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From: Perry, Lillyauna@Wildlife
Sent: Wednesday, February 26, 2025 4:25 PM
To: jlodigiani@mesd.net
Cc: Stanfield, Melissa@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA
Subject: CDFW Comments on the ISMND for the Manzanita Elementary School Well Replacement Project (SCH No. 2025010817)

Dear Joe Lodigiani,

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on Manzanita Elementary School District's (MESD) Proposed Mitigated Negative Declaration (MND) for the Manzanita Elementary School Well Replacement Project (Project). CDFW is responding to the MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386).

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. 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

The MESD proposes to construct a new 550-foot-deep well to supply potable and non-potable water to Manzanita Elementary School. The existing well will be demolished per Butte County (County) standards. The Project will require the creation of a temporary access road connected to Larkin Road. No tree removal is required. The Project is located north of East Evans Reimer Road, east of Larkin Road, south of Center Avenue, and west of River Avenue.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the project proponent 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: Section 4.4.6 Mitigation Measures: BIO-2 -- Burrowing Owl

Burrowing owl (BUOW) is listed as a State Species of Special Concern in the MND. On October 10, 2024, the California Fish and Game Commission granted the western burrowing owls candidate species protections under CESA. The candidacy designation temporarily affords the BUOW broad CESA protections (including prohibitions

against “take” without permit authorization) throughout the entirety of California over the next 12-18 months while CDFW conducts a species status review to confirm whether (and where) listing is warranted and to recommend management and recovery actions. In the event that the Fish and Game Commission does confirm that listing is warranted for the BUOW in the future when the Project’s construction phase is to occur and take of BUOW is unavoidable, the Project proponent will be required to comply with CESA. To address this comment, CDFW recommends the relevant MND section be modified to note the recent CESA candidate status of the BUOW. If take of BUOW cannot be avoided, then CDFW recommends the Project proponent obtain an Incidental Take Permit (ITP) and provide suitable mitigation that fully mitigates the Project impacts.

Comment 2: Section 4.4.6 Mitigation Measures: BIO-2 – Burrowing Owl

In light of BUOW being a candidate for listing under CESA, Mitigation Measure BIO-2 is not sufficient to determine absence of BUOW on the Project site and thus may not be adequate to reduce Project impacts to a less-than-significant level. CDFW recommends BIO-2 be revised to incorporate the following language:

1. Burrowing Owl Surveys. Project proponent shall conduct burrowing owl surveys over all suitable habitat present within Project area. Burrowing owl surveys shall be conducted by a qualified 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 the County.
2. Burrowing Owl Take Avoidance. During the breeding season (February 1 to August 31), surveys shall document whether BUOW 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 BUOW 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 the County and CDFW shall be required before Project work can be reinitiated. If a BUOW 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:
 - a. If BUOW 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 a qualified biologist confirms that such measures do not cause agitated behavior.
 - b. If BUOW are found during the breeding season (approximately February 1 to August 31), the Project applicant shall:
 - i. 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).
 - ii. Establish a minimum 500-foot non-disturbance buffer zone around nests, unless otherwise approved by the County in writing, in consultation with CDFW. 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 500-foot buffer zone during the breeding season if a qualified 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 the County, in consultation with 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 and Project proponent needs to passively exclude BUOW, an ITP shall be obtained for the activity and a BUOW exclusion plan shall be developed by a qualified biologist for the County's review and approval, in consultation with CDFW. This plan, including its proposed mitigation, shall be consistent with the most recent available guidelines (e.g., 2012 Staff Report on Burrowing Owl Mitigation). 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 by the County in consultation with CDFW after all avoidance and minimization measures have been exhausted. To fully mitigate take of BUOW, compensatory mitigation shall be required.

Comment 3: Section 4.4.6 Mitigation Measures: BIO-3

It is CDFW's recommendation that pre-construction surveys for nesting birds occur within 7 days prior to the start of project construction. Limiting this window to within 3 days prior to the start of construction is preferred.

If you should have any questions regarding these comments, please contact Melissa Stanfield at (916) 597-6417 or Melissa.Stanfield@wildlife.ca.gov.

Take care,

Lillyauna Perry

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