



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

May 13, 2021

**May 13 2021**

## STATE CLEARINGHOUSE

Mr. John Kearns  
City of Suisun City  
701 Civic Center Boulevard  
Suisun City, CA 94585  
[jkearns@suisun.com](mailto:jkearns@suisun.com)

Subject: Blossom Avenue Apartments Project, Mitigated Negative Declaration,  
SCH No. 2021040479, City of Suisun City, Solano County

Dear Mr. Kearns:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Suisun City (City) for the Blossom Avenue Apartments Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, a Lake and Streambed Alteration (LSA) Agreement, 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:** FPA Multifamily, LLC

**Objective:** The Project will construct an apartment complex consisting of nine separate three-story buildings, a one-story community building, internal pathways and picnic areas, a dog park, a children's park, parking lot, and associated infrastructure. Primary

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<sup>1</sup> 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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Project activities include grading, excavation, trenching, building construction, concrete pouring, and landscaping.

**Location:** The Project is located south of Railroad Avenue and east of Blossom Avenue in the City of Suisun City, adjacent to and southwest of Railroad Avenue Self Storage located at 515 Railroad Avenue. The Project will occur on Assessor's Parcel Number 0037-130-010. The approximate Project centroid is Latitude 38.25949°N, Longitude 122.01381°W.

**Timeframe:** The Project is anticipated to take 18 months to complete with a tentative start date of September 2021 and completion by May 2023.

## **ENVIRONMENTAL SETTING**

The Project site is located on a 9.09-acre undeveloped lot dominated by non-native annual grassland. One horticultural tree is present in the northeast corner of the lot and coyote bushes (*Baccharis pilularis*) are present on the southern edge of the lot. The site contains six seasonal wetlands covering 0.38 acres. California ground squirrel (*Otospermophilus beecheyi*) burrows are present. The site is immediately surrounded by residential housing, the Union Pacific Railroad, and a self-storage facility. 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, California tiger salamander (*Ambystoma californiense*), listed as threatened pursuant to CESA; the Central California population is also listed as threatened pursuant to the federal Endangered Species Act (ESA), burrowing owl (*Athene cunicularia*), a California Species of Special Concern, white-tailed kite (*Elanus leucurus*), a Fully Protected Species, and dwarf downingia (*Downingia pusilla*), a California Rare Plant Rank 2B.2 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 or California tiger salamander, 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.

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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.

### **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. In these cases, 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).

### **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.

#### **Swainson's Hawk:**

The MND identifies that Swainson's hawk, listed as threatened pursuant to CESA, may occur within the Project site, which provides suitable foraging habitat (page 3-37,

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Appendix D). Potentially suitable nesting trees exist in the vicinity of the Project site. In addition, the MND notes there are California Natural Diversity Database (CNDDDB) occurrences of nesting Swainson's hawk within five miles of the Project (page 3-37, Appendix D), 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 pre-construction nesting bird surveys identified in Mitigation Measure (MM) BIO-3. MM BIO-3 specifies that surveys for Swainson's hawk nests will occur within a 0.5-mile radius no more than 14 days prior to the start of construction activities. MM BIO-3 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 Measures.

*Mitigation Measure BIO-6: 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*.<sup>2</sup> Survey methods should be closely 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

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

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CESA and obtain an ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

*Mitigation Measure BIO-6A: 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*<sup>3</sup> 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. Please be advised that the draft Solano Multispecies Habitat Conservation Plan, Section 6.4.8 and Figure 4-21, identifies 1:1 Swainson's hawk foraging habitat mitigation for the Project site (see: <https://www.scwa2.com/solano-multispecies-habitat-conservation-plan/>).

**California Tiger Salamander:**

The MND identifies that the Project is within the range of California tiger salamander (CTS), listed as threatened pursuant to CESA; the Central California population is also listed as threatened pursuant to the ESA (Appendix D). However, CTS is presumed absent (Appendix D, Table 1). The Project site is surrounded by suburban and urban development and consists of potential upland and breeding habitat. The seasonal wetlands on-site and north of the railroad tracks may provide breeding habitat during above-average rain years; however, the MND does not include hydroperiod information for these wetlands (page 3-36).

CTS in central California face continuing threats from development projects such as urban development (U.S. Fish and Wildlife Service (USFWS) 2017). The Project has the potential to impact a remnant CTS population through grading, excavating, and removing burrow refugia, possibly crushing CTS, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends including the following Mitigation Measure.

*Mitigation Measure BIO-8: California Tiger Salamander Biological Monitor and CESA ITP*

During initial ground disturbing activities, a qualified biologist shall be on-site to monitor for presence of CTS. If CTS are observed on or near the Project site, all work shall cease, and the qualified biologist shall immediately contact CDFW and USFWS). Work

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

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shall not proceed until the Project has applied for and received a CESA ITP and authorization from USFWS.

**Burrowing Owl:**

The MND identifies that burrowing owl, a California Species of Special Concern, may occur within the Project site, which provides potentially suitable foraging habitat and potential refuge via ground squirrel burrows (page 3-37, Appendix D). The MND notes documented occurrences of burrowing owl within two miles of the Project site according to the CNDDDB (Appendix D). A burrowing owl nesting season survey was conducted on June 12, 2020 and no burrowing owls or their sign were observed. Given the potentially suitable habitat, the MND requires, in MM BIO-4, an updated habitat assessment the same year that project impacts will occur and protocol-level surveys following CDFW's *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report), if habitat is present.<sup>4</sup> In addition, MM BIO-4 requires that if nonbreeding burrowing owls are present, CDFW will be consulted on a burrowing owl exclusion plan.

The Project would result in a permanent reduction of potential 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.

CDFW appreciates the inclusion of the habitat assessment and protocol surveys for burrowing owl in the MND. To reduce impacts to less-than-significant and clarify habitat assessment and surveys requirements, CDFW recommends: 1) revising Mitigation Measures MM BIO-4 as follows, and 2) adding the below mitigation measure to mitigate habitat impacts.

*Mitigation Measure BIO-4: 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 site 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 site 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

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

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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, MM BIO-10 outlined below should require 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 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-4A: 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 shall 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...” Please be advised that the draft Solano Multispecies Habitat Conservation Plan, Section 6.4.9 and Figure 4-22, identifies 1:1 burrowing owl foraging habitat mitigation for the project site (see: <https://www.scwa2.com/solano-multispecies-habitat-conservation-plan/>).

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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. It is unclear in the MND what plant species are proposed for the landscaping of the Project site (page 2-9, figure 2.1-4), and CDFW recommends native species such as valley oaks (*Quercus lobata*), western redbud (*Cercis occidentalis*), and narrow leaf milkweed (*Asclepias fascicularis*) where possible.<sup>5</sup>

## 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 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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

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<sup>5</sup> 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](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](https://xerces.org/sites/default/files/2018-05/17-045_02_XercesSoc_Pollinator-Plants_California_web-3page.pdf)



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## 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](mailto:amanda.culpepper@wildlife.ca.gov); or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at [melanie.day@wildlife.ca.gov](mailto:melanie.day@wildlife.ca.gov).

Sincerely,

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

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2021040479)

## REFERENCES

- CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, Reported to the California Fish and Game Commission, Five-year Status Report. State of California Natural Resources Agency, Sacramento, CA.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>
- Forister, Matthew L.; Jahner, Joshua P.; Casner, Kayce L.; Wilson, Joseph S.; and Shapiro, Arthur M. 2011. The race is not to the swift: Long-term data reveal pervasive declines in California's low-elevation butterfly fauna. *Ecology*: 92 (12): 2222-2235.
- 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.
- U.S. Fish and Wildlife Service. 2017. Recovery Plan for the Central California Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. V + 69pp. Available at [https://www.fws.gov/sacramento/outreach/2017/06-14/docs/Signed\\_Central\\_CTS\\_Recovery\\_Plan.pdf](https://www.fws.gov/sacramento/outreach/2017/06-14/docs/Signed_Central_CTS_Recovery_Plan.pdf)

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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>

Xerces Society Western Monarch Thanksgiving County. 2021. Western Monarch Thanksgiving County Data, 1997-2020. Available at [www.westernmonarchcount.org](http://www.westernmonarchcount.org).