



S J C O G, Inc.

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San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project SJMSCP Incidental Take Minimization Measures (APN: 003-060-24)

Date: September 19, 2014

Findings: Potential Swainson's hawk nesting/foraging habitat, western pond turtle habitat, colonial nesting birds habitat, birds nesting along riparian corridors, and riparian habitats and other non-vernal wetlands habitat

Total Disturbed Acres Anticipated: 1 acre

Habitat Types to be Disturbed: Natural (O/G - 0.77 acres; R – 0.23 acres) Habitat Land

Project Jurisdiction: San Joaquin County

Advisory Statements

After inspecting the project site, and project site conditions, the San Joaquin Council of Governments (SJCOG) provides the following *advisory statements* to the applicant. No further action is required with the SJCOG with respect to the following statements. SJCOG does not accept any liability for the accuracy of these statements since each regulatory agency discussed below must determine the extent of its own regulatory authority with respect to the proposed project.

It should be noted that two important federal and state agencies (U.S. Army Corps of Engineers and the California Regional Water Quality Control Board) and California Department of Fish and Wildlife Streambed Alteration requirements have not issued permits to the SJCOG and so payment of the fee to use the SJMSCP will not modify requirements (1600/1602) now imposed by these agencies. **If potential waters of the United States [pursuant to Section 404 Clean Water Act] may occur on the project site**, it therefore may be prudent to obtain a preliminary wetlands map from a qualified consultant. If waters of the United States are confirmed on the project site, the Corps and the Regional Water Quality Control Board (RWQCB) would have regulatory authority over those mapped areas [pursuant to Section 404 and 401 of the Clean Water Act respectively] and permits would likely be required from each of these resource agencies prior to impacting these features on the project site.

The ITMM is not deemed complete until finalized by SJCOG, Inc. staff and provided back to the project.

Conditions

Prior to ground disturbance:

1. Incidental Take Minimization Measures (ITMMs) will be issued to the project and must be signed by the project applicant prior to any ground disturbance but no later than six (6) months from receipt of the ITMMs. If ITMMs are not signed within six months, the applicant must reapply for SJMSCP Coverage. Upon receipt of signed ITMMs from project applicant, SJCOG, Inc. staff will sign the ITMMs. This is the effective date of the ITMMs.
2. Under no circumstance shall ground disturbance occur without compliance and satisfaction of the ITMMs.
3. Upon issuance of fully executed ITMMs and prior to any ground disturbance, the project applicant must:
 - a. Post a bond for payment of the applicable SJMSCP fee covering the entirety of the project acreage being covered (the bond should be valid for no longer than a 6 month period); or
 - b. Pay the appropriate SJMSCP fee for the entirety of the project acreage being covered; or
 - c. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - d. Purchase approved mitigation bank credits.
4. Within 6 months from the effective date of the ITMMs or issuance of a building permit, whichever occurs first, the project applicant must:
 - a. Pay the appropriate SJMSCP for the entirety of the project acreage being covered; or
 - b. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - c. Purchase approved mitigation bank credits.

Failure to satisfy the obligations of the mitigation fee shall subject the bond to be called.

Pay appropriate SJMSCP 2014 fees based on habitat categories and rates to **SJCOG, Inc.**:

- Natural Habitat – 1 acre x \$13,295 per acre = **\$13,295.00**

Total Fee due: \$13,295.00

Note: If fees are not paid prior to January 1, 2015 this project will be subject to the subsequent fee change, and the fee above will no longer be applicable.

Project Proponent Must Initial Here As to Understanding the Note Above: _____

Prior to commencing ground disturbance:

5.2.4.11 Swainson's hawk

The Project Proponent has the option of retaining known or potential **Swainson's hawk** nest trees (i.e., trees that hawks are known to have nested in within the past three years or trees, such as large oaks, which the hawks prefer for nesting) or removing the nest trees.

If the Project Proponent elects to retain a nest tree, and in order to encourage tree retention, the following Incidental Take Minimization Measure shall be implemented during construction activities:

If a nest tree becomes occupied during construction activities, then all construction activities shall remain a distance of two times the dripline of the tree, measured from the nest.

If the Project Proponent elects to remove a nest tree, then nest trees may be removed between September 1 and February 15, when the nests are unoccupied.

These Incidental Take Minimization Measures are consistent with the provisions of the **Migratory Bird Treaty Act as described in Section 5.2.3.1(G)**.

5.2.4.10 Pond Turtles

When nesting areas for pond turtles are identified on a project site, a buffer area of 300 feet shall be established between the nesting site (which may be immediately adjacent to wetlands or extend up to 400 feet away from wetland areas in uplands) and the wetland located near the nesting site. These buffers shall be indicated by temporary fencing if construction has or will begin before nesting periods are ended (the period from egg laying to emergence of hatchlings is normally April to November).

5.2.4.16 Colonial Nesting Birds (Tricolored Blackbird, Black-Crowned Night Heron, Great Blue Heron)

Acquisition of colonial nesting sites for these species is a high priority of the SJMSCP. Project Proponents shall be informed of avoidance measures which eliminate compensation requirements for disturbance of colonial nesting areas in project design, as described in Section 5.5.9. If the Project Proponent rejects acquisition and avoidance, pursuant to Section 5.5.9, then the following Incidental Take Minimization Measure shall apply:

A setback of 500 feet from colonial nesting areas shall be established and maintained during the nesting season for the period encompassing nest building and continuing until fledglings leave nests. This setback applies whenever construction or other ground-disturbing activities must begin during the nesting season in the presence of nests which are known to be occupied. Setbacks shall be marked by brightly colored temporary fencing.

These Incidental Take Minimization Measures are consistent with the provisions of the **Migratory Bird Treaty Act as described in Section 5.2.3.1(G)**.

5.2.4.19 Birds Nesting Along Riparian Corridors (Cooper's Hawk, Yellow-Breasted Chat, Osprey, White-Tailed Kite)

A. For white-tailed kites, preconstruction surveys shall investigate all potential nesting trees on the project site (e.g., especially tree tops 15-59 feet above the ground in oak, willow, eucalyptus, cottonwood, or other deciduous trees), during the nesting season (February 15 to September 15) whenever white-tailed kites are noted on site or within the vicinity of the project site during the nesting season.

B. For the Cooper's hawk, yellow-breasted chat, osprey and white-tailed kite, a setback of 100 feet from nesting areas shall be established and maintained during the nesting season for the period encompassing nest building and continuing until fledglings leave nests. This setback applies whenever construction or other ground-disturbing activities must begin during the nesting season in the presence of nests which are known to be occupied. Setbacks shall be marked by brightly colored temporary fencing.

These Incidental Take Minimization Measures are consistent with the provisions of the **Migratory Bird Treaty Act as described in Section 5.2.3.1(G)**.

5.2.4.31 Riparian Habitats and Other Non-Vernal Pool Wetlands

For the purposes of implementing Incidental Take Minimization Measures, riparian habitats and "other nonvernal pool wetlands" shall be considered to be those habitats mapped on the SJMSCP Vegetation Maps as D (drainage ditch), R (Great Valley riparian forest), R2 (Great Valley Valley oak riparian forest), R3 (Great Valley cottonwood riparian forest), R4 (Arroyo willow thicket), S (Great Valley riparian scrub), S2 (Elderberry savannah), W (River or deep water channel - greater than 200 feet wide), W2 (Tributary stream - 100 to 200 feet wide), W3 (Creek - 20 to 100 feet wide), W4 (dead-end slough), W9 (Canal - if not cement lined), I (channel island), I2 (tule island and mud flat), W5 (freshwater lake or pond), W7 (freshwater emergent wetland).

The compensation requirements of the SJMSCP shall be triggered when the project design disturbs portions of the project site located within 100 feet of the outer edge of the drip lines of riparian vegetation. For the purposes of accounting pursuant to the Annual Report (Section 5.9.1), Open Space Conversion acreage subject to the SJMSCP shall be calculated from the point at which a development extends into the 100 foot buffer to the centerline of the subject drainage (other than a river). For rivers, lakes, or ponds, Incidental Take shall be calculated from the edge of the 100 foot buffer zone to the edge of the riparian vegetation as it extends into the river, lake, or pond.

For projects affecting riparian habitats:

- A. Require appropriate erosion control measures (e.g., hay bales, filter fences, vegetative buffer strips or other accepted equivalents) to reduce siltation and contaminated runoff from project sites.
- B. Retain emergent (rising out of water) and submergent (covered by water) vegetation.
- C. Retain vegetation as practical within the constraints of the proposed development as determined by the JPA with the concurrence of the Permitting Agencies' representatives on the TAC. Rapidly sprouting plants, such as willows, should be cut off at the ground line and root systems left intact, when removal is necessary.
- D. Locate roadways and other facilities perpendicular, rather than adjacent, to waterways to reduce the total riparian area disturbed wherever practical within the constraints of the proposed development as determined by the JPA with the concurrence of the Permitting Agencies' representatives on the TAC.
- E. Locate bridge and road footings outside of high water zones and riparian habitats wherever practical within the constraints of the proposed development as determined by the JPA with the concurrence of the Permitting Agencies' representatives on the TAC.
- F. Provide construction buffers of at least 100 feet throughout the construction process. Construction buffers of 300 feet (on both sides of riparian corridors, for a total of 600 feet) are required when the red-legged frog or foothill yellow-legged frog occupy the project site. These 300' setbacks shall be measured horizontally from the top of the bank and shall extend the entire length of the stream (or other linear wetlands) within the boundaries of the project site. These setbacks may be reduced by the TAC with the concurrence of the Permitting Agencies' representative on the TAC if the reduction: 1) does not affect habitat (e.g., the stream becomes piped and travels underground) or 2) the reduction will not result in an adverse impact to the species or reduction in the biological values of the habitat. This buffer area should be marked with stakes, fencing or other materials which will be visible to construction workers, including heavy equipment operators.

These buffers may be reduced on a case-by-case basis by the JPA with the concurrence of the Permitting Agencies' representatives on the TAC.

During project construction:

All food-related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers and removed at least once a week from the construction site.

In reliance on the Section 10(a)(1)(B) Permit issued by the United States Fish and Wildlife Service and the Section 2081(b) Incidental Take Permit issued by the California Department of Fish and Wildlife, San Joaquin County has consulted with and agreed to allow coverage pursuant to the SJMSCP for the *North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project*, its successors, agents and assigns pursuant to the "Implementation Agreement for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan" which will allow the *North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project*, its successors, agents and assigns to construct, operate and maintain the Project commonly known as the *North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project* and located on Assessor Parcel Numbers 003-060-24 which could result in a legally permitted Incidental Take of the SJMSCP Covered Species in accordance with and subject to the terms and conditions of the *North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project* approved by San Joaquin County. This Certification applies only to activities on the subject parcel(s) which are carried out in full compliance with the approved plans for the *North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project*, Section 10(a)(1)(B) Permit, and Section 2081(b) Incidental Take Permit conditions.

I have read, acknowledge, and agree to the preceding conditions:

Project Proponent for the *North San Joaquin Water District (NSJWD) Tracy Lakes Recharge Project*

Date

Please Print Name Here

FOR SJCOG, Inc. Use Only:

SJCOG, Inc. Staff Signature

Official Date of Issuance

SJCOG, Inc. Staff Print Name Here

Mitigation Due Date