
From: Wood, Dylan@Wildlife <Dylan.A.Wood@wildlife.ca.gov>
Sent: Friday, February 21, 2020 7:16 PM
To: McKechnieD@losrios.edu
Cc: Wildlife R2 CESA
Subject: Comments on the Cosumnes River College - Elk Grove Center Phase 2 Project MND (SCH: 2020019061)
Attachments: Attachment 1 Homegrown Plant List_Final-1.pdf

Governor's Office of Planning & Research

MAR 06 2020

Dear Mr. McKechnie:

STATE CLEARINGHOUSE

The California Department of Fish and Wildlife (CDFW) received the Mitigated Negative Declaration (MND) for the Cosumnes River College - Elk Grove Center Phase 2 Project MND Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines^[1].

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the project that may affect California fish and wildlife.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed and to the extent implementation of the Project as proposed may result in take² as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

^[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.

²Section 86 of the Fish and Game Code defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill"

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Comment 1: Biological Resources Mitigation Measure 1 revisions needed to mitigate impacts to Swainson's hawks to a level of less-than-significant. As identified in the MND, "loud construction activities such as pavement grinding or jackhammering could result in disturbance to Swainson's hawks, if any, nesting in or near the site." Swainson's hawk (*Buteo swainsoni*) is a species listed as *threatened* under CESA, so

potential take of the species resulting from the disturbance identified in the MND could constitute a potentially significant impact under CEQA.

To address this, CDFW recommends Biological Resources Mitigation Measure 1 be revised to more effectively assess potential impacts to Swainson's hawk and respond accordingly should active nests be discovered:

"If equipment staging, site preparation, grading, excavation or other project-related activities are scheduled during the Swainson's hawk nesting season (typically March 1 through September 15) surveys for active nests of such birds shall be conducted by a Qualified Biologist in accordance with the typical survey protocol: Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee 2000). Surveys shall be conducted at the appropriate radius and time periods listed in the survey protocol. Since the project spans over multiple years, a new survey shall be conducted for each nesting season to capture any new Swainson's hawk nests that may be established.

If an active Swainson's hawk nest is found during project surveys, the Qualified Biologist shall consult with CDFW and demonstrate compliance with CESA. If during consultation it is determined that implementation of the project as proposed may result in take of Swainson's hawk, the project may seek related take authorization as provided by the Fish and Game Code."

Comment 2: Potential impacts to Swainson's hawk foraging habitat are not analyzed and are not mitigated to a level of less-than-significant. Project implementation will result in the development grassland habitat, a typical foraging habitat type for Swainson's hawk in the Elk Grove. As such, CDFW recommends the MND analyze this potential impact beyond simply stating "use of this area by foraging Swainson's hawks is unknown." If it is determined the project may reduce available foraging habitat, this may constitute a potentially significant impact under CEQA not previously disclosed. To address this potentially significant impact, CDFW recommends the MND reference compliance with the Staff Report regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California (CDFW 1994) and/or the City of Elk Grove's Swainson's Hawk Program.

Comment 3: Biological Resources Mitigation Measure 2 revisions needed to mitigate impacts to nesting birds to a level of less-than-significant. CDFW is concerned that this measure is too broad when it describes how the survey will be conducted and what the corresponding response would be. The way the measure is written now may not adequately minimize potential impacts to nesting birds and also may impose unnecessary restrictions on project activities in the event an active bird nest is found.

To correct this, CDFW recommends the measure be revised to include the following nesting bird assessment and avoidance language:

"If equipment staging, site preparation, grading, excavation or other project-related activities are scheduled during the nesting season (typically February 1 through August 31) of protected raptors and other avian species, focused surveys for active nests of such birds shall be conducted by a Qualified Biologist no greater than fifteen (15) days prior to the beginning of project-related activities. Surveys shall be conducted throughout the project site, in staging, storage and soil stockpile areas. The minimum survey radii surrounding the work area shall be the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; iii) 1,000 feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day, during appropriate nesting times, and shall concentrate on areas of suitable habitat. If a lapse in project-related activities of 14 days or longer occurs, another focused survey will be required before Project activities can be reinitiated.

If nesting birds are found, the Qualified Biologists shall develop a bird avoidance and minimization plan. The plan may consist of typical avoidance and minimization practices such as nest-specific buffers, biological monitoring, or changes to the project schedule depending on the species of bird and time of year. Any no work buffer area(s) shall be fenced or flagged off from work activities and avoided until the young have fledged, as determined by the Qualified Biologist. If nesting birds are showing signs of distress or disruptions to nesting behaviors, then that nest the Qualified Biologist shall determine the appropriate

change in response (e.g. buffer increase, temporary construction stop, etc.) until no further interruptions to breeding behavior are detectable.”

Comment 4: Potential impacts to special-status species (burrowing owls) are not disclosed and are not mitigated to a level of less-than-significant. A review of CDFW records (CDFW BIOS 2020) indicates occupied habitat for burrowing owls (*Athene cunicularia*) is present within 2 miles of the project area. Also, burrowing owls are a species that is known to utilize urban infrastructure for nesting habitat, such as utility conduits and graded subdivision lots that have laid dormant. The MND does not specifically identify a survey protocol to effectively detect burrowing owls within the project area. The measure does not define avoidance measures in the event burrowing owls are discovered or reduce impacts from permanent loss of burrowing owl nesting or foraging habitats to a level of less-than-significant as it does not offset those impacts with compensatory mitigation requirements.

To address this comment, CDFW recommends the MND be revised to identify potential impacts to burrowing owl. As such, CDFW recommends the MND be revised to include adherence to survey protocol and the mitigation strategies defined in the CDFW *Staff Report on Burrowing Owl Mitigation* (2012) to mitigate to a level of less-than significant.

Comment 5: The MND does not have enough information to adequately assess potential impacts. Due to the results of the biological resources assessment, which states that “The nearest occurrence of nesting Swainson’s hawks in the CNDDDB (2019) search area is just west of the Parking Lot Site, nesting in a willow tree along Del Paso Road”, the type and extent of potential impact is difficult to determine. This is because the surveys listed in the MND were completed outside of the nesting season and may not effectively capture all potential nesting activities that may be impacted by the project. Conducting a survey in the nesting season of 2020 would allow the Los Rios Community College District to obtain adequate data to determine potential impacts. To address this comment, CDFW recommends that the above surveys in Biological Resources Mitigation Measures 1-2 be started in 2020 to effectively identify the species impacted and then mitigate accordingly for the 2021 construction season.

If a special-status status is found to be nesting within the survey area, consultation with CDFW is recommended. If take of a listed species could occur, CDFW recommends that the Los Rios Community College District apply for an Incidental Take Permit (Fish & G. Code, § 2080 et. seq) for take of listed species. The Incidental Take Permit process may span up to 120 days if an application is deemed complete, so submitting an application in Spring 2021 following a preconstruction survey, may result in an unintended construction delay. Therefore, using the Spring 2020 survey results to consult with CDFW in Fall 2020 would allow ample time for formal CESA consultation (if appropriate).

Comment 6: CDFW recommends enhancing habitat value of landscaping. CDFW has noted that the MND includes project plans for landscaping improvements in the project area. CDFW recommends consideration of the Homegrown Habitat Plant List (Sacramento Valley Chapter, California Native Plant Society)(Attachment 1) when developing the final planting palette. The Homegrown Habitat Plant List (HHPL) is the result of a coordinated effort of regional stakeholders with the intent of improving landscape plantings for the benefit of property owners and ecosystem. Including plants from the HHPL is intended to produce the following outcomes for landscaping:

- Increased drought tolerance
- Decreased water use
- Decreased maintenance and replacement planting costs
- Increased functionality for local pollinators and wildlife
 - o Increase in overall biodiversity and ecosystem health
- Increased carbon sequestration and climate change resilience
- Educational opportunities for staff and students

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental documents 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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

CONCLUSION

CDFW appreciates the opportunity to comment and assist the Lead Agency in identifying and mitigating project impacts on biological resources.

Please contact me at 916-358-2384 or dylan.a.wood@wildlife.ca.gov if you have any questions.

Sincerely,

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California Department of Fish and Wildlife

Environmental Scientist

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