



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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July 18, 2025

Liszet Burgueno, Junior Engineer, CIP
City of Stockton
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Stockton, CA 95202
Liszet.Burgueno@stocktonca.gov

Dear Liszet Burgueno:

Subject: Van Buskirk Park Revitalization Project, Initial Study/Mitigated Negative Declaration, SCH No. 2025061207, San Joaquin County

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to adopt a Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Stockton for the Van Buskirk Park Revitalization Project (Project) in San Joaquin County 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, 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 Stockton

Objective: The City of Stockton proposes to develop a community park on a 192.71-acre former golf course. The expanded Van Buskirk Park would include additional outdoor basketball courts, a new bike and skate park with associated amenities, a community garden, a multi-purpose lawn area, a splash pad/water play area, an 18-hole disc golf course, a golf academy, indoor facilities, an event lawn with outdoor pavilion, a playground, pickleball courts, and a dog park, as well as walking paths, restoration areas, and parking.

Location: The Project site is located at 734 Houston Avenue in the Conway neighborhood of the City of Stockton in San Joaquin County, California. The 192.71-acre Project site (APN 163-07-036) is located southwest of the center of Stockton. The Project site is bounded by Walker Slough and French Camp Slough to the south, the San Joaquin River to the west, Houston Avenue to the north, and the existing Van Buskirk Community Center and Community Park to the east. Regional vehicular access to the Project site is provided by Interstate-5, with the closest on- and off-ramps to the Project site located along Downing Avenue approximately 1.15 miles southeast of the Project site and by State Route (SR) 4 approximately 0.8 miles to the north via South Fresno Avenue. Direct local access to the Project site is via Houston Avenue.

Timeframe: The proposed Project will be constructed in phases. Phase 1 will occur over an approximately 18-month period and is anticipated to begin in June 2026. Construction of subsequent phases will depend on available funding. However, for the purposes of the IS/MND, the environmental analysis assumes that all of the recommended facilities will be constructed in a single phase.

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

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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.

Candidate species for listing under CESA are afforded the same legal protections as CESA-listed species while under review (Fish and Game Code § 2608). Candidate species which may occur within the Project area include, but are not limited to, western burrowing owl (*Athene cunicularia*), white sturgeon (*Acipenser medirostris*), and Crotch's bumble bee (*Bombus crotchii*).

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.

Fully Protected Species

Fully protected species, such as white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species;
- Live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code § 2081.15). Project proponents should consult with CDFW early in the project planning process.

Raptors and Other Nesting Birds

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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.

Lake or Streambed Alteration Agreement

CDFW requires notification for Lake and Streambed Alteration (LSA), pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA notification. CDFW may not execute a final LSA Agreement until it has considered the IS/MND and complied with its responsibilities as a responsible agency under CEQA.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Stockton 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.

COMMENT 1: Burrowing Owl Avoidance and Minimization

Section: Table 4.D: Special-Status Species and Sensitive Natural Communities Occurring within 1 Mile of the Project site Page 4-18 and Mitigation Measure BIO-4 section 3 on pages 4-27 through 4-28.

Issue: Table 4.D in the IS/MND shows burrowing owl as a State Species of Special Concern, however burrowing owl is a candidate species for CESA listing and the table should be updated to reflect its current status. Additionally, mitigation measure BIO-4 does not adequately mitigate impacts to burrowing owl to less-than-significant.

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Specific impact: Mitigation Measure BIO-4 (Preconstruction and Construction Monitoring) section 3, is not sufficiently protective to burrowing owl. While multiple preconstruction surveys are proposed to locate burrowing owls should they be within the project site, a 250-foot no-work buffer around occupied burrows is not large enough to avoid disturbing burrowing owl and could cause nest abandonment, injury or death. Eviction using passive relocation techniques during the breeding and nonbreeding season is proposed and could also cause injury and death and is considered take of burrowing owl.

Why impact would occur: Mitigation Measure BIO-4 (Preconstruction and Construction Monitoring) section 3 includes surveys for burrowing owl, however the two preconstruction surveys described in the measure are inconsistent with the surveys recommended in the *Department of Fish and Game* [currently CDFW] *Staff Report on Burrowing Owl Mitigation* (2012) (CDFW 2012 Staff Report), which requires at least four surveys. Additionally, Mitigation Measure BIO-4 subsections b and c discuss passive relocation and the preparation of an Exclusion Plan (page 4-28). CDFW does not consider passive relocation to be a take avoidance measure because the long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owl are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under CESA and Fish and Game Code section 3503.5.

Evidence impact would be significant: The Project may impact burrowing owl utilizing burrows or burrow surrogates on or within up to 500 meters (1,640 feet) of the Project site. The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent habitat loss. Burrowing owl is a candidate species for CESA listing because the species’ population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; human disturbance; and eradication of California ground squirrel (*Otospermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owl for nesting, protection from predators, and shelter (Shuford and Gardali 2008; CDFW 2012 Staff Report). Preliminary analyses of regional patterns for breeding populations of burrowing owl have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (CDFW 2012 Staff Report). Burrowing owl have been extirpated from 16 percent of their former range and are at risk of being extirpated from another 13 percent of their range in the State (CDFW 2024). Therefore, if burrowing owl are on or within 500 meters (1,640 feet) of the Project site, the Project may result in a substantial reduction in the number of a CESA candidate species,

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which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines sections 15065, subdivision (a)(1) and 15380.

Recommended Mitigation Measures: To reduce potential impacts to burrowing owl to less-than-significant and comply with CESA and Fish and Game Code section 3503 et seq., CDFW recommends including the mitigation measures below in the IS/MND:

Burrowing Owl Habitat Assessment and Surveys. A qualified biologist shall conduct a habitat assessment and surveys, if habitat is present for burrowing owl prior to construction. The habitat assessment and surveys shall follow the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012) methodology (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) and the qualified biologist shall prepare a report documenting the survey results, and submit the report to CDFW, and obtain CDFW's written approval of the report prior to Project construction. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur annually for the duration of the Project, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days. Surveys for either non-breeding or breeding burrowing owls shall be spread over four visits during the non-breeding and breeding season. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. If the habitat assessment does not identify habitat and surveys are not conducted, an additional habitat assessment shall be conducted within 14 days prior to construction. If new refugia are present such as burrows or novel Project infrastructure, surveys shall be conducted as described above. The qualified biologist shall have a minimum of two years of experience implementing the above methodology. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities.

If the Project cannot ensure burrowing owl and their burrows are fully avoided, the Project shall consult with CDFW and obtain a CESA take authorization or otherwise demonstrate compliance with CESA. Take is likely to occur and the Project shall obtain an ITP if burrowing owl surveys detect burrowing owl occupancy of burrows or burrow surrogates within the Project site, Occupancy of habitat may also be indicated by burrowing owl sign including molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site. If

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burrowing owl, or their burrows or burrow surrogates, are detected within 500 meters (1,640 feet) of the Project site during burrowing owl surveys, but not on the Project site, the Project shall consult with CDFW to determine if avoidance is feasible or an ITP is warranted.

Cap Pipes and Hoses: To prevent burrowing owl from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each work day and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.

COMMENT 2: Crotch's Bumble Bee Avoidance and Minimization

Issue: The Project area is within the current known range of Crotch's bumble bee and suitable nesting and foraging habitat for the species may be present in the Project area. The IS/MND does consider the impact of Project activities on Crotch's bumble bee in the Project area, however Table 4.D does not identify Crotch's bumble bee as a candidate species and indicates there is no suitable habitat at the site. Moreover, on page 4-36 the IS/MND discusses Crotch's bumble bee and recognizes it as a candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). As stated in the IS/MND as candidate species, Crotch's bumble bee receive the same legal protections afforded to endangered or threatened species. This section of the IS/MND also states suitable bumble bee foraging and nesting habitat and nectar plants exist within the Project site, which contradicts information provided in Table 4.D. Unauthorized take of Crotch's bumble bee pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

Evidence impact would be significant: Project activities, such as vegetation removal or ground-disturbing activities could result in permanent and/or temporary loss of floral resources for Crotch's bumble bee and other native pollinator species, loss of bumble bee nesting habitat, crushing, or filling of active bumble bee colonies and hibernating cavities, and reduced reproductive success. Bumble bees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species.

Recommendation: To reduce impacts to less-than-significant, CDFW recommends including the following mitigation measures in the IS/MND:

If Project impacts to Crotch's bumble bee cannot be completely avoided, CDFW recommends the Project proponent apply for CESA take authorization under an ITP.

Crotch's bumble bee and other bumble species are not covered by the San Joaquin County Multi-Species Open Space and Habitat Conservation Plan (SJMSCP) and therefore alternative mitigation will be required for impacts to Crotch's bumble bee and

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its habitat. If the Project will result in permanent impacts to suitable Crotch's bumble bee habitat, CDFW recommends that the IS/MND include compensatory mitigation for the habitat loss. Bumble bee floral resources should be mitigated at a minimum of a 3:1 ratio for permanent impacts in the absence of information regarding the compensatory mitigation site. Floral resources should be replaced as close to their original location as is feasible. If active Crotch's bumble bee nests have been identified and floral resources cannot be replaced within 200 meters (656 feet) of their original location, floral resources should be planted in the most centrally available location relative to identified nests. This location should be no more than 1.5-kilometer (4,921 feet) from any identified nest. Replaced floral resources may be split into multiple patches to meet distance requirements for multiple nests. The IS/MND should state that mitigation lands will be protected in perpetuity under a conservation easement with an endowment established for long-term management of the lands.

COMMENT 3: Coordination and Consistency with the San Joaquin River Basin, Lower San Joaquin River Compensatory Mitigation Plan

Issue: CEQA requires analysis of reasonably foreseeable future projects and cumulative impacts. The San Joaquin River Basin, Lower San Joaquin River, California, Project (LSJR Project) is a cooperative flood risk management effort intended to reduce flood risk to the City of Stockton associated with seepage, stability, overtopping, and erosion for levees along the San Joaquin River, Calaveras River, Fourteen-mile Slough, Tenmile Slough, French Camp Slough, Mosher Slough, and Duck Creek. The LSJR Project includes 23 miles of levee improvements and two closure structures. The levee improvements include cutoff walls, deep soil mixing (seismic remediation), a new levee, levee geometry improvements, and erosion protection. The mitigation strategy for the Project initially relied primarily on the purchase of mitigation bank credits to compensate for habitat impacts. However, there are no suitable mitigation banks with both a service area that covers the Project site and appropriate credits in sufficient quantities to meet the Project's compensatory mitigation requirements. Therefore, an updated compensatory mitigation plan proposes the establishment of six mitigation sites within the Project vicinity to address current estimated unavoidable Project impacts to biological resources.

Evidence impact would be significant: A proposed mitigation site for the LSJR Project occurs at Van Buskirk Park. The proposed action for Van Buskirk Park will convert the formerly urban land that was a public golf course into riparian and wetland habitat and restore river hydrology through setback of the existing levee.

Recommendation: CDFW recommends the IS/MND include a thorough analysis of all short-term and long-term impacts, including cumulative impacts, of the LSJR Project, a portion of which is proposed to be located within the Project area.

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COMMENT 4: Potential Waters of the US/ Lake and Streambed Alteration Program

Issue: The IS/MND does not discuss the potential need to acquire an LSA Agreement from CDFW. Five ponds associated with the former golf course are present on the Project site, of which some or all may be historical oxbows associated with French Camp Slough. The existing ponds will be preserved and maintained as part of Project implementation. All ponds at the Project site are isolated from the floodplain of French Camp Slough by a levee and are considered managed water features that are jurisdictional wetlands and waters of the United States/waters of the State. Additionally, on page 4-24 in section BIO-3 the IS/MND states that the Project will conduct all in-water construction activities between May 1 and November 30. Activities described in the IS/MND, including potential maintenance activities of the ponds, may require an LSA notification.

Evidence impact would be significant: Riparian habitats, including ponds, are important to watershed integrity because they perform many ecological functions such as enhancing water quality/quantity, biodiversity, habitat connectivity, and flood capacity. Impacts to riparian habitats have potential to cause a wide range of adverse effects to fish and wildlife resources.

Ponds often support greater biodiversity than other freshwater habitats (e.g., lakes and rivers), sustain many rare and endangered aquatic taxa, and act as important “refuges” in heavily modified landscapes. Alongside aquatic species, many terrestrial species—including insect pollinators, birds, bats, and other mammals—rely on ponds for water, food, and habitat. (Hill, 2021).

Recommendation: CDFW recommends early coordination with the CDFW for the potential need of an LSA Agreement prior to starting construction activities. The IS/MND should analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned features and associated biological resources.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be 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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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 appreciates the opportunity to comment on the IS/MND to assist the City of Stockton in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ben Huffer, Senior Environmental Scientist (Specialist), at Benjamin.Huffer@wildlife.ca.gov or (707) 815-9950; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation (SCH No. 2025061207)

REFERENCES

CDFW. 2024. Petition Evaluation for Western Burrowing Owl (*Athene cunicularia hypugaea*). Report to the Fish and Game Commission. California Department of Fish and Wildlife, P.O. Box 944209, Sacramento, CA.

CDFW. 2012. Department of Fish and Game Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA.

Hill, M. J., H. M. Greaves, C. D. Sayer, C. Hassall, M. Milin, V. S. Milner, L. Marazzi, R. Hall, L. R. Harper, I. Thornhill, R. E. Walton, J. Biggs, N. Ewald, A. Law, N. Willby, J. C. White, R. A. Briers, K. Mathers, M. J. Jeffries, and P. J. Wood. 2021. Pond Ecology and Conservation: Research Priorities and Knowledge Gaps. *Ecosphere* 12 (12): e03853. <https://doi.org/10.1002/ecs2.3853>.

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Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.