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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 10, 2025

Victoria Lombardo, Senior Planner
City of Tracy, Community and Economic Development Department
333 Civic Center Plaza
Tracy, CA 95376
Victoria.Lombardo@cityoftracy.org

Subject: Paradise Pointe Business Park Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2025050796, City of Tracy, San Joaquin County

Dear Ms. Lombardo:

The California Department of Fish and Wildlife (CDFW) has reviewed the City of Tracy (City) Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the Paradise Pointe Business Park 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 is providing the City of Tracy, as the Lead Agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

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

[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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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 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 (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, does not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Migratory Birds and Raptors

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). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

PROJECT DESCRIPTION SUMMARY

Proponent: Michael Diepenbrock, Ridge Tracy Land Partners No. 2, LLC

Objective: The objective of the Project is to develop two warehouse buildings totaling 718,165 square feet, including supportive parking and landscaping. Primary Project activities include excavation of contaminated soil in an approximately 10.2-acre Remediation Area prior to development; grading of the Project site; construction of two industrial warehouses, associated utilities, parking, and an outdoor amenity area for employees; and installation landscaping, including native and drought tolerant plants and associated irrigation systems.

Location: The Project site is located in the City of Tracy, San Joaquin County. The site is located at the northwest corner of Chrisman Road and Paradise Avenue adjacent to State Route 205 (SR-205) to the north, and the approximate Project coordinates are Latitude 37.763333°, Longitude -121.392694°.

Timeframe: A timeframe is not specified for the initiation of Project activities.

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.

PROJECT DESCRIPTION

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and

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that contains sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the following Project components in the Project description including, but not limited to, the following information:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes;
- Area and plans for any proposed buildings/structures, ground-disturbing activities;
- fencing, paving, stationary machinery, landscaping, and stormwater systems;
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features; and
- Construction schedule, activities, equipment, and crew sizes.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the draft EIR (CEQA Guidelines, §§15125 & 15360).

CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities), and any stream or wetland set back distances the City may require. Fully protected, threatened or endangered, candidate, and other special-status species or sensitive natural communities that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

Species	**Status**
Crotch's bumble bee (*Bombus crotchii*)	State candidate (SC)
Song sparrow – Modesto population (*Melospoza melodia pop. 1*)	Species of special concern (SSC)
Swainson's hawk (*Buteo swainsoni*)	State threatened (ST)
Tricolored blackbird (*Agelaius tricolor*)	ST
Western burrowing owl (*Athene cunicularia*)	SC

Habitat descriptions and species profiles included in the draft EIR should include robust information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Only with sufficient data and information can the City adequately assess which special-status species are likely to occur in the Project vicinity.

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CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocol. The Project will result in the loss of agricultural land, which could impact nesting and foraging habitat for birds and bees.

- Crotch's bumble bee: CDFW recommends utilizing Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (https://wildlife.ca.gov/Conservation/CESA) for reference in developing habitat assessment and survey methodology.

- Swainson's hawk: CDFW recommends surveys are conducted in accordance with Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (TAC Report)*.

- Western burrowing owl: CDFW recommends habitat assessments and surveys are conducted in accordance with the *California Department of Fish and Game* (*now CDFW*) *2012 Staff Report on Burrowing Owl Mitigation* (*CDFW 2012 Staff Report*).

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (http://www.cnps.org/cnps/rareplants/inventory/), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: https://www.wildlife.ca.gov/Conservation/Plants.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. The following items are not sufficiently addressed in the Initial Study included with the NOP, and should be evaluated and described in the draft EIR:

- Loss or modification of breeding, nesting, dispersal, and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g. nests, burrows, burrow surrogates);

- Permanent and temporary habitat disturbance associated with ground disturbance, noise, lighting, air pollution, traffic, and increased human presence; and

- Obstruction of movement corridors or access to core habitat features for resident species or wildlife in areas adjacent to the Project site. On page 37, the Initial Study indicates that because there are no CNDDB records of wildlife corridors or nursery sites on the Project site, the project will have a less than significant impact. CNDDB is a positive-occurrence database and there are areas of the state that have not been surveyed or where data have not been submitted to the CNDDB program. Therefore, absence of CNDDB data is not sufficient proof of absence, and such analysis should be based upon the results of habitat assessments and surveys of the Project site as described in the above comment.

The draft EIR also should identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, §15355). Although a Project's impacts may be insignificant individually, its contributions to a cumulative

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impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Mitigation Measures for Project Impacts to Biological Resources

The draft EIR should include all appropriate and feasible avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW recommends that the draft EIR provide scientifically supported discussions regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's potentially significant impacts upon fish and wildlife and their habitat. These measures should then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. The Initial Study included with the NOP relies upon mitigation measures that may not be sufficient to reduce impacts to special-status species to less-than-significant levels, and CDFW therefore recommends consideration of the following when proposing measures to avoid, minimize, or mitigate impacts in the draft EIR:

COMMENT 1: San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Participation and California Endangered Species Act-Listed Species

The draft EIR does not include supporting documentation for approval under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), nor does it propose or identify specific and sufficient mitigation in the event that the project is does not obtain full coverage under the SJMSCP. Impacts to special-status species need to be addressed with specific, enforceable mitigation measures in the event that SJMSCP does not approve coverage, if the Project opts not to seek coverage, or if the Project may impact any species which are not covered under the SJMSCP.

Unauthorized take of listed and candidate species pursuant to the CESA is a violation of California Fish and Game Code section 2080 et. seq. If the Project cannot fully avoid take of such species, including, but not limited to Swainson's hawk, western burrowing owl, Crotch's bumble bee, or tricolored blackbird, and if the SJMSCP does not offer take coverage for such species, CDFW recommends the IS/MND include language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

Please see the following comments for species-specific recommendations:

COMMENT 1a: Swainson's Hawk

The Project site is within the geographic summer range of Swainson's hawk and there are 56 CNDDB occurrences documented within five miles of the Project site (CDFW, 2025). Based on aerial imagery and information provided in the draft EIR, agricultural land within the Project site may provide foraging habitat for Swainson's hawk. The draft EIR proposes Mitigation Measure BIO-1 to reduce impacts to Swainson's hawk to less-than-significant levels; however, all avoidance and minimization measures described in Mitigation Measure BIO-1 are specific to western burrowing owl.

Swainson's hawk is unlikely to be detected by the preconstruction surveys described in Mitigation Measure BIO-1 which target western burrowing owl. Western burrowing

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owl utilizes underground burrows for nesting and cover, while Swainson's hawk nests within trees (CDFW, 2012; CDFW, 1994). Swainson's hawk nests may also be disturbed by Project-related activities at a distance of up to 0.5 miles (TAC, 2000) and may remain vulnerable to disturbance without adequate surveys and avoidance measures. Mitigation Measure BIO-1 does not describe methods to avoid or minimize potential Project-related disturbances to Swainson's hawk nests should one be present.

If Swainson's hawk nests are undetected during surveys, disturbances generated by the Project may result in nest abandonment, loss of young, reduced reproductive success, or the reduced health or vigor of eggs or nestlings. Swainson's hawk populations have experienced a precipitous decline over the past century, and current populations continue to be threatened by on-going and cumulative loss of foraging habitat, which is potentially present within the Project site (CDFW 2016). Swainson's hawk is a threatened species under CESA, which qualifies it as a rare, threatened, or endangered species under CEQA. Because Mitigation Measure BIO-1 is insufficient to reduce Project-related impacts to Swainson's hawk to less-than-significant levels, impacts to Swainson's hawk may still therefore be *potentially significant*.

To minimize impacts to Swainson's hawk to less-than-significant levels, CDFW recommends that the following specific and enforceable mitigation measures be incorporated in the draft EIR:

Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on this Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (TAC, 2000). Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist.

Swainson's Hawk Mitigation: Loss of foraging habitat shall be mitigated at the appropriate ratio following CDFW's (then Fish and Game) Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni)* in the Central Valley of California (CDFW, 1994) prior to Project construction, and accepted by CDFW in writing. The Project shall be assumed to be within one mile of an active nest tree and mitigate at a 1:1 mitigation to impact ratio, unless protocol-level Swainson's hawk surveys are conducted demonstrating that Swainson's hawks are not nesting within one mile of the Project. Habitat mitigation shall include permanent preservation of foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity.

COMMENT 1b: Western Burrowing Owl

The Project site is within the year-round range of western burrowing owl and there are 23 CNDDB occurrences documented within five miles of the Project site (CDFW, 2025). Based on aerial imagery and information provided in the draft EIR, land within

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and adjacent to the Project site may provide suitable foraging and roosting habitat for western burrowing owl. The draft EIR proposes Mitigation Measure BIO-1 to reduce impacts to western burrowing owl to less-than-significant levels; however, proposed preconstruction survey methodology is not described, and the avoidance and minimization measures described in Mitigation Measure BIO-1 appear to be based upon outdated guidance from the 1995 Staff Report on Burrowing Owl Mitigation. Therefore, Mitigation Measure BIO-1 may not be sufficient to reduce impacts to western burrowing owl to less-than-significant levels.

Please be advised that CDFW issued a revised Staff Report in 2012 with updated survey, avoidance, minimization, and mitigation recommendations that replace those outlined in the 1995 Staff Report. Please also be advised that CDFW no longer considers exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a "take" avoidance, minimization, or mitigation measure, and eviction of burrowing owls is a potentially significant impact under CEQA (CDFW, 2012). Burrowing owls are dependent on burrows at all times of year for survival or reproduction and exhibit high site fidelity (CDFW, 2024). According to the 2012 Staff Report, eviction from burrows often results in increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows. Therefore, exclusion and burrow closure are not recommended where they can be avoided.

If western burrowing owl 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. Without the implementation of appropriate avoidance and minimization measures, disturbance to nesting burrowing owls 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 burrowing owls from their burrows, potentially resulting in increased risk of injury by vehicle strike or predation. Western burrowing owl was named as a candidate for listing under CESA in October 2024. Their candidacy status qualifies western burrowing owl as a rare, threatened, or endangered species under CEQA and affords them the same legal protection as endangered or threatened species (Fish and Game Code sections 2074.2 and 2085). Because Mitigation Measure BIO-1 may be insufficient to reduce Project-related impacts to western burrowing owl to less-than-significant levels, impacts to western burrowing owl may still therefore be *potentially significant.*

To minimize impacts to western burrowing owl to less-than-significant levels, CDFW recommends that the following specific and enforceable mitigation measures be incorporated in the draft EIR:

Western Burrowing Owl Surveys: No more than 14 days prior to prior to Project activities, a qualified biologist shall conduct at least two surveys following the methods described in CDFW 2012 Staff Report on Burrowing Owl Mitigation, Appendix D (2012), at least seven days apart, with the final survey conducted no more than 48 hours prior to beginning Project activities. Surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. If a lapse in Project-related work of 14 calendar days or longer occurs, additional surveys shall be required. If occupied burrows are detected during surveys, CDFW shall be consulted prior to Project commencement.

Western Burrowing Owl No-Disturbance Buffers: A qualified biologist shall clearly delineate a no-disturbance buffer around all western burrowing owl

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burrows, including nesting, roosting, and satellite burrows, or the entire burrow complex within and adjacent to within 150 meters of the Project Area with posted markers demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of western burrowing owl habitat. Buffers shall be determined based upon the time of year and level of disturbance as described in the CDFW 2012 Staff Report. If burrows cannot be fully avoided, CDFW shall be consulted.

Western Burrowing Owl Habitat Mitigation: The CDFW 2012 Staff Report states, "current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates…" If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described above), impacts to burrowing owl habitat should be mitigated for at a minimum 1:1 mitigation to impact ratio through a conservation easement and implementing and funding a long-term management plan in perpetuity.

COMMENT 1c: Crotch's Bumble Bee

The draft EIR does not evaluate potential Project impacts to Crotch's bumble bee. The Project site is located within the historic range for Crotch's bumble bee, and recent Crotch's bumble bee occurrences have been documented within San Joaquin County including one CNDDB occurrence from 2023 within five miles of the Project site (CDFW, 2025).

Implementation of the Project includes construction of warehouses, associated parking lots and utilities, and landscaping. If Crotch's bumble bee utilizes the Project site for nesting, foraging, or overwintering habitat, direct mortality could result from crushing or filling of active bee colonies or hibernating bees, reduced reproductive success, loss of suitable breeding and foraging habitat, or loss of vegetation that may support foraging habitat. Crotch's bumble bee is currently a candidate species for listing under the CESA, and qualifies as a rare, threatened, or endangered species under CEQA. As a CESA candidate, Crotch's bumble bee is afforded the same protections as CESA-listed species, and take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

To reduce impacts to Crotch's bumble bee to less-than-significant levels and to comply with the CESA, CDFW recommends that impacts to Crotch's bumble bee be evaluated in the draft EIR, and that the following feasible mitigation measures be incorporated as enforceable measures of the draft EIR:

Habitat Assessment and Surveys: CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological studies conducted in support of the draft EIR to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support Crotch's bumble bee. 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 potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for Crotch's bumble bee following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW, 2023).

Take Avoidance: Crotch's bumble bee is not a species covered under the SJMSCP. If surveys indicate the presence or potential presence of Crotch's bumble bee, consultation with the CDFW is recommended for guidance on the

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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.

COMMENT 2: Nesting Birds

CDFW encourages 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 MBTA or relevant Fish and Game Codes as referenced above.

To evaluate and avoid potential impacts to nesting bird species, CDFW recommends the following measures be made conditions of approval for the Project:

Nesting Bird Surveys: If Project activities will occur during nesting bird season (February 1 to September 15), a Qualified Biologist shall conduct one focused survey for active nests within **seven 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. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with the Fish and Game Code of California.

Active Nest Buffers: Any active nests shall have an appropriately sized protective buffer to protect the bird's normal bird behavior to prevent nesting failure or abandonment. Typical protective buffers are as follows: i) 1,000 feet for large raptors such as buteos, ii) 500 feet for smaller raptors such as accipiters and iii) 250 feet for passerines. No project personnel or equipment shall be allowed to enter the protective buffer until a Qualified Biologist determines that the young have fully fledged and will no longer be adversely affected by the project. A Qualified Biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and all active nests should be continuously monitored by a biologist during construction activities to detect any signs of disturbance and behavioral changes as a result of the project. If signs of disturbance and behavioral changes are observed, work shall cease and the protective buffer shall be increased.

EDITORIAL COMMENTS

The draft EIR indicates that tricolored blackbird (*Agelaius tricolor*) occur within the region but does not provide a discussion of potential Project impacts to the species. Please provide an evaluation of potential impacts to tricolored blackbird, CESA-listed species and rare, threatened, or endangered under CEQA, in the draft EIR.

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

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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. (See Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW finds that without the incorporation of the above revisions to a revised draft EIR, the significant biological impacts identified in the Initial Study will not be mitigated to a level of less-than-significant. 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 Torrey Soland, Environmental Scientist, at (707) 266-2878 or Torrey.Soland@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory), at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

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

ec: Office of Planning and Research, State Clearinghouse, Sacramento

REFERENCES

California Department of Fish and Wildlife (CDFW). (1994). Staff Report Regarding Mitigation for Impacts to Swainson's Hawk (*Buteo swainsoni*) in the Central Valley of California. State of California Department of Fish and Game, Sacramento, CA. https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline.

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