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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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June 9, 2025

Kenneth Lipich, Associate Planner
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Kenneth.Lipich@cityoftracy.org

Subject: Tracy Dual Hotels, Initial Study/Mitigated Negative Declaration, SCH No. 2025050757, City of Tracy, San Joaquin County

Dear Mr. Lipich:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Tracy Planning Division for the Tracy Dual Hotels (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

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

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

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: City of Tracy (City), Community and Economic Development Department

Objective: The objective of the Project is to develop two hotels within the Project site with shared parking spaces, electric vehicle charging stations, and two swimming pools.

Location: The Project is located at 3095, 3055, and 3125 North Corral Hollow Road, in the City of Tracy, San Joaquin County, California. Project coordinates are Latitude 37.758611°, Longitude -121.454333°. The Project site is identified by Assessor Parcel Numbers (APNs) 212-260-070, 212-260-080, and 212-260-090.

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

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection 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 or the Native Plant Protection Act (NPPA), 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.

If the Project is covered by the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), the habitat conservation plan permit will only authorize the incidental take of covered species as listed in the SJMSCP. A list of the 97 SJMSCP-covered species can be found in the *2000 San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), Table 2-2 – SJMSCP Covered Species.*

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) &

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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, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

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

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a MND is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Impacts to Western Burrowing Owl

The surveys and avoidance measures described in Mitigation Measure BIO-1 may not be sufficient to reduce impacts to western burrowing owl (*Athene cunicularia*) to less-than-significant levels.

On page 32 of the impacts discussion, section IV. Biological Resources, Mitigation Measure BIO-1 indicates that surveys will be conducted and that if western burrowing owl are detected, avoidance and minimization measures will be implemented. Avoidance and minimization measures described in Mitigation Measure BIO-1 appear to be based upon guidance contained in the 1995 Staff Report on Burrowing Owl Mitigation, which no longer reflects current CDFW guidance based on the best available science and may in fact contribute to adverse impacts caused by the Project. Such measures are discussed in more detail below.

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There are 29 California Natural Diversity Database (CNDDB) occurrences of western burrowing owl within a five-mile radius of the Project site. Western burrowing owl in California typically do not migrate throughout the year, and if they leave the nest site they often return to the same nest or a nearby area the following year (CDFW, 2024). On page 32, the IS/MND reports that the Project site contains potentially suitable habitat for western burrowing owl, and that land adjacent to the Project site also consists of potentially suitable foraging and roosting habitat for wintering or breeding owls. One occurrence was documented within 500 meters of the Project site, and according to CDFW's *Staff Report on Burrowing Owl Mitigation, Appendix C: Habitat Assessment and Reporting Details* (CDFW, 2012), western burrowing owl may be disturbed by Project activities from a distance of up to 500 meters.

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 the 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 CESA endangered or threatened species (Fish and Game Code sections 2074.2 and 2085).

CDFW strongly recommends that Mitigation Measure BIO-1 is updated to reflect the guidelines for surveys, avoidance, minimization, and mitigation measures described in the 2012 Staff Report on Burrowing Owl Mitigation, or the most current guidance available at the time of Project implementation. CDFW also makes the following recommendations to assist in reducing impacts to western burrowing owl to less-than-significant levels:

COMMENT 1a: Western Burrowing Owl Surveys

On page 32 of the impacts discussion, section IV. Biological Resources, Mitigation Measure BIO-1 states that preconstruction surveys for western burrowing owl will be conducted "in accordance with SJMSCP [San Joaquin Multi-Species Habitat Conservation and Open Space Plan] requirements." Without a description of survey methodology, CDFW cannot assess whether surveys will be adequate to identify western burrowing owl which may be impacted by Project activities.

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CDFW recommends that the following specific and enforceable mitigation measure be incorporated in a revised IS/MND:

> *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.*

COMMENT 1b: Western Burrowing Owl Avoidance and Minimization

Mitigation Measure BIO-1 indicates that avoidance and minimization measures will be implemented only if burrowing owls or occupied nests are discovered during surveys. The avoidance and minimization measures described rely upon recommendations described in the 1995 Staff Report on Burrowing Owl Mitigation, including implementation of protective buffers during the breeding season and passive relocation of non-nesting western burrowing owls from occupied burrows. Please be advised that CDFW issued a revised Staff Report in 2012 with updated recommendations in response to the continued decline of western burrowing owl populations. The guidelines in the 2012 Staff Report supersede the survey, avoidance, minimization, and mitigation recommendations outlined in the 1995 Staff Report.

On page 33, Mitigation Measure BIO-1 states that a 75-meter protective buffer will be implemented around occupied burrows during the breeding season, unless it is verified that either “1) the birds have not begun egg laying, or 2) juveniles from the occupied burrows are foraging independently and are capable of independent survival.” A protective buffer is not identified for occupied burrows during the non-breeding season. This buffer radius appears to be based upon the 1995 Staff Report, which recommends a 75-meter protective buffer around occupied burrows during the breeding season and a 50-meter buffer during the non-breeding season. The 2012 Staff Report not only includes the recommendation that protective buffers are implemented around occupied burrows at all times of year, but the updated recommendation that the size of the buffers are increased based upon the level of disturbance caused by Project activities. A static protective buffer implemented only during the breeding season and without active monitoring, as described in Mitigation Measure BIO-1, may not be sufficient to protect western burrowing owl from disturbance.

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In addition to implementing protective buffers around occupied burrows during the breeding season, Mitigation Measure BIO-1 states that if burrowing owls are detected during preconstruction surveys, they will be evicted from burrows "as described in the California Department of Fish and Game's Staff Report on Burrowing Owls (October, 1995)." Please 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.

CDFW recommends that the following specific and enforceable mitigation measure be incorporated in a revised IS/MND:

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

COMMENT 2: Impacts to Swainson's Hawk

Implementation of Mitigation Measure BIO-1 is not sufficient to reduce impacts to Swainson's hawk (*Buteo swainsoni*) to a less-than-significant level.

On page 32 in the impacts discussion, section IV. Biological Resources, the IS/MND states that "impacts to Swainson's hawk are less-than-significant with implementation of Mitigation Measure BIO-1." However, all avoidance and minimization measures described in Mitigation Measure BIO-1 are specific to western burrowing owl, including focused preconstruction surveys for western burrowing owl and additional measures to be implemented "if burrowing owls or occupied nests are discovered." Though Swainson's hawk may nest in trees or forage within grassland habitats that may support western burrowing owl, Swainson's hawk has different habitat requirements from burrowing owl. Swainson's hawk nests within trees, while western burrowing owl utilizes underground burrows and cavities for nesting and cover, and Swainson's hawk are not likely to be detected by surveys for western burrowing owl (CDFW, 1994; CDFW, 2012).

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Swainson's hawk is a threatened species under CESA, which qualifies it as a rare, threatened, or endangered species under CEQA. The breeding population of Swainson's hawks in California has declined by an estimated 90 percent since 1900, with the majority of CNDDB records occurring within the Central Valley (CDFW, 2016). If Swainson's hawk nests are present within the Project site and remain undetected during surveys, nests may be destroyed during tree removal activities associated with the Project. Additionally, if nests are undetected during surveys or if avoidance measures specific to western burrowing owl are implemented to protect Swainson's hawk nests, Project-generated disturbances may result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young. Project impacts to Swainson's hawk may therefore still 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 a revised IS/MND:

> *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.*

COMMENT 3: San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Coverage

In section IV. Biological Resources of the IS/MND, page 33, Mitigation Measure BIO-2 states:

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> *"Prior to commencement of any grading activities, the Project proponent shall seek coverage under the SJMSCP to mitigate for habitat impacts to covered special status species…"*

The IS/MND does not include supporting documentation for approval under the SJMSCP, nor does it propose or identify specific and sufficient mitigation in the event that the Project is not approved for 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. To ensure that Project impacts to special-status species are mitigated to a level of less-than-significant in the event that SJMSCP does not offer full coverage, CDFW makes the following recommendations:

COMMENT 3a: Western Burrowing Owl

Ongoing habitat loss, degradation, and fragmentation are the largest threats to the remaining populations of western burrowing owl in California (CDFW, 2012). As discussed in Comment 1 of this letter, western burrowing owl has been previously documented within the Project site and potentially suitable foraging and roosting habitat for wintering or breeding owls exists on and adjacent to the Project site. To mitigate for the loss of western burrowing owl habitat in the event that the SJMSCP does not offer full coverage, CDFW recommends the following specific, enforceable mitigation measures be included in a revised IS/MND:

> *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 3b: Swainson's Hawk

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 (CDFW 2016). On page 32, the IS/MND reports that potentially suitable foraging and nesting habitat for Swainson's hawk is present within the Project site. There are 50 CNDDB occurrences of Swainson's hawk within a five-mile radius of the Project site, a species known to forage within a ten-mile radius of nesting sites (CDFW, 1994). To mitigate for the loss of Swainson's hawk foraging habitat in the event

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that the SJMSCP does not offer full coverage, CDFW recommends the following specific, enforceable mitigation measure be included in a revised IS/MND:

> *Swainson's Hawk Habitat 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 3c: CESA-Listed Species

Unauthorized take of listed and candidate species pursuant to 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 and western burrowing owl, and if the SJMSCP does not offer take coverage, CDFW recommends the IS/MND include language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

COMMENT 4: Nesting Birds

On page 32 of the Impact Discussion for IV. Biological Resources, the IS/MND reports that potentially suitable nesting habitat for Swainson's hawk occurs within an on-site tree along the eastern site boundary. The IS/MND does not discuss the potential for other species of birds to nest within the Project site.

Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the MBTA is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). Project activities including ground disturbance, operation of heavy machinery, and the movement of workers 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. If nesting birds occur within the Project site and are undetected, Project activities including tree and vegetation removal may inadvertently crush, destroy, or remove active nests.

CDFW recommends the following specific, enforceable mitigation measures be included in a revised IS/MND:

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*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.

II. Editorial Comments and/or Suggestions

Birds cannot typically see clear or reflective glass and can collide with windows that reflect surrounding landscape and/or habitat features (Klem and Saenger 2013, Sheppard 2019). When birds collide with glass, they can be injured or killed. In the United States, the estimated annual bird mortality is between 365-988 million birds (Loss et al. 2014), and incidents of western burrowing owl being injured by window strike have been documented by wildlife rehabilitation centers (Bird Alliance of Oregon, 2019; Motter, 2023). CDFW recommends the Project be required to incorporate visual signals or cues to exterior windows to prevent bird collisions. Visual signals or cues include, but are not limited to, patterns to break up reflective areas, external window films and coverings, ultraviolet patterned glass, and screens. For best practices on how to reduce bird collisions with windows, please go to the U.S. Fish and Wildlife Service's website for Buildings and Glass (https://www.fws.gov/story/threats-birds-collisions-buildings-glass).

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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 finds that without the incorporation of the above revisions to a revised and recirculated IS/MND, the significant biological impacts identified in the IS/MND will not be mitigated to a level of less-than-significant. CDFW appreciates the opportunity to comment on the IS/MND 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 Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486...

Erin Chappell
Regional Manager
Bay Delta Region

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

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