



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 9, 2021

Governor's Office of Planning & Research

September 10 2021

Ms. Lauren Scott, Project Planner
Sonoma County
2550 Ventura Avenue
Santa Rosa, CA 95403
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STATE CLEARINGHOUSE

Subject: PLP19-0009 Hyatt Place Wine Country Hotel, Mitigated Negative Declaration, SCH No. 2021080238, Sonoma County

Dear Ms. Scott:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Sonoma County (County) for the PLP19-0009 Hyatt Place Wine Country Hotel (project) pursuant 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 Sebastopol meadowfoam (*Limnanthes vinculans*), Burke's goldfields (*Lasthenia burkei*) and Sonoma sunshine (*Blennosperma bakeri*), CESA listed as endangered species, as described in further detail below.** Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation

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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 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) & 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: Scott Schellinger

Objective: Construct a 116,571-square-foot, six-story hotel and a 76,279-square-foot parking lot. Project construction would include earthwork, grading, paving, building construction and the installation of underground utilities (including water, sewer, storm drainage, electrical and irrigation facilities). The proposed construction would disturb approximately four acres and fill 0.26 acres of wetlands.

Location: The project is located in unincorporated Sonoma County, at the southeastern corner of the intersection of North Laughlin Road and Airport Boulevard, approximately 1,000 feet east of Charles M Schulz Airport. It is on Assessor Parcel Number 059-370-033-000 and centered at approximate coordinates 38.51063, -122.7995.

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,

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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.

Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Environmental Setting

Comment 1: MND Pages 38-40; Biological Assessments

Issue: According to the MND, the project is located within and adjacent to mesic grassland habitat supporting wetlands. Such habitat may support Sebastopol meadowfoam, Burke's goldfields and Sonoma sunshine, CESA and federally listed as endangered species. Special-status plant surveys were conducted in December 2016, July 2019, and August 2019. According to CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (CDFW protocol survey), botanical field surveys should be conducted during times of the year when plants will be both evident and identifiable—typically during the flowering or fruiting period. All three surveys were conducted outside of the blooming period for the three aforementioned CESA-listed species. It is unclear if the surveys were conducted in conformance with the CDFW protocol survey, which specifies that “botanical field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. ‘Focused surveys’ that are limited to habitats known to support special-status plants or that are restricted to lists of potential special-status plants are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special-status plants.” The MND indicates the wetland habitat on-site is not suitable to support these CESA-listed species; however, surveys appear to have occurred because habitat may be suitable. Furthermore, the failure to locate a known special-status plant occurrence during one field season does not constitute adequate evidence that the plant species does not occur at a location, particularly if adverse conditions are present, such as drought. Additionally, the Santa Rosa Plain Conservation Strategy Appendix D requires two years of surveys to substantiate absence of these species ([see: https://www.fws.gov/sacramento/es/Recovery-Planning/Santa-Rosa/santa-rosa-strategy.php](https://www.fws.gov/sacramento/es/Recovery-Planning/Santa-Rosa/santa-rosa-strategy.php)).

Recommendation: To adequately describe the environmental setting and reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure.

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Prior to the initiation of project activities, the project proponent shall conduct at least two years of botanical surveys at the project site in conformance with CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (see: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>). If CESA listed plants are detected and may be impacted by the project, including Sebastopol meadowfoam, Burke's goldfields, and Sonoma sunshine, or if CDFW is unable to accept the survey results in writing, the project applicant shall obtain a CESA ITP from CDFW prior to construction and comply with all requirements of the ITP. Impacts may include direct and indirect impacts (e.g., hydrological modifications).

The project proponent shall obtain authorization from the U.S. Fish and Wildlife Service (USFWS) for impacts to suitable habitat for federally listed plant species. Impacts to unoccupied suitable habitat shall be mitigated according to the Santa Rosa Plain Conservation Strategy and 2020 USFWS programmatic Biological Opinion for projects on the Santa Rosa Plain, which requires a 1:5:1 ratio for mitigation within the same core area as the impact, and a 3:1 ratio if within a different core area. Impacts to occupied habitat may require a different mitigation ratio.

Please be advised that for CDFW to accept the results of the two years of surveys, they must be completed in conformance with the CDFW protocol survey requirements, including but not limited to conducting surveys during appropriate conditions, utilizing appropriate reference sites, and evaluating all direct and indirect impacts. Surveys conducted during drought conditions may not be acceptable.

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?

Environmental Setting

Comment 2: MND Biological Assessments

Issue: The project is within the wintering distribution of burrowing owl (*Athene cunicularia*) and within and adjacent to grasslands that may be suitable foraging and wintering habitat for the species (Klute et al. 2003). The 2019 and 2020 biological assessments determine that burrowing owls are unlikely to occur on the project site due to a lack of fossorial burrows. However, suitable burrows may be excavated within a single day by, for example, American badger (*Taxidea taxus*) (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Therefore, burrowing owls could occupy the project site or adjacent habitat prior to project construction.

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The California Natural Diversity Database (CNDDDB) documents a burrowing owl observed in 2017 at the Sonoma County Airport approximately 0.8 miles northwest of the project site, confirming the species has occurred in the vicinity of the project site and could occupy suitable refugia in and adjacent to it.

Specific impacts and why they may occur and be potentially significant: The project may result in reduced health and vigor, or mortality, of owls resulting from removal of wintering burrows, or wintering burrow abandonment caused by audio and visual disturbances from project construction activities. Burrowing owl is a California Species of Special Concern and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act (Klute et al. 2003). 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: (1) further analyze the potential for burrowing owl to occur on and adjacent to the project site, and (2) include a mitigation measure requiring a qualified biologist to conduct a habitat assessment, and surveys if habitat is present, following the California Department of Fish and Game (now CDFW) *2012 Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report) habitat assessment and survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) prior to project activities occurring during the burrowing owl wintering season from September 1 to January 31. The habitat assessment and surveys shall encompass the project site and a sufficient buffer zone (up to 500 meters or 1,640 feet) 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.

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. 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 3: MND Biological Assessments

Issue: The project is within and adjacent to grassland habitat that may be suitable to

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support American badger, a Species of Special Concern (SSC). However, the 2019 and 2020 biological assessments determine that American badgers are unlikely to occur on the project site due to a lack of burrowing habitat for the species. While the MND does not describe soil conditions relative to potential species present on-site, a history of intermittent grading has a potential to yield the friable soil conditions badgers utilize for burrows. Furthermore, badgers can dig burrows in a single day, as stated above; therefore, the species may occupy the project site and adjacent habitat prior to project construction.

While the nearest CNDDDB observation of an American badger is approximately five miles south of the project site, an absence of records should not be presumed to be an absence of the species.

Specific impacts and why they may occur and be potential significant: The project may result in injury or mortality to adult or young badgers, or burrow abandonment. American badger is an SSC. 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.

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?

Mitigation Measures

Comment 4: MND Pages 43-44

Issue: Project activities could have significant impacts on nesting birds if they are conducted during the nesting bird season (identified as February 1 through August 31 in the MND). MM BIO-3 requires preconstruction nesting surveys 14 days prior to the initiation of construction but does not address any delays in construction which may allow birds to establish nests during lapses between project activities. For many passerines, 14 days is more than enough time to establish a nest; therefore, impacts to active nests may not be fully mitigated by surveys at 14-day intervals prior to construction.

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Recommendation: To ensure impacts are reduced to less-than-significant, CDFW recommends that MM BIO-3 require nesting bird surveys to be conducted no more than seven days prior to the initiation of project activities. Surveys should be repeated if there is a lapse in project activities of seven days or more.

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 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. Jennifer Rippert, Senior Environmental Scientist (Specialist), at Jennifer.Rippert@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Stephanie Fong

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Stephanie Fong
Acting Regional Manager
Bay Delta Region

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ec: State Clearinghouse (SCH No. 2021080238)
Vincent Griego, U.S. Fish and Wildlife Service, Vincent_Griego@fws.gov

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)
- Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTP-R6001-2003, Washington, D.C.