



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
North Central Region
1701 Nimbus Road, Suite A
Rancho Cordova, CA 95670-4599
916-358-2900
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 30, 2024

Julie Newton
Environmental Coordinator
Sacramento County Planning and Environmental Review
827 7th Street, Room 225
Sacramento, CA 95814
CEQA@saccounty.gov

Subject: Upper Westside Specific Plan
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2020100069

Dear Julie Newton:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from Sacramento County for the Upper Westside Specific Plan (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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.

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.

CDFW may also act 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located in unincorporated Sacramento County adjacent to the existing City of Sacramento communities of North and South Natomas. The Upper Westside Specific Plan (UWSP) area is bounded by Fisherman's Lake Slough to the north, the West Drainage Canal (Witter Canal) to the east, I-80 to the south, and Garden Highway to the west.

The Project consists of construction of a new development on 2,066 acres of unincorporated land in northwestern Sacramento County. The UWSP would provide a mix of residential and non-residential land uses to accommodate 9,356 housing units with a mixture of densities that support all population segments, and over 3 million square feet of commercial, retail, and office uses that serve the community's needs. Key features of the UWSP would include a mixed-use Town Center, 10 active parks, and an extensive system of greenbelts and multi-use trails with linkages to downtown Sacramento. Development would be limited to a 1,532-acre Development Area while the remaining 534 acres would serve as an agricultural buffer (Ag Buffer) along the western edge of the UWSP area.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Sacramento County (the County) in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

CDFW is primarily concerned with the Project impacts to the West Drainage Canal, agricultural land, nesting birds, burrowing owl (BUOW), Swainson's hawk (SWHA), and their habitats.

COMMENT 1: Cumulative Agricultural Land Loss and Covered Species Habitat Loss, Conversion of Farmland to Nonagricultural Uses and Conflict with Natomas Basin HCP and Metro Air Park HCP, page numbers 5-20 to 5-23, 7-76 to 7-84

Issue: The Project is near the boundaries of the Natomas Basin Habitat Conservation Plan (NBHCP) Area and Metro Air Park Habitat Conservation Plan (MAP HCP) Area. CEQA

Guidelines section 15125(d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans/natural community conservation plans). The HCPs anticipate a certain amount of acreage to sustain the agricultural land that Covered Species can utilize for habitat (foraging, nesting, dispersal, cover, etc.). Since the HCPs' implementation, projects in the Natomas Basin have resulted in a decrease in the amount of agricultural land available to Covered Species. CDFW is concerned that this Project will further contribute to the habitat loss and a reduction in the effectiveness of the NBHCP's Conservation Strategy. When the NBHCP was first implemented in 2003 it was anticipated that 15,095 acres of agricultural land would remain, specifically as buffers for habitat reserves and supporting ecological functions of the Covered Species that rely on agricultural resources (Natomas Basin Habitat Conservation Plan, Page IV-11 through Page IV-13). However, agricultural land remaining for Covered Species has decreased since the NBHCP was adopted, through projects such as Greenbriar (1041 acres) and the Sacramento Area Flood Control Agency Natomas Levee Improvement Project (1600 acres). Further development projects under consideration, including this Project, Airport South Industrial Project (353.5 acres), and Grandpark (5676 acres) will further decrease the remaining agricultural lands. CDFW is concerned that further agricultural land loss will contribute to significant cumulative impacts to biological resources and will make maintaining 15,095 acres of agricultural land, as described in the NBHCP, unreachable.

Recommendation or Recommended Mitigation Measure: To identify any potential inconsistencies with the NBHCP and MAP HCP, CDFW recommends that the DEIR analyze Project related impacts from developing up to 1532 acres within areas anticipated to remain in agricultural uses and providing available habitat for NBHCP and MAP HCP Covered Species. CDFW also recommends the DEIR discuss the persistence of the NBHCP and MAP HCP Covered Species, critical for the success of both plans, including what actions are needed to sustain the appropriate levels of habitat to support all Covered Species within the NBHCP and MAP HCP boundaries. Additionally, CDFW recommends the DEIR include a discussion on how the County will ensure that implementation of the Project will not impede the NBHCP and MAP HCP's biological goals and measurable objectives as it relates to agricultural lands.

COMMENT 2: Conservation Strategy for Upland Habitat, Page 7-84

Issue: The NBHCP conservation strategy for upland habitat is to avoid development in the Swainson's Hawk Zone (SHZ) (and to preserve upland habitat within and outside of the Swainson's Hawk Zone). The SHZ encompasses undeveloped land in the Natomas Basin that is within 1 mile of the inside toe of the levee along the Sacramento River from the Natomas Cross Canal south to Interstate 80. The SHZ was derived from the high density of Swainson's hawk nests within this area and scientific evidence for the value of the habitat (NBHCP 2003). The NBHCP recognizes the importance of the SHZ to this species and the viability of their plan which resulted in substantial effort from the City of Sacramento and Sutter County to replan development outside of this area. Replanning efforts in the SHZ have been vital to preserve the area's ecological value and the overall goals of the NBHCP, despite the associated economic and political opportunity costs. The

NBHCP states that the “greatest impact of urban development on the Swainson’s hawk in the Natomas Basin would occur if significant portions of the Swainson’s Hawk Zone were developed.” CEQA Guidelines section 15125(d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans/natural community conservation plans). The UWSP describes 975 acres of permanent habitat impacts within the SHZ, which is inconsistent with the NBHCP and therefore potentially significant as analyzed in the DEIR.

Mitigation Measure BR-7b of the DEIR proposes to minimize any potential conflict with this NBHCP strategy through applying a higher mitigation ratio (1:1) for conservation of Swainson’s hawk foraging habitat than proposed in the NBHCP (0.5:1); however, the NBHCP does not propose *any* additional development (and subsequent mitigation) within this area because of its ecological value, so only providing a comparison of the ratios without further analysis does not justify mitigation to a level of less than significant. At a 1:1 ratio, the current Mitigation Measure BR-7b will incur a net loss of available habitat for Swainson’s hawk in addition to the loss of a highly productive area within the SHZ.

Recommendation or Recommended Mitigation Measure: CDFW recommends to further analyze the impact to the SHZ by providing further discussion on the Project’s 1) biological impact in an ecologically valuable area; 2) the effect that Project development in the SHZ will have on the continued implementation and viability of the NBHCP, as well as the MAP HCP and 3) a comprehensive justification for how the mitigation proposed mitigates the impacts to a significant habitat.

COMMENT 3: Non-Special Status Migratory Bird and Raptor Survey Radius, BR-5 Avoid and Minimize Impacts on Nesting Birds, page number 7-53

Issue: The DEIR states that surveys shall be performed for the Project area, vehicle and equipment staging areas, and suitable habitat within 250 feet to locate any active passerine (perching bird) nests and within 500 feet to locate any active raptor (bird of prey) nests. CDFW believes a larger survey buffer with a minimum of 500 feet for migratory birds and 0.5-mile for raptors, as well as conducting them no more than seven (7) calendar days before construction commences would be more appropriate and protective for species that rebuild a nest quickly.

Recommendation or Recommended Mitigation Measure: CDFW recommends the DEIR describe how the considerations identified below will be implemented and incorporated into the appropriate DEIR section(s):

1. CDFW recommends the Project proponent add specific avoidance and minimization measures to the Mitigation Measures section. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The DEIR should include appropriate preconstruction surveys for non-listed migratory birds at a minimum radius of 500 feet (for migratory birds) and 0.5-mile (for raptors) around the Project area that can

be accessed by the Project proponent. The DEIR should include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is a nest buffer radius which can be determined by monitoring the active nests and determining the distance at which the activities will disturb the nesting birds.

2. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. While some birds may tolerate disturbance within 500 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. It is the Project proponent's responsibility to confirm that the buffer is sufficient to avoid take/nest failure.
3. CDFW recommends a final preconstruction bird survey be required no more than seven (7) calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed in earlier surveys. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1). If a lapse in Project-related work of seven (7) calendar days or longer occurs, another focused bird survey should be completed before Project work can be reinitiated. It is the Project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.
4. CDFW recommends that any removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

COMMENT 4: SWHA's Nesting Habitat Mitigation, Swainson's Hawk Mitigation Measures, page numbers 7-58 to 7-61

Issue: The DEIR lists mitigation measures for impacts to SWHA, including compensation for permanent impacts on SWHA foraging habitat (Measure BR-7b). However, there is no mitigation measure for potential impacts on SWHA nesting habitat. Recent surveys indicated that 14 Swainson's hawk nests are present within the Project area or within a 0.5-mile radius that Project activities may impact (TNBC 2019-2024, CDFW 2020-2024). The UWSP area also contains a number of mature trees that are planned to be removed by the Project which can be utilized for nesting by the SWHA. There is high likelihood that the Project may result in the take of SWHA through the removal of a nest (nesting tree) that is considered active within the last 5 years. The DEIR fails to provide a mitigation proposal for potential permanent impacts to an active SWHA nest and the measures in the DEIR (environmental training, preconstruction survey, avoidance and minimization plan, and biological monitor) are insufficient to reduce Project impacts to a less and significant level.

Recommendation or Recommended Mitigation Measure: Projects with potential impacts to active SWHA nests are required to comply with CESA. CDFW recommends that the Project proponent obtain an incident take permit (ITP) for the Project if potential take of any active SWHA nests cannot be avoided during the life of the Project. CDFW recommends the DEIR include more detailed measures for how the UWSP will mitigate for potential permanent impacts to SWHA nesting habitat before construction commences. These measures can include purchasing SWHA nesting mitigation credits from a CDFW-approved conservation bank, purchasing and placing a conservation easement on nearby biologically suitable, occupied SWHA nesting habitat, or any other method approved by CDFW. The additional measure should be incorporated into the appropriate DEIR section(s).

COMMENT 5: BUOW's CESA Protection, Burrowing Owl Mitigation Measures, page number 7-22

Issue: The BUOW is listed as a State Species of Special Concern in the DEIR. On October 10, 2024, the California Fish and Game Commission granted the western burrowing owls candidate species protections under CESA. The candidacy designation temporarily affords the BUOW broad CESA protections (including prohibitions against "take" without permit authorization) throughout the entirety of California over the next 12-18 months while CDFW conducts a species status review to confirm whether (and where) listing is warranted and to recommend management and recovery actions. Projects with potential Project impacts to the burrowing owl will now be required to comply with CESA. In the event that CDFW does confirm that listing is warranted for the BUOW in the future when the Project's construction phase is to occur and take of BUOW and its nest is unavoidable, the Project proponent will be required to comply with CESA and provide suitable mitigation for loss of nesting habitat.

Recommendation or Recommended Mitigation Measure: CDFW recommends the relevant DEIR section should be modified to note the recent CESA candidate status of the BUOW. If take of BUOW cannot be avoided, then CDFW recommends the Project proponent obtain an ITP and provide suitable mitigation that fully mitigates the Project impacts.

COMMENT 6: Streambed Alteration Agreement, Table PD-3: Subsequent Permits, Approvals, Review, and Consultation Requirements, page number 2-61

Issue: The DEIR contains a table which lists the various permits and approvals required from government agencies in order for the Project to be constructed. However, the table is missing the Streambed Alteration Agreement issued by CDFW. On page 2-55 of the DEIR, various off-site improvements are listed that may impact the West Drainage Canal. This includes the upgrades to the West Drainage Canal (Witter Canal) culvert south of the El Centro Road and Natomas Central Drive/Arena Boulevard intersection, construction of the new bike trail crossing bridge, and the levee bank reinforcement (bank armoring) for the stormwater pump discharge location. These activities will require notification for a Streambed Alteration Agreement.

Recommendation or Recommended Mitigation Measure: CDFW recommends that Table PD-3 be modified to include the Project's need for a Streambed Alteration Agreement from CDFW. CDFW also recommends the DEIR clearly state that notification for a Streambed Alteration Agreement will be required for the three Project activities listed above as well as any other activities that will impact the West Drainage Canal. The notification should include mitigation proposals for compensation to any permanent impacts to the canal which may include the purchase of suitable mitigation credits at a 3:1 replacement to loss ratio, habitat restoration/enhancement onsite or offsite, habitat connectivity enhancements (wildlife crossings), partnership with other agencies or non-profit groups on restoration projects, or other mechanisms pre-approved by CDFW.

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: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed 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

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

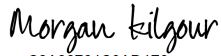
Upper Westside Specific Plan

October 30, 2024

Page 8 of 9

CDFW appreciates the opportunity to comment on the DEIR for the Upper Westside Specific Plan to assist Sacramento County in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@wildlife.ca.gov.

Sincerely,

DocuSigned by:

C3A86764C0AD4F6...

Morgan Kilgour
Regional Manager

ec: Dylan Wood, Senior Environmental Scientist (Supervisory)
Harvey Tran, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

2016 Five-year Status Review of the Swainson's Hawk (*Buteo swainsoni*) in California, California Department of Fish and Wildlife, Available at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>

2023 Biological Effectiveness Monitoring Report for the Natomas Basin HCP Area, Available at: <https://natomasbasin.org/reports/monitoring-reports/>