



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 4, 2025

Will Tackett, Community Development Director
City of Madera, Community Development Department
205 W. 4th Street
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(559) 661-5451
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Subject: Notice of Preparation (NOP)
Avenue 17 and State Route 99 Industrial and Commercial Project
(Project)
SCH No. 2025031378

Dear Will Tackett:

The California Department of Fish and Wildlife (CDFW) received a NOP from the City of Madera for the Project pursuant to 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, CDFW appreciates 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

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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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 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.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession, or needless destruction of the nest 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Span Development

Objective: The Project proposes to change the Madera General Plan, rezone portions of the Project site, and ultimately construct 919,560 square feet of warehousing, two 100-room hotels, a 20,000-square foot construction equipment rental store, a 5,500-square foot sit-down restaurant, three 4,000-square foot fast-food restaurants, and a convenience store and gas station.

Location: The proposed Project is in the northwestern area of the City of Madera, on the northeast corner of Avenue 17 and State Route (SR) 99. The Project site consists of Assessor Parcel Number (APN) 013-240-001.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Madera 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 Draft Environmental Impact Report (DEIR) prepared for the Project.

Based on a review of aerial imagery, the Project site consists of occasionally disked annual grasslands, with two agricultural ponds located in the northern section of the Project site. The Project site is surrounded by residential communities to the north and east, annual grasslands and a commercial fueling station to the south, commercial businesses and the Madera Municipal airport to the southeast and SR 99 along the western boundary of the Project site, with several residential homes and commercial businesses located within the Project vicinity.

Based on a review of California Natural Diversity Database (CNDDB) (CDFW 2025) records, and the surrounding habitat, the Project is within the geographic range of several special-status animal and plant species including, but not limited to: the State threatened Swainson's hawk (*Buteo swainsoni*); the State and federally threatened (California tiger salamander - central California DPS) (*Ambystoma californiense* pop. 1); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); the State species of special concern American badger (*Taxidea taxus*); the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*); the State special animal and federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*); the State and federally endangered and California Rare Plant Rank (CRPR) 1B.1 hairy Orcutt grass (*Orcuttia pilosa*); the State endangered, federally threatened, and CRPR 1B.1 San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*); the State rare, federally endangered, and CRPR 1B.1 Greenes tuctoria (*Tuctoria greenei*); and the CRPR 1B.2 Munz's tidy-tips (*Layia munzii*).

In order to support the adequate assessment of potential impacts to biological resources in the DEIR, CDFW recommends that a qualified biologist perform relevant database reviews and other research of the Project site, then conduct focused habitat assessments and/or focused biological surveys during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site.

CDFW recommends this initial work be documented within the DEIR and used to inform further efforts that may be needed thereafter including the need for additional protocol surveys and/or the development of avoidance, minimization, and/or mitigation measures. This information and analysis may then be used in the DEIR to consider the development of modified or new Project alternatives to avoid and minimize potentially

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significant environmental impacts on the biological environment. This information is critical to make an informed decision during the CEQA process and to ensure Project compliance with CESA, Fish and Game code, and other applicable State and federal laws and regulations.

Special-Status Plant Species

The Project site is within the known geographic range of several special-status plant species including hairy Orcutt grass, San Joaquin Valley Orcutt grass, Greene's tuctoria, and Munz tidy-tips, and these species were documented historically within the Project vicinity (CDFW 2025). The Project site may contain suitable habitat for special-status plant species, including the species mentioned above.

CDFW recommends that the Project site(s) be surveyed for special-status plants within areas of suitable habitat by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities" (CDFW 2018) as part of the biological technical studies conducted in support of the DEIR. This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. If surveys indicate the presence or potential presence of special-status plants, consultation with CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation. If take of State-listed species cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081, subdivision (b) and/or California Code of Regulations, Title 14, section 786.9, subdivision (b), is necessary to comply with CESA.

Swainson's Hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA) and there is a historical occurrence documented within 3 miles of the Project site (CDFW 2025). SWHA are known to breed within the Central Valley of California and prefer to nest near and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, the Project site has suitable perching and nesting trees along the northern and eastern borders and most of the Project site contains suitable habitat for SWHA foraging.

Therefore, CDFW recommends surveys for SWHA be conducted as part of the biological technical studies conducted in support of the DEIR by a qualified biologist following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). In addition to conducting SWHA surveys, CDFW recommends the DEIR include the following measures:

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Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction

Depending on the time between the initial survey efforts conducted in support of the DEIR and the initiation of construction activities associated with this Project, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee, be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 2: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

California Tiger Salamander

The Project site is within the known geographic range of California tiger salamander (CTS), and a historical occurrence was documented within 2 miles of the Project site (CDFW 2025). CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types and have been determined to be physiologically capable of dispersing up to approximately 1 ½-miles from seasonally flooded wetlands (Searcy and Shaffer 2011). The Project site has agricultural ponds located in the northern section of the Project site that could potentially facilitate CTS breeding and dispersal. As such, CDFW recommends a qualified biologist conduct a robust habitat assessment of the Project site and Project vicinity, including an appropriate habitat assessment buffer, to determine whether suitable breeding or dispersal habitat may be present as part of the biological technical studies conducted in support of the DEIR. If it is determined that suitable habitat is present, CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the U.S Fish and Wildlife (USFWS) “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS CTS Protocol) (USFWS 2003) as part of the biological technical studies conducted in support of the DEIR. If surveys indicate the presence or potential

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presence of CTS, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Western Burrowing Owl

The California Fish and Game Commission (FGC) approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the known geographic range of BUOW and a historical occurrence has been documented within $\frac{3}{4}$ of a mile of the Project site (CDFW 2025). BUOW inhabit open grasslands containing small mammal burrows, a requisite habitat feature used for nesting and cover, and they are known to forage in agricultural lands. It appears that suitable burrowing and foraging BUOW habitat may be present within the Project site or vicinity.

As BUOW have the potential to be present within the Project site or vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) as part of the biological studies conducted in support of the DEIR. If surveys indicate the presence or potential presence of BUOW, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The Project site is within the known geographical range of Crotch's bumble bee (CBB). CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. Based on aerial imagery, these habitat elements may be present within the Project site. As such, CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If

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potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023). If surveys indicate the presence or potential presence of CBB, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

American Badger

The Project site is within the known geographic range of American badger (AMBA) and a historical occurrence has been documented within 10 miles from the Project site (CDFW 2025). AMBA occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. Al 1990). Sections of the Project site provide potential habitat for AMBA to den and/or forage. As such, CDFW recommends that a qualified biologist assess the presence or absence of AMBA by conducting a focused field survey in all areas of potentially suitable habitat as part of the biological studies conducted in support of the DEIR. If surveys indicate the presence or potential presence of AMBA, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

Western Spadefoot

The Project site is within the known geographic range of western spadefoot (WESP) and a historical occurrence has been documented within a ½ mile from the Project site (CNDDDB 2025). WESP occurs primarily in grasslands and seasonal wetlands, which includes ephemeral depressions without any wetland vegetation, with appropriate upland habitat. These habitat features appear to be present within the northern section of the Project site and, as such, CDFW recommends that a qualified biologist conduct focused surveys for WESP as part of the biological technical studies conducted in support of the DEIR. If these surveys indicate the presence or potential presence of WESP, consultation with the CDFW is recommended for guidance on surveys and mitigation measures such as avoidance, minimization, and mitigation.

Vernal Pool Fairy Shrimp

The Project site is within the known geographic range of vernal pool fairy shrimp (VPFS) and a historical occurrence has been documented within 2 miles from the Project site (CDFW 2025). VPFS are small, freshwater crustaceans that complete their entire lifecycle within a variety of vernal pool habitats and temporary waters between

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November and early May. VPFS will disappear before vernal pools dry in the summer months but resting fairy shrimp eggs, known as cysts, will remain viable within the dried pools for years. Hatching subsequently begins in response to rains during the beginning of the rainy season. Review of aerial imagery indicates that low-lying areas in the Project site may have the requisite conditions for VPFS breeding during normal rain years, and may have potential habitat to support VPFS. As such, CDFW recommends that a general habitat assessment be conducted as part of the biological technical studies conducted in support of the DEIR. If the habitat assessment indicates the presence or potential presence of VPFS, CDFW recommends that protocol level surveys be conducted as part of the biological technical studies to inform the DEIR and that these surveys be conducted in accordance with the USFWS "Survey Guidelines for the Listed Large Branchiopods" (USFWS 2017). These surveys would need to be conducted at the appropriate time of year to determine the existence and extent of VPFS.

If through surveys it is determined that VPFS are present, consultation with CDFW is recommended for guidance on surveys and mitigation measures such as avoidance, minimization, and mitigation. Additionally, consultation with USFWS may be necessary to minimize the potential for federal take and/or mitigate for potential impacts.

Editorial Comments and/or Suggestions

Lake and Streambed Alteration: Based on a review of aerial imagery, it appears that several streams are located within the Project site and Project vicinity. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

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Nesting birds: CDFW encourages that all ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), developers are responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a 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. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). Cumulative impacts are recommended to be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should also be identified and mapped for each resource being analyzed and

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utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the Project's DEIR be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, CDFW advises that remaining impacts to sensitive biological resources be mitigated to reduce impacts to a less than significant level, if feasible.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CTS, WESP, and VPFS. Take under the Federal Endangered Species Act (FESA) is more broadly defined than the CESA; take under the FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS to comply with the FESA is advised well in advance of any ground disturbing activities.

California Natural Diversity Database: Please note that the CNDDDB is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present.

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

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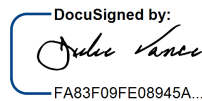
FILING FEES

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 NOP to assist the City of Madera in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included to assist the City of Madera with incorporating the recommended mitigation measures provided above. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453 or john.riedel@wildlife.ca.gov.

Sincerely,


FA83F09FE08945A...
Julie A. Vance
Regional Manager

ATTACHMENT

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State Clearinghouse
Governor's Office of Planning and Research
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REFERENCES

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- U. S. Fish & Wildlife Service. 2017. Survey guidelines for the listed large branchiopods. Pacific Southwest Region, Sacramento, California, USA. Revised November 2017.
- Zeiner, D., W. Laudenslayer, Jr., K. Mayer, and M. White. 1990. California's Wildlife. Volumes I-III in California Department of Fish and Game, editor. California Department of Fish and Wildlife, Sacramento, California, USA.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Avenue 17 and State Route 99 Industrial and Commercial
Project**

SCH No.: 2025031378

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA surveys	
Recommended Mitigation Measure 3: SWHA take authorization	
<i>During Construction</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA avoidance buffer	