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From: Tran, Harvey@Wildlife
Sent: Tuesday, February 20, 2024 3:50 PM
To: cjordan@elkgrovecity.org
Cc: Wood, Dylan@Wildlife; Wildlife R2 CEQA; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: SCH #2022110393 - New Zoo at Elk Grove DEIR - CDFW comments 2022-0453-0000

To Christopher Jordan:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Draft Environmental Impact Report (DEIR) from the City of Elk Grove, for the New Zoo at Elk Grove (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

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.

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 agreement (LSAA) 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

This proposed Project is located at the northwest corner of Lotz Parkway and Kammerer Road in the City of Elk Grove in Sacramento County. The Project would involve the construction and operation of a zoological park and associated support and operational, retail, and guest services facilities in the City of Elk Grove. The approximately 100-acre Project site is located on a vacant site. The Project would include a new Special Planning Area (SPA) referred to as the Zoological Park SPA, development of the zoo, parking facilities, off-site public infrastructure improvements, and an animal browse program. Stormwater will be directed into the Shed C Channel by outfalls from new detention basins. The Shed C Channel is an excavated agricultural drainage channel that runs along the northern boundary of the Project site. The New Zoo would be constructed in phases as Project funding allows.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Elk Grove in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the following items be addressed in the draft CEQA document:

Comment 1: 2.5.1 Other Local and Regional Agency Approvals - State, page 2-42

The DEIR states that a Streambed Alteration Agreement would be needed. However, there is no mention of what Project activities would impact resources under Fish and Game Codes Section 1602 and require a Streambed Alteration Agreement. It is mentioned on page 2-17 that stormwater from the Project site will be directed to Shed C channel through outfalls from nearby future detention basins. The construction of the outfall could obstruct the natural flow of the stream, impact the material from the bed, channel or bank, and/or fill entering the tributaries. CDFW recommends that the Project proponent includes the outfall installation activities at the Shed C channel in their notification for a Streambed Alteration Agreement.

Further information on CDFW's Notification and our online permitting portal can be found at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource based on a Project notification under Fish and Game Codes Section 1602, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources.

To address this comment, CDFW recommends the draft DEIR be modified to make it clear what Project activities will impact resources under Fish and Game Codes Section 1602 and require a Streambed Alteration Agreement. If the outfall construction will potentially impact the Shed C channel, then the DEIR should state that the activity will require a Streambed Alteration Agreement.

Comment 2: Mitigation Measure 3.3-1a Burrowing Owl, page 3.3-18

The DEIR includes a mitigation measure for burrowing owls (*Athene cunicularia*). The measure differs from what CDFW recommends in the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012) (Staff Report). More specifically, the measure states that a buffer be a "minimum of 150 feet around the active, nonbreeding burrow but may be reduced in consultation with CDFW." CDFW recommends that the buffer be at least 50 meters (164 feet) and up to a maximum of 500 meters (depending on expected level of disturbance) during that time frame as stated in the Staff Report. In addition, the measure does not include passive relocation of the burrow owls during the non-breeding season. While CDFW discourages relocation of the burrowing owls and prefers that the burrowing owls leave the Project site at their own volition, CDFW also recognizes that relocation may be necessary to prevent injury/mortality from Project activities.

To address this comment, CDFW recommends that the DEIR modify the Mitigation Measures to match the Staff Report in regard to buffers during the non-breed and breeding seasons and include language to allow for passive relocation as a last resort. Example language is provided below:

“1. Burrowing Owl Surveys. Permittee shall conduct a burrowing owl survey over all suitable habitat present within Project area. Burrowing owl surveys shall be conducted by the Designated Biologist in accordance with the protocol described in the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012). If possible, surveys should be conducted during both the breeding (February 1 – August 31) and non-breeding seasons (September 1 – January 31) immediately preceding the planned start of construction activities to ascertain the seasonal residency status of any owls occupying the site. The presence of burrowing owl or their sign anywhere on the site or within a 500-foot accessible radius around the Project site shall be recorded and mapped. Surveys shall disclose all burrows and occurrence of sign of burrowing owl on the Project site and within the 500-foot buffer. Results of the survey shall be submitted to CDFW.

2. Burrowing Owl Take Avoidance. During the breeding season (February 1 to August 31), surveys shall document whether burrowing owls are nesting in or within 500 feet of the Project area. During the non-breeding season (September 1 to January 31), surveys shall document whether burrowing owls are using habitat in or directly adjacent to any area to be disturbed. Survey results shall only be valid for the season (breeding or non-breeding) during which the survey was conducted. If a lapse in Project-related work of fifteen (15) calendar days or longer occurs, another focused survey and consultation with CDFW shall be required before Project work can be

reinitiated. If a burrowing owl or evidence of presence at or near a burrow entrance is found to occur within 500 feet of the Project site, the following measures shall be implemented:

2.1 If burrowing owls are found during the non-breeding season (approximately September 1 to January 31), the Project applicant shall establish a minimum 160-foot (50-meter) buffer zone around active burrows. The buffer zone shall be flagged or otherwise clearly marked. Measures such as visual screens may be used to further reduce the buffer with CDFW approval and provided the Designated Biologist confirms that such measures do not cause agitated behavior.

2.2 If burrowing owls are found during the breeding season (approximately February 1 to August 31), the Project applicant shall:

a. Avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging).

b. Establish a minimum 656-foot (200-meter) non-disturbance buffer zone around nests, unless otherwise approved by CDFW in writing. The buffer zone shall be flagged or otherwise clearly marked. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer will be increased such that activities are far enough from the nest so that the bird(s) no longer display this agitated behavior. Construction shall only occur within the 656-foot buffer zone during the breeding season if the Designated Biologist monitors the nest and determines that the activities do not disturb nesting behavior, or the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged and moved off site. Any modifications to this buffer shall be approved by CDFW prior to its implementation. The buffer reduction request shall include relevant information and/or propose new measures to justify the buffer reduction. The buffer area must be clearly marked to prevent Project-related activities from occurring within the buffer zone.

3. Passive Exclusion of Burrowing Owls. If after all applicable avoidance and minimization measures are implemented, Permittee needs to passively exclude burrowing owls, a burrowing owl exclusion plan shall be developed by the Designated Biologist for CDFW review and approval. This plan, including its proposed mitigation, shall be consistent with the most recent available guidelines (e.g., *2012 Staff Report on Burrowing Owl Mitigation*). This plan shall be submitted to CDFW at least thirty (30) days prior to its implementation. Burrow exclusion shall only be conducted during the non-breeding season for burrows located in the Project footprint, and in limited instances within a buffer zone around the Project site, as determined in consultation with CDFW after all avoidance and minimization measures have been exhausted.”

Comment 3: Mitigation Measure 3.3-1b Swainson’s Hawk and Other Nesting Birds, pages 3.3-19 and 3.3-20

The DEIR combined avoidance and minimization measures for both non-listed migratory birds and raptors as well as the state listed Swainson’s hawk. CDFW recommends different measures for migratory birds and raptors versus SWHA.

To address this comment, CDFW recommends the DEIR describe how the considerations identified below will be implemented and incorporated into the appropriate DEIR section(s):

1. CDFW recommends 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 also include appropriate preconstruction surveys for non-listed migratory birds at a minimum radius of 500-feet (for migratory birds) and 1/2-mile (for raptors) around the Project area that can be accessed by Project proponent. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is nest buffer radius which can be determined by monitoring the active nests and determining the distance that activities will disturb the nesting birds.

CDFW recommends all measures to protect non-listed nesting birds should be performance-based. 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. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish & G. Code. A 500-foot exclusion buffer may be sufficient; however, that buffer may need to be increased based on the birds’ tolerance level to the disturbance. It is the Project proponent's responsibility to confirm the buffer is sufficient to avoid take/nest failure. CDFW recommends a final preconstruction 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, the qualified biologist shall complete another focused survey 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.

2. CDFW recommends a qualified biologist conduct a SWHA survey within a minimum 1/2-mile radius around the Project area that is accessible to the Project proponent. Surveys should be conducted according to the following the five-period schedule in accordance with the “Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Tech. Advis. Comm., 5/2000)”:

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

If an occupied nest is found, the Project proponent should consult with CDFW and demonstrate compliance with CESA. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA. CDFW recommends an ITP include SWHA if the Project has the potential to result in “take” (Fish & G. Code § 86 defines “take” as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill”) of the CESA-listed species, either through construction or over the life of the Project.

3. 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. CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based at a ratio of no less than 1 acre of mitigation for every acre impacted, consistent with the City of Elk Grove Swainson’s Hawk Ordinance, which also recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites and the amount of habitat compensation is dependent on nest proximity. In addition to fee title acquisition or conservation easement recorded on property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

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.

CDFW appreciates the opportunity to comment on the DEIR for the New Zoo at Elk Grove Project to assist the City of Elk Grove 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 email or further coordination should be directed to Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@wildlife.ca.gov.

Thank you.

Harvey Tran

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