



S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202 • (209) 235-0600 • FAX (209) 235-0600

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

WQCF - Digester and Digester Control Building Improvements Project

SJMSCP Incidental Take Minimization Measures (APN: 241-300-50)

Date: June 17, 2016

Findings: Potential habitat for Swainson's hawk and nesting birds

Total Disturbed Acres Anticipated: 2.2 acres

Habitat Types to be Disturbed: Agricultural (C34) and Urban (U) Habitat Land (City of Manteca Compensation Map)

Project Jurisdiction: City of Manteca

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 2016 fees based on habitat categories and rates to **SJCOG, Inc.:**

- Agricultural (C34) Habitat –0.8 acres x \$15,596 per acre = **\$12,476.80**
- Urban (U) Habitat –1.4 acres x \$0.00 per acre = **\$0.00**

Total Fee due: \$12,476.80

Note: If fees are not paid prior to January 1, 2017 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:

Surveys

Initial and/or follow up surveys shall be conducted no greater than 14 days prior to construction for Swainson's hawk and nesting birds. If these species are observed nesting on the project site then the following Incidental Take Minimization Measures shall be implemented.

5.2.4.11 Swainson's hawk

The row of trees immediately south of the irrigation canal and approximately 200 feet west of the project site could provide potentially suitable nesting habitat. The agricultural field planted in alfalfa provides foraging habitat for 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).

1. If construction is to start between February 1 and August 31, then preconstruction surveys (within 21 days of removal) would be required for nesting **protected raptors** and **Migratory Bird Treaty Act (MBTA)** protected birds.
 - A. If no nesting protected birds are found during the preconstruction surveys then no further Incidental Take Minimization Measures are required.
 - B. If nesting birds covered under the **MTBA** or California Fish and Game Code are found then implement Incidental Take Minimization Measure 5.2.4.15 of the SJMSCP:
 - i. To facilitate compliance with federal and State law (MBTA and CFGC) and prevent impacts to nesting birds, avoid removal of trees, shrubs, or weedy vegetation during the bird nesting period (February 1 through August 31). If no vegetation or tree removal is proposed during the nesting period, no surveys are required. If it is not feasible to avoid the nesting period, a survey for nesting birds shall be conducted by a qualified wildlife biologist no earlier than seven days prior to the removal of trees, shrubs, weedy vegetation, buildings, or other construction activity.
 - ii. Survey results shall be valid for the tree removals for 21 days following the survey. If the trees are not removed within the 21-day period, then a new survey shall be conducted. The area surveyed shall include all construction areas as well as areas within 150 feet outside the boundaries of the areas to be cleared or as otherwise determined by the biologist.

- iii. In the event that an active nest for a protected species of bird is discovered in the areas to be cleared, or in other habitats within 150 feet of construction boundaries, clearing and construction shall be postponed for at least two weeks or until the biologist has determined that the young have fledged (left the nest), the nest is vacated, and there is no evidence of second nesting attempts.

Nesting Birds

Trees north of the project site could provide nesting habitat for birds. Annual grassland/ruderal vegetation south of the project site also provides suitable nesting substrate for ground-nesting bird species. To avoid potential impacts on nesting migratory birds, the following Take Minimization Measures shall be implemented before construction.

A pre-construction survey for nesting birds shall be conducted if construction or soil remediation activity will occur during the breeding season (February 1 through August 31). If active bird nests are detected in trees on or adjacent to the project site (within 100 feet) during the pre-construction survey, 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).

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, City of Manteca has consulted with and agreed to allow coverage pursuant to the SJMSCP for the *WQCF – Digester & Digester Control Building Improvements 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 *WQCF – Digester & Digester Control Building Improvements Project*, its successors, agents and assigns to construct, operate and maintain the Project commonly known as the *WQCF – Digester & Digester Control Building Improvements Project* and located on *Assessor Parcel Numbers 241-300-50* 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 *WQCF – Digester & Digester Control Building Improvements Project* approved by the City of Manteca. This Certification applies only to activities on the subject parcel(s) which are carried out in full compliance with the approved plans for the *WQCF – Digester & Digester Control Building Improvements 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 *WQCF – Digester & Digester Control
Building Improvements 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

