
From: Wood, Dylan@Wildlife <Dylan.A.Wood@wildlife.ca.gov>
Sent: Friday, February 21, 2020 7:17 PM
To: McKechnieD@losrios.edu
Cc: Wildlife R2 CESA
Subject: Comments on the American River College Natomas Center Phase 2 & 3 Project MND (SCH: 2020019063)
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 American River College Natomas Center Phase 2 & 3 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 Appendix B of the MND, "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." 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."

Please be aware that to meet **the minimum level** of protection for the species, surveys should be completed for **at least** the two survey periods immediately prior to a project's initiation. Since the MND states that parking lot activities will begin in July 2020, surveys must be initiated no later than April 5-April 20 to comply with the protocol; however, CDFW recommends completing surveys in **all** of the protocol periods because it typically leads to the most complete assessment of project impacts. 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 starting Spring 2020 survey protocol as soon as possible would facilitate the most efficient path for formal CESA consultation (if appropriate) and avoid delaying the July 2020 start.

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 of grassland habitat, a typical foraging habitat type for Swainson's hawk in the Natomas Basin. As such, CDFW recommends the MND analyze this as a potential impact to determine if the project may reduce available foraging habitat. If so, this could constitute a potentially significant impact. To correct this, 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) or comply with the Natomas Basin Habitat Conservation Plan (NBHCP) to reduce impacts to Swainson's hawk foraging habitat to a level of less-than-significant.

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 1 mile 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 address impacts to NBHCP Covered Species and does not mitigate to a level of less-than-significant. The NBHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values and incidental take of 22 Covered Species that could result in development within the Natomas Basin. The 22 Covered Species are designated as such because of their conservation priority and/or their Federal/State status. As a result, impacts to these species could be a potentially significant impact.

To address this, CDFW recommends the MND list or reference the 22 Covered Species of the NBHCP and that MND be revised to include a measure based on NBHCP’s preconstruction survey measure:

“Not less than 30 days or more than 6 months prior to commencement of construction activities in the NBHCP area, a pre-construction survey of the site shall be conducted to determine the status and presence of, and likely impacts to, all Covered Species on the site. However, pre-construction surveys for an individual species maybe completed up to one year in advance if the sole period for reliable detection of that species is between May 1 and December 31. A Qualified Biologist should be contracted to carry out the pre-construction surveys, and as necessary, to implement specific take minimization, and other conservation measures. The results of the pre-construction surveys along with recommended take minimization measures shall be documented in a report and shall be submitted to the Land Use Agency, United States Fish and Wildlife Service, CDFW, and The Natomas Basin Conservancy. If the results identify presence of Covered Species, the Land Use Permittees will identify applicable take avoidance and other site specific conservation measures, consistent with the NBHCP, required to be carried out on the site. The approved pre-construction survey documents and list of Conservation Measures will be submitted by the project proponent to the applicable Land Use Agency to demonstrate compliance for the NBHCP Covered Species.”

Comment 6: The MND does not address potential conflicts with the NBHCP. The project area as shown in the MND is a property identified within the development area of the NBHCP within the limits of the City of Sacramento. As a result, development of the site would be considered a NBHCP impact (subject to payment of

the NBHCP Fee, mitigation, and coverage). Without participation in the NBHCP, this property could adversely impact the City of Sacramento and The Natomas Basin Conservancy's ability to fulfil their obligations under the NBHCP. This impact could constitute a potentially significant impact under CEQA. To address this, CDFW recommends that the project participate in the NBHCP. Participation in the NBHCP could allow the Los Rios Community College District to address not only this comment but apply participation to potentially significant impacts identified in Comments 1-6 and mitigate to a level of less-than-significant.

It should also be noted that the City of Sacramento indicates that part of the parking area will be shared with a proposed City facility to the west of the project area³. Participation in the NBHCP also avoids shared stake conflicts with the City of Sacramento's use of the site and obligations under the NBHCP.

³City of Sacramento, personal communication, February 21, 2020

Comment 7: 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
(916) 358-2384



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