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To: skirchgessner@elkgrovecity.org
Cc: [Wildlife R2 CEQA](#); [OPR State Clearinghouse](#)
Subject: Comments on the MND for the Sheldon Farms North Project (SCH: 2020070214)
Date: Monday, August 10, 2020 6:59:03 PM
Attachments: [image001.png](#)
[Attachment 1 Homegrown Plant List Final-1.pdf](#)

Governor's Office of Planning & Research

Aug 11 2020

STATE CLEARINGHOUSE

Dear Ms. Kirchgessner:

RE: SHELDON FARMS NORTH PROJECT (PROJECT)
SUPPLEMENTAL MITIGATED NEGATIVE DECLARATION (MND) SCH#
2020070214

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Supplemental MND from the City of Elk Grove (the City) for the Project pursuant 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. 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^[2] 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.

PROJECT DESCRIPTION SUMMARY

The Sheldon Farms North Project would include subdivision of the Project site into 391 single-family residential lots, a 6.3-acre multi-family residential lot, a 5.3-acre commercial lot, a 2.5-acre park, and a total of 7.9 acres of public open space, including a 3.8-acre water quality detention basin area. The Project would require City approval of a Tentative Subdivision Map, Subdivision Design Review, and an amendment to the City's Bicycle, Pedestrian, and Trails Master Plan to modify the location of a proposed Class 1 multi-purpose trail alignment.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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. Editorial comments or other suggestions may also be included to improve the document or facilitate an effective environmental review process. Where CDFW recommends specific revisions to the MND, deletions are marked with a strikethrough (~~example~~) while additions are marked as underlined (example).

Comment 1: The MND incorrectly incorporates the survey radius of the Swainson's hawk protocol survey.

Mitigation Measure IV-2(a) of the MND cites that potential impacts to Swainson's hawk (*Buteo swainsoni*) will be assessed through a protocol survey in accordance with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Technical Advisory Committee 2000). However, later text in Mitigation Measure IV-2(a) incorrectly incorporates the survey radius as 0.25 mile, while the survey protocol stipulates a 0.5-mile survey radius around the project area. A query of the California Natural Diversity Database (CNDDDB) indicates a historic nest site between 0.25-0.30 miles from the Project area, so the MND may not effectively capture any current nesting activity at this site if it were to only survey with a 0.25 mile radius.

To address this comment, CDFW recommends the City revise Mitigation Measure IV-2(a) to include surveys, identification, and assessment of Swainson's hawk nests within 0.5 mile of the Project area in accordance with the referenced survey protocol.

Comment 2: Assessment for giant garter snake is incomplete in the MND.

The MND assesses potential impacts to giant garter snake (*Thamnophis gigas*) by stating that "although it is unlikely that any giant garter snakes would venture beyond the lower creek corridor, ground-disturbing activities associated with the Project would result in adverse effects to the species if individuals migrate northward into the site." While this statement may be true, the MND is unclear as to what level of detail the City evaluated suitable habitat on this specific site. Giant garter snakes have been observed using burrows for refuge in the summer as much as 50 meters (164 feet) away from the aquatic habitat while over-wintering giant garter snakes may use burrows as far as 200 to 250 meters (656 to 820 feet) from the edge of summer aquatic habitat^{3]}.

To address this comment, CDFW recommends the City provide a more detailed explanation of the Project's potential impact to giant garter snake habitat. CDFW recommends this explanation be clearly stated in the MND itself, provide a citation of relevant biological assessment, or provide reference to the City's Program Environmental Impact Report (if applicable). For instance, the City should evaluate to what extent Laguna Creek (and associated tributaries near the Project area) contain suitable aquatic habitat for giant garter snake (e.g. water present, presence of bankside vegetative cover, absence of large predatory fish and recurrent flooding, etc.). Then, the City can assess associated upland habitat for giant garter snake and to what extent the Project may impact this habitat. Providing Project-specific information regarding the distance from subdivided lots, constructed trails, and associated infrastructure to Laguna Creek is useful in this discussion.

Comment 3: Revisions needed to mitigate giant garter snake to a level of less-than-significant.

Mitigation Measure IV-3 of the MND states giant garter snake will be assessed through a preconstruction survey and associated avoidance and minimization strategies. Portions of this measure are vague or can otherwise be improved for more effective implementation. For instance, IV-3 does not define a specific survey window. As giant garter snake can be a cryptic species, surveying for them during the snakes' active period (May 1-October 1) can be the most effective for capturing species activities. The measure as written would technically allow the Project to perform a survey in January if project activities were to commence on January 15, which would be the least likely period in which to observe snake activity.

To address this comment, CDFW recommends making the following revisions to IV-3: *"Within 14 days prior to initiation of any ground disturbing activities, a preconstruction survey shall be conducted by a qualified biologist to determine the presence or absence of giant garter snakes. Results of the surveys shall be submitted to the Development Services Department. If the species is not found, further mitigation is not required. If the giant garter snake is found on-site, the following measures shall be implemented during construction and shall be reflected on the grading plans, subject to approval by the Development Services Department:*

- 1. A qualified biologist shall stake or otherwise mark the restriction limits of a "no disturbance" zone prior to initiation of construction. The no disturbance zone shall be defined as any upland area within 300 feet⁴¹ of suitable aquatic habitat. Any work areas within the no disturbance zone shall have an appropriate exclusion fence to ensure giant garter snakes do not enter the work area;*
- 2. Construction personnel shall receive ~~CDFW~~-approved worker environmental awareness training by a qualified biologist experienced with giant garter snake. The training shall include instruction on methods of identifying giant garter snakes and their habitat as well as the required avoidance procedures, exclusion fencing, and protocols in the event that a giant garter snake enters an active construction zone (i.e., outside the buffer zone);*
- 3. The Project area shall be surveyed for giant garter snakes 24-hours prior to construction activities. Survey of the Project area shall be repeated if a lapse in*

construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or the determination has been made that the snake will not be harmed; and

4. Any dewatered habitat should remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling of the dewatered habitat, unless otherwise agreed to with CDFW and USFWS.

5. Project activities in suitable upland or aquatic habitat shall be restricted to the snakes' active period of May 1-October 1, unless otherwise agreed to with CDFW and USFWS:

6. When Project activities occur in suitable habitat, a qualified biologist experienced with giant garter snake identification and behavior will monitor the Project site, including the integrity of any exclusion fencing. The approved biologist will be on site daily while construction-related activities are taking place in aquatic habitat or within 300 feet of aquatic habitat and will inspect the project site daily for giant garter snake prior to construction activities.

7. All excavated steep-walled holes and trenches more than 6 inches deep will be covered with plywood (or similar material) or provided with one or more escape ramps constructed of earth fill or wooden planks at the end of each work day or 30 minutes prior to sunset, whichever occurs first. All steep-walled holes and trenches will be inspected by the qualified biologist each morning to ensure that no wildlife has become entrapped. All construction pipes, culverts, similar structures, construction equipment, and construction debris left overnight within suitable habitat will be inspected for giant garter snake by a qualified biologist prior to being moved.

8. Nonentangling erosion control material will be used to reduce the potential for entrapment. Tightly woven fiber netting (mesh size less than 0.25 inch) or similar material will be used to ensure snakes are not trapped (no monofilament). Coconut coir matting and fiber rolls containing burlap are examples of acceptable erosion control materials

9. If a giant garter snake is encountered during construction activities, the qualified biologist will notify the City immediately. Construction activities will be suspended in a 100-foot radius of the animal until the animal leaves the Project site on its own volition and take of the species can be avoided.

Proof of compliance with the aforementioned measure shall be submitted to the Development Services Department.

Comment 4: The MND does not address compliance with CESA.

As indicated in the comments above, the MND identifies potential impacts to two state-listed species, Swainson's hawk and giant garter snake. However, the MND can be improved by further developing the response procedure in the event a state-listed species is present.

To address this comment, CDFW recommends the City add the following text to both IV-2(a) and IV-3:

"If state-listed species is found during project surveys or otherwise encountered during the Project, the Project shall avoid take of state-listed species to demonstrate

compliance with CESA. If implementation of the Project as proposed may result in take of a state-listed species, the project may consult with CDFW and may seek related take authorization as provided by the Fish and Game Code.”

Comment 5: Value of landscaping can be enhanced.

The MND includes Project plans for landscaping improvements in the Project area. Specific areas of interest include where the “the water quality detention basin area would be contiguous with additional open space areas along Laguna Creek to the west and east” and where the Project will create “vegetated swales, stormwater would be directed to the proposed water quality detention basin at the southern portion of the site.” While CDFW recognizes that the Project will introduce anthropogenic influence to the site, design considerations for features such as the swales, basin, and landscaping can improve overall ecosystem function for fish and wildlife species in the Laguna Creek corridor. This improvement can be magnified in connected habitats of the basin and open space areas.

CDFW recommends consideration of the Homegrown Habitat Plant List (Sacramento Valley Chapter, California Native Plant Society)(Attachment 1) when developing the final planting palette for the site. 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. The HHPL includes a variety of small, medium, and larger plants that can enhance habitat value in urban settings. 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
 - Increase in overall biodiversity and ecosystem health
- Increased carbon sequestration and climate change resilience

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 types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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 in identifying and mitigating Project impacts on biological resources.

Questions regarding this email or further coordination should be directed to Dylan Wood, Environmental Scientist at 916-358-2384 or dylan.a.wood@wildlife.ca.gov.

Sincerely,

Dylan Wood

California Department of Fish and Wildlife
Environmental Scientist
(916) 358-2384



References:

[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.

[2] Section 86 of the Fish and Game Code defines “take” as hunt, pursue, catch, capture or kill, or the attempt hunt, pursue, capture, or kill

[3] Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*)(USFWS 2017)

[4] South Sacramento Habitat Conservation Plan (Sacramento County 2018)

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