



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 15, 2021

Governor's Office of Planning & Research

Mar 15 2021

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
3945 Rio Road
Carmel, California 93922

STATE CLEARINGHOUSE

**Subject: Eucalyptus Pruning
Mitigated Negative Declaration (MND)
SCH No. 2021010383**

Dear Ms. Buikema:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Carmel Area Wastewater District (CAWD) for the 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. 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

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.

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 2

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 may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, §§ 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Carmel Area Wastewater District (CAWD)

Objective: The objective of the Project is to prune existing eucalyptus trees at the CAWD Wastewater Treatment Plant. Primary Project activities include pruning of 90 full grown trees, one tree will be completely removed, while the others will be topped. The eucalyptus trees range from about 75 feet to 90 feet tall, and they will be topped to 42 feet on the southern boundary, and 52 feet along the westerly side.

Location: APN: 009-521-004. The Project is directly south of the Carmel River and approximately a half mile from the Pacific Ocean, and approximately one third of a mile from Highway 1. It is located within the CAWD Wastewater Treatment Plant.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist CAWD 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.

There is habitat present within and near the Project site where special-status resources may be present. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. The MND indicates there is potentially significant impact unless mitigation measures are taken but the measures listed are general, and do not incorporate all potential resources that may be present. CDFW is concerned regarding potential impacts to special-status species

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 3

including, but not limited to: the federally threatened and State species of special concern California red-legged frog (*Rana draytonii*), and the federal candidate species monarch butterfly (*Danaus plexippus*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: California Red-Legged Frog (CRLF)

Issue: CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). CRLF have been documented to occur in the vicinity of the Project site along the Carmel River (CDFW 2021). The Project site contains habitat that may support the species. Avoidance and minimization measures may be necessary to reduce impacts to CRLF to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017). Project activities have the potential to significantly impact the species.

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 4

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to CRLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the MND prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: CRLF Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF in accordance with the USFWS “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if CRLF are within or adjacent to the Project area.

Recommended Mitigation Measure 2: CRLF Avoidance

If a qualified biologist determines that the Project site and adjacent area contains suitable habitat for CRLF, CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (October 15 and May 1). When ground-disturbing activities must take place between October 15 and May 1, CDFW recommends a qualified biologist monitor construction activity daily for CRLF if suitable habitat is present.

COMMENT 2: Monarch Butterfly

Issue: Monarchs can be found overwintering along the California coast, specifically in non-native eucalyptus trees (Pelton, 2016). Project-related activities have the potential to impact special-status species. Overwintering monarchs have been documented to occur near the Project area (CDFW 2021).

Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project’s tree trimming and tree removal activities include roost destruction, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or larvae, and direct mortality of individual monarchs.

Evidence impact would be significant: During the last decade overwintering monarch populations have decline to nearly 90-percent (Jepsen et al, 2015). Habitat loss and fragmentation is among the primary threats to the population (USFWS 2020). Project activities have the potential to significantly impact the species by reducing possible roosting habitat.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts of the Project to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval in the Project’s MND.

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 5

Recommended Mitigation Measure 3: Monarch Butterfly Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation, to determine if the Project area or its immediate vicinity contain habitat suitable to support monarchs.

Recommended Mitigation Measure 4: Monarch Butterfly Surveys

If suitable habitat is present, CDFW recommends assessing presence of monarchs by conducting surveys following recommended protocols or protocol-equivalent surveys. Recommended protocols vary by species.

Recommended Mitigation Measure 5: Monarch Butterfly Take Avoidance

Detection of special-status species within or in the vicinity of the Project area, warrants consultation with CDFW and USFWS to discuss how to implement ground-disturbing activities and avoid take.

II. Editorial Comments and/or Suggestions

Lake and Streambed Alteration: The Project contains activities that may result in the Project site being subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 6

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CRLF and monarch butterfly. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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:

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 7

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

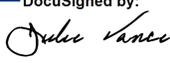
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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 CAWD in identifying and mitigating Project impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist, at (559) 243-4014, extension 243, or aimee.braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachment

ec: Office of Planning and Research, State Clearinghouse, Sacramento

Barbara Buikema, General Manager
Carmel Area Wastewater District (CAWD)
March 15, 2021
Page 8

REFERENCES

CDFW. 2021. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed March 8, 2021.

Jepsen, S., D. F. Schweitzer, B. Young, N. Sears, M. Ormes, and S. H. Black. 2015. Conservation Status and Ecology of Monarchs in the United States. 36pp. NatureServe, Arlington, Virginia, and the Xerces Society for Invertebrate Conservation, Portland, Oregon.

Pelton, E., Jepsen, C. Schultz, C. Fallon, and S.H. Black. 2016. State of the Monarch Butterfly Overwintering Sites in California. 40+vi pp. Portland, Oregon: The Xerces Society for Invertebrate Conservation. www.xerces.org

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

U.S. Fish and Wildlife Service (USFWS), 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

USFWS, 2017. Species Account for California Red-legged frog. March 2017. 1 pp.

USFWS, 2020. Monarch (*Danaus plexippus*) Species Status Assessment Report. V2.1 96 pp + appendices.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Eucalyptus Pruning

SCH No.: 20211010383

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: CRLF Surveys	
Mitigation Measure 3: Monarch Butterfly Habitat Assessment	
Mitigation Measure 4: Monarch Butterfly Surveys	
<i>During Construction</i>	
Mitigation Measure 2: CRLF Avoidance	
Mitigation Measure 5: Monarch Butterfly Take Avoidance	