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| Docket Number: | 19-SPPE-01 |
| Project Title: | Laurelwood Data Center (MECP I Santa Clara I, LLC) |
| TN #: | 229508 |
| Document Title: | Laurelwood Data Center Comments on Staff's Draft Mitigation Measures |
| Description: | N/A |
| Filer: | Jerry Salamy |
| Organization: | Jacobs |
| Submitter Role: | Applicant Consultant |
| Submission Date: | 8/22/2019 1:23:07 PM |
| Docketed Date: | 8/22/2019 |

Lisa Worrall
California Energy Commission
1516 9th St., MS-46
Sacramento, CA 95814

August 22, 2019

Subject: Laurelwood Data Center (19-SPPE-01) Comments on Draft Biological Resources and Cultural/Tribal Cultural Resources Mitigation Measures

Dear Ms. Worrall,

The Applicant has reviewed the Draft Biological Resources and Cultural/Tribal Cultural Resources Mitigation Measures presented in Staff's August 16, 2019 filing (Transaction Number 229473). After careful review, we have identified several minor refinements to the proposed measures. These proposed refinements are presented in Attachment 1. We look forward to discussing these refinements at the Workshop on August 26, 2019.

Please contact me if you have any questions about the information contained in this submittal.

Regards,



Jerry Salamy
Jacobs, Principal Project Manager

Attachment

Copies to: Matt Muell/EdgeCore
Garrison Beall/EdgeCore
Wylie Nelson/EdgeCore
Jeff Harris/ESHD

Attachment 1 – Applicant’s Proposed Refinements to Draft Mitigation Measures

MM BIO-1: Nesting bird avoidance and mitigation

1. If work is scheduled during the nesting season (February 1 through August 31), pre-construction nest detection surveys will be conducted by a qualified biologist, with a bachelor's degree or above in a biological science field and demonstrated field expertise in ornithology, in particular, nesting behavior. Surveys of suitable habitat areas (excluding roadways with curb to curb pavement, sidewalks, interstates, fully developed commercial/industrial areas and similar areas) will be conducted within 300 feet of the proposed project construction including staging, grading, site excavation and improvements, and the transmission line extension, or as directed by the local permitting agency. Surveys will occur at least 14 days prior and again 24 hours prior to initial ground disturbance activities, or as directed by the local permitting agency. Nest surveys will be accomplished by ground surveys and will support phased construction, with surveys scheduled to be repeated if construction lapses in a work area for 15 days between March and July. Any habitat areas adjacent to the project site but not publicly accessible will be surveyed with binoculars.
2. If active nests containing eggs or young are found on areas controlled by the Project Owner, the biologist will establish a species- appropriate nest buffer informed by the following **Table 5.4-1**, or as directed by the local permitting agency. Where warranted, the qualified biologist may increase or decrease the standard buffers based on an assessment of the individual circumstances of the nest. Nesting pair acclimation to disturbance in areas with regularly occurring human activities will be considered when establishing nest buffers. The established buffers will remain in effect until the young have fledged or the nest is no longer active as confirmed by the qualified biologist. Active nests will be periodically monitored until the qualified biologist has determined that the young have fledged or once construction ends. Hand removal of vegetation within nest buffers may be done at the discretion of the qualified biologist. Inactive nests may be removed upon a written determination by the qualified biologist that the nest and any eggs present are no longer viable. The qualified biologist will have authority to order the cessation of nearby project activities if nesting pairs exhibit signs of disturbance.

TABLE 5.4-1 AVIAN NEST BUFFERS

| Avian Group | Species Potentially Nesting in the Project Vicinity | Buffer for Construction Activities (feet) |
|----------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Bitterns and herons | Black-crowned night heron, great blue heron, great egret, green heron, snowy egret | 250 |
| Cormorants | Double-crested cormorant | 100 |
| Doves | Mourning dove | 25 |
| Geese and ducks | American widgeon, blue-winged teal, cinnamon teal, Canada goose, gadwall, mallard, northern pintail, ruddy duck | 100 |
| Grebes | Clark's grebe, eared grebe, horned grebe, pied-billed grebe, western grebe | 100 |
| Hummingbirds | Allen's hummingbird, Anna's hummingbird, black-chinned hummingbird | 25 |
| Plovers | Killdeer | 50 |
| Raptors (Category 1) | American kestrel, barn owl, red-tailed hawk | 50 |
| Raptors (Category 2) | Cooper's hawk, red-shouldered hawk, sharp-shinned hawk | 150 |

TABLE 5.4-1 AVIAN NEST BUFFERS

| Avian Group | Species Potentially Nesting in the Project Vicinity | Buffer for Construction Activities (feet) |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Raptors (Category 3) | Northern harrier, white-tailed kite, burrowing owl | Special-status species; buffer determined in consultation with permitting agency, CDFW and as specified in MM BIO-2 for burrowing owl. |
| Stilts and Avocets | American avocet, black-necked stilt | 150 |
| Terns | Elegant tern, Forster's tern, royal tern | 100 |
| Passerines (cavity and crevice nesters) | House wren, Say's phoebe, western bluebird | 25 |
| Passerines (bridge, culvert, and building nesters) | Black phoebe, cliff swallow, house finch, Say's phoebe | 25 |
| Passerines (ground nesters, open habitats) | Horned lark | 100 |
| Passerines (understory and thicket nesters) | American goldfinch, blue-gray gnatcatcher, bushtit, California towhee, common yellowthroat, red-winged blackbird, song sparrow, Swainson's thrush | 25 |
| Passerines (scrub and tree nesters) | American crow, American goldfinch, American robin, blue-gray gnatcatcher, Bullock's oriole, bushtit, Cassin's kingbird, common raven, hooded oriole, house finch, lesser goldfinch, northern mockingbird | 25 |
| Passerines (tower nesters) | Common raven, house finch | 25 |
| Passerines (marsh nesters) | Common yellowthroat, red-winged blackbird | 25 |
| Species not covered under MBTA | Domestic waterfowl, including domesticated mallards, feral (rock) pigeon, European starling, and house sparrow | N/A |

- The qualified biologist shall prepare a technical memorandum documenting the result of the survey and any designated buffer areas, to be submitted **as directed by** ~~to~~ the local permitting agency prior to the start of ground disturbing activities.

MM BIO-2: Burrowing owl avoidance and mitigation. Surveys for burrowing owl shall be conducted by a qualified biologist, with a bachelor's degree or above in a biological science field and demonstrated field expertise in ornithology, and in particular, nesting behavior. Surveys **of suitable habitat areas (excluding roadways with curb to curb pavement, sidewalks, interstates, fully developed commercial/industrial areas and similar areas)** shall be conducted within 300 feet of the proposed project construction including staging, grading, site excavation and improvements, and the transmission line extension, **or as directed by the local permitting agency.** Surveys shall be conducted in accordance with the most recent California Department of Fish and Wildlife (CDFW) guidance (current guidance: CDFW 2012). Any habitat areas adjacent to the project site but not publicly accessible will be surveyed with binoculars. Surveys, avoidance and mitigation shall be conducted according to the parameters and limitations listed below, depending on the time of year:

- Breeding Season (February 1 through August 31):** Pre-construction surveys for burrowing owls shall be performed at least 14 days prior and again 24 hours prior to initial ground disturbance activities, **or as directed by the local permitting agency.**

1. Any occupied burrows shall not be disturbed and shall be provided with a 250-foot protective buffer on areas controlled by the Project Owner until and unless modified by the local permitting agency (City of Santa Clara) in consultation with CDFW, or unless a qualified biologist approved by the local permitting agency verifies through non-invasive means that either: (1) the birds have not begun egg laying, or (2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Once the fledglings in an active burrow are capable of independent survival, a Burrowing Owl Exclusion Plan (BOEP) is developed and approved by the local permitting agency, and habitat is mitigated in accordance with the California Department of Fish and Wildlife (CDFW) staff report guidance (CDFW 2012), then the burrow may be destroyed. Pre-construction surveys following destruction of burrows and prior to initial construction activities are required (24 hours prior) to ensure owls do not re-colonize the project.

2. If project activities are delayed or suspended for more than 15 days during the breeding season, surveys shall be repeated.

- B. Non-breeding Season (September 1 through January 31): Pre-construction surveys following the staff report on burrowing owls (CDFW 2012) shall be performed prior (at least 14 days prior and again 24 hours prior) to initial ground disturbance activities or as directed by the local permitting agency. Burrowing owls may be evicted via passive exclusion after a BOEP is developed and approved by the local permitting agency, and habitat is mitigated in accordance with the CDFW staff report (CDFW 2012).

Pre-construction surveys following destruction of burrows are required 24 hours prior to initial construction activities to ensure owls do not re-colonize the project. If owls are found within 160 feet of the project, it is recommended that visual screens or other measures be implemented to limit disturbance of the owls without evicting them from the occupied burrows.

If no burrowing owls are detected, no further measures are required. If burrowing owls are detected, no construction activities will occur within 250 feet of occupied burrows during the breeding season or within 160 feet of occupied burrows during the non-breeding season. The size of any avoidance buffer may be increased or decreased as determined by the qualified biologist based on the planned construction activities and the sensitivity of the burrowing owls. Additionally, burrowing owls shall be monitored by a qualified biologist during construction to assess the sensitivity of the burrowing owls to the construction activities. During the non-breeding season passive relocation may be conducted in accord with an approved BOEP.

If a burrowing owl is observed at the project at any time during construction, then a buffer area shall be established in accord with the above seasonal criteria (consistent with CDFW 2012 guidance) until the animal can be passively relocated out of the construction area.

MM CUL-1: The applicant will secure the services of a Secretary of the Interior-qualified archaeologist and a Native American monitor, as directed by the local permitting agency, to observe grading of native soil once all pavement is removed from the project site. The applicant shall submit the name and qualifications of the selected archaeologist and Native American Monitor to the local permitting agency for approval. Director of Community Development prior to the issuance of a grading permit. Preference in selecting Native American monitors shall be given to Native Americans with:

- ~~1. Traditional ties to the area being monitored.~~
- ~~2. Knowledge of local historic and prehistoric Native American villagesites.~~
- ~~3. Knowledge and understanding of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.~~
- ~~4. Ability to effectively communicate the requirements of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.~~
- ~~5. Ability to work with law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.~~
- ~~6. Ability to travel to project sites within traditional tribal territory.~~
- ~~7. Knowledge and understanding of Title 14, California Code of Regulations, section 15064.5.~~
- ~~8. Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding CEQA mitigation provisions.~~
- ~~9. Ability to read a topographical map and be able to locate site and reburial locations for future inclusions in the Native American Heritage Commission's Sacred Lands Inventory.~~
- ~~10. Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.~~

After removal of pavement and prior to grading, the archaeologist shall conduct a pedestrian survey over the exposed soils to determine if any surface archaeological manifestations are present. The archaeologist will monitor full-time all grading and ground-disturbing activities in native soils associated with construction of the proposed project. If the archaeologist and /or Native American monitor believe that a reduction in monitoring activities is prudent, then a letter report detailing the rationale for making such a reduction and summarizing the monitoring results shall be provided to the Director of Community Development. Department of Parks and Recreation (DPR) 523 forms shall be submitted along with the report for any cultural resources encountered over 50 years old.

If prehistoric and/or historic resources are encountered during construction, all activity within a 50-foot radius of the find will be stopped and the archaeologist and /or Native American monitor will examine the find and record the site, including field notes, measurements, and photography for a DPR 523 Primary Record form. The archaeologist will provide recommendations regarding eligibility for the CRHR, data recovery, curation, or other appropriate mitigation. Ground disturbance within the 50-foot radius can resume once these steps are taken and the City Director of Community Development has concurred with the recommendations.

MM CUL-3: Within ~~3045~~ days of the completion of construction or archaeological/Native American monitoring is terminated, the Applicant will have the archaeologist/Native American monitor prepare a report of findings. The report will document the archaeological/Native American resource finds, if any, recommendations, data recovery efforts, and other pertinent information gleaned during construction. The report shall be submitted as directed by the local permitting agency to the City of Santa Clara's Director of Community Development for review and approval. The Applicant will submit the final report to the NWIC at Sonoma State University.