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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
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GAVIN NEWSOM, Governor
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January 20, 2026

Jonnie Lan, AICP, Principal Planner
City of Merced Planning Division
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Merced, California 95340
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Subject: Old Dominion Project (Project)
Notice of Preparation (NOP)
SCH No.: 2025120792

Dear Jonnie Lan:

The California Department of Fish and Wildlife (CDFW) received a NOP of a Draft Environmental Impact Report (DEIR) from the City of Merced Planning Division (City) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for 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.

[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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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species 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 are provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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

PROJECT DESCRIPTION SUMMARY

Proponent: David Marvulli, Marvulli, Inc.

Objective: The Project proposes to construct a 170.3-acre development of mixed-use commercial and housing including up to 1,374 rural residential, low-, medium-, and high-density residential units. Approximately 753,000 square feet of commercial uses would also be constructed.

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Location: The Project site is located in unincorporated Merced County, immediately north and east of the City of Merced's city limits, at the northeastern corner of the Bellevue Road and G Street intersection and is generally bound by G Street to the west, Golf Road to the east, Farmland Road to the north, and East Bellevue Road to the south. The Project site is comprised of Assessor's Parcel Numbers (APNs) 170-140-005, -021, -028, -029 and -033.

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 DEIR prepared for this Project.

Vernal Pool Species Evaluation and CDFW Consultation

The Project site is within close proximity to conserved lands such as the Merced Vernal Pools and Grassland Reserve and Merced Grasslands (Conserved Lands), and a large portion of the Project parcels contain highly sensitive wetland, vernal pool, and stream habitats, which provide high quality habitat for a number of vernal pool species, including the State and federally threatened California tiger salamander (*Ambystoma californiense*); the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondii*); the State special animal and federally endangered Conservancy fairy shrimp (*Branchinecta conservation*) and vernal pool tadpole shrimp (*Lepidurus packardi*); and the State special animal and federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*). As the Project site is located within high quality habitat for a number of special-status species, and is within close proximity to nearby Conserved Lands, which were set aside to permanently conserve the habitats for the species referenced above, CDFW recommends the DEIR contain a robust analysis of the potentially significant impacts that would result to biological resources from Project activities. This analysis should also consider and evaluate the Project's indirect and cumulative impacts to the nearby Conserved Lands. CDFW also recommends the higher quality habitats within the Project site be considered for conservation and/or Project-related mitigation, and that the Project development areas be sited to avoid impacts to higher quality vernal pool habitat. Finally, it is strongly recommended that the Project proponent consult with CDFW to discuss how to implement the Project and avoid take of CESA-listed species, including California tiger salamander. If take cannot be avoided, acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is required to comply with CESA.

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Special-Status Species

The Project site is located approximately ¾-mile southwest of Yosemite Lake, ¼ -mile east of Fahrens Creek and one-mile west from the UC Merced Campus. Based on aerial imagery, the Project site is comprised of annual grassland habitat, and a large portion of the Project site contains wetland and vernal pool habitat to support many special-status species. There are several residences north of the Project boundary, El Capitan High School campus to the west along with a roadside ditch bordering the western boundary, the Tower Lateral Canal which traverses east to west along a portion of the southern section, some agricultural fields to the south but predominately annual grasslands and vernal pools and swales to the south and east of the project boundary. Based on a review of the Project description, California Natural Diversity Database (CNDDB) records, aerial imagery, as well as our familiarity with the biological resources documented within the University of California (UC) Merced area and surrounding Conserved Lands, several special-status species could potentially be impacted by Project activities. These species include, but are not limited to, the State endangered and fully protected bald eagle (*Haliaeetus* leucocephalus); the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); the State and federally threatened California tiger salamander; the State fully protected golden eagle (*Aquila chrysaetos*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); the State species of special concern and federally proposed threatened western spadefoot; the State species of special concern American badger (*Taxidea taxus*); the State species of special concern and federally proposed threatened northwestern pond turtle (*Actinemys marmorata*); the State special animal and federally endangered Conservancy fairy shrimp and vernal pool tadpole shrimp; and the State special animal and federally threatened vernal pool fairy shrimp.

The Project site is also within geographic range of several special-status plant species including, but not limited to, the federally endangered and California Rare Plant Rank (CRPR) 1B.1 Keck's checkerbloom (*Sidalcea keckii*); the State endangered, CRPR 1B.1 and federally threatened San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*) and Colusa grass (*Neostapfia colusana*); and the State endangered, CRPR 1B.2, and federally threatened succulent owls-clover (*Castilleja campestris var. succulenta*). The Project site also has potential habitat for migratory and non-migratory nesting bird species.

In order to adequately assess potential impacts to biological resources, CDFW recommends a qualified biologist review the Project site and conduct habitat assessments and/or focused biological surveys during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site. This information should be used to inform the need for additional protocol surveys, assist with the development of avoidance, minimization, and/or mitigation

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measures, and when developing Project alternatives to avoid and minimize potentially significant biological impacts.

Fully Protected Raptors

The Project site is within the known geographic range of bald eagle (BAEA) and golden eagle (GOEA), and a BAEA historical occurrence was documented at Lake Yosemite, approximately 1 mile northeast of the Project site (CDFW 2025). BAEA require large bodies of water with hunting perches of large limbed trees to pounce on fish or small mammals and GOEA are known to inhabit open areas with large trees and cliffs for nesting.

As these habitat features occur within the Project site and vicinity, CDFW recommends that a qualified biologist conduct focused BAEA and GOEA surveys as part of the biological studies conducted in support of the DEIR. To avoid Project related impacts to these species, CDFW recommends incorporating survey methods outlined in the Protocol for Evaluating Bald Eagle Habitat and Populations in California (Jackman and Jenkins 2004) and the Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations guidelines (USFWS 2010). If surveys indicate the presence or potential presence of BAEA or GOEA, consultation with the CDFW is recommended for guidance on the development of take avoidance measures.

Swainson's Hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA) and there are historical occurrences documented within approximately 2 miles of the Project site (CDFW 2025). SWHA are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, most of the Project site contains suitable habitat for SWHA foraging. In addition, there are trees located within the Project site and vicinity that may provide suitable nesting habitat. Therefore, CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) as part of the biological technical studies conducted in support of the DEIR.

In addition to conducting SWHA surveys, CDFW recommends the DEIR include the following measures and that these measures be incorporated prior to any development or ground disturbance activities that are initiated as part of this Project:

> **Recommended Mitigation Measure 1: SWHA Pre-Construction Surveys**
> Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys,

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following the survey methodology developed by the SWHA Technical Advisory Committee, be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 2: SWHA Avoidance Buffer
If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization
CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation
Finally, CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.

- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

Tricolored blackbird

The Project site is within the known geographic range of tricolored blackbird (TRBL) and there are historical occurrences documented within the immediate vicinity of the Project site (CDFW 2025). TRBL historically bred within the vicinity of fresh water, primarily in marshy areas and important sites for nesting colonies included heavy growths of

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cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar, Foraging typically occurred within flooded lands, grassy fields, and margins of ponds (Grinnel and Miller 1994). Based on aerial imagery, it appears the Project site and vicinity may contain suitable habitat for TRBL foraging and nesting. In 2017, approximately 30,000 TRBL were distributed among 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Beedy et al. 2020).

As the Project site is within the known geographic range of TRBL and suitable foraging and nesting habitat may be present, CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the DEIR. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on focused survey methods and mitigation measures such as avoidance, take authorization, 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.

California Tiger Salamander

The Project site is within the known geographic range of California tiger salamander (CTS) and a historical occurrence was documented 1 mile from the Project site (CDFW 2025). CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types and have been determined to be physiologically capable of dispersing up to approximately 1 ½-miles from seasonally flooded wetlands (Searcy and Shaffer 2011). These habitat features are present within the Project vicinity, and, based on CDFW's familiarity with the area, it is likely that CTS occur within and surrounding the Project site. As such, CDFW recommends that the Project proponent consult with CDFW to discuss how to implement the Project and avoid take of the species. If take cannot be avoided, acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is required to comply with CESA. CDFW also recommends a qualified biologist conduct protocol-level surveys in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS CTS Protocol) (USFWS 2003) as part of the biological technical studies conducted in support of the Draft EIR.

In addition to consulting with CDFW and conducting CTS surveys, CDFW recommends the DEIR include the following measures and that these measures be incorporated prior to any development or ground disturbance activities that are initiated as part of this Project:

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Recommended Mitigation Measure 5: CTS Protocol-Level Surveys
CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS CTS Protocol (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project site in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Recommended Mitigation Measure 6: CTS Pre-Construction Surveys
Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional protocol-level surveys be conducted following the USFWS CTS Protocol. It should be noted that the protocol requires that surveys be conducted during at least two seasons, with sufficient precipitation, to be considered complete.

Recommended Mitigation Measure 7: CTS Avoidance Buffer
If CTS protocol-level surveys as described in Recommended Mitigation Measure 1 are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

Recommended Mitigation Measure 8: CTS Take Authorization
If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Western Burrowing Owl

The California Fish and Game Commission (FGC) approved western burrowing owl (BUOW) as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice

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Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the known geographic range of BUOW and there is a documented historical occurrence within approximately 1 mile from the Project site (CDFW 2025). BUOW inhabit open grasslands containing small mammal burrows, a requisite habitat feature used for nesting and cover. Because these habitat features occur within the Project site and vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) as part of the biological studies conducted in support of the DEIR. If surveys indicate the presence or potential presence of BUOW, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The Project site is within the known geographic range of Crotch's bumble bee (CBB) and a historical occurrence was documented 1 ½ miles of the Project site (CDFW 2025). CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements may be present within the Project site. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2015). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

As such, CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the DEIR to determine if the Project site or its immediate vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) as part of the biological technical studies conducted in support of the DEIR. If surveys indicate the presence or potential presence of CBB, consultation with the CDFW is recommended for guidance on the development of mitigation

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

Western Spadefoot

The Project site is within the known geographic range of western spadefoot (WESP) and there is a documented historical occurrence within approximately five miles of the Project site (CDFW 2025). WESP occurs primarily in grasslands and seasonal wetlands with appropriate upland habitat. As the Project site contains these habitat features within the Project site and vicinity, and based on CDFW's familiarity with the area, it is likely that WESP are present within the Project site and Project vicinity. As such, CDFW recommends a qualified biologist conduct focused surveys for WESP as part of the biological technical studies conducted in support of the Draft EIR.

In addition to conducting focused WESP surveys, CDFW recommends the DEIR include the following measures and that these measures be incorporated prior to any development or ground disturbance activities that are initiated as part of this Project:

Recommended Mitigation Measure 9: WESP Focused Surveys
CDFW recommends that a qualified biologist conduct focused surveys for WESP, using appropriate survey methodologies, prior to any ground-disturbing activities that may occur as part of the Project.

Recommended Mitigation Measure 10: WESP Avoidance Buffer
If burrows, soil cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources, including all potential breeding habitat, which can include agricultural sumps and irrigation ditches in addition to any areas that pool water for only a few weeks. Avoidance of potential breeding habitat should occur even when dry, since post-metamorphic WESP juveniles have a unique adaptation to the drying of their temporary breeding pools; they utilize the dried pond bottom as a refuge, burying themselves in the dessication cracks and damp soil beneath the surface crust (Baumberger et al., 2020). If any life stage of WESP are observed on the Project site, Project activities in their immediate vicinity should cease, allowing individuals to leave the Project site on their own accord.

Species of Special Concern

The Project area is within the known geographic range of American badger (AMBA) and northwestern pond turtle (NWPT), and there are several occurrences of NWPT within five miles of the Project site. AMBA are known to occupy grassland habitats with dry,

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friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations. NWPT are known to nest in riparian and upland habitats within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Based on aerial imagery, suitable habitat may be present within the Project site for these species. As such, CDFW recommends that a qualified biologist conduct a habitat assessment to determine if the Project site and vicinity contain habitat suitable to support AMBA and NWPT. CDFW also recommends this habitat assessment extend out to 500 meters to determine whether there is sufficient dispersal habitat for NWPT from surrounding aquatic habitats.

Recommended Mitigation Measure 11: Pre-construction Surveys
If suitable habitat is identified, prior to the start of work, CDFW recommends that a qualified biologist conduct focused surveys for the special-status species referenced above, as well as their requisite habitat features, to evaluate potential impacts resulting from ground disturbance. For NWPT, CDFW recommends preconstruction surveys occur no more than 10 days prior to Project activity, and that focused surveys for nests occur during the egg-laying season of March through August.

Recommended Mitigation Measure 12: Avoidance Buffer
Avoidance whenever possible is encouraged via delineation and a 50-foot no-disturbance buffer around these species and their associated burrows, nests, roost sites, and habitat areas. CDFW also recommends that if these species are found, Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord.

Branchiopods

The Project site is within the geographic range of conservancy fairy shrimp (CFS), vernal pool tadpole shrimp (VPTS), and vernal pool fairy shrimp (VPFS) (branchiopods) and historical occurrences of VPTS and VPFS have been documented within 1 mile of the Project site (CDFW 2025). Branchiopods are small, freshwater crustaceans that complete their entire life cycle within a variety of vernal pool habitats and temporary waters between winter and spring. These species will disappear before vernal pools dry in the summer months but resting eggs, known as cysts, will remain viable within the dried pools for years. Hatching subsequently begins in response to rains during the beginning of the rainy season. A large portion of the Project includes grassland, wetland, and vernal pool habitats that support branchiopods. Additionally, based on CDFW's familiarity with the area, it is likely that branchiopods are present within the vernal pool habitats located within the Project site. As such, CDFW recommends that a qualified biologist conduct protocol level surveys in accordance with the USFWS "Survey Guidelines for the Listed Large Branchiopods" (USFWS 2017) as part of the biological studies conducted in support of the DEIR. These surveys would need to be conducted at the appropriate time of year to determine the existence and extent of

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branchiopods. CDFW also recommends that the Project proponent coordinate with CDFW well in advance of any planned vegetation- or ground-disturbing activities to determine appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers.

Special-Status Plants

The Project site is within the known geographic range of several special status plant species and several species have been documented directly within or in the vicinity of the Project site. Special-status plant species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (California Native Plant Society 2018), all of which may be unintended impacts of the Project. Therefore, CDFW recommends that the Project site(s) be surveyed for special status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities" (CDFW 2018) as part of the biological technical studies conducted in support of the DEIR. This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. If surveys indicate the presence or potential presence of special status plants, consultation with CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation. Please note, if State-listed plant species are identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take of that species. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b), is necessary to comply with CESA.

Editorial Comments and/or Suggestions

Nesting birds: The Project site is within the known geographic range of several species of migratory and non-migratory birds and may contain suitable habitat for an abundance of nesting bird species. To evaluate Project-related impacts on migratory and non-migratory birds, CDFW recommends that a general habitat assessment for nesting and foraging birds be conducted as part of the biological technical studies conducted in support of the DEIR.

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

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

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance

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

Lake and Streambed Alteration: Based on aerial imagery, the Project site contains several stream features, including the Tower Lateral Canal, and a large portion of the Project site contains wetland and vernal pool habitats (see below for wetland discussion), and these features may be subject to CDFW's regulatory authority pursuant to Fish and Game Code Section 1600 et seq. Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game

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Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation): (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. “Any river, stream, or lake” includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

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

Wetlands: The Project site contains several stream features, including the Tower Lateral Canal, and a large portion of the Project site contains wetland and vernal pool habitats that likely support special-status species. Project activities have the potential to result in temporary and permanent impacts to these features through habitat conversion, grading, fill, and related development. The Fish and Game Commission policy regarding wetland resources discourages development or conversion of wetlands that results in any net loss of wetland acreage or habitat value. CDFW recommends that the potential direct and indirect impacts to wetland habitat be analyzed and based on those potential impacts, CDFW recommends that the DEIR include measures to mitigate those impacts and recommends potential losses to wetland habitats be offset with corresponding habitat restoration incorporating native vegetation to replace the value to special-status species provided by the habitats lost from Project implementation. If on-site restoration to replace habitats is not feasible, CDFW recommends offsite mitigation by restoring or enhancing in-kind habitats and providing for the long-term management and protection of the mitigation area, to ensure its persistence.

Wildlife Connectivity: The Project site and vicinity support significant biological resources and contain habitat connections that support movement across the broader landscape, sustaining both transitory and permanent wildlife populations. In particular, the Project site contains suitable vernal pool and wetland habitat for a number of special-status species, including CTS and branchiopods. There is the potential that Project activities could impact the ability for these species to move through the broader landscape of the Project vicinity. Additionally, Project activities could impact the ability of species within the Project site to move between the Project and the nearby Conserved Lands. As such, CDFW recommends that on-site features that contribute to habitat

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connectivity be evaluated and maintained. Aspects of the Project that could create physical barriers to wildlife movement, including direct or indirect Project-related activities, should be identified, and addressed in the DEIR.

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

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). Cumulative impacts are recommended to be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should also be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the following species as part of the DEIR due to these species being in poor or declining health or at risk: BAEA, SWHA, TRBL, CTS, GOEA, BUOW, CBB, WESP, AMBA, NWPT, CFS, VPTS, VPFS, Colusa grass, Keck's checkerbloom, San Joaquin Valley Orcutt grass, and succulent owls-clover. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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, section 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB 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.

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FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, section 753.5; Fish & G. Code, section 711.4; Pub. Resources Code, section 21089).

CONCLUSION

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

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ATTACHMENT 1 - MMRP Table

ec: State Clearinghouse
Governor's Office of Land Use and Climate Innovation
state.clearinghouse@lci.ca.gov

U. S. Fish and Wildlife Service
Matt Nelson
matt nelson@fws.gov

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Attachment 1

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Attachment 1

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

PROJECT: Old Dominion Project

SCH No.: 2025120792

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA pre-construction surveys	
Recommended Mitigation Measure 3: SWHA take authorization	
Recommended Mitigation Measure 4: SWHA foraging habitat mitigation	
California Tiger Salamander (CTS)	
Recommended Mitigation Measure 5: CTS protocol level surveys	
Recommended Mitigation Measure 6: CTS pre-construction surveys	
Recommended Mitigation Measure 8: CTS take authorization	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 9: WESP focused surveys	
Species of Special Concern (SSC)	
Recommended Mitigation 11: SSC pre-construction surveys	
During Construction	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
California Tiger Salamander (CTS)	

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Recommended Mitigation Measure 7: CTS avoidance buffer	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 10: WESP avoidance buffer	
Species of Special Concern (SSC)	
Recommended Mitigation Measure 12: SSC avoidance buffer	