From: Wood, Dylan@Wildlife
To: srjohnson@cityofsacramento.org
Cc: Wildlife R2 CEQA; OPR State Clearinghouse
Subject: Comments on the Draft Environmental Report for the Innovation Park Planned Unit Development (SCH: 2019039011)
Date: Monday, January 3, 2022 1:15:51 PM
Attachments: image001.png

Dear Mr. Johnson:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from the City of Sacramento (City) for the Innovation Park Planned Unit Development (Project), formerly known as the Natomas Arena Reuse Planned Unit Development Project.

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 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. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, 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 Project site is a 183.8-acre site located within the City of Sacramento's North Natomas community in the northwestern portion of the city. The site is situated within a larger area bounded by Del Paso Road to the north, Truxel Road to the east, Arena Boulevard to the south, and East Commerce Way to the west. Within this larger area, a ring of parcels surrounds the site of the proposed planned unit development (PUD). Current development within the proposed Project site

includes the Sleep Train Arena building, the former Sacramento Kings practice facility, parking areas, partially developed areas and fully undeveloped areas at the northernmost end of the Project site.

The proposed PUD provides a framework for a community defined by districts. The PUD provides for a total of three distinct districts: Health; Life; and Innovation.. The Health District would contain a hospital and medical campus, complementary commercial, retail, medical office, residential uses for active seniors, medical focused education facilities, and residences for students, faculty and faculty family members. Outdoor spaces and other public gathering places would be provided that foster connection to the surrounding districts. The Life District incorporates the area east of Innovator Drive and may include but is not limited to a mix of neighborhoods, a park and plaza, a school, a hotel and local serving retail. It would include vibrant higher density urban residential areas in the core of Innovation Park, graduating to quieter, less dense neighborhoods within, and feature a prominent urban plaza and nature park. The Innovation District would include a mix of higher intensity uses focused on innovation, including office, and residential mixed-use.

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. Suggested revisions to text are marked with additions in **bold underline.**

Comment 1: Revisions needed to mitigate potential impacts to nesting birds to a level of less-than-significant.

Mitigation Measure 4.3.2(a) describes surveys and associated responses to assess and reduce impacts to nesting birds. However, the Project site contains a unique pond feature that currently supports over 100 heron and egret nests, therefore CDFW recommends additional protections for rookery species as outlined in the suggested revision below. The revisions are intended to reduce impacts to the rookery during the sensitive breeding period, as well as to any herons and egrets that potentially occupy the rookery area as year-round residence. While many herons and egrets are migratory, ample food supply and refuge habitat in the Natomas Basin may contribute to yearlong presence of the birds in the rookery area.

***Text from the EIR**:*
Construction activities associated with clearing and grubbing, tree removal, demolition of buildings or other structures (including demolition by implosion), and removal of riparian woodland/filling of the pond shall occur outside of the nesting season that encompasses all birds (September 16 through January 31), unless the following measures are complied with. If vegetation removal begins during the nesting season (February 1 to September 15), the project applicant shall retain a qualified biologist to conduct a preconstruction survey for active nests in suitable nesting habitat within 500 feet of the construction area for nesting raptors and migratory birds. **If removal of riparian woodland/filling of the pond begins during the non-nesting season (September 15 to January 31), the project applicant shall retain a qualified biologist to conduct a preconstruction survey for active rookery use within the riparian woodland/pond.** The preconstruction survey shall be conducted within five days before the start of ground-disturbing activities. If the preconstruction survey shows that there is no evidence of active nests **or active rookery use**, a letter report shall be submitted to the City for its records within 14 days of the survey and no additional measures are required. If construction activities do not begin within five days of the preconstruction survey, or if

construction halts for more than five days, an additional preconstruction survey is required within five days of the initiation or re-initiation of construction activities.

If active nests are found during the survey, the project proponent shall implement mitigation measures to ensure that the species will not be adversely affected, which will include establishing a no-work buffer zone, as approved by the City in consultation with the CDFW and USFWS, around the active nest. Measures will include, but not be limited to:

1. The project proponent shall maintain **a sufficient buffer around the active nest to ensure impacts to nests are avoided. The buffer size shall be determined in consultation with a qualified biologist based on site-specific conditions such as proximity to novel stimuli, natural shielding, etc. The minimum buffer size should be no less than** a 500-foot buffer around each active raptor nest and a 100-foot buffer around the black-crowned night heron and cattle egret rookery (during nesting season)**; however, larger buffers may be needed depending on the sensitivity of any birds onsite**. No construction activities shall be permitted within this buffer. For other nesting migratory and passerine birds, a no-work buffer zone shall be established around the active nest, as determined by the City in consultation with **a qualified biologist**, CDFW and/or USFWS. The no-work buffer may vary depending on species and site-specific conditions, as determined by the City in consultation with **a qualified biologist**, CDFW and USFWS.
2. Depending on conditions specific to each nest, and the relative location and rate of construction activities, it may be feasible for construction to occur as planned within the buffer without affecting the breeding effort. In this case (to be determined on a case-by-case basis), a qualified biologist shall monitor the nest(s) during construction within the buffer. If, in the professional opinion of the monitor, the project would affect the nest, the biologist shall immediately inform the construction manager and the project proponent shall notify the City's Planning Director. The construction manager shall stop construction activities within the buffer until the nest is no longer active. Completion of the nesting cycle shall be determined by the qualified biologist. If construction begins outside of the migratory bird breeding season (February 1 through August 31), the applicant is permitted to continue construction activities in the existing active construction footprint. However, an additional nesting bird survey shall be conducted if construction is expected to extend outside of the active construction footprint **and the applicant is required to comply with bird protection measures of the Migratory Bird Treaty Act and the California Fish and Game Code, regardless of the time of year**.
3. Mitigation Measure 4.7-1(a), item viii (see Section 4.7, Noise and Vibration), which requires employment of noise reducing pile installation techniques, shall be implemented for construction activities that include pile driving.

If active rookery use is found outside the nesting season, the project proponent shall implement mitigation measures to ensure that the species will not be adversely affected, which will include establishing a no-work buffer zone, as approved by the City in consultation with a qualified biologist, CDFW and/or USFWS, around the active rookery. Measures will include, but not be limited to:

1. **In consultation with a qualified biologist, CDFW and/or USFWS, the project proponent shall develop a rookery impact reduction plan (Plan). The Plan shall detail the use of the rookery site outside of nesting season, propose strategies for reducing impacts to resident birds, and to ensure take of the species does not occur. Such strategies could include but are not limited to:**
    a. **Limiting any vegetation impacts to daylight hours or when birds are away from the rookery site.**
    b. **Progressively limbing any actively used trees that are to be removed over the course of several days as to passively encourage use of other habitats.**
    c. **"Soft-start" initiation of project activities as means to not immediately flush birds using the rookery. "Soft-start" techniques could be implemented by starting lower impact work in the area first or having a small crew walk the area before initiating heavy equipment use.**
    d. **Establishing a no disturbance buffer around any onsite habitat to be protected (i.e., so birds could relocate from one side of the pond to another).**

Comment 2: Revisions needed to mitigate potential impacts to Swainson's hawk (*Buteo swainsoni*) to a level of less-than-significant.

Component 2 of Mitigation Measure 4.3-2(c) describes procedures for implementation in the event an active Swainson's hawk nest is found within the vicinity of the project. Based on the 2020 Implementation Annual Report for the Natomas Basin Habitat Conservation Habitat Conservation Plan (NBHCP), an active Swainson's hawk nest is located within the roadside redwood trees along Del Paso Boulevard, approximately 0.3 miles southeast of Arco Arena West Entrance Road. Due to the life history of the species, it is likely that the nesting pair that utilized this territory in 2020 will return in subsequent nesting seasons, including the year in which project activities commence. As such, CDFW recommends a more robust set of conditions be included within Mitigation Measure 4.3-2(c).

Text from the EIR:

If active Swainson's hawk nests are found within 0.25 mile of construction activities, a survey report shall be submitted to CDFW, and an avoidance and minimization plan shall be developed for approval by CDFW before the start of construction. The avoidance plan shall identify measures to minimize impacts on the active Swainson's hawk nest, depending on the exact location of the nest. These measures shall include but not be limited to:

a. All construction personnel shall receive a worker environmental awareness training program from a CDFW- and USFWS-approved biologist before the start of any construction activities.

b. A buffer zone and work schedule shall be established to avoid affecting the nest during critical periods. If possible, no work will occur within 0.25 mile of the nest while it is in active use. If work will occur within 0.25 mile of the nest, construction will be monitored by a qualified biologist on a daily basis to ensure that no work occurs **which will result in take of Swainson's hawk. In consultation with the qualified biologist, the project applicant shall preclude all project activities** within a minimum of 500 feet of the nest during **sensitive periods of the breeding season such as** incubation or within 10 days after hatching. **If during consultation it is determined that implementation of the project as proposed may result in take of Swainson's hawk, the project may seek related take authorization as provided by the Fish and Game Code.**

c. A biological monitor shall conduct regular monitoring of the nest during construction activities.

d. The biologist shall be allowed to halt construction activities if construction activities are disturbing the nest. The biologist will be able to halt construction until she/he has determined that the nest activity is resuming normal activity. Once the biologist determines that normal nesting behavior has resumed, construction activities may recommence.

e. No plastic, monofilament, jute, or similar erosion control matting shall be placed within the project area when working within 200 feet of annual grassland or suitable nest sites. Possible substitutions include coconut coir matting, tackified hydroseeding compounds, or other material approved by CDFW and USFWS.

f. Any trees containing an active Swainson's hawk nest shall be retained during project implementation. Retention of the nest tree includes prohibition of any project-related activity which may inadvertently damage the integrity of the nest tree or the nest

structure, including any activities in the surrounding vicinity that occur outside the Swainson's hawk nesting season. If the nest tree cannot be retained, the project applicant and their qualified biologist shall consult with CDFW and demonstrate compliance with CESA. If during consultation it is determined that implementation of the project as proposed may result in take of Swainson's hawk, the project may seek related take authorization as provided by the Fish and Game Code.
g. All staging and storage areas, including vehicle parking and employee break area shall be located at least 1000 feet from an active Swainson's hawk nest.
h. Any night lighting used during project activities shall be directed away from the active nest or shielded to avoid disturbance of nesting behavior.

Comment 3: CDFW recommends implementation of bird enhancement and mortality reduction strategies.

As described in the EIR, the proposed project footprint will be in the Pacific Flyway. In addition, the Natomas Basin is a regional hotspot for migratory bird activity and special-status species covered under the NBHCP. Placement of buildings in this type of environment may adversely affect bird populations by introducing common sources bird mortalities such as domestic cats for residents at the facility and reflective windows that birds may collide with. Given declines in segments of the overall bird population[1] and ecological benefits of healthy bird activity[2][3][4], CDFW recommends consideration of bird enhancement and mortality reduction strategies in Project design and implementation. Incorporation of these strategies can reduce anthropogenic effects on birds and promote sustainable development in California.

Local bird populations are severely impacted by domestic cats, which are estimated to cause over one billion bird mortalities every year in the United States and may be the single biggest cause of global bird mortality after habitat destruction[5]. Unlike natural predators, whose populations fluctuate with prey levels, cat populations are artificially sustained through introduction of new individuals or feeding of feral individuals. Therefore, cats can contribute not only to direct bird mortality but also to the imbalance of natural factors in the birds' ecosystem. Keeping domestic cats indoors and out of native ecosystems is a key consideration for reducing environmental impacts and promoting responsible pet ownership in the community.

Collisions with clear and reflective sheet glass and plastic is also a leading cause in human-related bird mortalities[6]. Many types of windows, sheet glass, and clear plastics are invisible to birds resulting in casualties or injuries from head trauma after an unexpected collision. Birds may collide with windows as little as one meter away in an attempt to reach habitat seen through, or reflected in, clear and tinted panes, so even taking small measures to increase visibility of windows to birds can make a substantial difference in minimizing long-term impacts of urban development near natural environments.

As such, CDFW recommends the applicant incorporate bird and wildlife friendly strategies:

- An education program for any onsite residents to keep domestic cats indoors
- Install screens, window patterns, or new types of glass such as acid-etched, fritted, frosted,

ultraviolet patterned, or channel. Additional information can be found at https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds/collisions/buildings-and-glass.php.

Incorporation of bird and wildlife friendly strategies not only promotes environmental stewardship but also facilitates compliance with State and federal protections aimed at preserving bird populations.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental documents 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 (CNDDB). The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals. The completed form can be sent electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov.

CONCLUSION

CDFW appreciates the opportunity to provide comments.

Questions regarding this email or further coordination should be directed to Dylan Wood, Environmental Scientist, at 916-358-2384 or dylan.a.wood@wildlife.ca.gov.

Sincerely,

Dylan Wood
California Department of Fish and Wildlife
Environmental Scientist
(916) 358-2384

CALIFORNIA DEPARTMENT OF FISH and WILDLIFE

References:

[1] Douglas W Tallamy, W Gregory Shriver, Are declines in insects and insectivorous birds related?, Ornithological Applications, Volume 123, Issue 1, 1 February 2021.

[2] Maas, B., D. S. Karp, S. Bumrungsri, K. Darras, D. Gonthier, J. C.-C. Huang, C. A. Lindell, J. J. Maine, L. Mestre, N. L. Michel, et al. . (2016). Bird and bat predation services in tropical forests and agroforestry landscapes. Biological Reviews 91:1081–1101.

[3] Wenny, D. G., Ç. H. Şekercioğlu, N. J. Cordeiro, H. S. Rogers, and D. Kelly (2016). Seed dispersal by fruit-eating birds. In Why Birds Matter: Avian Ecological Function and Ecosystem Services (Ç. H. Şekercioğlu, D. G. Wenny, and C. J. Whelan, Editors). University of Chicago Press, IL, USA. pp. 107–146.

[4] Fujita, M., and K. O. Kameda (2016). Nutrient dynamics and nutrient cycling by birds. In Why Birds Matter: Avian Ecological Function and Ecosystem Services (Ç. H. Şekercioğlu, D. G. Wenny, and C. J.

Whelan, Editors). University of Chicago Press, IL, USA. pp. 271–297.

[5] Dauphine, N. and Cooper, R.J. (2009) Impacts of Free-Ranging Domestic Cats (*Felis catus*) on Birds in the United States: A Review of Recent Research with Conservation and Management Recommendations. Warnell School of Forestry and Natural Resources, University of Georgia.

[6] Klem, D. (2009). Avian Mortality at Windows: The Second Largest Human Source of Bird Mortality on Earth. Acopian Center for Ornithology, Department of Biology, Muhlenberg College, Allentown, Pennsylvania.

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[1] Douglas W Tallamy, W Gregory Shriver, Are declines in insects and insectivorous birds related?, Ornithological Applications, Volume 123, Issue 1, 1 February 2021.

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[6] Klem, D. (2009). Avian Mortality at Windowns: The Second Largest Human Source of Bird Mortality on Earth. Acopian Center for Ornithology, Department of Biology, Muhlenberg College, Allentown, Pennsylvania.