraging habitat at a 1:1 mitigation to impact ratio, in the same manner described above. The CDFW 2012 Staff Report 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...”

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

GENERAL SUGGESTIONS

In addition to the above recommendations, CDFW encourages landscaping using native trees and shrubs to benefit native wildlife such as nesting birds and insect pollinators. 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 (Rosenburg et al. 2019). Similarly, insect pollinators such as monarch butterflies and native bees have declined drastically relative to 1990 levels (Xerces Society Western Monarch Thanksgiving Count 2021, Xerces Society et al. 2018, Forister et al. 2011). Planting native trees, shrubs, and flowering species, is an opportunity to improve conditions for native birds and insects. CDFW recommends replacing the proposed non-native ornamental species with native species where possible. For example, rather than planting sycamores, plant valley oaks, instead of Chinese pistache, plant western

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redbud (*Cercis occidentalis*), and in place of periwinkle, plant narrow leaf milkweed (*Asclepias fascicularis*).⁵

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 CNDDDB. The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

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 for the underlying Project approval to be operative, 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 the City in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at amanda.culpepper@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

⁵ For further native species recommendations and planting tips, review the Willis L. Jepson Chapter of the California Native Plant Society document *Native Landscape Planting Guide*: https://jepson.cnps.org/images/horticulture/plans/willis_jepson-planting_guide.pdf and the Xerces Society document *Pollinator Plants: California*: https://xerces.org/sites/default/files/2018-05/17-045_02_XercesSoc_Pollinator-Plants_California_web-3page.pdf

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cc: Office of Planning and Research, State Clearinghouse (SCH No. 2021040317)

REFERENCES

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Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

Xerces Society, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the State of California Fish and Game Commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as endangered under the California Endangered Species Act. Available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161902&inline>

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