



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

October 28, 2021

Oct 29 2021

STATE CLEARINGHOUSE

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
675 Texas Street, Suite 5500
Fairfield, CA 94533
nferrario@solanocounty.org

Subject: U-05-26-AM1 (Griffin), Mitigated Negative Declaration,
SCH No. 2021100008, Solano County

Dear Ms. Ferrario:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Solano (County) for the U-05-26-AM1 (Griffin) project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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 (NPPA), 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: Joetta and Edward Griffin

Objective: The Project would construct five new buildings and expand on-site capacity for horse shows and horse events at the Pleasant Valley Riding Arena and Horse Boarding facility. The buildings would include a 12,000-square-foot covered riding corral with nine outdoor stalls for horses, an 800-square-foot manufactured home, and three

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.

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 2

equipment storage buildings averaging 1,067 square feet each. Primary Project activities would include grading, excavation, trenching, building construction, and concrete pouring. No trees would be removed.

Location: The Project is located at 7680 Pleasants Valley Road approximately four miles northwest of the City of Vacaville in unincorporated County of Solano. The approximate centroid of the Project is Latitude 38.43828°N, Longitude 122.05147°W and the Assessor's Parcel Number (APN) is 0102-030-230.

Timeframe: The MND does not specify a timeframe.

ENVIRONMENTAL SETTING

The Project is located on a 67-acre parcel with existing buildings, grazing land, an unnamed tributary to Pleasants Creek, grassland, and interior live oak (*Quercus wislizeni*) woodland. The surrounding area includes grasslands, oak woodlands, grazing lands, and rural residences. Special-status species with the potential to occur in or near the Project area 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 (SSC); and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

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. In those cases, CDFW would 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.

California Endangered Species Act and Native Plant Protection 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 or NPPA, 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

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 3

must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA or NPPA 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, & 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.

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 & G. Code, §§ 3511, 4700, 5050, & 5515).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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.

Mitigation Measures and Related Impact Shortcoming

Swainson's Hawk

The Project is within the range² of Swainson's hawk, listed as threatened pursuant to CESA, and large trees on and near the Project site could provide nesting habitat (MND

² CDFW maintains range maps and life histories for all terrestrial species in California. The Swainson's hawk range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1674&inline=1>

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 4

page 15). The California Wildlife Habitat Relationships Predicted Habitat Suitability for portions of the site is High Suitability for Swainson's hawk. The California Natural Diversity Database (CNDDDB) identifies a known Swainson's hawk nest tree approximately 2.5 miles south of the Project. The MND relies on general pre-construction nesting bird surveys identified in Mitigation Measure BIO-1 to avoid potential impacts to Swainson's hawk. BIO-1 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 impacts to Swainson's hawk through nest abandonment or reduced health and vigor of young. To reduce impacts to less-than-significant, CDFW recommends including the following Mitigation Measure.

BIO-2. 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 the Project, a qualified biologist shall conduct surveys according to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*.³ 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 0.5-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 shall 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 0.5-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.

³ Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 5

Burrowing Owl

The Project is within the range⁴ of burrowing owl, an SSC, and the grassland in the vicinity of the Project may provide suitable foraging habitat. There are documented occurrences of burrowing owl approximately 5.4 miles east of the Project site according to the CNDDDB. In addition, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the site is High Suitability for burrowing owls. The MND relies on general pre-construction nesting bird surveys identified in Mitigation Measure BIO-1 to avoid potential impacts to burrowing owls. BIO-1 does not provide adequate survey techniques to effectively identify burrowing owls in and near the Project area.

The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, or loss of wintering owls. Burrowing owls are an SSC 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.

BIO-3A. 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 *Staff Report on Burrowing Owl Mitigation*⁵ (CDFW 2012 Staff Report). The habitat assessment shall extend at least 492 feet (150 meters) from the Project site boundary or more where direct or indirect effects could potentially extend off-site (up to 500 meters or 1,640 feet) 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 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 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

⁴ The burrowing owl range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=1872&inline=1>

⁵ CDFW, then Department of Fish and Game, 2012. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 6

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-3B 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.”

BIO-3B. Burrowing Owl Breeding and Wintering 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.

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

Nesting Birds

The MND identifies Mitigation Measure BIO-1 to avoid potentially significant impacts to nesting birds (MND pages 15). The existing measure combines special-status species and common nesting bird species survey and avoidance requirements into one measure. As identified above, CDFW recommends separating special-status species surveys from general pre-construction nesting bird surveys. The existing measure also identifies a timeline of 15 days prior to ground-disturbing activities within the nesting season for pre-construction nesting bird surveys. CDFW recommends using a timeline

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 7

of 7 days to increase the likelihood that newly constructed nests are identified prior to beginning ground-disturbing activities. If a period of more than 7 days elapses between the survey date and start of Project activities, then an additional survey should be conducted.

GENERAL SUGGESTIONS

In addition to the above recommendations, CDFW notes that the property includes an existing on-stream stock pond that impounds water on an unnamed tributary to Pleasants Creek (MND page 6). The Project may rely on the stock pond for the increased horses that will use the property after the Project is completed. Impounding water in this manner requires approval from the State Water Resources Control Board, Division of Water Rights⁶. CDFW recommends that the Project proponent and the County ensure that the on-stream pond is legally authorized for use, potentially through registration as a livestock stockpond⁷ if the pond qualifies. As a reminder, substantial diversions and any future activities to maintain the pond or work in the unnamed tributary upstream or downstream of the pond are subject to CDFW's LSA authority, as described previously.

Lastly, the MND identifies three APNs associated with Project activities (MND page 4). However, based on the site plan (MND Appendix A) and Project description, all Project activities will occur on APN 0102-030-230. CDFW recommends removing references to the neighboring APNs or clarifying how they are associated with the Project.

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

⁶ https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/

⁷ https://www.waterboards.ca.gov/waterrights/water_issues/programs/registrations/

Ms. Nedzlene Ferrario
Solano County Department of Resource Management
October 28, 2021
Page 8

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 County 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 (707) 428-2075 or amanda.culpepper@wildlife.ca.gov, or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Stephanie Fong

CF047D7F8D234E1...

Stephanie Fong

Acting Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021100008)

Jessica Maxfield, California Department of Fish and Wildlife
jessica.maxfield@wildlife.ca.gov

State Water Resources Control Board, Division of Water Rights
DWR@waterboards.ca.gov

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>