

July 30, 2015

Larry Nagel
Unitarian Universalist Church of Berkeley
1 Lawson Road
Kensington, CA 94707
lwn@att.net

Re: Wildlife assessment for Monterey pines scheduled for removal at 1 Lawson Road, Kensington, California

Dear Mr. Nagel:

As per your request, this letter provides a biological assessment of approximately 85 Monterey pine (*Pinus radiata*) trees that are proposed for removal at the Unitarian Universalist Church of Berkeley campus (Study Area) located at 1 Lawson Road in Kensington, Contra Costa County, California. The purpose of the assessment is to address potential adverse impacts to birds and other wildlife resulting from the removal of these trees.

Summary of Findings

WRA conducted a review of background literature to determine if any special-status wildlife species have the potential to be present within the Study Area, and also directly investigated the trees proposed for removal. Other than very rarely and incidentally, no species listed under the federal and/or California Endangered Species Acts have the potential to be present within the Study Area. Two bird species with a less consequential legal status (state Fully Protected and Species of Special Concern, respectively) may be present near the Study Area and forage there, but nesting is less likely. WRA concurs with the arborist report stating that removal of the pines will facilitate the growth of native oaks on-site, and that will be of ultimate benefit to bird populations in the area. If trees are removed during the general bird nesting season (February through August), there is the potential for adverse impacts to bird nests and nesting activities. Therefore WRA recommends that the trees be removed during the non-breeding season (September through January), when pre-construction surveys and nest avoidance measures should not be required.

Tree Removal Background

WRA reviewed the “Tree Management Survey: Unitarian Universalist Church of Berkeley” document by T. C. Ghirardelli (consulting arborist) dated January 20, 2015. The trees in question are all Monterey pines, an introduced (non-native) species that is commonly used for landscape purposes and is also naturalized in many parks and wildlands in the San Francisco Bay area. Mr. Ghirardelli’s report categorizes over 75% of the focal trees as in “poor” or “fair/poor” health, and also provides a retention rating of “poor” for all of these trees. The Ghirardelli report recommends removal of these trees, and also suggests that removal will help establish stands of native oaks on the site, the growth of which is currently suppressed by the

presence of the pines. Mr. Ghirardelli's findings and conclusions are supported in a peer review of his report by James R. Clark (consulting arborist) of Hort Science, dated June 12, 2015.

Wildlife Legal Background

Within the context of environmental review, the term "special-status" is typically used to refer to wildlife (and plant) species¹ with heightened legal protections beyond baseline levels, if any such exist. Special-status species include all those that have been formally listed as Endangered or Threatened, or are formal candidates for such listing, under the respective federal and/or California Endangered Species Acts. The stringent protection offered by listing typically also includes the habitat of the species in question. Also considered special-status are 1) species designated as Fully Protected by the California Department of Fish and Wildlife (CDFW), for which legal "take" (essentially, injury or death) of these species cannot be authorized, and 2) CDFW Species of Special Concern. Although Species of Special Concern generally have no heightened legal status, they are given special consideration under the California Environmental Quality Act.

In addition to regulations for special-status species, most native birds (including non-status species) have baseline protection under the federal Migratory Bird Treaty Act of 1918 (and subsequent amendments) and the California Fish and Game Code, i.e., sections 3503, 3503.5 and 3513. Both the federal statute and state codes prohibit the unauthorized and deliberate "take" of covered species, including their active nests (those with eggs and/or young). It is important to note that, despite its name, the federal statute also covers non-migratory species and individuals. Nesting bird survey requirements are manifested at various regulatory levels, e.g., CDFW Streambed Alteration Agreements, county and municipal permits, and mitigation measures within Environmental Impact Reports.

Given this baseline protection, it is routine for projects under environmental review in California that involve ground disturbance, vegetation removal and/or the demolition of existing structures to be obligated to conduct nesting bird surveys, if impacts are to occur when bird nesting is most likely. Such surveys are also appropriate for most special-status species, although avoidance of federal and/or state listed species typically requires use of specific survey protocols and consultation with the relevant wildlife authorities. Although a few bird species have the potential to nest throughout the year, the vast majority of nesting in California occurs from early spring through summer, and the window in which surveys are required reflects this. In WRA's experience, the window is typically stipulated as February 1 to August 31, meaning that no surveys are required for impacts occurring from September 1 to January 31. In the San Francisco Bay area, virtually all nesting bird activity has ceased by the end of August in any given year.

Methods

Special-status Species Review

To determine if any special-status species have the potential to occur within the Study Area, WRA reviewed the following background literature and resources:

- CDFW's Natural Diversity Database, specifically the "Richmond" U.S. Geological Survey Quadrangle (which includes the Study Area) (CDFW 2015)

¹ In this context, "species" is used broadly to include proper species, subspecies, and also populations that have defining characters based on biology and/ range.

- *California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California* (Shuford and Gardali 2008)
- *Breeding Bird Atlas of Contra Costa County* (Glover 2009)
- eBird.com: an online database of bird observations (eBird 2015)

Site Visit

On July 28, 2015, from 7:15 AM to 9:15 AM, a site visit to the Study Area was conducted by WRA wildlife biologist Claire Woolf. During this site visit, all of the trees scheduled for removal were investigated directly to assess their structure, health, and overall potential to support sensitive wildlife species. Any such species observed were noted. Although not a formal nesting bird survey, any indicators of active bird nesting (breeding bird behavior, the presence of nest structures or suitable tree cavities) were also noted.

Results

Special-status Species Review

According to the Natural Diversity Database, only two federal and/or state listed bird species have been documented in the vicinity of the Study Area; both of these species occur in direct association with tidal and brackish wetlands and thus have no potential to occur within the Study Area. The literature review indicates that several other special-status (non-listed) bird species are known to occur in the vicinity, primarily state Species of Special Concern. However, with two exceptions, none of these species are likely to nest within or even adjacent to the Study Area given that they require specific habitat types (i.e., wetlands, riparian areas, or open grasslands) that are not present there, and/or do not occur in urban areas.

The exceptions are the white-tailed kite (*Elanus leucurus*; Fully Protected) and the olive-sided flycatcher (*Contopus cooperi*; Species of Special Concern). The white-tailed kite is a relatively common year-round resident in the region, occurring in a variety of open habitats including grasslands, marshes, open woodlands, and agricultural areas; this species is a diurnal raptor and builds relatively substantial stick nests in trees, including near development. The olive-sided flycatcher is a summer resident (present spring-summer to breed, but absent the remainder of the year), and occurs in association with intact coniferous and mixed forest, especially forest edges. The Study Area occurs near a relatively large expanse of intact forest, and there are documented observations of this species within 0.5 mile of the Study Area. Although the array of Monterey pines present within the Study Area do not form a facsimile of a true coniferous forest, there is at least some potential for olive-sided flycatcher to utilize these trees, most particularly for foraging (nesting is less likely given the generally unhealthy state of the trees, see below).

Site Visit

During the site visit, the majority of the Monterey pine trees scheduled for removal appeared to be unhealthy, with limited canopies and structure. Despite the presence of many dead or dying limbs, no tree cavities of the kind typically used for bird nesting were observed. Bird activity within the pines was minimal during the site visit, with only a few individuals observed; bird activity was limited to foraging, or simply transiting through the Study Area. No indication of active nesting by any species was observed within the Study Area. One relatively large nest structure was observed in one of the pines, but appeared to be that of squirrels; introduced

(non-native) eastern fox squirrels (*Sciurus niger*) were observed on-site. A second, smaller nest structure was observed in another pine; observations during the site visit indicated that this nest is remnant and no longer active or being attended by any birds.

Overall Assessment

It is my professional opinion that the Monterey pine trees scheduled for removal do not provide habitat for any federal or state listed species, and nor do any such species have the potential to occur within the Study Area other than on a purely incidental basis. Two special-status bird species have the potential to occur in the vicinity of the Study Area (one Fully Protected and the other a state Species of Special Concern), but nesting by these species within the focal trees is unlikely overall given the urban environment and relative unhealthy nature of the on-site tree stands. Regardless, provided that no adverse impacts to nesting birds occurs as a result, there is no indication that removal of these trees will have adverse impacts on local populations of birds, special-status or otherwise.

As stated earlier, Monterey pines are a common local landscape tree and are also present in open space areas. Monterey pines do provide habitat value for birds and other wildlife, e.g., for bird foraging and nesting. However, Monterey pines are also relatively abundant across the urban/suburban landscape, and the net decrease in pines even within the greater Berkeley area due to removal of the Study Area's trees is biologically discountable. In fact, allowing native oaks to regenerate and grow to size (facilitated by pine removal) will likely provide wildlife habitat of even greater value, as native oaks provide most of the same benefits of Monterey pines with the added values of a longer lifespan, greater tendency to develop cavities suitable for bird nesting (and potentially for bat roosting), and the provision of acorn resources that are utilized by a variety of wildlife.

Recommendations

As discussed under "Legal Background" above, adverse impacts to active bird nests or bird nesting activities may result from removal of the focal trees within the Study Area. These impacts include not only the direct destruction of nests with eggs or young, but also incidental disturbances (noise, vibration, visual disruption) in proximity to nesting areas that result in nest failure or reduced reproductive effort; impacts of the latter type are often interpreted by regulatory agencies and local government bodies as constituting violations of federal and state baseline protection mechanisms.

For this reason, WRA strongly recommends that all tree removal (including trimming and other modifications) occur outside of the general season, i.e. from September 1 to January 31. No impacts to bird nests or nesting activities are expected at this time, nor are pre-construction avoidance surveys warranted.

If tree removal must occur during the general nesting bird season, a pre-construction nesting bird survey should be conducted by a qualified biologist. All trees proposed for removal should be surveyed. Any active nests found during the survey should be protected by a work exclusion buffer, within which all work activities are prohibited while the nest remains active. Appropriate buffer sizes vary dependent upon bird species, nest location, baseline disturbance conditions, and other factors; suitable buffers may be as small as 50 feet for common, disturbance-adapted species and 250 feet or more for raptors and special-status species.

Please do not hesitate to contact me with questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Jason Yakich". The signature is written in a cursive, flowing style.

Jason Yakich
Associate Wildlife Biologist

References

- California Department of Fish and Wildlife (CDFW). 2015. California Natural Diversity Database. Wildlife and Habitat Data Analysis Branch, Sacramento, CA. Accessed: July.
- eBird. 2015. eBird: An online database of bird distribution and abundance [web application]. eBird, Ithaca, New York. Available: <http://www.ebird.org>. Accessed: July.
- Glover, S. 2009. Breeding Bird Atlas of Contra Costa County. Mount Diablo Audubon Society, Walnut Creek, CA. 260 pp.
- Shuford, W.D. and T. Gardali, eds. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.