

## Haggerty, Nicole@Wildlife

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**From:** Tran, Harvey@Wildlife  
**Sent:** Tuesday, June 2, 2026 8:47 AM  
**To:** skirchgessner@elkgrove.gov  
**Cc:** Wildlife R2 CEQA; Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife  
**Subject:** CDFW Comments on the DEIR for the Summer Flats Project (SCH No. 2024100487)

Dear Sarah Kirchgessner:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from the City of Elk Grove (the City) for the Summer Flats Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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 may also act 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 alteration 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.

### **PROJECT DESCRIPTION SUMMARY**

The Project site is located at an approximately 27.6-acre site located immediately northeast of the Waterman Road/Rancho Drive intersection, within the East Elk Grove Sub-Area of the Eastern Elk Grove Community Plan, in the City of Elk Grove, California. The site, comprised of

three parcels identified by Assessor's Parcel Numbers 127-0150-001, 127-0150-002, and 127-0150-009, is bounded by Waterman Road along the site's western boundary.

The Project consists of a subdivided single-unit residential community, comprised primarily of 120 single-unit residential lots. In addition, the Project includes new internal roadways and frontage improvements, associated utility improvements, 14.7 acres of open space (Lot A), an open space path and pedestrian paseo, and new landscaping. Site access would be provided by way of two newly constructed streets (i.e., Streets A and C), which will extend eastward into the site from Waterman Road. In addition, Street B would be constructed within the site in a north-to south direction to connect to Street A to the north and Street C to the south, with the three streets combining to form a looped interior road system that would provide access to all proposed residences. Streets A, B, and C would each consist of a 44-foot-wide right-of-way (ROW), comprised of two 14-foot-wide vehicle lanes, a three-foot-wide shoulder with an attached curb and gutter on each side of the road, which would connect to a five-foot-wide sidewalk. Additionally, the Project includes frontage improvements along Waterman Road to widen the roadway into a four-lane arterial road. The Project would expand the Waterman Road ROW along the frontage of the property, ranging in width from 72 to 73 feet and including a total of four 11-to 11.5-foot vehicle travel lanes (two in each direction), one 11-foot median with a portion designed as a two-way left turn lane, a five-foot-wide shoulder, and an attached three-foot-wide curb and gutter. The proposed frontage improvements would also include a 32.5-foot-wide landscape corridor, featuring a 10-foot-wide Class I multi-use path. The existing half ROW is 25 feet along the Project frontage. An additional 28-foot dedication would be required to include a 53-foot half ROW on the east side of Waterman Road fronting the Project.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City in adequately identifying and, where appropriate, 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, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

CDFW is primarily concerned with the project impacts to nesting raptors and nesting burrowing owls.

### **COMMENT 1: Non-Special Status Active Raptor Nests Avoidance Buffers, Mitigation Measures 4.3-7(a), page number 4.3-51**

**Issue:** The DEIR states that construction activities shall not take place within 500 feet of other raptor nest(s), that focused surveys for nesting raptor and migratory birds would be done within 14 days prior to beginning construction activities, and that surveys would be repeated if a lapse in construction activity exceed 14 days and construction resumes during the nesting season. While some birds and raptors may tolerate disturbance within 500 feet of construction activities, other birds and raptors may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. In addition, the 14-day survey and resurvey window may not be effective as some avian species (e.g. songbirds, etc.) can construct and rebuild nests within

a week. CDFW believes a performance-based buffer with a minimum of 500 feet for nesting raptors, as well as conducting surveys no more than seven (7) calendar days before construction commences and allowing no more than seven (7) calendar days construction lapse for a resurvey during the nesting season would be more appropriate and protective for species that build and rebuild a nest quickly.

**Recommendation or Recommended Mitigation Measure:** CDFW recommends the DEIR describe how the considerations identified below will be implemented and incorporated into the appropriate DEIR section(s):

1. CDFW recommends the Project proponent add specific avoidance and minimization measures to the Mitigation Measures section. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The DEIR should include appropriate preconstruction surveys for non-listed migratory birds at a minimum radius of 500 feet (for migratory birds) and 0.25-mile (for raptors) around the Project area that can be accessed by the Project proponent. The DEIR should include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is a nest buffer radius which can be determined by monitoring the active nests and determining the distance at which the activities will disturb the nesting birds.
2. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. It is the Project proponent's responsibility to confirm that the buffer is sufficient to avoid take/nest failure.
3. CDFW recommends a final preconstruction bird survey be required no more than seven (7) calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed in earlier surveys. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1). If a lapse in Project-related work of seven (7) calendar days or longer occurs, another focused bird survey should be completed before Project work can be reinitiated. It is the Project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.
4. CDFW recommends that any removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

**COMMENT 2: BUOW's CESA Mitigation, Mitigation Measures 4.3-7(c), page number 4.3-53**

**Issue:** The DEIR stated that there may be marginally suitable burrow habitat present in the debris scatter around the Project site. CNDDDB also has recorded occurrences of BUOW within 5 miles of the Project site and eBird has a record from 2020 that is 2.2 miles southwest of the

Project site. Based on the habitat and occurrence records, there is potential for the BUOW to be present in the Project site during construction activities. The BUOW's CESA candidacy designation temporarily affords the BUOW broad CESA protections (including prohibitions against "take" without permit authorization) and Projects with potential Project impacts to the burrowing owl are required to comply with CESA, including fully mitigating for permanent and temporary impacts to the species. The DEIR only provided mitigation for permanent loss of foraging habitat within 250 feet of nesting BUOW at a 1:1 ratio. The DEIR does not provide mitigation for the possible take of an active burrowing owl nest to reduce project impacts to a less-than-significant level under CEQA and CDFW does not believe the mitigation proposed meets the CESA definition of fully mitigating Project impacts. If a nesting BUOW is found onsite and proposed to be impacted, early consultation with CDFW is encouraged, as modifications to the proposed Project and mitigation measures may be required in order to obtain an Incidental Take Permit (ITP).

To reach the fully mitigated standard as required by CESA, mitigation for temporary impacts should also be considered. Temporary impacts to the species may include temporary ground disturbance and vegetation removal that may render a nesting site (nesting burrow and satellite burrows) or foraging site unsustainable or unavailable depending on the time frame, resulting in reduced survival or abandonment. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To facilitate the issuance of an ITP, CDFW recommends the DEIR include details pertaining to the permanent protection and perpetual management of compensatory habitat necessary to fully mitigate project-related impacts, both permanent and temporary. The type and amount of mitigation should be based on factors including an assessment of the importance of that habitat in the Project site, the extent to which covered activities will impact the habitat, and the estimate of the acreage required to provide for adequate compensation in coordination with CDFW.

**Recommendation or Recommended Mitigation Measure:** CDFW recommends the relevant DEIR section should be modified to state that if take of BUOW cannot be avoided, then CDFW recommends the Project proponent obtain an ITP and provide suitable mitigation that fully mitigates the Project impacts.

CDFW recommends the mitigation for the take of an active BUOW best be described in the relevant section of the DEIR. CDFW recommends that the mitigation ratio for BUOW habitat impacts is a minimum of 3:1 to offset the permanent loss of nesting habitat and 2:1 to offset the permanent loss of foraging habitat. CDFW also recommends that the mitigation for temporary impacts is no less than 1:1 for BUOW and their habitat to reduce project impacts to a less-than-significant level. CDFW recommends that mitigation is in the form of purchasing suitable mitigation credits from a CDFW-approved conservation bank, habitat restoration/enhancement onsite or offsite, partnership with other agencies or non-profit groups on suitable restoration projects, or other biologically suitable mechanisms pre-approved by the Lead Agency.

CDFW also recommends that the DEIR modify the Mitigation Measures to include language to demonstrate that all feasible avoidance measures will be exhausted before allowing for eviction as a last resort after obtaining an ITP from CDFW. Example recommended language is provided below:

1. Burrowing Owl Surveys. Project proponent shall conduct a BUOW survey over all suitable habitat present within the Project site. BUOW surveys shall be conducted by a qualified biologist in accordance with the protocol described in the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012). If possible, surveys should be conducted during both the breeding (February 1 – August 31) and non-breeding seasons (September 1 – January 31) immediately preceding the planned start of construction activities to ascertain the seasonal residency status of any owls occupying the site. The presence of BUOW or their sign anywhere on the site or within a 500-foot accessible radius around the Project site shall be recorded and mapped. Surveys shall disclose all burrows and occurrence of sign of BUOW on the Project site and within the 500-foot buffer. Results of the survey shall be submitted to the City.

2. Burrowing Owl Take Avoidance. During the breeding season (February 1 to August 31), surveys shall document whether BUOW are nesting in or within 500 feet of the Project area. During the non-breeding season (September 1 to January 31), surveys shall document whether BUOW are using habitat in or directly adjacent to any area to be disturbed. Survey results shall only be valid for the season (breeding or non-breeding) during which the survey was conducted. If a lapse in Project-related work of fifteen (15) calendar days or longer occurs, another focused survey and consultation with the City and CDFW shall be required before Project work can be reinitiated. If a BUOW or evidence of presence at or near a burrow entrance is found to occur within 500 feet of the Project site, the following measures shall be implemented:

2.1 If BUOW are found during the non-breeding season (approximately September 1 to January 31), the Project applicant shall establish a minimum 160-foot (50-meter) buffer zone around active burrows. The buffer zone shall be flagged or otherwise clearly marked. Measures such as visual screens may be used to further reduce the buffer with CDFW approval and provided a qualified biologist confirms that such measures do not cause agitated behavior.

2.2 If BUOW are found during the breeding season (approximately February 1 to August 31), the Project applicant shall:

a. Avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging).

b. Establish a minimum 500-foot non-disturbance buffer zone around nests, unless otherwise approved by the City in writing, in consultation with CDFW. The buffer zone shall be flagged or otherwise clearly marked. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer will be increased such that activities are far enough from the nest so that the bird(s) no longer display this agitated behavior. Construction shall only occur within the 500-foot buffer zone during the breeding season if a qualified biologist monitors the nest and determines that the activities do not disturb nesting behavior, or

the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged and moved off site. Any modifications to this buffer shall be approved by the City, in consultation with CDFW prior to its implementation. The buffer reduction request shall include relevant information and/or propose new measures to justify the buffer reduction. The buffer area must be clearly marked to prevent Project-related activities from occurring within the buffer zone.

3. Eviction of Burrowing Owls. If after all applicable avoidance and minimization measures are implemented and Project proponent needs to evict BUOW, an ITP shall be obtained for the activity and a BUOW eviction plan shall be developed by a qualified biologist for the City's review and approval, in consultation with CDFW. This plan, including its proposed mitigation, shall be consistent with the most recent available guidelines (e.g., *2012 Staff Report on Burrowing Owl Mitigation*). Burrow eviction shall only be conducted during the non-breeding season for burrows located in the Project footprint, and in limited instances within a buffer zone around the Project site, as determined by the City in consultation with CDFW after all avoidance and minimization measures have been exhausted.

## **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 found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov).

## **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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**

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [R2CEQA@wildlife.ca.gov](mailto:R2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the DEIR for the Summer Flats Project to assist the City in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or [harvey.tran@wildlife.ca.gov](mailto:harvey.tran@wildlife.ca.gov).

Sincerely,

**Harvey Tran**

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