

Response to Comments – Board Agenda Item 4

Addendum Adequacy

In summary, the two comment letters state that the original Bear Creek Redwoods EIR, certified by the Board in 2017, relied on a 2006 biological survey by HT Harvey to establish a baseline, and that bird observations in the project area through platforms such as eBird and iNaturalist constitute a change in circumstances and new information under CEQA. One of the comment letters requests preparation of a Supplemental EIR. The other comment letter requests that construction of the North Parking Area is undertaken outside of the nesting season and that an evaluation of potential impacts to vegetation management associated with fire safety be disclosed.

In response, in addition to the 2006 biological surveys conducted by HT Harvey, record searches conducted in 2015 using the California Natural Diversity Database (CNDDDB) were also incorporated into the 2017 EIR analysis on the Preserve Plan's potential impacts to biological resources.

CEQA does not require agencies to prepare an exhaustive list of species or to append an EIR if new species are observed. The EIR acknowledged that impacts to nesting birds from implementation of the preserve plan would be potentially significant and included appropriate and protective mitigation measures to bring those impacts to a less than significant level. Minor changes proposed to the North Parking Area as detailed in the Addendum do not change that conclusion, and do not necessitate new or revised mitigation measures related to nesting birds.

Additionally, observational applications such as eBird and iNaturalist *would not* constitute “changed circumstances” or “new information of substantial importance” requiring preparation of a supplemental EIR in accordance with CEQA guidelines section 15162.

Furthermore, Wildfire was not a required resource area under CEQA prior to 2019 and thus was not analyzed as a separate resource topic in the Bear Creek Redwoods Preserve Plan EIR. However, Wildland Fire Hazards were analyzed in the Hazards and Hazardous Materials section of the EIR, which concluded that impacts from construction and operation activities would be less-than-significant. Additionally, the District approved its Wildland Fire Resiliency Program in 2021, allowing expansion of the District's vegetation management activities to prevent and reduce wildland fire severity and risk.

Construction Timing

As an industry standard and in compliance with Santa Clara County grading standards, construction is typically conducted between April and October due to the dry conditions. Mitigation measures are applied during breeding season windows as necessary.

Mitigation Measure Accuracy

The EIR is a project level document that established baseline conditions and includes mitigation measures to reduce impacts to nesting birds to a less-than-significant level. Mitigation Measure 4.3-3b is the stated measure for nesting bird protections and surveys in this EIR. Nesting bird surveys for projects within Bear Creek Redwoods OSP are proposed to be more conservative than what is stated in the EIR, with surveys conducted in a range between 24 hours prior to initiation of construction ("construction" includes tree removal), to no more than 14 days prior to the initiation of construction, which is more aligned with the District's standard process and programmatic Avoidance and Minimization Measures.

A consultant will be retained to provide a qualified biologist to perform nesting bird and other species surveys ahead of construction. Surveys are performed around project areas to capture differences in phenology across species (i.e. passerine versus large raptors). If active nests are found, buffer areas ranging from 250-1,000 feet are established around each nest depending on species. Work can occur outside the established protective buffers in which case no monitoring would be required. If work areas occur within protective buffers, the qualified biologist would consult with regulatory agencies for approval to adjust the buffer area under careful and ongoing monitoring by a qualified biologist to ensure nesting birds are not disturbed by work, and work does not result in nest failure. This approach is considered on a case-by-case basis and multiple factors would be considered, including proximity of work to the nest, type of work to occur within the buffer, and wildlife acclimation to ambient disturbance levels. Otherwise, work would not occur within protective buffers until that nest is no longer active or until after the nesting bird season. During the monitoring, the qualified biologist will observe the behavior of the nesting birds, looking for signs of disturbance, such as reduced feeding, flushing from incubation or brooding duties, or other stress responses. The qualified biologist will also determine when each nest fledges or is no longer active to inform project managers.

As is consistent with the mitigation measure, all of these surveys will be completed prior to construction and appropriate actions will be taken to minimize impacts. The EIR is a project level document that conducted a baseline assessment of conditions. Regardless of the list of bird species identified in the EIR, it is the District's standard practice to apply protection buffers for all active bird nests, and to consult with agencies prior to taking action that deviates from the regular course of project implementation, on a case-by-case basis.