



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



September 12, 2019

Governor's Office of Planning & Research

**SEP 12 2019**

## STATE CLEARINGHOUSE

Mr. Albert Enault, Associate Planner  
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Community Development Department  
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Subject: Lagoon Valley Self Storage Project, Mitigated Negative Declaration,  
SCH #2019089056, City of Vacaville, Solano County

Dear Mr. Enault:

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 Lagoon Valley Self Storage Project (project) pursuant the California Environmental Quality Act (CEQA).

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 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 a California Endangered Species Act (CESA), 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.

### 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. Issuance of a CESA permit 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 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

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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*

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:** Praxis Properties, LLC

**Objective:** Construct of a 98,000-square-foot self-storage facility on a vacant 6-acre parcel of land.

**Location:** The project is located at 5920 Cherry Glen Road in the City of Vacaville, Solano County. It is centered at approximately 38.338116 latitude and -122.017135 longitude on APN 0127-040-140.

**Timeframe:** 12-month duration.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations 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. Based on the project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that the proposed MND is appropriate for the project.

#### **Mitigation Measures**

***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?

#### **Comment 1: MND Page 27**

*Issue:* Mitigation Measure (MM) BIO-1 would not reduce potential impacts to Swainson's hawk (*Buteo swainsoni*) to less-than-significant.

*Specific impact:* The project could result in Swainson's hawk nest abandonment, loss of young, and reduced health and vigor of chicks (resulting in reduced survival rates) due to construction activities during nesting season. As such, a CESA ITP from CDFW may be warranted (see recommended MM below).

*Why impact would occur:* MM BIO-1 states that the survey area will only cover a 100-foot radius around the project site; however, Swainson's hawk active nests may be impacted up to 0.25 miles (1,320 feet) from the project site. Therefore, survey requirements for Swainson's hawk nests would be highly unlikely to detect active nests that could be impacted by the project.

Two active Swainson's hawk nests were reported in the California Natural Diversity Database (CNDDDB) in 2004, 2005, 2006, and 2010 within approximately 250 feet and 1,200 feet southwest of the project site. The species shows a high degree of site fidelity by returning to the same territory year after year (England et al. 1997, Bechard et al. 2010).

Additionally, suitable nesting oak trees occur within the project site, and the site is near the Laguna Creek riparian corridor which supports additional suitable nest trees. Suitable nesting habitat includes trees within mature riparian forest or corridors, lone oak trees and oak groves, and mature roadside trees (CDFW 2016).

*Evidence impact would be significant:* Swainson's hawk qualifies as a threatened animal under CEQA because it is listed as threatened under CESA. [CEQA Guidelines, § 15380, subd. (c)(1)]. The Swainson's hawk population in California has significantly declined largely due to habitat loss. It is thought that the historic population was as many as 17,136 pairs. A 1979 CDFW (then California Department of Fish and Game) report estimated 375 pairs of Swainson's hawks remaining. Population estimates have increased but are still far below the original estimates. The 2016 CDFW Swainson's Hawk Five-Year Status Report found that the species should remain listed as threatened under CESA due to an overall reduction in the hawk's breeding range, ongoing cumulative loss of foraging habitat, and significantly reduced abundance throughout much of the breeding range compared to historic estimates. Based on the foregoing, project impacts would potentially substantially reduce the number of Swainson's hawk. Therefore, project impacts to Swainson's hawk would be **potentially significant**.

### **Mitigation Measure 1: Swainson's hawk surveys**

*To reduce impacts to less than significant:* CDFW recommends that a qualified biologist conduct surveys in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

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 should 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 should occur annually for the duration of the project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology.

If take of Swainson's hawk cannot be avoided, the project proponent should be required to obtain a CESA ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

***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 U.S. Fish and Wildlife Service?***

**Comment 2: MND Page 27**

*Issue:* The project may substantially adversely impact burrowing owl (*Athene cunicularia*).

*Specific impact:* The project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent loss of breeding, overwintering, and foraging habitat.

*Why impact would occur:* MM BIO-1 does not require protocol surveys for the species and states that the survey area will only cover a 100-foot radius around the project site. As written, survey requirements for special-status bird species would be unlikely to detect nesting or overwintering burrowing owls that could be impacted by the project because burrowing owls may be impacted up to several hundred feet from the project site and are less likely to be detected if the protocol is not followed. Project construction activities may disturb or remove breeding or overwintering burrowing owls resulting in nest abandonment, loss of young, reduced health and vigor of chicks, injury, mortality, shelter abandonment, and exposure to predation and other adverse impacts. The project would also remove grasslands, through habitat conversion, that may be used for foraging. Two CNDDDB burrowing owl occurrences were reports in 2004 and 2017 approximately 4.7 and 5 miles east of the project site, demonstrating that the species occurs in the Project vicinity and within its mobility range.

*Evidence impact would be significant:* Burrowing owl is a special-status species because it is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. Based on the foregoing, project impacts would potentially substantially adversely affect burrowing owl. Therefore, project impacts to burrowing owl would be **potentially significant**.

## **Mitigation Measure 2: Burrowing owl surveys and habitat preservation**

*To reduce impacts to less-than-significant:* CDFW recommends that a qualified biologist conduct surveys following the Department of Fish and Game (CDFG) *Staff Report on Burrowing Owl Mitigation (2012)* survey methodology. Surveys should encompass the project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities should trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist should have a minimum of two years of experience implementing the CDFG 2012 survey methodology resulting in detections. Detected burrowing owls should be avoided pursuant to the buffer zone prescribed in the CDFG 2012 Staff Report and any passive relocation plan should be subject to CDFW review.

Impacts to each breeding site used by burrowing owls within the last three years should be mitigated by permanent preservation of two known breeding sites with appropriate foraging habitat within Solano County, through a conservation easement, and provision of an endowment for long-term management. Alternatively, the project proponent should provide another method for preserving breeding sites approved by the Lead Agency in consultation with CDFW.

Permanent loss of burrowing owl overwintering and foraging habitat should be mitigated by permanent preservation of off-site habitat at a 1:1 impact to mitigation ratio, through a conservation easement, and provision of an endowment for long-term management. The CDFG 2012 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..."

### **Comment 3: MND Page 27**

For compliance with Fish and Game Code section 3503 et seq. and the federal Migratory Bird Treaty Act, and protection of nesting birds, MM BIO-1 should be revised to require: 1) nesting bird surveys by a qualified biologist within 500 feet of the project site if the project occurs between February 1 and August 31, 2) that surveys occur no more than 7 days before project construction begins and anytime a lapse of 7 days or more in construction occurs, 3) setting minimum no-disturbance buffers around active nests by a qualified biologist with the buffer distance based on the species of non-listed bird or raptor. These buffers should 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 parental care for survival biological, and 4) monitoring of any active nest to ensure it is not disturbed and that buffers are adjusted by a qualified biologist as needed to avoid disturbance.

### **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

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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 City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Specialist), at (707) 428-2092 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at [Karen.Weiss@wildlife.ca.gov](mailto:Karen.Weiss@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH# 2019089056)

## REFERENCES

Bechard, M. J., C. S. Houston, J. H. Sarasola and A. S. England. 2010. "Swainson's Hawk (*Buteo swainsoni*)." The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online: <http://bna.birds.cornell.edu/bna/species/265>.

CDFW. 2016. Swainson's Hawk (*Buteo swainsoni*) Five-Year Status Review. Retrieved online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>

England, A. S., M. J. Bechard, and C. S. Houston. 1997. Swainson's Hawk (*Buteo swainsoni*). In The Birds of North America, No. 265 (A. Poole and F. Gill, eds.). The Academy of Natural Sciences, Philadelphia, PA, and The American Ornithologists' Union, Washington, D.C.