



State of California – Natural Resources Agency
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August 29, 2025

John Swiecki, Planning Director
 City of Brisbane
 50 Park Place
 Brisbane, CA, 94005
Baylands@brisbaneca.org

Subject: Brisbane Baylands Specific Plan, Draft Environmental Impact Report,
 SCH No. 2006022136, City of Brisbane, San Mateo County

Dear John Swiecki:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Brisbane (City) for the Brisbane Baylands Specific Plan (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

California Endangered Species Act and Native Plant Protection 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 or Native Plant Protection Act (NPPA), either during construction or over the life of the Project. Under CESA, take is defined as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.” Issuance of an ITP is subject to CEQA documentation. If the Project will impact CESA or NPPA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. Fully protected species may not be taken or possessed at any time (Fish and Game Code, §§ 3511, 4700, 5050, and 5515).

CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and 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 Fish and Game Code, § 2080 et. seq.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Any impacts to the mainstems, tributaries and floodplains or associated riparian habitat would likely require an LSA Notification. CDFW, as a responsible agency under CEQA, will consider the draft EIR for the Project. CDFW may

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not execute a final LSA Agreement until it has complied with CEQA as the responsible agency.

Raptors and Other Nesting Birds

CDFW has authority 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 §§ 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.

Fully Protected Species

Fully protected species, such as California Ridgway's rail (*Rallus obsoletus obsoletus*, CRRA) and California least tern (*Sterna antillarum browni*, LETE) 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 incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process.

PROJECT DESCRIPTION SUMMARY

Proponent: Sunquest Properties Inc. and Baylands Development Inc.

Objective: The Project includes development of 680.1 acres with 2,200 dwelling units and 6.5 million square feet of commercial office, with an additional 500,000 square feet of hotel use; acquisition of a water supply by establishing the California Water Service Company as the water service agency for the Baylands, Sierra Point, and Beatty subareas of the City of Brisbane. Additionally, 157 acres of the site's 558.3-acre existing land area would be devoted to conservation and outdoor recreation. Proposed potable

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and recycled water infrastructure would include a water recycling facility, water storage tanks, and pipeline system. Off-site facilities include pipelines to deliver recycled water to users in South San Francisco and minor off-site improvements to Brisbane's potable water system (e.g., meters at connections to the SFPUC regional water system). Baylands infrastructure would also include extending Geneva Avenue east from Bayshore Boulevard with a bridge over the Caltrain right-of-way, extending Sierra Point Parkway north to Geneva Avenue, and realigning Lagoon Road. A grade 6–8 middle school would be constructed, along with converting the existing Bayshore School to a PK–5 elementary school. The City's existing fire station and corporation yard would be relocated, and a new fire station and corporation yard would be built within the Baylands. A 55-acre solar field will be built, along with a distributed local battery storage and a 250- megawatt utility-scale battery storage facility, as well as a new switching substation and an under-ground connection to and improvements at the existing PG&E Martin Substation.

Location: City of Brisbane, San Mateo County, located west of the US-101 freeway, south of the San Mateo and San Francisco county line, east of Bayshore Boulevard.

Timeframe: TBD

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Project Description and Related Impact Shortcoming

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 U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Habitat Mitigation Land

Issue: The draft EIR states that a total of 16.92 acres of federal and/or state-jurisdictional wetland and non-wetland waters within and along Visitacion Creek and the north shore of Brisbane Lagoon would be removed due to implementation of the Baylands Specific Plan, and that there would be in-kind replacement 21.20 acres of wetlands and non-wetland waters when habitat restoration within Visitacion Creek and Lagoon Park are completed. The draft EIR describes a Conservation and Open Space plan (Plan) aims to provide a framework for permanent protection of these wetlands and non-wetlands however, neither the draft EIR nor the Plan describe

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how permanent protection will be achieved. Lack of permanent protection of replacement wetlands and non-wetlands may result in un-mitigated significant impact to biological resources over the long-term.

Specific impacts, why they may occur and be potentially significant:

Conservation easements provide relatively greater certainty that long-term management of mitigation lands consistent with conservation purposes can be assured, compared to any other currently available mechanism. Conservation easements created under Civil Code section 815 et seq. enjoy special protections in condemnation proceedings. Under the Code of Civil Procedure provisions relating to condemnation actions, a conservation easement qualifies as “property appropriated to public use” and can only be condemned as provided in section 1240.055. (Code Civ. Proc., § 1240.055, subd, (a)(3), (b)). These protections are not available for the other types of instruments discussed below.

In contrast, deed restrictions, also known as restrictive covenants, can be freely amended or terminated and are not guaranteed to bind subsequent owners of the property (or “run with the land”) (Civ. Code, § 1461). Under California law, only certain types of covenants run with the land. (Civ. Code, § 1461). As a general principle, only the benefit of a covenant runs with the land, while the burden (for example a restriction or promise not to do an act) does not. More specifically, according to statute covenants that run with the land only include: (1) covenants that benefit the land that is transferred, for example mineral rights, warranties of title, or a right of first refusal; (2) covenants between owners of two properties that the covenantor will refrain from acts on his land for the benefit of the land of the covenantee; (3) covenants by a landlord related to acts on adjoining or nearby properties that are for the benefit of the tenant; and (4) environmental covenants that are necessary for health and safety concerns due to the presence of hazardous substances. (Civ. Code, §§ 1462, 1468, 1469, 1471).

Furthermore, restrictive covenants lack statutory protections that apply to conservation easements, in particular those related to condemnation proceedings and the limitations on who can hold or manage the protected habitat. In addition, deed restrictions are more easily amended or terminated than conservation easements. Finally, should a restrictive covenant be challenged in court, it would be construed in favor of free use of the land, not in favor of conservation purposes.

Recommendation 1: To reduce potential for significant impacts to special-status fish and wildlife resources and their habitats to a less-than-significant level, CDFW strongly recommends a conservation easement as the legal tool used to protect mitigation wetlands and non-wetlands in perpetuity.

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Recommended Conservation Easement Mitigation Measure: To compensate for loss of wetlands and non-wetland waters, the Project applicant shall include a conservation easement that will restrict use of the proposed open space in the Project area to offset impacts to wetlands and non-wetland waters. The conservation easement shall include a long-term endowment funded by the proposed Project to manage the entire Conservation and Open Space area in perpetuity. The Project shall implement a CDFW-approved Mitigation and Monitoring Plan for the proposed restored wetland and non-wetland waters which shall include the following:

- Establish within the Conservation and Open Space Plan a minimum of 11.68 acres of palustrine emergent freshwater marsh, 1.09 acres of estuarine emergent tidal/intertidal marsh, 1.73 acres of seasonal wetlands, 1.10 acres of subtidal mudflat, 1.06 acres estuarine rocky shore tidal/intertidal marsh, and 0.26 acres of seasonal non-wetland waters;
- Provide financial assurances to ensure a high level of confidence that the Mitigation and Monitoring Plan will be successfully completed, in accordance with applicable performance standards;
- Design ecological performance standards to assess whether the Mitigation and Monitoring Plan is achieving the overall objectives, so that it can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected conditions or function, and attaining any other applicable metrics such as acres, percent cover of native plants, structural patch richness, control of invasive plants, water depth etc.;
- Monitor the site for a minimum of 10 years to determine if the Mitigation and Monitoring Plan is meeting the performance standards; and
- Assess the potential effects of changing weather patterns that are currently occurring, and that may occur due to climate change in the foreseeable future and how these changes may impact the long-term viability of the constructed wetlands. The purpose of this assessment is to locate and design the wetlands to avoid and minimize impacts from climate change and to develop adaptive management measures into the Mitigation and Monitoring Plan specifically to minimize these potential effects.

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 USFWS?

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COMMENT 2: California Least Tern

Issue: The draft EIR Biological Resources Technical Report provides analysis on special-status fish and wildlife species deemed to have potential to occur within the Project area but does not include LETE. The disturbed, somewhat unvegetated vacant land is suitable as surrogate nesting habitat for LETE. Despite the existence of suitable nesting habitat and potential for LETE to nest or forage within the Project area, the draft EIR does not include analysis on the potential for the Project to significantly impact LETE, nor does it include measures to avoid, minimize or mitigate potentially significant impacts to LETE.

Specific impact, why impact would occur, and evidence impact would be significant: LETE are CESA and federal Endangered Species Act (ESA) endangered and state fully protected species. Populations of LETE nest along the West coast of North America from Baja California north to the San Francisco Bay and establish nesting colonies on sandy soils with little vegetation along Pacific Ocean beaches, lagoons and bays (USFWS 1980). LETE were once widespread and abundant, but increasing human disturbance to sandy beaches, hunting for the millinery trade, and increasing predator populations caused the population to undergo a major decline in the early 1900s (USFWS 2006). LETE nesting occurs between April 15 and late September, and successful development and growth of chicks requires habitat free of human disturbance, protection from avian and mammal predators, and proximity to aquatic foraging habitat. LETE have high site fidelity and return to nesting areas year after year. This species is highly sensitive to human disturbance and will readily abandon nesting areas if disturbed.

Project activities could impact LETE in the short term due to generation of noise from construction equipment, groundwork, and operation and movement of equipment and workers that would have the potential to disturb LETE foraging, roosting, and nesting. Direct mortality of LETE could occur through nest abandonment, resulting in reduced reproductive success (loss or reduced health or vigor of eggs or young), inadvertent entrapment or entainment, or impingement. Long-term impacts of Project development include loss of LETE nesting habitat due to land modification, increased human presence within the Project area after development is completed, and vertical habitat change due to construction of tall buildings that would reduce LETE line of sight and provide perching habitat for LETE predators such as raptors and corvids, which would discourage LETE from returning to the site to nest.

Recommendation 2: CDFW recommends the EIR provide an assessment of the potential for the Project to impact LETE individuals as well as foraging and breeding habitat, and incorporate the following mitigation measure to avoid, minimize, and mitigate potential impacts of the Project on this species.

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Recommended California Ridgway's rail and California least tern Mitigation Measure: A CDFW-approved biologist, in coordination with CDFW, shall conduct breeding and occupancy surveys for LETE in all suitable habitats within and adjacent to the Project area during the LETE nesting season (April 15-September 15) prior to each year of construction to determine whether LETE are present.

If LETE are found in suitable habitat near the Project site, appropriate buffers shall be incorporated to avoid and minimize impacts to LETE. A 700-foot no-work buffer shall be implemented between construction activities and any current-year breeding LETE detections. Noise-reducing modifications to equipment as well as portable acoustic barriers/blankets placed near noise sources may be appropriate to reduce auditory and visual impacts to breeding shorebirds. A qualified avian biologist shall advise and support buffer establishment in consultation with CDFW. Fully protected species such as LETE may not be taken or possessed at any time. The qualified biologist shall also be on-site during all Project activities to ensure that fully protected species impacts are avoided by all Project activities.

If breeding and occupancy surveys demonstrate that LETE utilize any habitat in the Project area that would be temporarily or permanently impacted by Project development, the Project shall develop a Least Tern Mitigation and Monitoring Plan in coordination with CDFW, which shall outline actions the Project will take to avoid impacts to LETE and their habitat. These actions could include:

- 1) Establishing protected areas within the Project area for LETE nesting, prior to Project impacting existing nesting habitat;
- 2) Creating a monitoring program to assess LETE populations within existing and/or established protected areas and restored habitat in the Project area;
- 3) Incorporating other methods for promoting LETE resiliency on lands within the Project area; and
- 4) Identifying and implementing metrics for assessing success of the Least Tern Mitigation and Monitoring Plan.

COMMENT 3: California Ridgway's Rail

Issue: The draft EIR Biological Resources Technical Report provides analysis on special-status fish and wildlife species deemed to have potential to occur within the Project area, including CRRA, for which protocol-level surveys were conducted at Brisbane Lagoon in February-March 2020 along with a habitat survey in February 2023. The 2020 surveys for CRRA yielded negative (no presence) results. The 2023

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habitat survey “found the tidal marsh habitat too small, disturbed, and fragmentary to support this species.” In the Biological Resources Technical Report, these findings contribute to the assessment that “no impact to [CRRA] would occur” in the Project area. However, there exist positive identifications of CRRA within the Project area on iNaturalist, including a record from August 2019. CRRA are highly secretive and difficult to observe, and, given their elusive nature, there exists potential for CRRA to occur within the Project area despite negative results of 2023 protocol-level surveys. The draft EIR doesn’t include measures to avoid, minimize or mitigate potentially significant impacts to CRRA.

Specific impact, why impact would occur, and evidence impact would be significant: CRRA are CESA and federal ESA endangered and state fully protected species. This species is at great conservation risk and is experiencing serious population declines or range retractions. Project activities could include impacts such as generation of noise, groundwork, and operation and movement of equipment and workers that would have the potential to disturb CRRA foraging, roosting, and/or nesting. Direct mortality of CRRA could occur through nest abandonment, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs or young), inadvertent entrapment or entainment, or impingement.

Recommendation 3: CDFW recommends the EIR provide additional assessment of the potential for the Project to impact CRRA, and incorporate the following mitigation measure to avoid, minimize, and mitigate potential impacts on these species.

Recommended California Ridgway’s Rail Mitigation Measure: A CDFW-approved biologist shall conduct protocol-level surveys for CRRA prior to each year of construction, in all suitable habitats within and adjacent to the Project area using the 2017 California Clapper Rail Survey Protocol to determine CRRA presence (Wood et al. 2016).

If CRRA are found in suitable habitat near the Project site, and if construction cannot be avoided during the CRRA breeding season (January 15- August 31), appropriate buffers shall be incorporated to avoid and minimize impacts to CRRA. A 700-foot no-work buffer shall be implemented between construction activities and any current-year breeding CRRA detections. If establishing a 700-foot buffer around breeding CRRA detections is not feasible, noise-reducing modifications to equipment as well as portable acoustic barriers/blankets placed near noise sources may be appropriate to reduce auditory and visual impacts to breeding shorebirds. Note that these noise reduction features may be appropriate regardless of time of year to minimize impacts to foraging shorebirds as well. A qualified avian biologist shall advise and support buffer establishment in consultation with CDFW. The qualified biologist shall also be on-site during all

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Project activities to ensure that fully protected species are not being disturbed by Project activities.

COMMENT 4: Burrowing Owl

Issue: The draft EIR aims to analyze the potential for the Project to significantly impact burrowing owl (*Athene cunicularia hypugaea*, BUOW) and their habitat and includes a mitigation measure designed to assess whether BUOW are present within the Project area. The BUOW mitigation measure states that, if BUOW are confirmed to be present in the Project area, artificial burrows would be constructed and any owls within occupied burrows would be passively relocated prior to deconstructing the existing burrows. CDFW no longer considers exclusion of BUOW (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure, and eviction of BUOW is a significant impact under CEQA (CDFW, 2012).

The Project, as described in the draft EIR, does not provision for the protection or preservation of areas that may be currently used by BUOW. Under the currently proposed BUOW mitigation measure, any areas of vacant land that may be currently used by BUOW would be both temporarily and permanently impacted by Project activities, given the extensive level of development proposed within the Project area. Without the implementation of appropriate avoidance and minimization measures, disturbance to nesting BUOW within or adjacent to the Project site may result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young. Disturbance at any time of year may result in flushing of BUOW from their burrows, potentially resulting in increased risk of injury by vehicle strike or predation.

Specific impact, why the impact would occur, and evidence the impact would be significant: BUOW are listed as a candidate threatened or endangered species under CESA. Their candidacy status qualifies BUOW as a rare, threatened, or endangered species under CEQA and affords them the same legal protection as endangered or threatened species. BUOW are dependent on burrows at all times of year for survival or reproduction and exhibit high site fidelity (CDFW, 2024). Eviction from burrows often results in increased stress on BUOW and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows (CDFW 2012). Exclusion and burrow closure are not recommended where they can be avoided. If BUOW are present within the Project site but remain undetected by surveys, they may be directly injured or killed during ground disturbance or operation of equipment associated with the Project.

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Recommendation 4: To reduce potential impacts to BUOW to less-than-significant and comply with CESA, CDFW recommends including the following mitigation measures:

Burrowing Owl Take Avoidance: If BUOW is present within the Project boundaries, an ITP shall be obtained before Project activities commence.

Burrowing Owl Habitat Assessment and Surveys: A qualified biologist shall conduct a habitat assessment and surveys for wintering BUOW 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 BUOW nearby that may be impacted, up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for BUOW, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. 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 BUOW detections. The Project shall immediately notify CDFW if BUOW are detected, and shall implement a construction avoidance buffer around any detected BUOW 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 BUOW shall be monitored by the qualified biologist to ensure they are not disturbed during construction activities, unless otherwise approved in writing by CDFW.

Burrowing Owl Wintering Burrow Mitigation: If the Project would impact an unoccupied wintering BUOW burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for wintering), the impacts to each unoccupied burrowing owl wintering site shall be mitigated by permanent preservation of two BUOW occupied wintering sites with appropriate foraging habitat, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity.

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Burrowing Owl Foraging Habitat Mitigation: Impacts to BUOW foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Prior to Project construction, the Project shall provide BUOW foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of BUOW foraging habitat credits at a CDFW-approved mitigation bank, unless otherwise approved in writing by CDFW.

COMMENT 5: Special-Status Plants

Issue: The Biological Resources Technical Report prepared for and included with the draft EIR discusses the potential for special-status plant species to occur within the Project area. The report states that "as a result of historical land uses including as a former railyard and landfill and the related absence of native substrate across the Project site, rare plants would only be expected in annual grasslands and coastal scrub habitats on Icehouse Hill on the western edge of the site."

There exist positive identifications of special-status plants within the Project area beyond the Icehouse Hill area, including two records of San Francisco lessingia (*Lessingia germanorum*, documented in August 2024 and June 2021 on iNaturalist), and two records of Presidio clarkia (*Clarkia franciscana*, documented in June 2024 and June 2019 on iNaturalist). Despite the potential for special-status plants to be present within the Project area during development, the draft EIR does not provide avoidance, minimization or mitigation measures to address potential temporary or permanent impacts to special-status plant species that may be present within the Project area due to Project development.

Specific impact, why impact would occur, and evidence impact would be significant: San Francisco lessingia is a plant species listed as endangered under the CESA and the federal ESA and has a California Rare Plant Rank (CRPR) of 1B.1. Presidio clarkia is also federal ESA- and CESA-listed as endangered, with a CRPR of 1B.1. Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century. The additional threat rank of 0.1 indicates that over 80 percent of their occurrences are threatened.

The conservation of special-status native plants is essential to maintaining biodiversity in the California Bay Area. Native plants are better adapted to the local environment, allowing them to grow more efficiently, require less maintenance, and provide habitat resources for other native species (Berthon et al. 2020). Industrial land development is a leading threat to endangered plant communities, causing

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resource depletion through direct habitat replacement and increased input of pollutants into the environment (Czech et al. 2000). Limited distribution and small population sizes of special-status plants can increase the difficulty in species detection, and robust survey efforts are imperative to determine whether plant species protected under the CESA and NPPA occur within the Project area. Robust and timely survey efforts are a necessary first step in avoiding take of listed species and preventing significant impacts to habitat in which they occur.

Recommendation 5: CDFW recommends the EIR incorporate the following mitigation measure to avoid, minimize, and mitigate potential impacts on special-status plants.

Recommended Special-Status Plant Mitigation Measure: A qualified biologist shall conduct botanical surveys prior to construction at all Project sites where suitable habitat occurs. Surveys shall be conducted during the appropriate blooming period for all special-status plants that have the potential to occur at or adjacent to each site where plants could be directly and/or indirectly impacted. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/SurveyProtocols#377281280-plants>) and include checking reference sites for target special-status plant species. Per this protocol, more than one year of surveys may be necessary if, for example, lack of rain inhibits growth of annual plants.

If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and provide an avoidance plan to CDFW and obtain CDFW written approval of the plan. If full avoidance is not possible, Project activities may not commence until the Project has consulted with CDFW and obtained CDFW's written approval prior to the start of construction, which may include salvaging topsoil, transplanting and monitoring individuals, compensatory habitat mitigation, or other measures, based on the life history of the species and other relevant factors.

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 California Natural Diversity Database (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

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types of information reported 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. (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 draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Shannon Husband, Environmental Scientist, at (707) 337-1364 or Shannon.Husband@wildlife.ca.gov; or Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:

0D25EB6A0381473
Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation (SCH No. 2006022136)

REFERENCES

Berthon, K., Thomas, F., and Bekessy S. 2020. The role of 'nativeness' in urban greening to support animal biodiversity. Landscape and Urban Planning 205 (2021) 103959.

California Department of Fish and Wildlife (CDFW) (2012). Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

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California Department of Fish and Wildlife (CDFW). (2024). Petition Evaluation for Western Burrowing Owl (*Athene cunicularia hypugaea*). Report to the Fish and Game Commission. State of California Department of Fish and Wildlife, Sacramento, CA.

Czech, Brian & Krausman, Paul & Devers, Patrick. (2000). Economic Associations Among Causes of Species Endangerment in the United States. *Bioscience*. 50. 10.1641/0006-3568(2000)050[0593:EAACOS]2.0.CO;2.

Davis, M. 1974. Experiments in nesting behavior of the least tern *Sterna albifrons browni*. *Proc. Linn. Soc. New York* 72:25-43.

U.S. Fish and Wildlife Service. 1980. Selected vertebrate endangered species of the seacoast of the United States - California least tern. U.S. Dep. Inter., Fish and Wild.

U.S. Fish and Wildlife Service. 2006. California least tern (*Sternula antillarum browni*) 5-Year Review, Status and Evaluation. Carlsbad, CA.

Wood, J.K., Nur, N., Salas, L. and O.M.W. Richmond. 2016. Site-specific Protocol for Monitoring Marsh Birds: Don Edwards San Francisco Bay and San Pablo Bay National Wildlife Refuges. Prepared for the U.S. Fish and Wildlife Service, Pacific Southwest Region Refuge Inventory and Monitoring Initiative. Point Blue Conservation Science. Petaluma, CA.

iNaturalist. Arvel. June 2021. <https://www.inaturalist.org/observations/82763804>. Accessed on August 15, 2025.

iNaturalist. Californiarowan. June 2024. <https://www.inaturalist.org/observations/223802417>. Accessed on August 15, 2025.

iNaturalist. Chilipossum. August 2024. <https://www.inaturalist.org/observations/236107378>. Accessed on August 15, 2025.

iNaturalist. Queeryecology. June 2019. <https://www.inaturalist.org/observations/26590671>. Accessed on August 15, 2025.

iNaturalist. Relg. July 2022. <https://www.inaturalist.org/observations/124980833>. Accessed on August 15, 2025.