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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 16, 2022

Governor's Office of Planning & Research

**Dec 19 2022**

## STATE CLEARINGHOUSE

Katie Metraux  
California State Parks  
P.O. Box 942896  
Sacramento, California 94296

**Subject: Red Rock Canyon State Park General Plan Revision  
Draft Environmental Impact Report (DEIR)  
State Clearinghouse No. 2008121026**

Dear Katie Metraux:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the California Department of Parks and Recreation (State Parks), as Lead Agency, for the Red Rock Canyon State Park General Plan Revision (Project) pursuant to 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, 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 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.

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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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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.), related authorization as provided by the Fish and Game Code will be required.

**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).

**Protected Furbearing Mammals:** CDFW has jurisdiction over furbearing mammals pursuant to Title 14, California Code of Regulations, Section 460 (14 CCR § 460). This Section states, "Fisher, marten, river otter, desert kit fox, and red fox may not be taken at any time;" therefore, CDFW cannot authorize their take.

**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:** State Parks

**Objective:** While the current General Plan only covers the original 8,180 acres of Red Rock Canyon State Park, the Revised General Plan will include the entire area of approximately 25,000 acres currently under park ownership and management. The General Plan presents the long-term management framework for natural and cultural resource stewardship, interpretation, facilities, operations, and visitor experience. Unit-specific discussions and proposals are provided to address site-specific issues, opportunities, and management strategies. Synergies, similarities, and common goals and guidelines that are generally applicable to all areas are identified as parkwide and are provided where appropriate throughout the plan. The General Plan is the primary management document for a park within the State Park System, establishing its vision, purpose, and management direction for the future.

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**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the State Parks 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 have also be included to improve the CEQA document.

### **I. GENERAL COMMENTS**

#### **Recommendation to Change document to Program EIR**

After reviewing the DEIR, CDFW recommends that State Parks consider updating and re-circulating this document as a Program Environmental Impact Report from which all future projects identified within the General Plan, with subsequent CEQA analysis conducted, can be tiered. A Program EIR as described in CEQA code 15168 would apply to this Project and potentially be more appropriate for a General Plan type of document. The DEIR, as proposed, describes a series of actions that will take place over a long period of time and lacks project-level specificity and definition necessary to adequately analyze or comment on project impacts. Although the General Plan can be characterized as one large project, each potential development action or decision proposed herein lacks adequate specificity to conduct the appropriate analyses necessary to comment on potential impacts and propose specific and enforceable avoidance, minimization, and mitigation measures.

#### **Recommendation to Expand and Revise Cumulative Impacts Analyses**

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 actions proposed within this DEIR, 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). CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

Specifically, CDFW recommends that an analysis of the cumulative impacts of the projects identified as reasonably foreseeable and included in the list in Section 5.22.4.2 be performed. Identifying and listing reasonably foreseeable future projects is one step in a comprehensive methodology to conduct cumulative impact analyses but there are several other critical steps that must be completed to provide a full cumulative impacts

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analysis. These include the identification of an appropriate geographic area of study unique to resource, a description of the overall health of each resource within the study area that includes historical context relative to the resources current health, the trend of each resources health, and an analysis of the impacts of the proposed actions within this DEIR combined with the potential impacts of the reasonably foreseeable future projects. These steps are recommended to arrive at and determine the potential significance of the cumulative impacts to resources of concern and to develop alternatives to minimize cumulative impacts. In addition, several biological resources including Swainson's hawk and Crotch bumblebee were not evaluated in the DEIR that also require a cumulative impacts analysis to explain and justify the conclusions reached within. CDFW recommends revising and expanding this analysis and including a summary of findings in a re-circulated draft Program EIR.

### **Recommendation to Revise Language in Mitigation Measures**

As the DEIR is currently written, CDFW finds that some mitigation measures provided are not actionable nor enforceable. For example, Section 5.9.4 Sensitive Plants Guideline 1-1 states; "State Parks will protect sensitive plant species, including those that are listed under Federal and State laws as rare, threatened, or endangered, candidates for listing, or that are species of concern. Protection methods may include habitat preservation, seed banking, restoration/enhancement, and visitor education." This does not constitute an actionable nor an enforceable measure. CDFW recommends that future CEQA documents tiered from this DEIR for projects include mitigation measures that meet the requirements of actionable and enforceable.

### **OHV Impacts**

Section 4.5.1 indicates that State Parks wishes to expand the area of authorized off-highway vehicle (OHV) use to Sierra View Road and Red Rock Wash. CDFW recommends that a recirculated Program DEIR better define how and under what conditions the expansion will take place, when the expansion will occur, and how all OHV use will be monitored. In addition, there should be discussion of how the inherent impacts of this type of activity can be minimized. CDFW recommends that the recirculated CEQA document analyze the cumulative impacts of OHV use within the entirety of the 25,000 acre park that would result from an increase in OHV usage. CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by the proposed OHV expansion, including impacts that 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 should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the

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resource, not the Project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

## **Grazing**

CDFW is aware that grazing occurs within the Project area. Section 5.22.4.2 references projects that include grazing as a part of their listed activities. The DEIR states, “The management actions reflected in the goals and guidelines of the General Plan would maintain Park’s contributions to potential cumulative impacts at less-than-significant”. However, the DEIR does not provide any analysis or substantial evidence to justify this conclusion. Absent a robust and detailed analysis of the cumulative impacts that these projects would have and within the context of the expansion of this General Plan’s application to an area nearly three times the size of the current park, CDFW does not agree that potential cumulative impacts would be less than significant.

Generally speaking, based on a long term body of evidence, grazing, especially overgrazing in so called “hot” deserts, like the Mojave Desert, can be particularly impactful to desert ecosystems. Grazing related impacts to native plants and wildlife species result from disruptions to the soil surface and crusts and loss of annual biomass and shrub cover. Further, entities like the U.S. Bureau of Reclamation (BLM) have indicated difficulty in adequately identifying when grazing pressure is too high in a given area and being able to respond in a timely fashion, thus often resulting in overgrazing. Because of the recognized impacts of grazing in desert ecosystems, the Appropriations Act of 2012 (Public Law 112-74) provides for a process for grazing permittees/lessees in BLM’s California Desert District to voluntarily relinquish their desert grazing leases or rights as part of a mitigation package to offset impacts to public lands from solar projects, wind energy projects, highways, or other ground disturbing construction projects. Once these grazing authorizations are relinquished, they are permanently removed from the lands available for livestock grazing. The reason that so called “grazing relinquishments” can be used as mitigation is because grazing is recognized as particularly impactful and that removal of grazing is known to result in a marked improvement to the habitat. For this reason, in 2022, CDFW approved the permanent removal of grazing from the 215,000 acre Rudnick Common Allotment (#05008) to serve as mitigation for specific solar project impacts to the State and Federally threatened desert tortoise (*Gopherus agassizii*) (DT) and State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*) (MGS). This arrangement was further memorialized between BLM and CDFW via Addendum No 5 to the Sikes Act Agreement, and these types of arrangements were contemplated in a Durability Agreement between CDFW and BLM; this project was the first such action pursuant to the Durability Agreement. In summary, CDFW recognizes the significant habitat benefits that result from removal of grazing in desert ecosystems and encourages other such

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efforts to reduce grazing in the desert given the benefits that would result to threatened and endangered species.

The Rudnick Comon Allotment is located in the Mojave desert near the Project Area. Given what we know about grazing impacts to this habitat and to threatened and endangered species like DT and MGS, as well as the significant benefits of grazing removal in such habitats, CDFW recommends that State Parks seriously consider removal or phasing out of grazing in the Project Area. However, if grazing is to continue or expand for any duration in the Project Area, CDFW recommends that a full analysis of the impacts of the past, present, and reasonably foreseeable future grazing actions proposed within the entire General Plan DEIR Project Area be conducted on resources of concern, with a summary of this analysis included in a recirculated Program DEIR. CDFW recommends inclusion of actionable and enforceable avoidance, minimization, and mitigation measures be included to demonstrate the conclusion reached for grazing cited above in this DEIR and/or this conclusion be updated accordingly as a result of a robust cumulative impact analysis. Absent this additional analysis, CDFW feels that the DEIR fails to adequately evaluate the biological impacts of grazing.

## II. SPECIES SPECIFIC COMMENTS

The Project area is within the geographic range of several special-status animal species including the State and Federally threatened desert tortoise (*Gopherus agassizii*) (DT), State threatened Swainson's hawk (*Buteo swainsoni*) and Mohave ground squirrel (*Xerospermophilus mohavensis*) (MGS), the State candidate endangered Crotch Bumblebee (*Bombus crotchii*), State candidate threatened western Joshua tree (*Yucca brevifolia*), special status plants such as the rank 1B.1 Red Rock Canyon Monkey Flower (*Erythranthe rhodopetra*), and the rank 1B.2 alkali Mariposa lily (*Calocortus striatus*), Red Rock Poppy (*Eschscholzia minutiflora twisselmannii*), Charlotte's phacelia (*Phacelia nashiana*), and Red Rock tarplant (*Deinandra arida*), the State species of special concern burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), Pallid bat (*Antrozous pallidus*), spotted bat (*Euderma maculatum*), Le Conte's thrasher (*Taxostoma lecontei*), and mountain plover (*Charadrius montanus*), and the protected furbearing mammal desert kit fox (*Vulpes macrotis arsipus*) .

### Swainson's Hawk (SWHA)

The habitat types present within and surrounding the Project site all provide suitable foraging habitat for SWHA, increasing the likelihood of SWHA occurrence within the vicinity. In addition, any trees in the Project vicinity, including Western joshua trees, have the potential to provide suitable nesting habitat. SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). If a potential nest site occurs in the Project vicinity, approval of the Project may lead to subsequent ground-disturbing activities that

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involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to result in nest abandonment and/or loss of foraging habitat, significantly impacting local nesting SWHA. In addition, conversion of undeveloped land can directly influence distribution and abundance of SWHA, due to the reduction in foraging habitat.

Based on the information presented in the document, CDFW has determined that inadequate habitat assessments, impacts mapping, and surveys were conducted within the 25,000 acre project area to adequately analyze impacts to SWHA or to develop appropriate avoidance, minimization, and mitigation to offset potential impacts. Further, there appears to be a potential for significant cumulative impacts to SWHA from the collective past, present, and reasonably foreseeable future actions within this General Plan DEIR in combination with the projects identified as reasonably foreseeable. CDFW recommends that a recirculated Draft Program DEIR include a robust cumulative impacts analysis for SWHA using an appropriate methodology to analyze cumulative impacts.

CDFW recommends future biological technical studies, conducted in support of the CEQA analyses for the Projects tiered from this General Plan DEIR, include surveys conducted by a qualified biologist for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000). The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities. If ground-disturbing Project activities are to take place during the breeding season (February 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests 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. If an active SWHA nest is detected during surveys and a 0.5-mile 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

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:

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- 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  $\frac{3}{4}$  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  $\frac{1}{2}$  acre of HM land for each acre of development is advised.

### **Mohave Ground Squirrel (MGS)**

MGS are known to occur within and surrounding the Project area. The Biological Resources Report section of the DEIR describes numerous surveys completed between 2007-2010, and in 2015 confirming MGS presence. CDFW agrees that MGS are present within much of the 25,000 acres covered in this General Plan DEIR and recommends that for all future Projects tiered from this DEIR that State Parks, prior to construction activities, contact CDFW to discuss how to implement the Project to avoid take through methods such as burrow mapping and avoidance buffers. 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. Any take of MGS without take authorization would be a violation of Fish and Game Code section 2080.

### **Desert Tortoise (DT)**

Desert tortoise have been documented to occur within and surrounding the Project area. The Biological Resources Report section of the DEIR confirms that DT potentially occur throughout the Project area. As such, CDFW recommends that for all future Projects tiered from this DEIR that State Parks, prior to construction activities, contact CDFW to discuss how to implement the Project and avoid take through methods such as burrow mapping and avoidance buffers. 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. Any take of DT without take authorization would be a violation of Fish and Game Code section 2080.

### **Western Joshua Tree (WJT)**

According to the DEIR and aerial photography, WJT are confirmed to occur within the Project area. CDFW recommends all future Projects tiered from this DEIR establish a no-disturbance buffer of at least 290 feet for individual western Joshua trees. A 290-foot buffer is warranted to not only avoid impacts to individual trees, but potential impacts to the seed bank as well. Vander Wall et. al. 2006 documented 290 feet as the maximum distance of seeds dispersed carried by rodents. If 290-foot buffers cannot be maintained, then consultation with CDFW is warranted to



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determine if the Project can avoid take or if take authorization is necessary. If take cannot be avoided, including any disturbance within the 290-foot buffer area around each WJT, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Any take of WJT without take authorization would be a violation of Fish and Game Code section 2080.

### **Crotch Bumblebee (CBB)**

Based on information presented in the document, CDFW has determined that inadequate habitat assessments, impacts mapping, and surveys were conducted within the 25,000 acre project area to adequately analyze impacts to CBB or to develop appropriate avoidance, minimization, and mitigation to offset potential impacts. CNDDDB records indicate that the Project site is within the habitat range of CBB. Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations. For all future Projects tiered from this DEIR, CDFW recommends as part of the biological technical studies conducted in support of the tiered CEQA document, that focused surveys be conducted by a qualified biologist experienced with CBB. CDFW also recommends that all suitable CBB habitat in areas of planned Project-related ground disturbance, equipment staging, or materials laydown areas be mapped. Potential CBB nesting sites shall be avoided in order to avoid unauthorized take of CBB.

CBB detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **Burrowing Owl (BUOW)**

Based on CNDDDB records and the Biological Resources Report in the DEIR, BUOW are known to occur within and surrounding the Project area. For all future Projects tiered from this DEIR, CDFW recommends having a qualified biologist conduct surveys of the proposed Project area during biological technical studies conducted in support of the tiered CEQA document, following the California Burrowing Owl Consortium's Burrowing Owl Survey Protocol and Mitigation Guidelines (CBOC

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1993) and CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012). Specifically, if suitable habitat is present at an individual Project site, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

If BUOW are detected, CDFW recommends no-disturbance buffers, as outlined in the Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

### Other Special-Status Plant Species

Other plants listed pursuant to the federal Endangered Species Act, CESA, and the Native Plant Protection Act, as well as other special status plants such as California Rare Plant Rank (CRPR) occur in many locations within the Project area. Species of concern include but are not limited to the 1B.1 Red Rock Canyon Monkey Flower (*Erythranthe rhodopetra*), and the rank 1B.2 alkali Mariposa lily (*Calocortus striatus*), Red Rock Poppy (*Eschscholzia minutiflora twisselmannii*), Charlotte's phacelia

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(*Phacelia nashiana*), and Red Rock tarplant (*Deinandra arida*). 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 (CNPS 2020), all of which may be unintended impacts of the Project and all future Projects tiered from this General Plan DEIR. Therefore, impacts of the Project will potentially have significant and cumulative impacts to populations of the species mentioned above if present in the project area.

CDFW recommends that a qualified botanist conduct a habitat assessment of individual Project sites well in advance of Project implementation for all Projects tiered from this General Plan DEIR, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual Project sites 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 Sensitive Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period..

If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

If a 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 would need to occur through issuance of an ITP by CDFW to comply with CESA and/or Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

### **State Species of Special Concern**

American badger, pallid bat, spotted bat, mountain plover, and Le Conte’s thrasher have the potential to occur in the Project area. These species have been documented to occur within and surrounding the Project area, which supports requisite habitat elements (CDFW 2022).

CDFW recommends that for all future Projects tiered from this General Plan DEIR that State Parks have a qualified biologist conduct focused surveys for the applicable species and their requisite habitat features as part of the biological technical studies conducted in support of the tiered CEQA document to evaluate potential impacts resulting from ground and vegetation disturbance.

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## **Desert Kit Fox**

Desert kit fox (*Vulpes macrotis arsipus*) is protected under the California Code of Regulations, Chapter 5, Section 460, which prohibits “take” of the species for any reason. For all future Projects tiered from this General Plan DEIR, CDFW recommends that focused surveys by a qualified biologist be conducted for desert kit fox as part of the biological technical studies conducted in support of the tiered CEQA document. If any active or potential dens are found on the Project site, consultation with the CDFW would be warranted for guidance on take avoidance measures for the desert kit fox. CDFW also recommends that no den excavation occur during the pupping season. Kit fox are known to use multiple dens during this time and vacant dens may be needed when kit fox relocate their pups. In addition, CDFW recommends any fencing proposed as part of any future Project tiered from this General Plan DEIR be raised five to seven inches above ground level and knuckled under to allow desert kit fox movement into and out of any future Project site.

## **III. EDITORIAL COMMENTS AND/OR SUGGESTIONS**

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, desert tortoise. Take under the federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

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

To evaluate future tiered Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife 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. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to

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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 wildlife 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 area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CDFW appreciates the opportunity to comment on the DEIR to assist State Parks in identifying and mitigating Project related impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at [Jaime.Marquez@wildlife.ca.gov](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie Vance  
Regional Manager

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## REFERENCES

- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Wildlife (CDFW). 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.
- CDFG, 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.
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