



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Bay Delta Region  
 2825 Cordelia Road, Suite 100  
 Fairfield, CA 94534  
 (707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



April 13, 2020

Governor's Office of Planning & Research

**APR 14 2020**

Mr. Mark Meissner, Director of Community Development  
 City of Lathrop  
 390 Towne Centre Drive  
 Lathrop, CA 95330  
[mmeissner@ci.lathrop.ca.us](mailto:mmeissner@ci.lathrop.ca.us)

**STATE CLEARINGHOUSE**

Subject: River Islands at Lathrop Phase 2 Project/Update to the West Lathrop Specific Plan, Notice of Preparation of a Subsequent Environmental Impact Report, SCH #1993112027, San Joaquin County

Dear Mr. Meissner:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a Subsequent Impact Report (SEIR) prepared by the City of Lathrop (City) for the proposed River Islands at Lathrop Phase 2 Project/Update to the West Lathrop Specific Plan (Project) located in the City of Lathrop, San Joaquin County.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

### **PROJECT DESCRIPTION AND LOCATION**

The Project area is the Phase 2 development area of the River Islands at Lathrop Project, located on Stewart Tract within the WLSP in the City of Lathrop. The Phase 2 development area includes approximately 3,100 acres of land and open space located on Stewart Tract (an inland island bounded by Paradise Cut, the San Joaquin River, and Old River).

The CEQA Guidelines (§§15124 and 15378) require that the SEIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the Project components listed below.

- Footprint area of permanent features and temporarily impacted areas, such as staging areas and access routes
- Plans for any proposed buildings or structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems

Mr. Mark Meissner  
 City of Lathrop  
 April 13, 2020  
 Page 2 of 7

- Operational features, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features
- Construction schedule, activities, equipment types and crew sizes

Additionally, the SEIR should specify if CDFW is anticipated to be a Responsible Agency that is expected to use the SEIR in its decision making for the Project [CEQA Guidelines, § 15124, subd. (d)(1)(A)].

## ENVIRONMENTAL SETTING

The Project is located in mostly undeveloped and/or agricultural land. There are a few single-family residences and agricultural buildings throughout the site. The Project site contains two wetland areas: the Central Drainage Ditch, a long agricultural ditch which bisects Stewart Tract, and a small pond located near Paradise Cut.

The SEIR should provide sufficient information regarding the environmental setting necessary to understand the Project's, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 and 15360). CDFW recommends that the SEIR provide baseline habitat assessments for special-status fish, wildlife, and plant species potentially affected by the Project including but not limited to the species with the designations listed below.

- Threatened, endangered, rare, candidate, or fully protected under state law
- Threatened or endangered under federal law
- California Rare Plant Rank (CRPR) 1 through 4  
<http://www.cnps.org/cnps/rareplants/ranking.php>
- California Species of Special Concern (<https://www.wildlife.ca.gov/Conservation/SSC/>)
- Local or regional rare plants or animals identified in a local or regional plan or policy
- Rare, threatened, or endangered pursuant to CEQA Guidelines section 15380

Special-status species documented to occur, or with the potential to occur, on or near the Project area include, *but are not limited to*, those listed in the table below.

Common Name	Scientific Name	Status	Rare Plant Rank
Delta button-celery	<i>Eryngium racemosum</i>	SE	1B.1
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC	
Pallid bat	<i>Antrozous pallidus</i>	SSC	
Riparian brush rabbit	<i>Sylvilagus bachmani riparius</i>	FE, SE	
Slough thistle	<i>Cirsium crassicaule</i>		1B.1
Song sparrow ("Modesto" population)	<i>Melospiza melodia</i>	SSC	
Steelhead (Central Valley DPS)	<i>Oncorhynchus mykiss irideus</i>	FT	

Mr. Mark Meissner  
 City of Lathrop  
 April 13, 2020  
 Page 3 of 7

Swainson's hawk	<i>Buteo swainsoni</i>	ST	
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC	
Tricolored blackbird	<i>Agelaius tricolor</i>	ST	
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>	FT	
Western bumble bee	<i>Bombus occidentalis</i>	CE	
Western burrowing owl	<i>Athene cunicularia</i>	SSC	1B.2
White-tailed kite	<i>Elanus leucurus</i>	FP	
Wright's trichocoronis	<i>Trichocoronis wrightii</i> var. <i>wrightii</i>		2B.1

FE = federally listed as endangered under ESA; FT = federally listed as threaten under ESA; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SFP = state fully protected under Fish and Game Code; SSC = state species of special concern; CE= candidate for state listing as endangered

Habitat assessments and species baseline information should include information from multiple sources; for example, recent and historical aerial imagery and survey data, field reconnaissance surveys, scientific literature and reports, and findings from databases such as California Natural Diversity Database (CNDDDB). The CNDDDB is a "positive occurrence" database containing records of species and natural communities that have been observed and documented. Absence of data in such sources does not indicate that the species is absent from the Project area or vicinity. Based on the data and information from the habitat assessment and surveys, the SEIR can adequately assess which special-status species are likely to occur in the Project area or vicinity.

## COMMENTS

### Comment 1: Mitigation for Wildlife and Habitat Impacts

The SEIR indicates the potential for multiple special-status species to occur within or adjacent to the Project site, including, but not limited to: Swainson's hawk, riparian brush rabbit, burrowing owl, and migratory and nesting birds. The NOP notes that the SEIR will rely on the San Joaquin County Habitat Conservation Plan (SJMSCP) to mitigate for wildlife and habitat impacts. Mitigation through the SJMSCP should be detailed in the SEIR, including mitigation ratios for habitat impacts and alternative forms of mitigation should credits and coverage through SJMSCP be unavailable. CDFW recommends incorporating the quantifiable and enforceable measures detailed in the following comments in the SEIR to ensure impacts to special-status species are fully mitigated.

### Comment 2: Swainson's Hawk

CDFW recommends that a qualified biologist conduct surveys prior to any construction activities that may impact Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

Mr. Mark Meissner  
City of Lathrop  
April 13, 2020  
Page 4 of 7

Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted: 1) within a minimum 0.25-mile radius of the Project area or a larger area if necessary to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.25-mile buffer shall be maintained around the nest until the young fledge. If Swainson's hawk activity (foraging or courtship, not just nests) is noted within 0.25 miles of the Project site and a non-disturbance buffer of 0.25 miles cannot be implemented, the Project proponent should be required to obtain a CESA Incidental Take Permit (ITP) and pursue further compensatory mitigation as a condition of Project approval.

The permanent loss of foraging habitat is considered significant. To offset loss of foraging habitat, CDFW recommends that the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio as a condition of Project approval. If active nests are found within 0.25 miles of the project site and take cannot be avoided, the mitigation ratio should be increased to a minimum of 3:1 (mitigation: loss).

### **Comment 3: Riparian Brush Rabbit**

The riparian brush rabbit (*Sylvilagus bachmani riparius*) is State and Federally listed as Endangered. The population at Paradise Cut is one of the few remaining populations of riparian brush rabbit and is under significant threat of extirpation. Due to the potential presence of this listed species and the potential for Project-related take, CDFW advises that the Project proponent be required to obtain a CESA ITP (pursuant to Fish and Game Code 2080 et seq.) as a condition for Project approval.

The permanent loss of core riparian habitat and adjacent flood refugia is a potentially significant impact. To offset loss of habitat, CDFW recommends that the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 5:1 mitigation ratio as a condition of Project approval.

### **Comment 4: Western Burrowing Owl**

The Project has the potential to adversely impact the species through permanent and temporary losses of nesting and foraging habitat. The Project may also result in additional impact to burrowing owl through nest abandonment, loss of young, and reduced health and vigor of chicks (resulting in reduced survival rates) and breeding and foraging disturbance through Project activities.

To ensure impacts to burrowing owls are mitigated to a level of less-than-significant, CDFW recommends that the following nesting bird assessment and avoidance mitigation measure is included as a condition for Project approval:

Mr. Mark Meissner  
City of Lathrop  
April 13, 2020  
Page 5 of 7

*“Burrowing Owl Assessment and Avoidance: Prior to the initiation of Project activities, including ground disturbing work, the Qualified Biologist shall conduct surveys following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the California Department of Fish and Game (CDFG) Staff Report on Burrowing Owl Mitigation (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.*

*In accordance with the CDFG 2012 Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance. Detected burrowing owls shall be avoided pursuant to the buffer zones prescribed in the CDFG 2012 Staff Report and any passive relocation plan shall be subject to CDFW review.”*

Additionally, CDFW recommends that the City incorporate and implement measures to avoid or minimize the loss of burrowing owl nesting and/or foraging habitat. To offset loss of foraging habitat, CDFW recommends that the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio as a condition of Project approval. If active burrows or winter roosts are found onsite and take cannot be avoided, the mitigation ratio should be increased to a minimum of 3:1 (mitigation: loss). The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

#### **Comment 5: Special-Status Plants**

CDFW recommends that the Project area 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,” which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. 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. In the absence of protocol-level surveys being performed, additional surveys may be necessary. If a state-listed or state Rare<sup>1</sup> plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the Native Plant Protection Act.

---

<sup>1</sup> In this context, “Rare” means listed under the California Native Plant Protection Act.

Mr. Mark Meissner  
City of Lathrop  
April 13, 2020  
Page 6 of 7

### **Comment 6: Nesting Birds**

To ensure impacts to nesting birds are mitigated to a level of less-than-significant, CDFW recommends that the following specific and enforceable nesting bird assessment and avoidance mitigation measure is included as a condition for Project approval:

*“Nesting Bird Assessment and Avoidance: Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review 48 hours prior to the initiation of the Project. If a lapse in Project activity of seven days or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDFW.*

*If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the Project site shall be monitored by the qualified biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable. The Permittee or representatives of the Permittee shall not disturb or destroy the nests or eggs of fully protected species or of other birds as per Fish and Game Code section 3503.”*

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a 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.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, and CEQA Guidelines section 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration

Mr. Mark Meissner  
City of Lathrop  
April 13, 2020  
Page 7 of 7

(FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

### **Lake and Streambed Alteration Program**

Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will 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, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

### **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter, please contact Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or [jennifer.rippert@wildlife.ca.gov](mailto:jennifer.rippert@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [melissa.farinha@wildlife.ca.gov](mailto:melissa.farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse #1993112027