

From: Mulloy, Lauren@Wildlife
Sent: Friday, April 9, 2021 12:18 PM
To: kvalente@liveoakcity.org
Cc: Wildlife R2 CEQA <R2CEQA@wildlife.ca.gov>; state.clearinghouse@opr.ca.gov
Subject: Comments on the Bishop Avenue Truck Parking Project MND (SCH#2021030337)

Governor's Office of Planning & Research

Apr 12 2021

STATE CLEARINGHOUSE

Dear Mr. Valente:

RE: Bishop Avenue Truck Parking Project (PROJECT)

MITIGATED NEGATIVE DECLARATION (MND) SCH# 2021030337

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Live Oak (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.

PROJECT DESCRIPTION SUMMARY

^[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.

The proposed Project consists of the development of 4.52-acres of a 9.7-acre existing orchard into a semi-truck parking area. The parking area will include 80 13- by 75-foot gravel parking stalls, paved driveway, 80-foot hammerhead turnaround, 50-foot radius turnaround, and a 1.56-acre retention basin. The parking area and accesses will be surfaced with asphalt, cement, or other approved material. A new paved driveway entrance from Bishop Avenue will provide access to the Project site. The driveway approach will extend 20 feet south of the road right-of way. The proposed project includes off-site roadway improvements to Bishop Avenue to serve the proposed truck traffic and to comply with County standards. The off-site construction will include the widening of Bishop Avenue to 32 feet plus 3-foot gravel shoulders from the proposed driveway to SR 99 to the west (approximately 600 feet.) The existing on-site orchard trees surrounding the proposed parking area will remain to provide screening from the public right-of-way.

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: IV-1 revisions suggested to reduce potential impacts to Swainson's hawk to a less than significant level.

IV-1 describes preconstruction surveys for Swainson's hawk.

To address this concern, CDFW recommends the following revisions to IV-1:

A pre-construction nesting bird survey shall be conducted on-site within 15 days prior to construction If construction, grading, or activities associated with the project would commence during the nesting season (February 1st to September 30th), focused surveys for Swainson's hawk nests shall be conducted by a qualified biologist within a ½-mile radius of project activities, in accordance with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk TAC 2000). To meet the minimum level of protection for the species, surveys should be completed for the two survey periods immediately prior to commencement of construction activities in accordance with the 2000 TAC recommendations. Results of the pre-construction survey shall be submitted to the City of Live Oak Community Development Department. If disturbance associated with the project would occur outside of the nesting season, surveys shall not be required.

If Swainson's hawk are identified as nesting on the project site, a nondisturbance buffer of 75-feet shall be established or as otherwise prescribed by a qualified ornithologist. The buffer shall be demarcated with painted orange lath or via the installation of orange construction fencing. Disturbance within the

buffer shall be postponed until a qualified ornithologist has determined that the young have attained sufficient flight skills to leave the area or that the nesting cycle has otherwise completed. If active nests are found, a qualified biologist shall prepare an avoidance plan in consultation with CDFW that proposes measures to comply with the California Endangered Species Act and the Fish and Game Code and these measures shall be implemented prior to the start of any construction related activities. Measures may include but are not limited to nest-specific no disturbance buffers, biological monitoring, rescheduling project activities around sensitive periods for the species (e.g. nest establishment), or implementation of construction best practices such as staging equipment out of the species' line of sight from the nest tree. In the event take of Swainson's hawk cannot be avoided, the project proponent may seek related take authorization as provided by the Fish and Game Code.

Comment 2: IV-2 revisions suggested to reduce potential impacts to nesting birds to a less than significant level.

IV-2 describes preconstruction surveys for nesting migratory birds.

To address this concern, CDFW recommends revising IV-2 with the following language:

During construction of the proposed project, the project applicant shall implement the following measures to avoid or minimize impacts to protected migratory bird species:

- *If any site disturbance or construction activity for any phase of development is scheduled to begin between February 1 and September 30, a qualified biologist shall conduct a preconstruction survey for active tree nests and ground nests from publicly accessible areas within 14 days prior to site disturbance for any phase of development. The survey area shall cover the construction site and a 100-foot radius surrounding the construction site. all potential nesting habitat on-site and off-site up to a distance of 250 feet from the project boundary. The preconstruction survey results (including date, time of survey, survey method, name of surveyor and survey results) shall be submitted to the City of Live Oak Community Development Department for review. If no nesting migratory birds are found, then further mitigation measures are not necessary.*

- *If an active nest of a MBTA bird, or other CDFW-protected bird is discovered that may be adversely affected by any site disturbance, or an injured or killed bird is found, the project applicant shall immediately: a qualified biologist shall be retained to prepare a site-specific take avoidance plan that proposes measures to comply with the Fish and Game Code. Measures may include, but are not limited to, nest-specific no disturbance buffers, biological monitoring, rescheduling project activities around sensitive periods for the species (e.g. nest establishment), or implementation of construction best practices such as staging equipment out of the species' line of sight from the nest tree. The avoidance/protective measures shall be implemented prior to the commencement of construction within 250 feet of an identified nest.*

- o *Stop all work within a 100-foot radius of the discovery.*

- o *Notify the City of Live Oak Community Development Department.*

- o *Do not resume work within the 100-foot radius until authorized by the biologist.*

- o *The biologist shall establish a minimum 100-foot Environmentally Sensitive Area (ESA) around the nest. The ESA may be reduced if the biologist determines that a smaller ESA would still adequately protect the*

active nest. Further work may not occur within the ESA until the biologist determines that the nest is no longer active.

Comment 3: IV-3 revisions suggested to improve mitigation for potential impacts to roosting bats.

IV-3 describes preconstruction surveys for roosting bats

To address this concern, CDFW recommends revising IV-3 with the following language:

CDFW recommends this mitigation measure be revised to state that a qualified biologist with education and experience in bat biology and identification (Designated Bat Biologist) will conduct a habitat assessment for potentially suitable bat habitat within six months of Project activities. If the habitat assessment reveals suitable bat habitat then tree trimming and/or tree removal should be only conducted during seasonal periods of bat activity (from August 31 through October 15, a period prior to hibernation when young are self-sufficiently volant, and from March 1 to April 15, to avoid hibernating bats and prior to formation of maternity colonies.)

The project applicant shall implement the following measures prior to initiation of tree removal:

- A Designated Bat Biologist shall conduct a pre-construction survey for roosting bats at the project site within 14 days prior to initiation of tree removal at the project site.
- Survey results shall be submitted to the City of Live Oak Community Development Department. If active maternity bat roosts are not found within the survey area, further mitigation is not required.
- If active bat roosts are found, the biologist shall identify a suitable construction-free buffer around the maternity roost. the Designated Bat Biologist shall establish a no-disturbance buffer around the roost. The width of the buffer should be determined by the Designated Bat Biologist based on the bat species, specific site conditions, and level of disturbance. The buffer shall be maintained until the Designated Bat Biologist determines that the roost is no longer active.

An example of a suitable construction free buffer is 50 feet; however, each buffer distance should be determined on a case-by-case basis by the qualified biologist and approved by the City of Live Oak Community Development Department. The buffer shall be identified on the ground with flagging or fencing, and shall be maintained until a qualified biologist has determined that the tree and snag impacts would not adversely affect bat survival or survival of their young.

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 Lauren Mulloy, Senior Environmental Scientist (Specialist) at 916-358-2909 or lauren.mulloy@wildlife.ca.gov.

Lauren Mulloy

Central Valley Flood Protection Plan

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To report poachers and polluters please call 1-888-334-2258.