

April 20, 2016

Raney Planning & Management
1501 Sports Drive
Sacramento, CA 95834

Attention: Mr. Nick Pappani

**RE: Peer Review of a Biological Resources Assessment and the U.S. Army Corps of Engineers Wetland Jurisdictional Determination
Lincoln Meadows Project Site, City of Lincoln, California
APN: 021-231-018 (~40 Acres)**

Dear Mr. Pappani:

Monk & Associates, Inc. (M&A) has completed a peer review of the *Biological & Wetland Resources Assessment for the McKim Lincoln Meadows (Placer County) Property* prepared by Barnett Environmental Consulting dated February 15, 2016. M&A also reviewed the August 27, 2015, Preliminary Jurisdictional Determination letter from the U.S. Army Corps of Engineers, Sacramento District. Finally, M&A reviewed the *Arborist Report and Native Oak Tree Inventory* prepared by Edwin E. Stirtz for the project on October 8, 2014. To further understand the project and project site, an M&A biologist and a wetlands specialist/botanist visited the project site on March 28, 2016. During this site survey the entire project site was walked and lists were made of plants and wildlife observed onsite as well as plant communities/ habitats present.

In this letter-report we discuss the peer reviewed reports and information that may have been lacking from those reports and that would be necessary in order for the lead agency to prepare a defensible CEQA document.

1. SPECIAL-STATUS PLANT SURVEYS ARE OUTDATED.

The applicant's biological consultant, Barnett Environmental Consulting, relied on prior consultants' special-status plant surveys (Foothill Associates 2003, ECORP 2006) and did not update the surveys during his field work in 2015. The only visits made by Barnett Environmental Consulting to the project site were in December 2014 and August 2015 which is outside the blooming window of most special-status plants known from Placer County.

The California Department of Fish and Wildlife's (CDFW) 2009 "*Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*" states: "...for some sites, floristic inventories or special status plant surveys may already exist. Additional surveys may be necessary for the following reasons:

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- Surveys are not current¹; or
- Surveys were conducted in natural systems that commonly experience year to year fluctuations such as periods of drought or flooding (e.g. vernal pool habitats or riverine systems); or
- Surveys are not comprehensive in nature; or fire history, land use, physical conditions of the site, or climatic conditions have changed since the last survey was conducted; or
- Surveys were conducted in natural systems where special status plants may not be observed if an annual above ground phase is not visible (e.g. flowers from a bulb); or
- Changes in vegetation or species distribution may have occurred since the last survey was conducted, due to habitat alteration, fluctuations in species abundance and/or seed bank dynamics.

Because California has experienced four consecutive years of drought and 2016 is looking to be a “normal” rainfall year, special-status plant surveys should be conducted on the project site this year to determine if any plant species emerge that may not have come up in past survey years. 2016 surveys would also bring the existing surveys into conformance with the CDFW’s 2009 survey protocol requirement that:

“habitats, such as grasslands or desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment.”

The project site’s wetland and vernal pool habitats support numerous native, annual plant species (personal observation) and thus, **updated special-status plant surveys are warranted** so that the project is not only in conformance with the CDFW’s current survey protocol but also the lead agency has a defensible CEQA document.

It should also be noted that the *Biological & Wetland Resources Assessment* states that Bogg’s Lake hedge hyssop (*Gratiola heterosepala*), a California endangered species, “...can be found in riparian and oaks woodlands. This species requires the presence of the blue elderberry shrub,” page 18 and Table 2. These statements are incorrect. *Gratiola heterosepala* is a vernal pool endemic species. **The project site provides suitable habitat for this endangered species and updated surveys are necessary. These surveys should commence immediately if they haven’t already and continue monthly through June.**

If special-status plants are identified on the project site during the course of 2016 surveys, Barnett Environmental Consulting’s survey report should include mitigation measures that the City can include in their CEQA document to offset the project’s impact on special-status plant species. An example of suitable mitigation measures for special-status plants follows:

¹Habitats, such as grasslands or desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment.

If special-status plant species are found during surveys, those individuals or populations shall be avoided to the maximum degree possible. If avoidance is not possible while otherwise obtaining the project's objectives, then other suitable measures and mitigation shall be developed in consultation with the agencies that are responsible for protection of that plant species based on its protection status [i.e., the City of Lincoln (protected by CEQA), CDFW (protected by California law/regulation), or USFWS (protected by federal law/regulation)]. Appropriate mitigation prescriptions for impacts on special-status plants shall be included as conditions of project approval as detailed below.

A mitigation compliance report shall be submitted to the City planning staff or staff biologist at least 30 days prior to breaking ground. The compliance report shall detail the avoidance and other mitigation measures that have been implemented by the project. The City may approve grading/site disturbance in a quicker timeframe than 30 days if compliance with the mitigation measures can be verified by the City sooner than 30 days.

The following measures shall be implemented if special-status plants are found on the project site:

Initially the feasibility of avoidance shall be evaluated as noted above. If avoidance is not feasible, a mitigation plan shall be developed in consultation with CDFW personnel if it is a state listed (i.e., protected pursuant to the CESA) or a California Native Plant Society (CNPS) Rank 1B or Rank 2 plant. If the plant is state listed, an "incidental take" permit (i.e., a 2081 Agreement) shall be acquired for the project from CDFW prior to any grading within the project area. A copy of this permit shall be provided to the appropriate department within the City prior to any grading within the project area. Any conditions for the project established by CDFW in the 2081 Agreement shall become conditions of the project also enforceable by the City.

If the plant is federally listed (i.e., protected pursuant to the Federal Endangered Species Act), the project sponsor shall formally notify the USFWS within five days of the species finding and this agency's permitting instructions shall be incorporated into the project conditions of approval. As required in-practice by the USFWS, an "incidental take" permit may be necessary from the USFWS for any proposed impacts on any federally listed plants found within the project site. A copy of this permit or a letter from the USFWS that otherwise states this agency is satisfied with the avoidance and/or mitigation measures shall also be provided to the appropriate department at the City prior to the time the project site can be graded.

If a plant is found on the project site that is a CNPS Rank 1B or 2 species, and the species is not otherwise protected pursuant to state or federal regulations, prior to construction within the project area, a qualified botanist shall collect the seeds, propagules, and top soils, or other part of the plant that would ensure successful replanting of the population elsewhere. The seeds, propagules, or other plantable portion of all plants shall be

collected at the appropriate time of the year. Half of the seeds and top soils collected shall be appropriately stored in long-term storage at a botanic garden or museum (for example, Rancho Santa Ana Botanic Garden). The other half of the seeds, propagules, or other plantable portion of all plants shall be planted at the appropriate time of year (late-fall months) in an area of the subject property or off-site, protected property that will not be impacted by the project (if the project has a designated off-site mitigation site for impacts on other special-status species, the plants can be seeded on the mitigation site). This area shall be fenced with permanent fencing (for example, chain link fencing) to ensure protection of the species. The applicant shall hire a qualified biologist to conduct annual monitoring surveys of the transplanted plant population for a five year period and shall prepare annual monitoring reports reporting the success or failure of the transplanting effort. These reports shall be submitted to the City no later than December 1st each monitoring year.

These steps shall be implemented prior to site disturbance. If the seeding/transplanting effort fails, the stored seeds and top soils can be taken out of long-term storage and sown in another location (either onsite or offsite) deemed suitable by the City and CDFW. This seeding effort shall then be monitored for an additional three year period to ensure survivorship of the new population. Annual monitoring reports shall be submitted to the City for the three year period.

A CNDDDB form shall be filled out and submitted to CDFW for any special-status plant species identified within the project site. Any mitigation plan developed in consultation with CDFW or USFWS shall be implemented prior to the initiation of grading or issuance of a development permit.

In lieu of the above prescribed mitigation, as allowed in writing by the City (for CEQA protected species only) and/or CDFW (for CEQA and/or state listed species), mitigation requirements may be satisfied via the purchase of qualified mitigation credits or the preservation of offsite habitat. If the species in question is federally listed, then USFWS would also have to agree in writing typically through issuance of a Biological Opinion that the purchase of qualified mitigation credits or the preservation of offsite habitat would constitute satisfactory mitigation compensation.

The above mitigation measure would reduce impacts to special-status plant species to a level considered less than significant pursuant to CEQA.

2. NO IMPACT ACREAGE FOR WATERS OF THE UNITED STATES

While the *Biological & Wetland Resource Assessment* states that 1.17 acres of waters of the United States have been mapped on the project site, this report does not quantify the number of acres of waters of the United States that would be impacted by the proposed project. This impact needs to be calculated and reported to the City.

3. NO DISCUSSION OF INCIDENTAL TAKE/SECTION 7 CONSULTATION

The *Biological & Wetland Resources Assessment* discusses the project site's waters of the U.S./State and the presence of federally listed vernal pool fairy shrimp (*Branchinecta lynchi*) in these waters of the U.S./State; however, there is no discussion of the federal permitting loop the project applicant will need to go through in order to impact the vernal pool fairy shrimp. That is, there is no discussion of the "incidental take" permitting process or a discussion of Section 7 consultation pursuant to the Federal Endangered Species Act that may be necessary. The applicant needs to be aware of these permitting hurdles and time lines. Additionally, the mitigation prescribed in the *Biological & Wetland Resources Assessment* for impacts to vernal pool fairy shrimp may not be sufficient. The U.S. Fish and Wildlife Service may require a higher mitigation ratio than what has been prescribed (this agency typically requires a 3:1 mitigation ratio or higher for impacts to listed vernal pool Branchiopods). Therefore, it is always best to state that mitigation for impacts to federally listed species (in this case, the federally listed vernal pool fairy shrimp) will be as required by the U.S. Fish and Wildlife Service in the Biological Opinion issued for the proposed project.

4. SWAINSON'S HAWK MITIGATION MEASURES ARE INSUFFICIENT TO OFFSET A PROJECT IMPACT TO A LESS THAN SIGNIFICANT LEVEL

The biology report states that the "...CNDDDB results in Figure 6 show that there have been no occurrences of Swainson's hawk within a two-mile radius of the study area." This absence of records may be the reason why Barnett Environmental Consulting is prescribing less stringent mitigation measures for Swainson's hawk than CDFW standards. However, that reason (if it is the reason) is not sufficient for reducing the agency-required mitigation for a State listed species. In fact, during M&A's CNDDDB research we found recent (2009 and 2003) records for Swainson's hawk within 3 miles of the project site, close enough to warrant thorough project site surveys and follow all CDFW prescribed mitigation for project impacts to nesting and foraging habitat.

Barnett Environmental Consulting has prescribed a 75-foot nesting buffer should Swainson's hawk be identified nesting on the project site. A 75-foot nesting buffer is typically not large enough for a nesting raptor pair *unless* the particular nesting pair is already well-acclimated to noise, ground vibrations and other loud disturbance similar to site grading/construction noise. Thus, we recommend that the mitigation measure for impacts to nesting Swainson's hawks be rewritten to follow the CDFW guidelines.

The CDFW has prepared guidelines for conducting surveys for Swainson's hawk entitled: *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*². These survey recommendations were developed by the Swainson's Hawk Technical Advisory Committee (TAC) to maximize the potential for locating nesting Swainson's

² CDFG (California Department of Fish and Game). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. May 31, 2000. 4 pages.

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hawks, and thus, reduce the potential for nest failures as a result of project activities and/or disturbances. To meet the CDFW's recommendations for mitigation and protection of Swainson's hawks in this guideline, surveys should be conducted by a qualified raptor biologist for a 0.25-mile radius around all project activities and should be completed for at least two survey periods as is found in the CDFW's 2000 survey guidelines (referenced in footnote 2). The guidelines provide specific recommendations regarding the number of surveys based on when the proposed project is scheduled to begin and the time of year the surveys are conducted. A copy of this survey report should be provided to the City of Lincoln prior to starting construction.

If the proposed project could impact the Swainson's hawk, its nest, eggs, or young, the applicant's biologist shall prepare a Swainson's hawk *Monitoring and Habitat Management Plan*. If "take" could occur as determined by a qualified raptor biologist, protective buffers as prescribed in CDFW's 1994 Staff Report³ will need to be established on the project site that will prevent such take from occurring. These protective buffers can be anywhere from ¼- to ½-mile. The protective buffer shall be maintained until such time that the Swainson's hawks have completed their nesting cycle as determined by a qualified raptor biologist. The nest protection buffer shall be coordinated with the CDFW.

The project site's grassland habitat with seasonal wetlands interspersed provides suitable foraging habitat for the Swainson's hawk. Grassland is the natural foraging habitat preferred by Swainson's hawks, with croplands being a good alternative should grassland habitat not be available. Thus, Barnett Environmental Consulting's proposed mitigation for loss of Swainson's hawk foraging habitat is sufficient should Swainson's hawks be identified nesting within 10 miles.

5. GROUND-NESTING AND TREE-NESTING BIRDS (OTHER THAN SWAINSON'S HAWK) ARE NOT ADDRESSED IN THE BIOLOGY REPORT

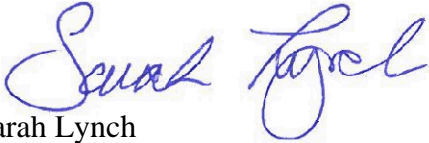
The *Biological & Wetland Resource Assessment* does not address the project's potential impact on ground nesting and tree nesting passerine (perching) birds and raptors. Preconstruction nesting surveys for common and special-status ground nesting birds (such as the horned lark (*Eremophila alpestris*) and northern harrier (*Circus cyaneus*)) and tree nesting birds must be conducted if earth work/construction would take place during the nesting season (March 1-August 31). If nesting birds are identified on the project site or adjacent to the project site (within a sphere of influence), a protective non-disturbance buffer must be established by a qualified biologist and kept in place (fenced) until the young have fledged and are flying well enough to avoid project construction zones.

³ CDFG (California Department of Fish and Game). 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo swainsonii*) in the central valley of California. 14 pps. November 1, 1994.

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This concludes our comments pertaining to the applicant's commissioned reports. If you have any questions, please do not hesitate to contact me at (925) 947-4867, ext. 203 or Sarah@monkassociates.com. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Lynch". The signature is written in a cursive, flowing style.

Sarah Lynch
Associate Biologist