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May 19, 2026

David Crompton, Chief of Planning
Town of Danville
500 La Gonda Way
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Subject: Martin Hills Ranch Residential Project, Draft Environmental Impact Report, SCH No. 2025010602, Contra Costa County

Dear David Crompton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the Town of Danville for the Martin Hills Ranch Residential Project (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 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.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, "take" means "hunt, pursue, catch, capture, or

[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.

kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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 a CESA Permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the lead agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the lead agency makes and supports findings of overriding consideration for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Fully Protected Species

Fully protected species, such as white-tailed kite (*Elanus leucurus*) 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.

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, 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 is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the draft EIR and complied with its responsibilities as a responsible agency under CEQA.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: Bates Stringer Martin Hills Ranch LLC

Objective: The objective of the Project is to construct 21 single-family homes with 25 percent of homes designed with Accessory Dwelling Units. A twenty-second single-family home may be developed within the Project site at a future date. Internal roadways, and a driveway off Como Way to facilitate access and circulation within the Project site. One of five parcels will remain undeveloped at this time but may be developed with a single-family residence in the future.

Location: The Project site is located off Borica Drive and Como Way in the Town of Danville, in Contra Costa County, California. The approximate Project centroid is located at Latitude 37.79857°, Longitude -121.95850°.

Timeframe: The proposed project would be constructed in one phase beginning in Summer 2026 and would take approximately 12–15 months to complete.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Town of Danville in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Pre-construction Survey and Avoidance of Burrowing Owl (Mitigation Measure BIO-1b)

The draft EIR notes the presence of ground squirrel (*Otospermophilus beecheyi*) burrows and suitable grassland habitat to support burrowing owl within the Project site. As of May 6, 2026, California Natural Diversity Database (CNDDB) records show eight occurrences of burrowing owl (*Athene cunicularia*) reported within five miles of the Project site. The closest occurrence record was recorded in August 2025 and overlaps with the southeastern portion of the Project site where construction is planned (CDFW 2026). Given the recency of the record and the proximity of this occurrence to the Project site, there is a high likelihood that burrowing owl may use the Project site and/or suitable habitat adjacent to the site.

Potentially significant direct impacts associated with Project activities may include burrow collapse, entombment, displacement, reduction of habitat or habitat quality, reduction of foraging area, nest abandonment, reduced reproductive success, reduction in health and vigor or eggs and/or young, and direct mortality of individuals.

Burrowing owl is currently a candidate species under CESA and is afforded the same protection as a CESA-listed species (CEQA Guidelines, §15380, subds.(b)). Unauthorized take of this species pursuant to CESA is a violation of Fish and Game Code section 2080 et seq.

Mitigation measures proposed by Mitigation Measure BIO-1b are insufficient to reduce potential adverse effects to burrowing owl to less-than-significant levels. Potential issues and recommended updates to the mitigation measures are outlined in further detail in the sub-comments below.

COMMENT 1a: Burrowing Owl Preconstruction Surveys

If burrowing owl are present within the Project site or within a range of disturbance by Project activities but are not detected by the single preconstruction survey proposed by

Mitigation Measure BIO-1b, unmitigated significant adverse impacts to burrowing owl may occur.

CDFW recognizes and appreciates that a season of burrowing owl surveys were conducted in support of the preparation of the draft EIR and acknowledges that the findings were negative. Since these surveys were conducted, a new burrowing owl occurrence has been recorded in CNDDB within the Project site (CDFW 2026). Additionally, the 2012 Staff Report on Burrowing Owl Mitigation notes that failure to locate burrowing owl during one field season does not constitute evidence that the site is no longer occupied. There remains potential for burrowing owl to occur in habitat within or adjacent to the Project site despite negative survey findings from the 2025 breeding season (CDFW 2012).

Recommendation 1: CDFW recommends that breeding and non-breeding season surveys consistent with the timing, frequency, considerations, and methodology of the Staff Report on Burrowing Owl Mitigation's appendix D (CDFW 2012) be conducted by a qualified biologist prior to any vegetation removal or ground-disturbing activities. CDFW recommends that survey results be submitted to CDFW upon completion.

Depending on the time between the initial survey efforts conducted in support of the draft EIR and Project construction, CDFW recommends that additional surveys in accordance with the Staff Report on Burrowing Owl Mitigation (CDFW 2012) be repeated immediately prior to construction.

COMMENT 1b: Burrowing Owl Protective Buffers

The buffers proposed by Mitigation Measure BIO-1b are insufficient to protect burrowing owl from Project-related disturbances. The 2012 Staff Report on Burrowing Owl Mitigation includes guidelines for implementation of buffers based on both the time of year and the level of disturbance. The recommended buffer sizes range from 50 to 500 meters (164 to 1640 feet) during the non-breeding season, and 200 to 500 meters (656 to 1640 feet) during the breeding season. Based on these guidelines, a 160-foot buffer as proposed by Mitigation Measure BIO-1b would be insufficient to protect burrowing owl individuals from medium-to-high levels of disturbance during the non-breeding season, and a 300-foot buffer would be insufficient to protect burrowing owl from any level of disturbance during the breeding season.

If burrowing owl are present within or adjacent to the Project site, individuals may be affected during construction activities if appropriate protective measures are not implemented. Because they roost underground, burrowing owl may be killed or injured during ground disturbance or during the movement of heavy equipment within the Project site. If these activities result in burrow collapse, individuals may be entombed within burrows or displaced. Visual or noise disturbances caused by Project activities may result in nest abandonment, potentially resulting in reduce health and vigor or the loss of eggs or young in active nests.

Recommendation 2: If a burrowing owl individual or known burrowing owl burrow (active or inactive) is detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the Staff Report on Burrowing Owl Mitigation (CDFW 2012), be implemented around each burrow or complex of burrows prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding burrowing owl.

COMMENT 1c: Passive Relocation of Burrowing Owl

Mitigation Measure BIO-1b provides for passive relocation of burrowing owl using one-way doors, contingent upon CDFW approval of an exclusion plan. The Staff Report on Burrowing Owl Mitigation (CDFW 2012) clarifies that exclusion is not take avoidance,

minimization, or mitigation and is considered a potentially significant impact under CEQA. Exclusion and/or eviction can result in "take" (as defined by Fish and Game Code section 86). Evicted burrowing owl may suffer from reduced reproductive success or direct mortality through prolonged exposure to harsh environmental conditions, such as extreme cold or heat, without adequate shelter or protection or predation.

Without proper site evaluation and care, evicted or excluded burrowing owl have the potential to experience higher levels of mortality and reduced reproductive success. Data from a recent study suggests that evicted burrowing owl often settle in burrows of a lower quality (Hennessy et. al. 2020), and relatively close to the site of their eviction (avg. of 570 meters), meaning that impacts to the species are still possible after eviction. CDFW's Staff Report on Burrowing Owl Mitigation (CDFW 2012) considers the eviction or exclusion of burrowing owl to have a potentially significant impact under CEQA.

Recommendation 3: If burrowing owl are identified during surveys, the Project should consult with CDFW to determine if the Project can avoid take, and if avoidance is not feasible, to acquire a CESA ITP, pursuant to Fish and Game Code section 2081, subdivision (b) prior to any ground-disturbing activities.

COMMENT 1d: Burrowing Owl Habitat Mitigation

The draft EIR does not provide mitigation for Project-related impacts to burrowing owl habitat. The Project site contains Project implementation would result in the permanent loss of 28.76 acres of suitable nesting, roosting, and foraging habitat for burrowing owl through the conversion of grassland habitat to a residential development. The Project site contains 97.14 acres of grassland habitat in total, and disturbances associated with the new residential development will also degrade adjacent habitat quality and result in loss of usable habitat for burrowing owl beyond the immediate Project footprint.

The 2024 Burrowing Owl Petition identifies habitat loss, fragmentation, and degradation as a primary threat to burrowing owl in California (CDFW 2024). Burrowing owl were formerly numerous throughout the San Francisco (SF) Bay Area region, particularly in the interior east of the Bay, but populations have rapidly declined over the past three decades. The number of breeding burrowing owl pairs in the SF Bay area have decreased from 165 in 1993 to less than 25 as of 2023 (CDFW 2024). If unmitigated, the permanent loss of habitat as a result of Project implementation loss would be a potentially significant adverse impact to burrowing owl as a species threatened by habitat loss.

Recommendation 4: CDFW recommends that the Project obtain an ITP if impacts to nesting habitat, including occupied and/or satellite burrows are expected, as the risk of take is high.

Even if take is not expected to occur during Project construction and therefore an ITP is not obtained, CDFW recommends that permanent impacts to foraging and nesting habitat, including occupied burrows and satellite burrows habitat, be mitigated by: (a) permanent conservation of land with current documented presence of burrowing owl and similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, wintering, and dispersal comparable to or better than that of the impact area, and (b) providing sufficiently large acreage on each parcel to support burrowing owl, and presence of fossorial mammals, including ground squirrel. If the proposed mitigation lands require habitat enhancements to meet species needs, then those enhancements should be made, including, but not limited to, enhancement or expansion of burrows for breeding, creation of shelter and dispersal opportunities, and removal or control of population stressors.

If Project impacts result in the "take" (as defined by Fish and Game Code section 86) of burrowing owl, the land conservation described above may not be sufficient mitigation. If

it is believed that "take" may occur, the Project should consult with CDFW and obtain a CESA ITP, pursuant to Fish and Game Code section 2081, subdivision (b).

COMMENT 2: Impacts to Nesting Birds (Mitigation Measure BIO-1c)

Mitigation Measure BIO-1c may not be sufficient to reduce potential Project-related impacts to nesting birds to less-than-significant levels. Additionally, Mitigation Measure BIO-1c references a CDFW-recommended "minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors." Please be advised that these minimum buffers do not reflect official recommendations from CDFW and may not be adequate to protect nesting birds in all circumstances.

The Project has the potential to result in the take of nesting birds, including white-tailed kite. Tree and vegetation removal may result in the direct mortality of nesting birds, and construction activities may generate noise or visual disturbances which may in turn result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young.

Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the federal Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513).

To assist the Project in reducing potentially substantial adverse impacts to nesting birds to less-than-significant levels, CDFW recommends that Mitigation Measure BIO-1c is replaced with the following potentially feasible mitigation measure:

*If the proposed project requires vegetation to be removed during nesting bird season (February 1 to September 15), a qualified biologist shall conduct a focused survey for active nests within **five days** prior to the initiation of project-related activities. If a lapse in project-related activities of **seven days** or longer occurs, another focused survey will be required before project activities can be reinitiated. Surveys shall be conducted in all potential habitat located at project work sites and in staging and storage areas. The minimum survey radii surrounding the work area shall be the following: (1) 250 feet for non-raptors; and (2) 1,000 feet for raptors.*

A qualified biologist shall determine an appropriately-sized avoidance buffer to protect the bird's normal bird behavior to prevent nesting failure or abandonment. The buffer distance recommendation should be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Typical minimum protective buffers between each identified nest site and the construction site are as follows: i) 250 feet for passerines and ii) 1,000 feet for raptors.

A qualified Biologist will delineate the avoidance buffer using Environmentally Sensitive Area fencing, pin flags, and/or yellow caution tape. The buffer zone will be maintained around the active nest site(s) until the young have fledged and are foraging independently. No construction activities or construction foot traffic is allowed to occur within the avoidance buffer(s). The qualified Biologist shall monitor the active nest during construction activities and modify the protection zone accordingly to prevent project-related nest disturbance until the young have fledged. If signs of disturbance and behavioral changes are observed, work shall cease and the protective buffer shall be increased.

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 CNDDB. The CNDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 recommends the draft EIR be revised to incorporate the recommendations outlined above to reduce significant impacts to burrowing owl to a less-than-significant level. CDFW appreciates the opportunity to comment on the draft EIR to assist the Town of Danville in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Torrey Soland, Environmental Scientist, at (707) 266-2878 or Torrey.Soland@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory), at Sara.Kern@wildlife.ca.gov.

Sincerely,

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

ec: Office of Land Use and Climate Innovation, State Clearinghouse, Sacramento

REFERENCES

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.

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.

California Department of Fish and Wildlife (CDFW). 2026. Biogeographic Information and Observation System (BIOS). https://www.wildlife.ca.gov/Data/BIOS. Accessed May 6, 2026.

Hennessy, S.M., Wisinski, C., Ronan, N., Gregory, C., Swaisgood, R., & Nordstorm, L. 2020. Assessing California's Relocation Guidelines for Burrowing Owls Affected by Renewable Energy Development. California Energy Commission.