



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 428-2002

www.wildlife.ca.gov

GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



October 25, 2024

Chris Cahill, General Manager
Napa County Regional Park and Open Space District
1195 Third Street, Second Floor
Napa, CA 94559
CCahill@ncrposd.org

Subject: Suscol Headwaters Park, Subsequent Initial Study/Mitigated Negative Declaration, SCH No. 2024100066, Napa County

Dear Mr. Cahill:

The California Department of Fish and Wildlife (CDFW) received a Subsequent Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County Regional Park and Open Space District (District) for Suscol Headwaters Park (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the subsequent IS/MND to inform the District, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: The District

Objective: The Project is limited to the development of Suscol Headwaters Park to include Phase 2 development comprising of additional trails totaling 18 miles, a gated trailhead and parking lot, and ancillary signage to provide public use of 709 acres of District-owned lands. The adoption of an amended Park Development Plan by the District will allow the Suscol Headwaters Park to be improved and operated as a publicly accessible open space and park and recreational facility. Access would be via a new entrance, +/- 0.75-acre parking lot, and trailhead off North Kelly Road across from

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Camino Dorado as well as through the existing Napa Solano Ridge Trail connection to Skyline Wilderness Park. Proposed development primarily consists of natural-surface, multi-use, non-motorized trails. Phase 1 of the Suscol Headwaters Park Development Plan was adopted in January 2020, including opening the park to the public through Skyline Park and approval of a trail network north of the main Jameson Canyon ridgeline.

Location: The Project is located on approximately 709 acres owned by the District in Napa County, on assessor parcel numbers (APNs) 045-360-013, -014, -022, and 057-030-014). The Project also includes approximately 2.2 miles of proposed natural surface trail located on easements across the County of Napa, APNs 057-340-002, 057-020-055, and -056 and a +/- 0.75-acre trailhead parking area located on an easement on parcel 057-020-056. Nearby landmarks are Skyline Wilderness Park to the north and Jameson Canyon to the south; the Project site center is located at approximately 38.24426°N, -122.2122°W.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to impact Swainson’s hawk (*Buteo swainsoni*), CESA listed as threatened species; and burrowing owl (*Athene cunicularia*) and Crotch’s bumble bee (*Bombus crotchii*), which are both CESA candidate species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065.). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., is required for project activities affecting lakes or streams and associated riparian habitat.

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Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **The Project has the potential to impact Suscol Creek and Fagan Creek, as further described below.** CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

California Fully Protected Species

California Fully Protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code, § 2081.15). Project proponents should consult with CDFW early in the project planning process. **The Project has the potential to impact white-tailed kite (*Elanus leucurus*), a California Fully Protected species, as further described below.**

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

COMMENTS AND RECOMMENDATIONS

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CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and included in **Attachment 1** Draft Mitigation Monitoring and Reporting Program, CDFW concludes that an MND is appropriate for the Project.

I. Environmental Setting and Related Impact Shortcomings

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

And,

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk

Issue: According to the California Natural Diversity Database (CNDDDB), Swainson's hawk have been observed within 0.25 miles of the Project's proposed parking facility site and within 1.15 miles of the Park boundary, as shown on page 5 of the Suscol Headwaters Park Development Plan, available at <https://napaoutdoors.org/wp-content/uploads/2024/09/Suscol-Headwaters-Park-Development-Plan-1.pdf>. Page 8 of the subsequent IS/MND states that the portion of Suscol Headwaters Park property owned by the District will be kept in a natural undeveloped condition to provide habitat resources to species such as Swainson's hawk. Page 8 of the IS/MND also states that "Tree removal or trimming for the North Kelly Road Trailhead construction project will be the minimum necessary and will only occur outside the typical breeding season for raptors (September 16 to December 31) if raptors are determined to be present. However, the subsequent IS/MND does not include a suitable methodology for determining presence of nesting Swainson's hawk nor does it include measures for mitigating impacts to nesting Swainson's hawk resulting from Project activities such as trail building and equipment operation during the nesting season. Furthermore, page 15 of the subsequent IS/MND indicates that no tree removal is proposed in the Project which is inconsistent with the above.

Specific impacts and why they may occur and be significant: The Project has the potential to impact nesting Swainson's hawk through auditory or visual

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disturbances above ambient levels within 0.5 miles of Project activities, or through direct removal of an active nest site. Disturbances from Project activities may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and vigor and loss of young. Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: To reduce potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure.

Mitigation Measure Biological Resources 3: Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities, unless otherwise approved in writing by CDFW. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved in writing by CDFW. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

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COMMENT 2: Burrowing Owl

Issue: The subsequent IS/MND does not adequately evaluate potential impacts to burrowing owl. The southern portion of the Project is within the burrowing owl winter range according to the California Wildlife Habitat Relationships (CWHR) model. The Project site includes and is nearly surrounded by open space, rolling grassland, agriculture land, and unpaved gravel access roads, which may provide habitat for burrowing owl. Ground squirrels or other fossorial mammals likely occur on or near the Project site and can excavate burrows, providing refugia habitat for burrowing owl. Additionally, burrowing owl has been observed approximately 0.35 miles from the proposed Project parking lot.

Specific impacts, why they may occur and be potentially significant: The Project could result in injury or mortality of adult burrowing owl wintering in burrows or other suitable refugia on or within up to 500 meters of the Project site, and permanent wintering (i.e., non-nesting) habitat loss. Burrowing owl have been extirpated from 16 percent of their former range and are at risk of being extirpated from another 13 percent of their range in the State (CDFW 2024). Information indicates a decline in burrowing owl's range over time, burrowing owl has experienced population declines in regions of California and threats to burrowing owl, coupled with long-term population declines, suggest a high degree and immediacy of threat to burrowing owl in California (CDFW 2024). Burrowing owl population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrel (*Otospermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owl for nesting, protection from predators, and shelter (Shuford and Gardali 2008; Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owl have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012). Burrowing owl is a candidate species under CESA. Based on the foregoing, if burrowing owl are wintering on or within up to 500 meters of the Project site, Project impacts to burrowing owl would be *potentially significant*.

Recommended Mitigation Measure: To reduce potential impacts to burrowing owl to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure.

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Mitigation Measure Biological Resources 4: Burrowing Owl Habitat Assessment and Surveys: A qualified biologist shall conduct a habitat assessment and surveys for wintering burrowing owl prior to construction if construction starts during the burrowing wintering season (September 1 to January 31). Surveys shall be conducted if warranted based on the habitat assessment. The habitat assessment and surveys shall follow the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)* methodology (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) and the qualified biologist shall prepare a report documenting the survey results. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur annually for the duration of the Project, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Surveys for non-breeding burrowing owl shall be spread over four visits during the nonbreeding season (i.e., wintering), September 1 to January 31. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)*, which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities. If take of burrowing owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

Mitigation Measure Biological Resources 5: Covering of Entrapment Hazards: To prevent burrowing owl from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each workday and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.

COMMENT 3: Crotch's bumble bee

Issue: The subsequent IS/MND does not address whether the Project could result in impacts to Crotch's bumble bee. A CNDDDB record of Crotch's bumble bee is documented within less than five miles east of the Project site. The Project site is within the Crotch's bumble bee range (see *Bombus crotchii* range map (PDF),

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<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213184&inline> at <https://wildlife.ca.gov/Conservation/CESA>), and grassland within and adjacent to the Project site may contain habitat for the species.

Specific impacts and why they may occur and be significant: Constructing trails on previously undisturbed lands may result in direct mortality of Crotch's bumble bee from crushing or filling of active bee colonies and hibernating bee cavities. Bumblebees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species. Crotch's bumble bee is a candidate species under CESA. Therefore, if Crotch's bumblebee occurs within the Project site, Project impacts to Crotch's bumble would be *potentially significant*.

Recommended Mitigation Measure: To reduce potential impacts to Crotch's bumble bee to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure.

Mitigation Measure Biological Resources 6: Crotch's bumble bee Assessment, Survey, and Avoidance:

Habitat Assessment

In accordance with *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (CDFW 2023) (see Survey Considerations for CESA Candidate Bumble Bees (PDF)

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline> at <https://wildlife.ca.gov/Conservation/CESA>), a Crotch's bumble bee habitat assessment shall be conducted, results of the assessment should be discussed in the MND, and mitigation measures (if habitat is present) shall be developed and included in the MND to avoid or minimize impacts of the proposed Project to Crotch's bumble bee.

The habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumblebee. The habitat assessment should include all suitable nesting, overwintering, and foraging habitats within the Project site and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment should be conducted during peak bloom period for floral resources on which Crotch's bumble bee feed.

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Survey

If Crotch's bumble bee habitat is present within the Project site, the Project shall conduct a pre-construction survey consistent with *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (CDFW 2023). The survey plan should be submitted to CDFW for review. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bee.

Surveys shall be conducted during the colony active period (i.e., April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year, therefore, surveys shall be conducted each year that Project work activities occur.

Avoidance or Take Authorization

If Crotch's bumble bee are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan should be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal. The Project shall incorporate CDFW's comments into the avoidance plan.

If take of Crotch's bumble bee cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

COMMENT 4: White-tailed Kite and other Nesting Birds

Issue: The subsequent IS/MND does not evaluate the potential for nesting birds such as white-tailed kite, a California Fully Protected species, to occur and be impacted by the Project.

Specific impacts and why they may occur and be significant: Human activity and removal of habitat has contributed to the loss of a significant proportion of the total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Nesting birds such as white-tailed kite, a California Fully Protected species, may be disturbed by Project noise, visual changes, and human presence, which could lead to nest abandonment or reduced health and vigor of young, a *potentially significant impact*.

Recommended Mitigation Measure To reduce impacts to white-tailed kite and other nesting birds to less-than-significant and comply with Fish and Game Code sections 3500 et seq. and the federal MBTA, CDFW recommends including the below mitigation measure.

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Mitigation Measure Biological Resources 8: Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, January 1 to September 15, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or the USFWS?

COMMENT 5: Stream Alteration

Issue: Page 14 of the MND states that "The most sensitive habitat within the project area is the riparian habitat along the creeks." and "...Suscol Creek is designated critical habitat for steelhead (*Oncorhynchus mykiss*), a federally endangered species." This section of the MND also indicates that the proposed trails will utilize existing ranch roads to cross the stream(s). However, page 5 of the Suscol Headwaters Park Development Plan shows that the proposed trail alignment crosses Suscol Creek in at least two places outside of the ranch roads, based on stream alignment imagery from the California Aquatic Resources Inventory (CARI). Additionally, Mitigation Measure Biological Resources 2 in the subsequent IS/MND implies that Project activities could extend into the riparian zone of Fagan Creek.

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Based on the above information, it appears that the Project could result in impacts to Sucsol Creek and Fagan Creek.

Specific impacts and why they may occur and be significant: Project activities including trail construction, earthmoving, and vegetation removal could result in impacts to streams and the habitats they support. Impacts could include inputs of deleterious materials, obstructions and diversions, riparian habitat removal, equipment staging and operation, and disturbances to riparian corridors, special status wildlife and their habitats, and nesting birds. Due to the ecological importance and sensitivity of stream habitat, the above impacts would be *potentially significant*.

Recommended Mitigation Measure: To reduce impacts to streams to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends adding the below mitigation measure to the IS/MND.

Mitigation Measure Biological Resources 7: Impacts to Streams and Riparian Areas. Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to streams and riparian habitat including but not limited to impacts resulting trail clearing, earth moving, and vegetation removal. If impacts to the bed, bank, channel, or riparian area of the streams cannot be avoided, the Project shall notify CDFW for potential Project impacts to the streams. More information for the Notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the Streambed Alteration Agreement (SAA), if issued, and shall not commence activities with potential to impact the stream until the SAA process has been completed. Impacts to the streams and riparian habitat shall be mitigated by restoring riparian habitat at a minimum 3:1 mitigation to impact ratio in area and linear feet for permanent impacts, all temporary impact areas shall be restored, and trees shall be replaced at an appropriate ratio based on size and species, unless otherwise approved in writing by CDFW. An SAA, if issued, may include additional avoidance and minimize measures to protect fish and wildlife resources.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported

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to CNDDDB can be found at the following link:
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (see Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the subsequent IS/MND to assist the District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or Nicholas.Magnuson@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2024100066

REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. Petition Evaluation for Western

Burrowing Owl (*Athene cunicularia hypugaea*). Report to the Fish and Game Commission. California Department of Fish and Wildlife, P.O. Box 944209, Sacramento, CA.

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California Department of Fish and Wildlife (CDFW). 2023. Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species.

California Department of Fish and Wildlife (CDFW). 2012. Department of Fish and Game Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA.

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avrind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

Shuford, W. D., and Gardali, T., editors. 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.

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BR-3	<p><u>Mitigation Measure Biological Resources 3: Swainson's Hawk Surveys and Avoidance:</u> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i> (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities, unless otherwise approved in writing by CDFW. <u>Surveys shall occur annually for the duration of the Project.</u> The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved in writing by CDFW. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of</p>	Prior to Ground Disturbance	Project Applicant

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	Swainson’s hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.		
MM BR-4	<p><u>Mitigation Measure Biological Resources 4: Burrowing Owl Habitat Assessment and Surveys:</u> A qualified biologist shall conduct a habitat assessment and surveys for wintering burrowing owl prior to construction if construction starts during the burrowing wintering season (September 1 to January 31). Surveys shall be conducted if warranted based on the habitat assessment. The habitat assessment and surveys shall follow the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation</i> (2012) methodology (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds) and the qualified biologist shall prepare a report documenting the survey results. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur annually for the duration of the Project, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Surveys for non-breeding burrowing owl shall be spread over four visits during the nonbreeding season (i.e., wintering), September 1 to January 31. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation</i> (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities,. If take of burrowing owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.</p>	Prior to Ground Disturbance	Project Applicant
MM BR-5	<p><u>Mitigation Measure Biological Resources 5: Covering of Entrapment Hazards:</u> To prevent burrowing owl from sheltering or nesting in exposed material; all</p>	Prior to Ground	Project Applicant

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	<p>construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each workday and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.</p>	<p>Disturbance</p>	
<p>MM BR-6</p>	<p><u>Mitigation Measure Biological Resources 6: Crotch's bumble bee Assessment, Survey, and Avoidance:</u></p> <p><i>Habitat Assessment</i></p> <p>In accordance with <i>Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species</i> (CDFW 2023) (see Survey Considerations for CESA Candidate Bumble Bees (PDF) at https://wildlife.ca.gov/Conservation/CESA), a Crotch's bumble bee habitat assessment shall be conducted, results of the assessment should be discussed in the MND, and mitigation measures (if habitat is present) shall be developed and included in the MND to avoid or minimize impacts of the proposed Project to Crotch's bumble bee.</p> <p>The habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumblebee. The habitat assessment should include all suitable nesting, overwintering, and foraging habitats within the Project site and surrounding areas. Potential nest habitat (February through October) could include that of other <i>Bombus</i> species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other <i>Bombus</i> species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment should be conducted during peak bloom period for floral resources on which Crotch's bumble bee feed.</p> <p><i>Survey</i></p> <p>If Crotch's bumble bee habitat is present within the Project site, the Project shall conduct a pre-construction survey consistent with <i>Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species</i> (CDFW 2023). The survey plan should be submitted to CDFW for review. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bee.</p> <p>Surveys shall be conducted during the colony active period (i.e., April through August) and when floral</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>resources are in peak bloom. Bumble bees move nests sites each year, therefore, <u>surveys shall be conducted each year that Project work activities occur.</u></p> <p><i>Avoidance or Take Authorization</i></p> <p>If Crotch's bumble bee are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan should be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal. The Project shall incorporate CDFW's comments into the avoidance plan.</p> <p>If take of Crotch's bumble bee cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.</p>		
<p>MM BR-7</p>	<p><u>Mitigation Measure Biological Resources 7: Nesting Bird Surveys.</u> If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, January 1 to September 15, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <p>The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.</p>		
<p>MM BR-8</p>	<p><u>Mitigation Measure Biological Resources 8: Impacts to Streams and Riparian Areas.</u> Prior to the commencement of Project activities, the Project shall conduct a thorough assessment for potential impacts to streams and riparian habitat including but not limited to impacts resulting trail clearing, earth moving, and vegetation removal. If impacts to the bed, bank, channel, or riparian area of the streams cannot be avoided, the Project shall notify CDFW for potential Project impacts to the streams. More information for the Notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA. The Project shall comply with all measures of the Streambed Alteration Agreement (SAA), if issued, and shall not commence activities with potential to impact the stream until the SAA process has been completed. Impacts to the streams and riparian habitat shall be mitigated by restoring riparian habitat at a minimum 3:1 mitigation to impact ratio in area and linear feet for permanent impacts, all temporary impact areas shall be restored, and trees shall be replaced at an appropriate ratio based on size and species, unless otherwise approved in writing by CDFW. An SAA, if issued, may include additional avoidance and minimize measures to protect fish and wildlife resources.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>