



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



January 10, 2024

Tim Maier, Senior Planner
City of Santa Cruz, Planning and Community Development Department
809 Center Street, Room 101
Santa Cruz, CA 95060
TMaier@santacruzca.gov

Subject: Santa Cruz City Schools Educator Housing, Initial Study/Mitigated Negative Declaration, SCH No. 2024120753, City of Santa Cruz, Santa Cruz County

Dear Tim Maier:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Santa Cruz (City) for the Santa Cruz City Schools Educator Housing (Project) pursuant the California Environmental Quality Act (CEQA).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 these comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake

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 Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent the Project 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 will be required.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA permit 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. Issuance of a CESA permit 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 a CESA permit.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for any Project activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA (Pub. Resources Code § 21000 et seq.) as the Responsible Agency.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include §§ 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: Trevor Miller, Santa Cruz City Schools (Applicant)

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Description and Location: The Project site is located at 313 Swift Street, in the City of Santa Cruz, in Santa Cruz County; APN: 003-16-132.

The proposed Project is located on a 4.08-acre site that will demolish two existing single-story office buildings and two portable, modular classroom buildings. A new four-story, approximately 120,604 square-foot multifamily educator workforce housing project, encompassing approximately 100 residential units, approximately 119 parking spaces, new landscaping, and associated site modifications will be constructed. Additionally, the Project will remove twelve trees, including five heritage trees.

SPECIES POTENTIAL

Threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to the species listed below and in Table 1:

- Monarch butterfly (*Danaus plexippus*); FC
- Nesting birds

FC = Federal Candidate

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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.

COMMENT 1: Nesting Bird Surveys

Issue: Proposed nesting bird "standard condition of approval," would not adequately reduce impacts to nesting birds to a less-than-significant level, as the proposed survey details are not adequately described to ensure detection of all nesting birds which may be impacted by Project activities.

Recommendation: CDFW recommends the nesting bird "standard condition of approval" in the Project MND be updated to the recommended mitigation measure below to mitigate impacts to less-than-significant levels.

Recommended Nesting Bird Mitigation Measure: If project grading or construction is scheduled to take place between **February 1 – September 15**, a preconstruction survey of the project vicinity for nesting birds shall be conducted by a qualified biologist experienced with the nesting behavior of bird species of the region. The survey shall determine if active nests are present within the planned area of disturbance or within

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250 feet for non-raptors and 1,000 feet for raptors. The survey shall be performed no more than 14 days prior to the commencement of construction activities, and a second focused survey shall be conducted within 48 hours prior to construction activities that would occur during the nesting/breeding season. If ground disturbance activities are delayed following a survey, then an additional preconstruction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If a lapse of Project-related activities of seven days or longer occurs, another focused survey will be conducted before Project activities can be reinitiated.

If an active bird nest is found within the survey radii, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. A protective buffer distance shall be established by a qualified biologist based on the site conditions such as whether the nest is in a line of sight of the construction and the sensitivity of the birds nesting. Typical protective buffers are as follows: 1) 1,000 feet for large raptors such as buteos, 2) 500 feet for smaller raptors such as accipiters, and 3) 250 feet for passerines. No Project personnel or equipment shall be allowed to enter the protective buffer until the Qualified Biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.

A Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the nest site(s) shall be monitored by the biologist periodically to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased. The perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of grading in the nest-setback zone. The qualified biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. All buffers shall be shown on all sets of construction drawings.

COMMENT 2: Monarch Butterfly Overwintering

Issue: Although the Project site is primarily developed, the Project IS/MND does not identify if removal of 5 heritage trees could cause impacts to over-wintering Monarch butterflies or their habitat. Loss of Monarch roosting trees used for over-wintering should be considered a significant impact to the species.

Evidence: The Project site is located approximately 0.5 miles from Natural Bridges State Beach, a known overwintering site for monarch butterflies (*Danaus plexippus*), which rely on the coastal environment, including eucalyptus, cypress, pine trees for

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shelter during the migratory season and native milkweed. The western monarch population has declined by 95 percent (Crone et al. 2019, Schultz et al. 2017) and has dropped an additional less than one percent of their historic size (Pelton et al. 2019). Milkweed is a commonly known nectar plant for their role as larval food plants for monarch butterflies. The loss of milkweed and overwintering habitat have caused the monarch populations to severely decline (Fallon et al. 2015). Pesticides, such as insecticides and herbicides, are contributing factors to the decline of monarch butterflies and other butterfly species in California and the United States (Pelton 2020).

Recommendation: CDFW recommends the Project avoid impacts to known and potential monarch roost habitat including buffer trees and nectar resources. Trees selected for removal shall be evaluated by a qualified biologist for potential impacts to monarch roost habitat. Alternatives to tree removal such as tree limbing should be considered prior to tree removal to minimize potential impacts. Where tree removal cannot be avoided, CDFW recommends a Monarch Roost Site Mitigation Plan is developed and included as part of the final MND.

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 found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. 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://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 IS/MND to assist the City in identifying and mitigating Project impacts on biological resources.

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Questions and coordination pertaining to this letter should be directed to Alexis Harrison, Environmental Scientist, at (707) 815-2779 or Alexis.Harrison@wildlife.ca.gov; or Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024120753)
Craig Weightman; CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov

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