



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 19, 2019

Governor's Office of Planning & Research

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STATE CLEARINGHOUSE

Ms. Charlene Gallina
Napa County
Department of Planning, Building, and Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559

Subject: New Life Community Adventist Church, Draft Mitigated Negative Declaration,
SCH #2019079070, Napa County

Dear Ms. Gallina:

The California Department of Fish and Wildlife (CDFW) received a draft Mitigated Negative Declaration (MND) for the New Life Community Adventist Church (Project). CDFW is submitting comments on the draft MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

Regulatory Requirements

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Lake and Streambed Alteration Agreement

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river, lake, or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during

periods of rainfall) are also subject to Fish and Game Code section 1602; and CDFW may require an LSA Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code.

Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lisa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

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 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). Fully protected species (e.g. white-tailed kite; *Elanus leucurus*) may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Project Description and Environmental Setting

The 1.8-acre Project site is located at 1451 American Canyon Road, approximately 1,000 linear feet to the east of the American Canyon Road and Newell Drive intersection, in south Napa County; Latitude 38.163889, Longitude -122.230210; Assessor's Parcel Number: 059-100-002. The Project parcel lies directly south of the Newell Open Space Preserve and is approximately 280 feet north of American Canyon Creek, a tributary to the Napa River. Additionally, a tributary to American Canyon Creek lies approximately 600 feet to the northwest of the Project site. The Project site consists of approximately 1.63 acres of disturbed non-native annual grassland and approximately 0.17 acres of development (i.e. single-family residence and associated agricultural and grazing activities).

The Project is to develop a church and associated support and educational rooms/facilities on the 1.8-acre site; resulting in approximately 11,026 square feet of new development. Additionally, an asphalt parking lot will provide parking for up to 62 vehicles and would be accessed by converting the current gravel driveway into a paved asphalt driveway. Lastly, an approximately 20-foot tall, 35,000-gallon water tank is proposed in the central western-edge of the Project site.

Comments and Concerns

Special-Status Plants

Section IV of the draft MND discusses the Project's potential impacts to special-status plant species. Page 7 of the draft MND states, "*Eleven special-status plant species were evaluated for their potential to occur and be affected by the Project. Of these, none have the potential to occur within the Project Area based on absence of suitable habitat*". However, the Biological

Resource Assessment (BRA), prepared by Foothill Associates, dated March 22, 2016 states that alkali milk-vetch (*Astragalus tener*), big-scale balsamroot (*Balsamorhiza macrolepis*), saline clover (*Trifolium hydrophilum*), San Joaquin spearscale (*Extriplex joaquinana*), and two-forked clover (*Trifolium amoenum*) have *high* potential to occur within the disturbed non-native annual grassland within the Project site. Additionally, the BRA states that a rare plant survey was conducted on February 25, 2016, which is outside the blooming period for the abovementioned plants.

CDFW recommends that Mitigation Measure BIO-1 be revised to state that a qualified botanist shall conduct special-status plant surveys covering the entire 1.8-acre Project site during the blooming period for all special-status plants that have the potential to occur in the Project area, using the updated CDFW survey protocol: *Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, dated March 20, 2018. The survey protocol can be found here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>. Additionally, if special-status plant populations are identified during surveys, CDFW recommends that those populations be avoided to the greatest extent feasible. If the Project cannot completely avoid impacting special-status plants, a qualified botanist should prepare a mitigation and monitoring plan in consultation with CDFW.

Western Burrowing Owl (Athene cunicularia)

The draft MND states the following: the study area has breeding and foraging habitat for western burrowing owl (BUOW); the burrows within the Project site provide marginal wintering and nesting habitat for BUOW; and there are two historical occurrences of BUOW within five miles of the Project site, including one historical occurrence approximately 1 mile from the Project site. Mitigation Measure BIO-2 (MM BIO-2) of the draft MND states that prior to working on the Project, the Project sponsor will conduct a take avoidance survey for BUOW between 14 and 30 days prior to the start of construction. CDFW recommends that MM BIO-2 be revised to state the following:

*A qualified biologist shall conduct pre-construction surveys during the BUOW breeding season (February 1 to August 31) in the manner described in the **Staff Report on Burrowing Owl Mitigation**, prepared by CDFW, dated March 7, 2012. If BUOW are discovered during surveys, no construction shall occur until September 1 or until the qualified biologist has determined all BUOW young have fledged, whichever comes first. If the Project cannot completely avoid impacting active burrows (i.e. burrows used by BUOW within the last 3 years), a qualified biologist shall prepare a BUOW mitigation and monitoring plan based on Mitigation Methods outlined in the Staff Report on Burrowing Owl Mitigation for CDFW review and approval prior to the start of construction to mitigate for the loss of breeding and/or foraging habitat. If no BUOW are discovered during breeding season surveys, but suitable BUOW burrows are present on the Project site, then a qualified biologist shall also conduct non-breeding season surveys (September 1 – January 31) to determine if BUOW use the burrows as wintering habitat. If BUOW are discovered during non-breeding season surveys and impacts to active burrows cannot be completely avoided by the Project, a qualified biologist shall prepare a mitigation and monitoring plan to mitigate for the loss of wintering habitat.*

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CDFW recommends being consulted with early in the mitigation planning process if a mitigation and monitoring plan is necessary. Survey reports for BUOW should be submitted to CDFW before the start of construction.

Please be advised that CDFW does not consider exclusion of burrowing owls or "passive relocation" as a "take" avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid "take".

White-Tailed Kite (Elanus leucurus) and other Nesting Birds/Raptors

White-tailed kite is a fully protected species under Fish and Game Code section 3511 and therefore take of the species cannot be permitted. The BRA states that white-tailed kite has a *high* potential to occur at the Project site and that the Project site contains suitable nesting and foraging habitat. MM BIO-2 of the draft MND states that if construction activities must occur during the breeding season for migratory birds and raptors (February 15 – August 31), then a pre-construction survey will be conducted by the Project sponsor within 14 days to 72 hours prior to the start of construction. Again, CDFW recommends that MM BIO-2 be revised to state that a qualified biologist will conduct pre-construction surveys for nesting birds and/or raptors. Furthermore, MM BIO-2 should include language stating that if an active nest is found, the area around the tree with the active nest will be marked with high visibility fencing or flagging and the qualified biologist shall determine a suitable buffer distance to avoid nest disturbance during Project activities. The qualified biologist should supervise nest activity during the first couple of days of construction to ensure construction activities are not disturbing the nest. Alternatively, construction can wait until September 1 or until the young have fledged, or a qualified biologist has determined the nest is no longer active, whichever comes first.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse