



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

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August 7, 2025

Rourke Healey, Planner  
East Bay Regional Parks District  
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Subject: San Francisco Bay Trail Richmond Gap Closure - Point Pinole to Wilson Point, Mitigated Negative Declaration, SCH No. 2025070442, Contra Costa County

Dear Rourke Healey:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from East Bay Regional Parks District for the San Francisco Bay Trail Richmond Gap Closure - Point Pinole to Wilson Point (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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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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 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.

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*) and western bumble bee (*Bombus occidentalis*).

Plants identified as rare or endangered under NPPA that may occur within the Project area include, but are not limited to, soft salty bird's-beak (*Chloropyron molle* spp. *molle*), Santa Cruz tarplant (*Holocarpha macradenia*), and Mason's lilaeopsis (*Lilaeopsis masonii*). Please note that with a few exceptions, an ITP may need to be obtained for activities that will result in take of Santa Cruz tarplant and Mason's lilaeopsis.

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

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## **Fully Protected Species**

Fully protected species, such as California black rail (*Laterallus jamaicensis coturniculus*), California ridgway's rail (*Rallus obsoletus obsoletus*), white-tailed kite (*Elanus leucurus*), and salt marsh harvest mouse (*Reithrodontomys raviventris*) 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.

## **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).

## **Lake and Streambed Alteration Agreement**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject

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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 MND and complied with its responsibilities as a responsible agency under CEQA.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** East Bay Regional Parks District

**Objective:** The objective of the Project is to close an approximately one-mile gap between existing segments of the San Francisco Bay Trail (Bay Trail), located between the eastern boundary of Point Pinole Regional Shoreline to Point Wilson at the Pinole Shores Park in Contra Costa County. Primary Project activities include the installation of concrete boardwalks over two wetlands, installation of one clear span bridge over Garrity Creek, clearing and grading along the trail alignment, installation of the trail, and the removal of an abandoned fuel transmission pipeline.

**Location:** The Project is located in Contra Costa County, California, and is bordered by the City of Richmond to the west and southwest and the City of Pinole to the east. The Project site consists of a linear trail alignment that begins approximately 1 mile east of where Atlas Road enters Point Pinole Regional Shoreline and connects to Point Wilson at the Pinole Shores Park, approximately 3,300 feet west of Pinole Shores Drive.

**Timeframe:** The Project is anticipated to commence in 2026 and will extend for approximately 12 to 24 months.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist East Bay Regional Parks District 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.

### **COMMENT 1: Western Burrowing Owl**

The no-disturbance buffers proposed in Mitigation Measure BIO-6 may be insufficient to avoid disturbance to burrowing owl (*Athene cunicularia*) within or adjacent to the Project site. Additionally, Mitigation Measure BIO-6 proposes to passively relocate burrowing owl during the non-breeding season, contingent upon CDFW approval, if the no-disturbance buffers cannot be implemented or if burrows

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must be destroyed; however, the MND does not indicate that an ITP will be sought for the Project. These measures may not be sufficient to reduce impacts to burrowing owl to less-than-significant levels.

In addition, construction activities, such as the movement of equipment and workers throughout the Project site, may generate noise or visual disturbances resulting in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young for burrowing owl within or adjacent to the Project site during nesting season. Disturbance at any time of year may result in flushing of burrowing owl from their burrows, potentially resulting in increased risk of predation or injury by vehicle strike. The no-disturbance buffers proposed in Mitigation Measure BIO-6 are significantly smaller than the recommended buffers outlined in the 2012 Staff Report on Burrowing Owl Mitigation and may not be sufficient to protect burrowing owl from Project-related disturbances. Recommended buffers begin at 200 meters during the breeding season and 50 meters during the wintering season and should be increased based upon level of disturbance and site-specific conditions (CDFW, 2012).

“Passive” relocation or eviction from burrows has the potential to result in increased stress on burrowing owl and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows. The potentially adverse effects of passive relocation can be incurred at any time of year, as burrowing owl are dependent on burrows at all times of year for survival or reproduction and exhibit high site fidelity. Implementation of passive relocation or eviction may result in “take” of burrowing owl and is a potentially significant impact under CEQA (CDFW, 2012).

The MND misidentifies burrowing owl as a Species of Special Concern and does not indicate that an ITP will be sought for the Project. Please be advised that in October 2024, burrowing owl was named as a candidate species for potential listing under the California Endangered Species Act (CESA) and is afforded the same legal protections as CESA-listed species while under review (Fish and Game Code § 2608). Because of the potential for “passive” relocation to result in “take” of burrowing owl, CDFW may only authorize such activities through an ITP.

**Evidence of Significance:** As a candidate for listing under CESA, burrowing owl qualifies as a rare, threatened, or endangered species under CEQA. Because implementation of Mitigation Measure BIO-6 may be insufficient to reduce potential substantially adverse impacts to burrowing owl to less-than-significant levels, Project impacts to burrowing owl may therefore still be *potentially significant*.

**To reduce impacts to less than significant:** CDFW recommends Mitigation Measure BIO-6 be replaced with the following potentially feasible mitigation measures:

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**Burrowing Owl Surveys.** No more than **14 days** prior to initiation of 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 7 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.

**Burrowing Owl No-Disturbance Buffers.** A qualified biologist shall clearly delineate a no-disturbance buffer around all 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.

If the Project proposes to passively relocate burrowing owl to accommodate Project activities, or if “take” of western burrowing owl cannot be avoided either during Project activities or over the life of the Project, CDFW strongly recommends the Project obtain an ITP pursuant to Fish & G. Code § 2080 et. seq.

## **COMMENT 2: Nesting Birds**

The survey parameters and no-disturbance buffers proposed in Mitigation Measure BIO-7 may be insufficient to detect nesting birds or protect them from Project-related disturbances.

The MND states that the Project has the potential to directly or indirectly impact special-status birds, including short-eared owl (*Asio flammeus*), northern harrier, white-tailed kite, grasshopper sparrow (*Ammodramus savannarum*), loggerhead shrike (*Lanius ludovicianus*), and tricolored blackbird (*Agelaius tricolor*), and other nesting birds. Though bird nesting activity may peak during the months identified in Mitigation Measure BIO-7, bird species including white-tailed kite have been known to nest into October. Nesting birds are highly sensitive to disturbance, and

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construction activities including grading, ground disturbance, operation of heavy machinery, or 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. Chronic stress can also result in immune system repression or reduced reproductive success (Ortega, 2012).

Consistent with CEQA Guidelines, Section 15380, the status of the white-tailed kite as a Fully Protected species (Fish & G. Code § 3511) and tricolored blackbird as a threatened species under CESA (Fish & G. Code, § 2050 *et seq.*) qualifies each as an endangered, rare, or threatened species under CEQA. 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). If Mitigation Measure BIO-7 is insufficient to protect nesting birds from Project-related disturbance, impacts to nesting birds may still be *potentially significant*.

**To minimize significant impacts:** CDFW recommends the following updates to Mitigation Measure BIO-7:

**Nesting Bird Survey Dates.** CDFW recommends that preconstruction nesting bird surveys be conducted during the nesting bird season, defined as February 1 through September 15. Additionally, CDFW recommends that if a lapse in project-related activities of seven days or longer occurs, another focused survey is required before project activities can be reinitiated.

**Nesting Bird Survey Radii.** CDFW recommends that preconstruction nesting bird surveys be conducted within a minimum survey radii surrounding the work area of 250 feet for non-raptors and 1,000 feet for raptors.

**Active Nest Buffers.** CDFW recommends protective buffers of 1,000 feet for large raptors and 250 feet for passerines if active nests are found, or if adults are demonstrating nesting behavior.

## I. Editorial Comments and/or Suggestions

The MND indicates that fencing may be installed during project activities for exclusion of wildlife, indication of sensitive communities or special-status plants, and erosion control purposes. Fencing may pose a barrier to wildlife movement, and certain fencing materials may result in entanglement, injury, or mortality to a variety of wildlife species. CDFW recommends the use of flagging or staking when this is a feasible alternative to fencing. When implementation of fencing is necessary, CDFW recommends the use of wildlife-friendly fencing, with any fencing, signpost, or vertical poles capped, any post holes covered or filled, and avoidance of barbed wire where it may result in harm to

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birds and other wildlife. Temporary fencing should be removed as soon as it is no longer needed.

## 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>.

## 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 MND to assist East Bay Regional Parks District 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](mailto:Torrey.Soland@wildlife.ca.gov); or Sara Kern, Senior Environmental Scientist (Supervisory), at [Sara.Kern@wildlife.ca.gov](mailto: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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## **REFERENCES**

California Department of Fish and Wildlife (CDFW). (2012). Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>

Ortega, C. P. 2012. Chapter 2: Effects of noise pollution on birds: A brief review of our knowledge. Ornithological Monographs 47: 6-22