

Jun 17 2020

## STATE CLEARINGHOUSE

**From:** [Oswalt, Caitlyn@Wildlife](mailto:Oswalt.Caitlyn@Wildlife)  
**To:** [lancel@cityofgrassvalley.com](mailto:lancel@cityofgrassvalley.com)  
**Cc:** [Wildlife R2 CEQA](#); [OPR State Clearinghouse](#)  
**Subject:** CDFW CEQA Comments for Sierra College Drive - Chapa-De Indian Health Administrative Office Development Review Permit Project; SCH# 2020050358  
**Date:** Wednesday, June 17, 2020 11:05:26 AM

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6/18/2020

Dear Mr. Lowe:

Sierra College Drive - Chapa-De Indian Health Administrative Office Development Review Permit (Project); Mitigated Negative Declaration (MND); SCH# 2020050358

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from City of Grass Valley for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

#### 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 expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

#### PROJECT DESCRIPTION SUMMARY

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**Objective:** The objective of the Project is to construct a 10,000 square foot administration office building immediately west of the existing Chapa De Indian Health facility located at 1350 East Main Street, Grass Valley.

**Location:** Sierra College Drive in the city of Grass Valley, Nevada county.

## COMMENTS AND RECOMMENDATIONS

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CDFW offers the comments and recommendations presented to assist the City of Grass Valley in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### *Migratory Birds and Birds of Prey*

Migratory nongame native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the environmental document. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

All measures to protect nesting birds should be performance-based. While some birds may tolerate disturbance within 250 feet of construction activities, other birds may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. The CDFW recommends including performance-based protection measures for avoiding all nests protected under the MBTA and Fish and Game Code.

CDFW recommends the following language be revised in BIO 1- Mitigation Measure:

*If construction or development activities occur during the ~~breeding~~ nesting season (February 1 March 1 through August 30) and have the potential to disturb or remove occupied nests of migratory birds or raptors, the preparation of a pre-construction nesting bird survey shall be done by a qualified biologist, within 250 feet of any potential disturbance of any nesting migratory birds and raptors habitat, shall be required. If nesting raptors or migratory birds are identified during surveys, active nests should be avoided, and a no disturbance or destruction area ~~of the nest site~~ shall be established by a qualified biologist and kept in place until after the breeding nesting season or a wildlife biologist determines that the young have fledged. The extent of these buffers would be determined by a wildlife biologist and would depend on the special-status species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers. These factors should be analyzed to make an appropriate decision on buffer distances.*

### *Deferred Mitigation*

CEQA Guidelines §15126.4 (a)(1)(B) states that formulation of mitigation measures should not be

deferred until some future time. The MND lists mitigation measures for biological resources that rely on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance. Because there is no guarantee that these approvals or cooperation with all the involved entities will ultimately occur, the mitigation measures are unenforceable and do not reduce the impacts to biological resources to a less-than-significant level.

On page 25, section E, it states that *“mitigation for the removal of trees shall be completed in accordance with Chapter 12.36.085 of the City’s Development Code. Trees to be preserved on-site shall also be shown on the improvement plans and protective fencing shall be installed prior to any grading activities. The fencing shall be in accordance with Section 12.36.200 of the City’s Development Code. As a result of the City’s tree permitting and tree protection requirements, this impact is considered less than significant.”* No mitigation or Best Management Practices for tree removal are outlined within the CEQA document. CDFW recommends the City clearly state the measures that will be implemented to protect trees onsite and specifically how mitigation will occur (including providing the text of *“Chapter 12.36.085 of the City’s Development Code”*).

Mitigation measures should establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented and explain why the measure is feasible. Therefore, the CDFW recommends that the environmental document include measures that are enforceable and do not defer the details of the mitigation to the future.

#### *General Project Comments*

1. Please clarify the construction timeline for the Project. Including construction phases, i.e. tree removal, grading, active construction, and landscaping.
2. Please identify the construction methods and tools to be used for the Project.

Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for 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 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](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](mailto: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](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

### **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 in order for the underlying project approval to be 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 City of Grass Valley in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Caitlyn Oswalt, Environmental Scientist at 916-358-4315 or [Caitlyn.Oswalt@wildlife.ca.gov](mailto:Caitlyn.Oswalt@wildlife.ca.gov).

Sincerely,

*Caitlyn Oswalt*

Environmental Scientist | 916.358.4315

North Central Region – Region 2

California Department of Fish and Wildlife