



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



March 24, 2023

Katherine Holmes, Deputy Executive Director
Solano Resource Conservation District
1170 North Lincoln Street, #110
Dixon, CA 95620
Katherine.Holmes@solanorcd.org



Subject: Lake Solano Habitat Restoration and Public Access Improvement Project, Mitigated Negative Declaration, SCH No. 2023030042, Solano County

Dear Ms. Holmes:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Solano Resource Conservation District (District) for the Lake Solano Habitat Restoration and Public Access Improvement Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the District, 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) or Native Plant Protection Act, a 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: Solano Resource Conservation District

Objective: The purpose of the Project is to restore wildlife and native plant habitat, improve public access and recreational opportunities, and provide visitors with interpretive and educational materials in Lake Solano Park (Park). The Project proposes to plant up to 2,265 native trees, shrubs, and subshrubs, up to 20,000 native forb plugs,

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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and up to 300 pounds of native grass and wildflower seed on 19 acres in the upland terraces located above the upper day use parking lot. Within this restored area, a half-acre native plant demonstration garden will be installed, including 670 feet of Americans with Disabilities Act accessible trail with two decomposed granite pads, and 10 to 15 plant identification signs. A simple shade structure with a gravel pad will be installed at the highest elevation of the Park and provide an overlook point for Park visitors and elementary school students on field trips. Park signage will be improved in the upland areas above the upper day use parking lot and in the main day use area with the installation of 10 to 15 small wayfinding signs, 10 to 15 interpretive panels, and 2 kiosks.

Location: Lake Solano Park in Solano County, approximately 4.5 miles southwest of the Town of Winters and approximately 0.1 miles southeast of the intersection of Sackett Lane and Pleasant Valley Road, Assessor's Parcel Number 0101-060-040. Project work is centered at approximately latitude 38.490327° and longitude 122.027885°.

REGULATORY REQUIREMENTS

California Endangered Species Act

Although the Project is near orchards and within and adjacent to areas with ongoing agricultural and recreational activities, it has the potential to impact nesting Swainson's hawk (*Buteo swainsoni*), a CESA listed as threatened species, through potential auditory or visual disturbances above ambient levels. **CDFW recommends surveys and avoidance of Swainson's hawk, as further described below.** If avoidance is not feasible, please be advised that a CESA Incidental Take Permit (ITP) must be obtained. 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.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially

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significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions are also 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 1, CDFW concludes that an MND is appropriate for the Project.

I. Environmental Setting and Mitigation Measure Shortcoming

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare or threatened species?

Comment 1: Swainson's Hawk, Page 46

Issue: As indicated above, although the Project is within and adjacent to areas with ongoing agricultural and recreational activities, it has the potential to impact nesting Swainson's hawk through potential auditory or visual disturbances above ambient levels. The California Natural Diversity Database (CNDDDB) documents a Swainson's hawk nesting occurrence approximately four miles northeast of the Project site, along Putah Creek. There have also been several documented occurrences of the species reported to eBird (<http://ebird.org>) occurring within two miles of the Project site during the breeding season within the last few years. The MND states that there are only eight live trees of preferred height for Swainson's hawks on-site; however, based on Google Earth aerial imagery and a site visit, it appears that many potential nest trees exist within 0.5-mile from the Project, the distance at which Swainson's hawk may be disturbed in rural settings.

The MND includes Mitigation Measure BIO-2, pre-construction surveys for nesting birds including Swainson's hawk. Mitigation Measure BIO-2 does not specify how many surveys will occur and indicates that surveys must be conducted between March 1 and August 31 within 15 days of the start of construction. The proposed survey may not detect nesting Swainson's hawks.

Specific impacts, why they may occur and be potentially significant: Nesting Swainson's hawk could experience auditory and visual disturbances from Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young. 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. 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).

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

Mitigation Measure BIO-3 (Swainson's Hawk Surveys and Avoidance Buffer): If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>). Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

II. Editorial Comments

Comment 2: Status of Foothill Yellow-Legged Frog, Page 43

CDFW recommends revising the MND to reflect that northwest/north coast clade of foothill yellow-legged frog (*Rana boylei*), the only clade occurring near the Project site, is not listed under CESA but is a California Species of Special Concern.

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 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

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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 District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at Alex.Single@wildlife.ca.gov or (707) 799-4210; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023030042)

REFERENCES

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM-BIO-3	<p><i>Mitigation Measure BIO-3 (Swainson's Hawk Surveys and Avoidance Buffer):</i> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i> (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline). Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>