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December 24, 2019

Governor's Office of Planning & Research

Rich Deal  
Transportation Agency for Monterey County  
55-B Plaza Circle  
Monterey, California 93901

**DEC 24 2019**

**STATE CLEARINGHOUSE**

**Subject: Fort Ord Regional Trail and Greenway Project (Project)  
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
SCH No. 2019060053**

Dear Mr. Deal:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the Transportation Agency for Monterey County (TAMC) for the above-referenced 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.

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).

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that implementation of the Project without mitigation measures could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Transportation Agency for Monterey County (TAMC)

**Objective:** TAMC has proposed phased construction of an approximately 28-mile long multi-use paved trail, the Fort Ord Trail and Greenway (FORTAG) in northwestern Monterey County. The trail will be designed to accommodate pedestrians and bicyclists, and in some portions, an adjacent separated path for equestrian uses. The estimated

number of trail users per day is between 1,000 and 3,000, with the highest concentrations near the California State University, Monterey Bay (CSUMB) campus and near the Monterey Bay Coastal Recreation Trail.

#### *Trail Design*

The majority of the trail will be a 12-foot-wide paved path, with a two-foot-wide unpaved shoulder on both sides, for a total width of 16 feet. For approximately 1.3 miles of the trail, FORTAG will include an adjacent four- to eight-foot wide side path, separated from the main path by a minimum of four feet, for equestrian uses. This side path will be composed of compacted native soil. Eighteen miles of the trail will be constructed on land without a pre-existing trail or roadway; nine miles of the trail will follow existing roadways or paths; and only 2,000 feet (approximately 1 percent of the trail) will be developed on existing roadways. Where space allows, the trail will be surrounded by an open space greenway buffer on both sides, ranging between 150- to 300-feet wide.

The trail will be paved with asphalt, with the exception of the Frog Pond Wetland Preserve area where a stable, permeable surface will be used in lieu of asphalt. Here the trail will be reduced to a width of eight feet, to protect natural resources in the area.

#### *Trail Amenities and Features*

FORTAG will include amenities such as rest areas, benches, and shade structures along the alignment, with the exception of those portions which lie within the Marina Municipal Airport safety zone. Amenity areas will be situated adjacent to the trail at trail access points and viewpoints and will be comprised of either a permeable surface or compacted native soil.

#### *Lighting*

Lighting will be provided along some sections of FORTAG, depending on the context. Lighting will be added for all new undercrossing and overcrossings and as needed at road crossings and other locations for safety and crime prevention. Minimal or no lighting will be installed in open space areas. If lighting is required in open space areas for public safety purposes, lighting will be designed to minimize impacts to wildlife and the natural setting.

#### *Drainages*

Drainage would occur via sheet flow across the trail surface to adjacent pervious areas. Where this is infeasible, swales may be used parallel to the trail, but they would not be engineered storm water features.

### *Fencing and Retaining Walls*

The majority of FORTAG will not be bound by fencing. Fencing will be added where necessary to separate trail users from conflicting vehicle traffic or from equestrian use. Fencing may also be used to protect habitats with sensitive species, to provide a guardrail for safety, or to channelize bike riders and pedestrians in locations where the trail is adjacent to private property and access control is required. Retaining walls will be needed to retain slopes at certain locations. A total of approximately 2,050 feet of retaining walls will be constructed along the trail.

### *Parking, Site Access, and Construction Staging*

No new parking spaces or formal staging areas will be developed. Improvements, limited to installation of fencing or other barriers, will be installed at existing unimproved parking areas to improve safety and confine parking. Construction staging will be located on existing pavement and disturbed areas adjacent to trails. Staging areas will include existing parking lots adjacent to the trail, vacant or abandoned parking lots at CSUMB, and vacant lots on the former Fort Ord. Roadway shoulders will be used for construction staging where alternatives are not available. Construction staging areas will be located at least 50 feet from waterways. Best management practices, including watering to control dust, will be implemented at staging areas.

### *Project Operation and Maintenance*

FORTAG will traverse multiple jurisdictions and will be owned, implemented, and operated by various entities. As a result, a Master Agreement (MA) will be entered into between TAMC and each underlying jurisdiction. The MA will identify maintenance responsibilities, trail use rules, and other considerations. Rules and restrictions for trail use may vary by jurisdiction. The MA would establish the specific enforceable mitigation measures and any applicable rules for each jurisdiction, as agreed upon in conjunction with TAMC through a series of Supplemental Agreements to the MA as each segment is constructed.

### *Hours and Closures*

FORTAG is proposed as a public trail that will be used for active transportation and recreation. Most segments of the trail will be parallel to nearby existing roads, and no gates are proposed as part of the Project. Therefore, most segments of the trail will be open 24 hours daily. The exact hours of operation could be modified by jurisdictions in which the individual segments occur.

### *Construction*

The FORTAG will be constructed in phases. The first phase is anticipated to be a portion of the Canyon del Rey/State Route (SR) 218 segment. Construction activities for the Project will include vegetation removal in up to a 16-foot swath for most of the proposed alignment, excavation of material sources, clearing and grubbing, grading, placement of aggregate base and asphalt concrete, revegetation, installation of signs, and installation of lighting and other safety related features. Fencing will be installed to limit construction impacts to sensitive resources. Large construction equipment will include trail dozers, skid steers, narrow track loaders, rollers, and vibrating plate compactors. The Project does not include removal of any existing buildings or structures and will avoid major utility conflicts. Therefore, relocation of existing facilities is not anticipated. Most of the trail will be composed of a 4-inch layer of asphalt concrete over 6-inch aggregate base. An estimated 42,000 tons of asphalt concrete are expected to be used to construct the trail.

Best management practices for the Project include but are not limited to: watering active construction areas to prevent dust; application of chemical soil stabilizers on inactive construction areas if unused for four consecutive days; and application of non-toxic binders to exposed areas after cut/fill operations.

**Location:** The Project is located in northwestern Monterey County; generally encircling the cities of Seaside, Del Rey Oaks, Monterey, and Marina and the CSUMB campus, primarily inland from State Route 1 (SR 1). The proposed alignment will generally form three loops that roughly encircle the City of Marina, the CSUMB campus, and the City of Seaside, respectively. The trail is generally organized into seven segments: Northern Marina, Northern Loop, CSUMB Loop North, CSUMB Loop South, National Monument Loop, Canyon Del Rey/SR 218, and Ryan Ranch.

**Timeframe:** Construction of the seven segments will occur in phases. The Canyon del Rey/SR 218 segment has been awarded federal funding through the Active Transportation Program. Engineering-level design for this phase is estimated to begin in 2020, with construction occurring in 2021/2022. Additional construction is expected to occur over time and could continue for several years depending on funding availability and participation of the underlying jurisdiction. A total project construction schedule has not yet been finalized and is subject to funding availability and other considerations.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the Transportation Agency for Monterey County (TAMC) in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts

on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the DEIR indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the DEIR. However, as currently drafted, it is unclear whether the mitigation measures described will be enforceable or sufficient in reducing impacts to a level that is less than significant. In particular, CDFW is concerned regarding adequacy of mitigation measures for special-status plant species including, but not limited to, the State threatened and federally endangered Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*), the State endangered seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), the federally endangered robust spineflower (*Chorizanthe robusta* var. *robusta*), the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*), the California Rare Plant Ranked 1B.1 Hickman's onion (*Allium hickmanii*) and sandmat manzanita (*Arctostaphylos pumila*). CDFW is also concerned regarding the adequacy and enforceability of mitigation measures for special-status animal species including the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*), the State fully protected white-tailed kite (*Elanus leucurus*), and the State threatened tricolored blackbird (*Agelaius tricolor*), and other State species of special concern including burrowing owl (*Athene cunicularia*), northern California legless lizard (*Anniella pulchra*), coast horned lizard (*Phrynosoma blainvillii*), two-striped garter snake (*Thamnophis hammondi*), western pond turtle (*Emys marmorata*), American badger (*Taxidea taxus*), Monterey dusky-footed woodrat (*Neotoma macrotis luciana*), pallid bat (*Antrozous pallidus*), and Townsend's big-eared bat (*Corynorhinus townsendii*).

## I. Environmental Setting and Related Impact

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?**

### COMMENT 1: Special-Status Plants

**Section 4.4 Biological Resources; Impact BIO-1, Mitigation Measures BIO-1(a) through BIO-1(c); page 4.4-36; 4.4-41 through 4.4-43.**

**Issue:** Through completion of habitat assessment/reconnaissance surveys conducted in support of the Project, and as documented in the DEIR, several special-status plant species have been documented to occur in the Project area. These species include Monterey gilia, Monterey spineflower, Hickman's onion,

sandmat manzanita, Monterey cypress and Monterey pine. An additional 38 special-status plant species were determined to have some likelihood to occur in the Project area. Species ranked as having a high likelihood of occurrence include, but are not limited to, seaside bird's-beak and robust spineflower. As currently drafted, the DEIR prepared for the Project requires implementation of Mitigation Measures BIO-1(a) through BIO-1(c) to avoid or minimize impacts to special-status plant species. However, these measures may not be enforceable or sufficient in minimizing Project impacts to a level that is less than significant.

Mitigation Measure BIO-1(a) requires floristic surveys conducted during the blooming period in accordance with the most current protocols established by regulatory agencies and local jurisdictions. As currently drafted, this measure does not explicitly require use of reference populations to ensure that that surveys are timed appropriately. The measure also does not require repetition of these surveys if construction of a trail segment occurs within three years of survey completion. This measure also omits specific reference to the current CDFW-recommended protocol for evaluating impacts to special-status plant populations. Mitigation measure BIO-1(b) requires realignment of the trail if, through surveys, it is determined that special-status species fall within the Project impact area, but as currently drafted does not specify the size of an avoidance buffer associated with realignment. For special-status plants that fall within 50 feet of the trail but outside of the impact area, this measure requires avoidance by 30 feet beyond the extent of the individuals present and allows for a reduced buffer whose radius will be determined by a qualified biologist. If significant impacts to special-status plants cannot be avoided, the DEIR requires implementation of BIO-1(c) which requires development of a Habitat Mitigation and Monitoring Program and mitigation through restoration or compensatory mitigation at a minimum 1:1 ratio. This measure also goes on to state that mitigation may be accomplished through the Monterey County Regional Conservation Investment Strategy (RCIS) if completed at the time of Project implementation. However, it is important to note that compensatory mitigation requirements for State-listed species are determined and approved by CDFW through issuance of an Incidental Take Permit (ITP). Mitigation through the RCIS, if it is adopted at the time of Project implementation, would be possible **only if** an approved mitigation credit agreement was approved under the RCIS for the resources impacted and approved under a Project-specific ITP. In addition, as currently drafted, mitigation measures BIO-1(a) through BIO-1(c) do not explicitly require acquisition of an ITP, pursuant to Fish and Game Code section 2081(b) should impacts to State-listed plant species be unavoidable. For these reasons, these measures may not be enforceable or sufficient in minimizing impacts to a level that is less than significant.

**Specific impact:** Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground- and

vegetation-disturbing activities associated with Project construction include inability to reproduce and direct mortality.

**Evidence impact would be significant:** Special-status plant species known to occur in the vicinity of the Project area are threatened by residential development, road maintenance, vehicles, grazing, trampling, and invasive, non-native plants (CNPS 2019). Both Monterey gilia and seaside bird's-beak are narrowly distributed endemic species that require sandy openings in maritime chaparral and dune scrub communities (CNPS 2019). Monterey gilia is known to occur in the Project area, while seaside bird's-beak has been determined to have high potential to occur. Given the narrow distribution and specific habitat requirements of these species, Project-related impacts have the potential to significantly impact local populations.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to special-status plant species associated with the Project, and to make the mitigation measures included in the DEIR more enforceable, CDFW recommends conducting the following evaluation of the Project area, editing the DEIR to include the following measures, and including the following mitigation measures as conditions of Project approval.

**Mitigation Measure BIO-1(a): Special-Status Plant Surveys, page 4.4-41 through 42**

In areas of suitable habitat, CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following CDFW's (2018) "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities." This protocol, which is intended to maximize species detectability, includes the identification of local reference populations to ensure proper survey timing and 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. It is important to note that, as a result of weather patterns affecting the ability to detect or identify some special-status plant species, in the event of a negative finding this survey protocol recommends repeated visits over a number of years to assess Project impacts to species that may not germinate every year, such as short-lived annual plant species with long-lived seed banks, of which Monterey gilia is one. Therefore, CDFW recommends revising mitigation measure BIO-1(a) to specifically reference this protocol and its specific elements. CDFW also recommends revising this mitigation measure to require repeated survey efforts annually for portions of the trail that will not be constructed immediately.



**Mitigation Measure BIO-1(b): Special-Status Plant Avoidance, page 4.4-42**

CDFW recommends revising Mitigation Measure BIO-1(b) by requiring special-status plant species be avoided whenever possible through delineation and observation of 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.

**Mitigation Measure BIO-1(c): Special-Status Plant Take Authorization, page 4.4-42 through 43**

CDFW recommends revising Mitigation Measure BIO-1(c) to require that if a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

**COMMENT 2: California Tiger Salamander**

**Section 4.4 Biological Resources; Impact BIO-1, Mitigation Measures BIO-1(d)iv and viii, BIO-1(f), BIO-1(g), BIO-1(h), BIO-1(i), and BIO-1(j); pages 4.4-44, 4.4-45, 4.4-46 through 4.4-47, 4.4-47 through 4.4-49, 4.4-49, and 4.4-49 through 4.4-50; respectively.**

**Issue:** Through completion of habitat assessment/reconnaissance surveys conducted in support of the Project, and as documented in the DEIR, suitable CTS breeding and upland habitat has been documented to occur in the Project area. In fact, according to the DEIR, the total impact area of potential CTS upland habitat (defined in the DEIR as upland habitat within 1.3 miles of a pond) is approximately 55.18 acres. To minimize impacts to CTS, the DEIR requires implementation of mitigation measures BIO-1(d)iv and viii, BIO-1(f), BIO-1(g), BIO-1(h), BIO-1(i), and BIO-1(j). As currently drafted, these measures may not be enforceable or sufficient in reducing impacts to CTS to a level that is less than significant.

Mitigation measure BIO-1(d) requires a preconstruction survey for CTS consisting of a transect survey over the entire Project disturbance footprint and mapping of burrows that are potentially suitable for CTS occupancy. However, this survey methodology may not be sufficient in detecting CTS, as the species spends the majority of its life cycle in underground refugia (i.e. small mammal burrows), undetectable above ground. Mitigation Measure BIO-1(f) requires that no

endangered/threatened species be "captured/handled, relocated, harmed, or harassed" without express written permission from CDFW, but this measure does not explicitly require acquisition of an ITP to conduct such activities. If impacts to CTS habitat cannot be avoided, Mitigation Measure BIO-1(g) requires that implementing entities preserve off-site upland habitat or purchase credits at an approved bank as compensatory mitigation. This measure goes on to require that areas proposed for preservation contain "verified" CTS habitat within 1.3 miles of a known breeding pond; that the compensatory mitigation area(s) have a restrictive covenant such as a conservation easement to prevent future development; and that the implementing entity determine whether or not a proposed easement holder meet requirements outlined on page 4.4-47 of the DEIR. This measure also allows (1) compensatory mitigation sites to be located on lands currently held publicly for the purpose of resource protection if a portion of the land is "degraded/destroyed or otherwise not functioning as pre-disturbance, intact natural habitat and could be restored"; and (2) the conservation easement holder and implementing entity alone to determine the appropriate amount of stewardship fees required to enforce and monitor the conservation easement in perpetuity. This measure also defines criteria used to evaluate whether mitigation habitat is of equal or greater value than that impacted by the Project and summarizes these criteria into two categories: suitable habitat and enhanced habitat. The suitable habitat category allows for compensatory mitigation sites to have highly invasive species and contain hazardous waste. The enhanced habitat category allows the applicant, in lieu of acquiring already suitable habitat, to enhance habitat which may consist of actively farmed land or other land that contains degraded habitat and/or contains hazardous waste. As currently drafted, the compensatory mitigation requirements summarized in BIO-1(g) may not be sufficient in reducing Project impacts to a level that is less than significant.

Regarding compensatory mitigation for Project impacts to CTS, CDFW recommends that implementing entities conduct compensatory mitigation in accordance with conditions outlined in an associated Project-specific ITP, in consultation with and following approval by CDFW. Government Code sections 65965-65968 details specific requirements which govern conservation easements, endowments, and land management activities when serving as compensatory mitigation for a project. Despite describing specific compensatory mitigation requirements for Project impacts to CTS, this measure does not explicitly require acquisition of an ITP from CDFW for Project-related take of CTS. In addition, Mitigation Measure BIO-1(j) states that construction of portions of the trail with high potential for CTS occurrence should be conducted between April 1 and October 31 to avoid impacts to CTS. However, CTS occupy underground refugia in upland habitat for the majority of the year. Therefore, though CTS may not be as likely to disperse/migrate during this seasonal window, construction-related impacts to CTS are still possible. For these reasons, the mitigation measures currently identified for CTS may not be enforceable or sufficient in minimizing or avoiding Project-related impacts.

**Specific Impacts:** Without appropriate mitigation measures, potential Project-related impacts include collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites, reduced reproductive success, reduction in health, and direct mortality of individuals.

**Evidence impact would be significant:** Up to 75 percent of historic CTS habitat has been lost to development (Searcy et al. 2013). Loss, degradation, and fragmentation of habitat are the primary threats to CTS. Contaminants and vehicle strikes are also sources of mortality for the species (CDFW 2015a, USFWS 2017a). The Project area is within the range of CTS and the DEIR recognizes that the species has a high potential to occur within the Project area. CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011). The DEIR states that approximately 55.18 acres of potential habitat falls within the Project impact area. Therefore, the Project has the potential to significantly impact local populations of CTS.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to CTS associated with the Project, and to make the mitigation measures included in the DEIR more enforceable, CDFW recommends conducting the following evaluation of the Project area, editing the DEIR to include the following measures, and including the following mitigation measures as conditions of Project approval.

**Mitigation Measure BIO-1(d)iv: Focused CTS Surveys, page 4.4-44**

Because it has already been determined that suitable habitat for CTS falls within the Project impact area, CDFW recommends revising mitigation measure BIO-1(d)iv to require that a qualified biologist conduct protocol-level surveys in areas of suitable habitat in accordance with the USFWS's 2003 "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander." In areas that contain only suitable upland habitat, this protocol recommends a two-year drift-fence study. In areas with both upland and aquatic habitat, the protocol recommends two years of aquatic sampling coupled with a drift-fence study of the upland habitat during the intervening winter. CDFW recommends that survey findings be submitted to CDFW for review. To demonstrate a negative finding, survey findings should discuss whether there has been sufficient rainfall relative to average rainfall amounts for the local area during the study period.

**Mitigation Measures BIO-1(f) and BIO-1(j): CTS Avoidance, page 4.4-49 through 4.4-50**

CDFW recommends revising Mitigation Measures BIO-1(f) and BIO-1(j) to require delineation of a minimum 50-foot no-disturbance buffer around all small mammal

burrows in suitable upland habitat and a minimum 250-foot no-disturbance buffer around occupied or potentially suitable breeding habitat within and/or adjacent to the Project impact area. CDFW also recommends avoiding any impacts that could alter the hydrology or result in sedimentation of breeding habitat. If avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

#### **Mitigation Measures BIO-1(g): CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project impact area and take cannot be avoided, CDFW recommends revising Mitigation Measure BIO-1(g) to require take authorization prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b). Alternatively, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an ITP from CDFW. CDFW also recommends revising this measure to state that compensatory mitigation required to meet CDFW's fully mitigated standard will be described in the Project-specific ITP and require review and approval by CDFW prior to implementation.

#### **COMMENT 3: Animal Species of Special Concern**

**Section 4.4 Biological Resources; Impact BIO-1; Mitigation Measure BIO-1(d)i, BIO-1(d)ii, BIO-1(d)v, BIO-1(d)vi, and BIO-1(d)vii; pages 4.4-43, 4.4-43 through 4.4-44, 4.4-44 through 4.4-45, 4.4-45; respectively.**

**Issue:** Through completion of habitat assessment/reconnaissance surveys conducted in support of the Project, and as documented in the DEIR, several State Species of Special Concern have been documented to occur or have a high likelihood of occurrence in the Project impact area. These species include California red-legged frog, burrowing owl, northern California legless lizard, coast horned lizard, two-striped garter snake, western pond turtle, American badger, Monterey dusky-footed woodrat, pallid bat, and Townsend's big-eared bat. As currently drafted, the DEIR prepared for the Project requires implementation of Mitigation Measures BIO-1(d)i, BIO-1(d)ii, BIO-1(d)v, BIO-1(d)vi, and BIO-1(d)vii to avoid or minimize impacts to these species. However, these measures may not be enforceable or sufficient in minimizing impacts to these species to a level that is less than significant. For example, Mitigation Measure BIO-1(d)i requires general wildlife surveys be conducted for northern California legless lizard, coast horned lizard, two-striped garter snake, western pond turtle, and American badger within 14 days of the start of construction. This measure also allows for California legless lizard, coast horned lizard, two-striped garter snake to be relocated from the Project site if encountered. However, this measure does not specify the survey methodology that

will be employed to survey these species and does not require that the biologist conducting relocations have authorization from CDFW to do so. Mitigation Measure BIO-1(d)ii requires preconstruction surveys for burrowing owl be conducted within 30 days prior to construction in accordance with CDFW's recommended survey methodology and allows for passive relocation of burrowing owl during the non-breeding season. However, CDFW's recommended survey methodology recommends repeated visits throughout the breeding season, timed a minimum of three weeks apart, to assess project impacts to burrowing owl. In addition, it is important to note that exclusion of burrowing owl is considered a potentially significant impact under CEQA. Mitigation Measure BIO-1(d)v requires that relocation of California red-legged frog not occur without permission from the USFWS but does not require authorization from CDFW to do so. Mitigation Measure BIO-1(d)vi requires demarcation of a 10-foot avoidance buffer for Monterey dusky-footed woodrat middens that lie within 50-feet of Project activity or dismantling of middens that cannot be avoided. However, a 10-foot avoidance buffer may not be sufficient in avoiding impacts to woodrats. Mitigation Measure BIO-1(d)vii currently provides conflicting guidance regarding implementation of minimization measures for bat Species of Special Concern. For example, this measure requires that alternative bat roosting habitat be installed as far in advance of human eviction/exclusion as possible, but also allows installation of alternative bat roosting structures as soon as active roosts are identified and implementation of eviction measures after alternative roost structures have been installed. For these reasons, the mitigation measures currently identified in the DEIR may not be enforceable or sufficient in minimizing impacts to a level that is less than significant for these species.

**Specific impact:** Without appropriate avoidance and minimization measures for State Species of Special Concern, potential significant impacts resulting from ground- and vegetation-disturbing activities associated with Project construction include inability to reproduce and direct mortality.

**Evidence impact would be significant:**

*Burrowing Owl*

Burrowing owl rely on burrow habitat year-round for their survival and reproduction. The Project Area is within the range of BUOW and suitable burrow habitat is present on or in the vicinity of the Project Area. Habitat loss and degradation are considered the greatest threats to burrowing owl (Gervais et al. 2008). Therefore, the Project has the potential to significantly impact local burrowing owl populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding burrowing owl is considered a potentially significant impact under CEQA.

### *California Red-Legged Frog*

California red-legged frog populations throughout the state have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from urban development, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to California red-legged frog (Thomson et al. 2016, USFWS 2017b). The DEIR acknowledges the potential for California red-legged frog to occur in the Project area and the threats to the species summarized above have the potential to result from Project activities. Therefore, project activities have the potential to significantly impact California red-legged frog.

### *Western Pond Turtle*

Western pond turtle are capable of nesting up to 1,600 feet away from waterbodies. Nesting occurs in spring or early summer and hatching occurs in fall. Hatchlings can remain in the nest throughout the first winter, emerging the following spring. In addition, western pond turtle are slow to reach sexual maturity, which naturally reduces the number of western pond turtle that are recruited into a population each year (Thomson et al. 2016). Threats to western pond turtle include land use changes and habitat fragmentation associated with development, road mortality, as well as a decrease in suitable upland nesting/overwintering habitat (Thomson et al. 2016), all of which are potential impacts of the Project. As a result, Project development has the potential to significantly impact the local population of western pond turtle.

### *Other Species of Special Concern*

Other species of special concern that are likely to occur in the Project impact area include coast horned lizard, two-striped garter snake, northern California legless lizard, and American badger. These species are threatened by habitat loss and degradation resulting from urbanization, off-highway vehicles, soil compaction, and introduction of invasive plants (Gittleman et al. 2001, Thomson et al. 2016). All these impacts have potential to occur as a result of Project implementation, and therefore, the Project has the potential to significant impact local populations of these species.

### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to State species of special concern associated with the Project, and to make the mitigation measures included in the DEIR more enforceable, CDFW recommends conducting the following evaluation of the Project area, editing the DEIR to include the following measures, and including the following mitigation measures as conditions of Project approval.

**Mitigation Measure BIO-1(d) i: General Wildlife Surveys for Special-Status Animals, page 4.4-43; Mitigation Measure BIO-1(d)vi: Monterey Dusky-Footed Woodrat Surveys and Avoidance, page 4.4-45**

*Focused Surveys*

Where suitable habitat is present for State species of special concern, including California legless lizard, coast horned lizard, two-striped garter snake, western pond turtle, American badger, and Monterey dusky-footed woodrat, CDFW recommends that a qualified biologist conduct focused surveys for individuals and their requisite habitat features (e.g., nests, burrows, dens, middens, etc.) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

*Avoidance/Relocation*

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around requisite habitat features (e.g., burrows, dens, middens, etc.). If avoidance is not possible, relocation of individuals or dismantling of requisite habitat features should be conducted by a qualified biologist who holds a Scientific Collecting Permit for the specific species affected.

**Mitigation Measure BIO-1(d)ii: Burrowing Owl Surveys and Avoidance, page 4.4-43 through -44**

*Burrowing Owl Surveys*

CDFW recommends assessing presence/absence of burrowing owl by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012). In addition, CDFW advises that surveys include a 500-foot buffer around the Project Area. CDFW's Staff Report recommends: (1) conducting surveys during the breeding season (February 1 through August 31), when burrowing owl are most detectable; (2) conducting three or more survey visits during daylight hours; and (3) timing surveys for a minimum of three weeks apart with one survey conducted during the laying and incubation period, one survey during the nestling period, and one in the late nestling period.

*Burrowing Owl Avoidance*

Because burrowing owl occupy burrow habitat year-round, CDFW recommends seasonal 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 associated with Project implementation. 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)

*Burrowing Owl Passive Relocation and Mitigation*

If burrowing owl are found to occupy the Project Area 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 burrowing owl. Burrowing owl may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project Area during Project activities, at a rate that is sufficient to detect burrowing owl if they return.

**Mitigation Measure BIO-1(d)v: California Red-Legged Frog Surveys and Avoidance, page 4.4-44 through -45**

*California Red-Legged Frog Surveys*

If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for California red-legged frog within 48 hours prior to commencing work (i.e., two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS's (2005) "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" to determine if California red-legged frog are within or adjacent to the Project area.



### *California Red-Legged Frog Avoidance*

If any California red-legged frog are found during preconstruction surveys or at any time during construction, CDFW recommends that construction cease and that CDFW be contacted to discuss a relocation plan for California red-legged frog, conducted by a qualified biologist, holding a Scientific Collecting Permit for the species.

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when California red-legged frog are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily for California red-legged frog.

### **Mitigation Measure BIO-1(d)vii: Special-Status Bat Species Surveys and Avoidance, page 4.4-45**

#### *Bat Pre-construction Surveys*

CDFW recommends that the Project area be assessed for potential to support roosting bats well in advance of initiation and that additional pre-activity surveys occur within two weeks prior to the start of work.

#### *Bat Avoidance*

If a bat roost is detected during habitat assessment or pre-construction surveys, CDFW advises a minimum 50-foot no-disturbance buffer during activity, or postponing activity until repeat surveying documents that bats no longer use the roost.

#### *Consultation*

CDFW recommends that bats not be disturbed without specific notice to and consultation with CDFW. If avoidance or postponement is not feasible, CDFW recommends submitting a Bat Eviction Plan to CDFW for written approval prior to project implementation. CDFW further advises that a request to evict bats from a roost include details for excluding bats from the roost site and monitoring to ensure that all bats have exited the roost prior to the start of activity and are unable to re-enter the roost until activity is completed. CDFW also recommends that project or bat eviction activities be timed to avoid lactation and young-rearing.

#### **COMMENT 4: White-Tailed Kite and Tricolored Blackbird**

##### **Section 4.4 Biological Resources; Impact BIO-1; Mitigation Measure BIO-1(e); page 4.4-46**

**Issue:** The DEIR acknowledges the potential for the State fully protected white-tailed kite, to nest and/or forage in the vicinity of Project area. The DEIR also acknowledges the potential for tricolored blackbird to nest within or adjacent to the Project area. As currently drafted, the DEIR includes Mitigation Measures BIO-1(e), a general nesting bird preconstruction survey measure, as the only mitigation measure addressing these species. This measure requires a general preconstruction survey no more than 14 days prior to construction initiation and requires a 500-foot survey and avoidance buffer around impact areas for both white-tailed kite and tricolored blackbird. However, this survey effort and avoidance buffer may not be sufficient in assessing or avoiding Project impacts to these species. Without appropriate mitigation measures, Project activities conducted within occupied territories or in proximity to nesting colonies have the potential to significantly impact these species.

**Specific Impacts:** Potentially significant impacts that may result from new ground-disturbing activities include nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and could result in direct mortality or individuals.

**Evidence impact would be significant:** The Project will involve noise, groundwork, and use of heavy machinery that may occur directly adjacent to large trees and other features with potential to serve as nest sites for white-tailed kite and flooded emergent vegetation features that may serve as nesting substrate for tricolored blackbird. The Project may also result in tree removal. Habitat loss and degradation are the primary threats to these species. For example, successful nests of white-tailed kite were found to be surrounded by more natural vegetation and non-urban development than failed nests (Erichsen et al. 1996 in Dunk 1995). Tricolored blackbird aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Increasingly, tricolored blackbird are forming larger colonies that contain progressively larger proportions of the species' total population. In 2008, for example, 55 percent of the species' global population nested in only two colonies (Kelsey 2008). 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 tricolored blackbird populations (Meese et al. 2014).

**Recommended Potentially Feasible Mitigation Measure(s)**

Because the DEIR identifies the potential for white-tailed kite and tricolored blackbird to occur within or adjacent to the Project impact area, CDFW recommends conducting the following evaluation, editing the DEIR to include the following measures, and that these measures be made conditions of approval for the Project.

**Mitigation Measure BIO-1(e); Nesting Bird Preconstruction Survey, page 4.4-46**

*White-Tailed Kite Surveys*

In areas of suitable habitat, CDFW recommends that focused surveys be conducted by experienced biologists prior to Project implementation and that surveys encompass a ½-mile buffer around Project impacts areas. If Project activities are to take place during the typical bird breeding season (March 1 through September 15), CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project activity.

*White-Tailed Kite Avoidance*

Because white-tailed kite is a fully protected species, take of the species cannot be authorized. In the event that white-tailed kite nests are found within ½-mile of Project sites, implementation of avoidance measures is warranted. CDFW recommends that a qualified wildlife biologist be on site during all Project-related activities and that a ½-mile no disturbance buffer be put into effect. If the ½-mile no-disturbance buffer cannot feasibly be implemented, contacting CDFW to assist with providing and implementing additional avoidance measures is recommended.

*Tricolored Blackbird Surveys*

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting tricolored blackbird no more than 10 days prior to the start of implementation to evaluate presence/absence of tricolored blackbird nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

*Tricolored Blackbird Avoidance*

If an active tricolored blackbird nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts

to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015b). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, and the birds have fledged and are no longer reliant upon the colony or parental care for survival. It is important to note that tricolored blackbird colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days of Project initiation.

#### *Tricolored Blackbird Take Authorization*

In the event that a tricolored blackbird nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081(b), prior to any ground-disturbing activities.

**Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?**

#### **COMMENT 5: Lake and Streambed Alteration**

**Section 4.4 Biological Resources; Impact BIO-3, Mitigation Measures BIO-3(a) and BIO-3(b), page 4.4-55.**

**Issue:** The DEIR acknowledges the presence of wetlands and waters within the Project impact area and the potential for the Project to impact these features. Specifically, the DEIR acknowledges that the Project alignment runs through the middle of an emergent wetland between Canyon Del Rey Creek and SR 218 at Work Memorial Park and that while the Project design includes a narrower-width trail to minimize impacts to Frog Pond Wetland preserve, impact to this feature will not be eliminated. Direct impacts associated with the Project and considered in the DEIR include fill (e.g., placement of soil, gravel, and/or pavement into wetland features), spills, leaks, and alteration of detention basins throughout the Project area. As currently drafted, the DEIR includes Mitigation Measures BIO-3(a) through BIO-3(c) to minimize impacts to wetlands and waters associated with Project development. However, as currently drafted, these measures may not be enforceable or sufficient in reducing impacts to wetlands and waters to a level that is less than significant. For example, Mitigation Measure BIO-3(a) states that, "if CDFW asserts its jurisdictional authority, then a Streambed Alteration Agreement pursuant to Section 1600 et seq. of the [California Fish and Game Code will] be required prior to construction within the areas of CDFW jurisdiction." However, this measure does not explicitly require proactive Notification to CDFW, pursuant Fish and Game Code § 1602. In addition, Mitigation Measure BIO-3(b) allows for

mitigation for impacts to waters and wetlands be achieved through acquisition and in-perpetuity management of similar habitat through in-lieu funding of such mitigation through an existing mitigation bank. This measure also states that mitigation may be facilitated through the RCIS program if the Monterey County RCIS is adopted at the time of project implementation and that compensatory mitigation for sensitive vegetation communities may be combined with other compensatory mitigation as applicable. However, this measure does not require that compensatory mitigation for impacts to wetlands and waters that fall within CDFW's regulatory authority be approved through issuance of a Lake and Streambed Alteration Agreement (LSAA). In addition, mitigation through the RCIS, if adopted at the time of Project implementation, would occur only if an approved mitigation credit agreement was approved under the RCIS for the resources impacted and approved under a Project-specific LSAA.

**Specific impact:** Project activities conducted within streams, wetlands, and waters have the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality.

**Evidence impact is potentially significant:**

Lake and Streambed Alteration

Activities within streams may be subject to CDFW's lake and streambed alteration regulatory authority. Construction activities within these features have the potential to impact downstream waters. Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of features such as these can have significant physical, biological, and chemical impacts that can extend into the adjacent uplands adversely affecting not only the fish and wildlife species dependent on the stream itself, but also the flora and fauna dependent on the adjacent upland habitat for feeding, reproduction, and shelter.

Water Diversion

Water diversions can impact flow regimes. Prolonged low flows can cause water features to become degraded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic wildlife species. In addition, alterations to flows can affect the health of riparian vegetation, reducing habitat quality for wildlife species.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to wetlands and waters associated with the Project, and to make the mitigation measures included in the DEIR more enforceable, CDFW recommends conducting the following evaluation of the Project area, editing the DEIR to include the following measures, and including the following mitigation measures as conditions of Project approval.

**Mitigation Measure BIO-1(d)vii: Jurisdictional Delineation and Notification;  
page 4.4-55**

*Wetland Delineation*

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams (including any floodplain) and wetlands within and adjacent to the Project Area to help inform how the Project will impact or avoid hydrological alteration. Please note that, while there is overlap, State and Federal definitions of wetlands as well as what activities require Notification pursuant to Fish and Game Code section 1602 differ. Therefore, it is advised that the wetland delineation identify both State and Federal wetlands in the Project Area as well as what activities may require Notification to comply with Fish and Game Code. Fish and Game Code section 2785 (g) defines wetlands; further, section 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from the United States Army Corps of Engineers and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with any Project Area evaluations.

*Notification*

Fish and Game Code section 1600 et seq. 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. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. For additional information on Notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. Any compensatory

mitigation requirements will be determined and approved by CDFW and included in any Lake and Streambed Alteration Agreement(s) issued for the Project.

## II. 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, California tiger salamander and California red-legged frog. 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 Project implementation 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's 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 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 a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and that CDFW be consulted 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 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.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**


If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the City of Salinas in identifying and mitigating the Project's 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>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,



 Julie A. Vance  
Regional Manager

cc: See Page Twenty-five



Rich Deal  
Transportation Agency for Monterey County  
December 24, 2019  
Page 25

cc: Leilani Takano  
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Ventura, California 93003

ec: Lake and Streambed Alteration Program  
California Department of Fish and Wildlife  
Central Region

Jeff Cann  
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### Literature Cited

- California Burrowing Owl Consortium (CBOC), 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- California Department of Fish and Game (CDFG), 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- California Department of Fish and Wildlife (CDFW), 2015. California Tiger Salamander Technical Review – Habitat, Impacts and Conservation. California Department of Fish and Wildlife, October 2015.
- CDFW, 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- CDFW, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife, March 2018.
- California Native Plant Society (CNPS), Rare Plant Program. 2019. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org>. Accessed December 17, 2019.
- Dunk, J. R. 1995. White-tailed Kite (*Elanus leucurus*), version 2.0. In The Birds of North America (A. F. Poole and F. B. Gill, Editors). Cornell Lab of Ornithology, Ithaca, NY, USA. <https://doi.org/10.2173/bna.178>
- Erichsen, A. L., K. S. Smallwood, A. M. Commandatore, B. W. Wilson and D. M. Fry. 1996. "White-tailed Kite movement and nesting patterns in an agricultural landscape." In Raptors in human landscapes., edited by D. M. Bird, D. E. Varland and J. J. Negro. London: Academic Press and Raptor Research Foundation.
- Gervais, J. A., D. K. Rosenberg, and L. A. Comrack, 2008. Burrowing Owl (*Athene cunicularia*) In California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California (W. D. Shuford and T. Gardali, editors). Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

- Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne, 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.
- Kelsey, R. 2008. Results of the tricolored blackbird 2008 census. Report submitted to U.S. Fish and Wildlife Service, Portland, OR, USA.
- Meese, R. J., 2017. Results of the 2017 Tricolored Blackbird Statewide Survey. California Department of Fish and Wildlife, Wildlife Branch, Nongame Wildlife Program Report 2017-04, Sacramento, CA. 27 pp. + appendices.
- Orians, G.H. 1961. The ecology of blackbird (*Agelaius*) social systems. Ecological Monographs. 31:285-312.
- Poff, N. L., J. D. Allan, M. B. Bain, J. R. Karr, K. L. Prestegarrd, B. D. Richter, R. E. Sparks, and J. C. Stromberg. 1997. The natural flow regime: a paradigm for river conservation and restoration. BioScience 47:769–784.
- Searcy, C. A., and H. B. Shaffer. 2011. Determining the migration distance of a vagile vernal pool specialist: How much land is required for conservation of California tiger salamanders? *In* Research and Recovery in Vernal Pool Landscapes, D. G. Alexander and R. A. Schlising, Eds. California State University, Chico, California.
- Searcy, C. A., E. Gabbai-Saldate, H. B. Shaffer. 2013. Microhabitat use and migration distance of an endangered grassland amphibian. Biological Conservation 158: 80-87.
- Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.
- USFWS, 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.
- USFWS, 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog March 2005. 26 pp.
- USFWS, 2017a. Recovery Plan for the Central California Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*). U. S. Fish and Wildlife Service, Region 8, Sacramento, California. June 2017.
- USFWS, 2017b. Species Account for California Red-legged frog. March 2017. 1 pp.