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GAVIN NEWSOM, Governor
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July 1, 2019

Governor's Office of Planning & Research

JULY 03 2019

STATE CLEARINGHOUSE

Mr. Giuseppe Sanfilippo
San Joaquin County Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205

Subject: Agricultural Excavation Application No. PA-1800301 (AE) Project,
SCH #2019069013, San Joaquin County

Dear Mr. Sanfilippo:

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft Initial Study and Mitigated Negative Declaration (IS/MND) for the proposed Agricultural Excavation Application No. PA-1800301 Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the IS/MND as a means to inform the San Joaquin County Community Development Department (County), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) 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 a California Endangered Species Act (CESA) Incidental take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA 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 (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, 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 potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the 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, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency

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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 Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Carol Ann Jaques

Location: The Project site is located near 13285 South Willow Glen Road in Stockton, California, San Joaquin County, on the east side of South Willow Glen Road, 2,455 feet North of West Undine Road, South of Stockton, Assessor's Parcel Number 191-040-07 and 191-040-08.

Timeframe: Project construction will occur over the next two years.

Description: The Project proposes to remove 97,000 cubic yards of sand material over two (2) years from a 74.06-acre parcel and a 74.66-acre parcel in the AG-180 (General Agriculture, 180-acre minimum zone).

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County 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: IS/MND does not mitigate biological impacts to a level of less-than-significant

Comment 1a: IS/MND lacks analysis of Project impacts to Biological Resources

On page 10 in the Impact Discussion for IV. Biological Resources, the IS/MND states:

"Participation in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP [or Plan]) would address any potential impacts to rare, endangered or threatened species, or habitat located on or near the site. Pursuant to the Final EIR/EIS for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), dated November 15, 2000, and certified by the San Joaquin Council of Governments on December 7, 2000, implementation of the SJMSCP is expected to reduce

impacts to biological resources resulting from the proposed project to a level of less-than-significant. The project applicant has indicated they will participate in the plan and by participating in the plan this would reduce potential impacts on special-status plant and animal species to a less-than-significant level.”

The statement is inadequate for satisfying the requirements of CEQA as it does not identify, analyze, or quantify impacts or potential impacts from the Project. The statement also does not negate the need for a biological impact analysis, which includes, but is not limited to, Swainson’s hawk (*Buteo swainsoni*), burrowing owl (*Athene cunicularia*), giant garter snake (*Thamnophis gigas*), and other special-status species. Please update the Impact Discussion to include an analysis of potential habitats and species that could be impacted by the Project’s activities. If potential impacts are identified in the analysis, then those impacts need to be addressed in this section with specific enforceable mitigation measures, such as proof of approval and a statement of adherence to SJMSCP, and alternative mitigation in the event SJMSCP does not approve coverage or the applicant elects not to participate in the Plan.

Comment 1b: Conflicting information is presented in the Biological Resources Section

On page 9 in the Biological Resources section, the IS/MND indicates the Project has a less-than-significant impact in checkboxes a through f, then states the Project applicant has indicated they will participate in the SJMSCP to mitigate to a less-than-significant level. Since specific impacts have not been identified or analyzed, is it unclear if the Project has a less-than-significant impact or if the Project has impacts that will be less-than-significant with mitigation incorporated in the IS/MND. If the Project has a less-than-significant impact as indicated in the checkboxes, a statement of participation in the SJMSCP would not be needed in this section. Based on the impact analysis requested in CDFW’s Comment 1a of this letter, please update the section to indicate which subsections have a less-than-significant impact and which are less-than-significant with the mitigation identified and incorporated, including participation in SJMSCP, into a revised Impacts Discussion.

Comment 1c: Specify mitigation in the event SJMSCP does not approve coverage

The statement presented in the Impacts Discussion on page 10 does not mitigate potential impacts to less-than-significant regarding CEQA, as the IS/MND does not propose or identify specific and sufficient mitigation in the event the SJMSCP does not approve coverage or the applicant chooses to not participate. The IS/MND states the Project applicant has indicated they will participate in the Plan but does not include supporting documentation for approval from the Plan or identify specific and sufficient mitigation in the event SJMSCP does not approve coverage in whole or part of the Project. Based on the impact analysis requested in CDFW’s Comment 1a of this letter, please update the section to include mitigation measures that will ensure the Project impacts are less-than-significant in the event SJMSCP does not approve of coverage of the Project in whole or part, or in the event the applicant opts-out of participation in the SJMSCP.

If the Project cannot fully avoid take of CESA-listed wildlife and SJMSCP does not offer take coverage, then CDFW recommends the IS/MND include language defining the Project’s obligation to obtain take coverage through an ITP issued by CDFW.

Comment 1d: IS/MND does not mitigate for impacts to burrowing owl, Swainson's hawk, and giant garter snake habitats to a level of less-than-significant

The Project has the potential to impact special-status species that utilize the Project site through direct and indirect take due to Project activities and temporary and permanent losses of habitat. These special-status species include, but are not limited to, Swainson's hawk, burrowing owl, and giant garter snake. To ensure that Project impacts to special-status species are mitigated to a level of less-than-significant, and in the event SJMSCP does not offer full coverage in the Plan, CDFW makes the following recommendations:

Swainson's hawk, burrowing owl, and giant garter snake have the potential to occur within the vicinity of the proposed Project. The Project has the potential to adversely impact the species through permanent and temporary losses of nesting and foraging habitat. The Project may also result in additional impacts to Swainson's hawk and burrowing owl through nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates) and breeding and foraging disturbance through Project activities.

To ensure these impacts are mitigated to a level of less-than-significant, CDFW recommends the IS/MND require compensatory mitigation for loss of habitats at a minimum of a 1:1 mitigation ratio (conservation to loss) for permanent impacts to Swainson's hawk foraging habitat, a 3:1 ratio for permanent impacts to Swainson's hawk, burrowing owl, and giant garter snake habitats, and a 1:1 ratio for temporary impacts. Conservation lands should be placed under a conservation easement with CDFW listed as a third-party beneficiary and an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity. Additionally, a long-term management plan should be prepared and implemented by a land manager. The Grantee of the conservation easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

Comment 1e: Swainson's hawk surveys and avoidance measures should be incorporated in the IS/MND

If SJMSCP does not cover the Project, then CDFW recommends the following specific and enforceable measures for Swainson's hawk be incorporated into a revised and recirculated IS/MND to avoid impacts:

"Pre-Construction Surveys for Swainson's Hawk: If Project Activities are to be conducted between March 1 and September 15, a focused survey for active Swainson's hawk nests shall be conducted by a qualified biologist within seven (7) days prior to the beginning of Project Activities. If a lapse in Project Activities of seven (7) days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. The following criteria for surveys shall be met:

- *Surveys shall be conducted in proposed work areas, staging, and storage areas.*
- *Surveys shall be conducted within 0.5 miles of the Project site.*
- *Nest surveys for Swainson's hawks shall be conducted in a manner consistent with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in*

California's Central Valley. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline> located at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>

If an active nest is identified, a 0.5-mile buffer in non-urban settings or a 0.25-mile buffer in urban setting shall be maintained around the nest until the young fledge. If any active Swainson's hawk nests are found within 0.5 miles of the Project site, CDFW shall immediately be contacted and additional measures may be required for Project activities."

Comment 1f: Burrowing owl surveys and avoidance measures should be incorporated in the IS/MND

If SJMSCP does not cover the Project, then CDFW recommends the following specific and enforceable measures for burrowing owls be incorporated into a revised and recirculated IS/MND to avoid impacts:

"Pre-Construction Surveys for Burrowing Owl: To avoid impacts to burrowing owls, a qualified biologist shall conduct a habitat assessment to determine if burrowing owl habitat is present and if occupancy surveys are required. The following criteria for surveys shall be met:

- *Surveys shall be conducted during the breeding season from February 1 to August 31*
- *A minimum of three surveys shall be conducted and each survey shall occur at least three weeks apart during the peak of breeding season (between April 15 and July 15), during the nesting period, and during the late nestling period.*
- *Each survey shall be conducted during crepuscular hours.*

If surveys confirm occupied burrowing owl habitat in or adjoining the Project area, the qualified biologist shall complete an impact assessment for burrowing owl. The impact assessment shall evaluate all factors that could affect burrowing owls on the Project site and include mitigation measures, if appropriate. Examples include, but are not limited to, avoidance of occupied burrows during the nesting period of February 1 to August 31, avoidance of occupied burrows during non-breeding season, pre-construction surveys, site surveillance, use of buffer zones or visual screens, and burrow exclusion.

If habitat loss or degradation occur on the Project site, the impacts to burrowing owl shall be mitigated to less-than-significant. A mitigation monitoring and reporting plan shall be developed and submitted to CDFW for approval prior to Project implementation.

All habitat assessment, pre-construction survey protocols, impact assessment, reporting requirements, and mitigation guidance can be found in the Staff Report on Burrowing Owl Mitigation dated March 7, 2012. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>."

Comment 1g: Giant garter snake avoidance measures should be incorporated in the IS/MND

If SJMSCP does not cover the Project, then CDFW recommends the following specific and enforceable measures for Giant garter snake be incorporated into a revised and recirculated IS/MND to avoid impacts:

“Giant Garter Snake Exclusion Fencing - At least 15 days prior to the initiation of Project activities an exclusion fencing system shall be installed surrounding the Project site(s), and access routes as appropriate. In addition, the following criteria for the exclusion fencing system shall be met:

- *The exclusion fencing shall consist of material appropriate for exclusion of special-status species that have the potential to occur on-site (excluding avian species).*
- *The exclusion fencing shall either measure at least 36 inches tall above the soil surface or be of an appropriate height for exclusion of special-status species that have the potential to occur on-site (excluding avian species).*
- *The bottom of the exclusion fencing shall not allow wildlife to pass through gaps or holes.*
- *The exclusion fencing shall be taut between the supporting stakes and shall have the supporting stakes oriented on the inside edge of the Project site(s).*
- *The exclusion fencing shall feature one-way escape doors or an appropriate design for preventing special-status species and other wildlife from being trapped within the Project site(s).*
- *Fencing system entry/exit points for vehicular and pedestrian traffic shall be constructed so wildlife cannot access the Project site(s) during non-work hours.*

Small Mammal Burrows - A qualified biologist shall identify and flag all potential small mammal burrows within 200 feet of giant garter snake habitat within the Project site. When burrows cannot be avoided, they shall be hand excavated under the supervision of the qualified biologist prior to Project activities. Following excavation, the qualified biologist shall block holes or burrows that appear to extend under exclusion fencing to minimize giant garter snake movement into the Project site.

Giant Garter Snake Exclusion Fencing Maintenance and Monitoring - The qualified biologist shall inspect the exclusion fencing before the start of each workday, and during and after rain events. The fencing shall be inspected and maintained daily, and any damage to the barrier shall be repaired immediately to ensure that it is functional and without defects. The fencing material shall be maintained in a taught condition, and the bottom edge of the fencing material shall remain buried. Vegetation within one meter on the side of the fence away from the Project site shall be maintained at a maximum height of four inches, with the intention that vegetation shall not allow for giant garter snake to traverse.

Giant Garter Snake Observations - If a snake species of any kind is observed within the Project site, then all Project activities shall halt and work shall not continue until the snake species is identified by a qualified biologist. If giant garter snake is discovered at any time within the Project site and staging areas, then all Project activities shall halt until CDFW has been notified and the Project proponent can demonstrate compliance with CESA to CDFW's satisfaction. CDFW reserves the right to provide additional giant garter snake protection

measures in the event of a giant garter snake detection. If take of giant garter snake is expected to occur as a result of Project activities, then an ITP is recommended.”

Comment 1e: IS/MND does not mitigate for impacts to nesting birds

The IS/MND does not analyze Project impacts to nesting birds or provide mitigation measures to reduce impacts to a level of less-than-significant. The Project may adversely impact nesting birds through direct take by removal of vegetation within the Project site, and by resulting in nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates), temporary loss of nesting habitat, and breeding and foraging disturbance through Project activities. CDFW recommends the IS/MND be revised to analyze impacts to nesting birds.

If the analysis identifies impacts to nesting birds, then CDFW recommends the following specific and enforceable measures for nesting birds be incorporated into a revised and recirculated IS/MND to avoid impacts:

“Nesting Bird Assessment and Avoidance - Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a qualified biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The qualified biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight (48) hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the Project site shall be monitored by the qualified biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable.”

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

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form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the revisions to mitigation measures, described above, be incorporated as enforceable conditions into the revised IS/MND. CDFW appreciates the opportunity to comment on the IS/MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or Jeanette.Griffin@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

ec: State Clearinghouse

Steve Mayo, Mayo@sjcog.org