



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 16, 2023

Hamid Heidary, Senior Civil Engineer
City of Calistoga Public Works Department
414 Washington Street
Calistoga, CA 94515
hheidary@ci.calistoga.ca.us

Subject: Dunaweal Pump Station Replacement Project, Mitigated Negative Declaration, SCH No. 2023010511, Napa County

Dear Mr. Heidary:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Calistoga (City) for the Dunaweal Pump Station Replacement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Calistoga Public Works Department

Objective: Demolish and replace the existing Dunaweal Pump Station and construct a second new pump station (Rutherford Pump Station) to provide a reliable water supply for the City. The new Dunaweal Pump Station will be constructed on the same site as the existing pump station and involve the removal of vegetation and trees. Construction of the Rutherford Pump Station will involve grading and construction of a single-story

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.

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28-foot by 48-foot building and a 28-foot by 40-foot equipment yard enclosed by a chain link fence. The equipment yard will enclose an electrical transformer, diesel emergency generator, and air stripper system to treat water. Two pressure tanks will be located on the opposite side of the building from the equipment yard. The area in front of the building and equipment yard will be paved. Trenching across Silverado Trail will be required to connect the pump station to the existing North Bay Aqueduct pipeline. The Project will also replace an existing valve with an automated valve at the primary metering location south of Silverado Trail.

Location: The two pump stations are located in Napa County. The Dunaweal Pump Station is located in the City of Calistoga at the City's wastewater treatment plant off of Dunaweal Lane (Latitude 38.571680°N, Longitude 122.557867°W). The proposed new Rutherford Pump Station is located in unincorporated Napa County, southeast of St. Helena, adjacent to Silverado Trail and south of Rutherford Hill Road (Latitude 38.488242°N, Longitude 122.407508°W).

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), a CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

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Fully Protected Species

Fully Protected species, such as white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in Attachment A: Draft Mitigation Monitoring and Reporting Program, CDFW concludes that an MND is appropriate for the Project.

I. **Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

COMMENT 1: Swainson's Hawk - Environmental Setting/Mitigation Measure Shortcoming

Issue: The Project may impact nesting Swainson's hawk, which occurs in Napa County. The California Natural Diversity Database (CNDDDB) documents a Swainson's hawk nesting occurrence approximately 2.5 miles from the Project site.

The proposed nesting bird survey mitigation measure (MM) BIO-1 would only survey for raptors present within 500 feet of the Project and implement a buffer zone of the same distance around any active Swainson's hawk nests; however, nesting Swainson's hawks may not be detected using the proposed nesting bird surveys and the species can be impacted up to 0.5 miles from the Project within rural areas.

Specific impacts and why they may occur and be significant: If active Swainson's hawk nests are not detected by the proposed surveys or appropriate buffer zones are not established, Swainson's hawk could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species.

Swainson's hawk is CESA listed as a threatened species and therefore, is considered to be a threatened species pursuant to CEQA Guidelines section 15380. The estimated

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historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an accurate environmental setting, and to reduce impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends adding the following mitigation measure:

Mitigation Measure (MM) BIO-3 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000)² survey protocol, within 0.5-mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

II. 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?

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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COMMENT 2: Special-Status and Other Nesting Birds - Mitigation Measure Shortcoming

Issue: MM BIO-1 states that pre-construction nesting bird surveys will be conducted for passerines within 100 feet of the Project site and raptors within 500 feet of the Project site and proposes a 50- to 100-foot buffer for passerines and a 300- to 500-foot buffer for raptors. However, the Project may cause noise and visual disturbance to passerines such as purple martin (*Progne subis*), a California Species of Special Concern (SSC), and non-passerine birds, such as waterfowl, up to 250 feet from the Project site.

MM BIO-1 also states surveys will be repeated if construction is suspended for more than 14 days. However, nest building can be completed rapidly and the time from nest initiation to egg laying can occur in a matter of days.

Specific impacts and why they may occur and be significant: If appropriate surveys are not conducted and appropriate buffer zones are not established, nesting birds including, but not limited to, SSC could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young.

If additional surveys are not conducted when there has been a one-week lapse in construction, there is an increased risk that nests may become established and be disturbed by Project activities.

An SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria: is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; is listed as Federally-, but not State-, threatened or endangered; meets the State definition of threatened or endangered but has not formally been listed; is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; or has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status (see: <https://wildlife.ca.gov/Conservation/SSC>).

Additionally, nesting birds are protected by Fish and Game Code section 3500 et seq. and the federal MBTA.

Therefore, if nesting birds such as passerines or waterfowl occur within 250 feet of the Project site, or nesting raptors occur within 500 feet of the Project site, impacts to nesting birds would be potentially significant.

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Recommended Mitigation Measure: To reduce impacts to less-than-significant and comply with Fish and Game Code and MBTA, CDFW recommends replacing MM BIO-1 with the following language:

MM BIO-1: Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. The Project is responsible for complying with Fish and Game Code section 3503 et seq. and the MBTA of 1918.

- a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a qualified biologist within 3 days prior to the beginning of Project-related activities. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall be required before Project work can be reinitiated.
- b) Active Nest Buffers. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.
 - Buffers shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors unless otherwise approved by a qualified biologist. The buffer distances shall be determined by a qualified biologist based on site conditions and specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
 - The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist.

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- c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a qualified biologist.

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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

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Attachment A: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023010511)

REFERENCES

Bloom, P. H. 1980. The status of the Swainson's hawk in California, 1979. Bureau of Land Management, Sacramento, CA, USA.

CDFW. 2016. Status review: Swainson's hawk (*Buteo swainsoni*) in California. Report to the California Fish and Game Commission, Sacramento, CA, USA.

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ATTACHMENT A

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-1	<p>Mitigation Measure BIO-1: Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. The Project is responsible for complying with Fish and Game Code section 3503 et seq. and the MBTA of 1918.</p> <p>a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a qualified biologist within 3 days prior to the beginning of Project-related activities. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall be required before Project work can be reinitiated.</p> <p>b) Active Nest Buffers. Active nest sites shall be designated as ESA and protected (while occupied) during Project work by demarking a "No Work Zone" around each nest site.</p> <ul style="list-style-type: none"> • Buffers shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors unless otherwise approved by a qualified biologist. The buffer distances shall be determined by a qualified biologist based on site conditions and specified to protect the bird's normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall 	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	<p>be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <ul style="list-style-type: none"> The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist. <p>c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a qualified biologist.</p>		
<p>MM BIO-3</p>	<p>MM BIO-3 Swainson’s Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson’s hawks (March 1 to August 31), prior to beginning work on this Project, Swainson’s hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson’s Hawk Nesting Surveys in</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	<p>California's Central Valley Swainson's Hawk (2000) survey protocol, within 0.5 mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>		
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