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August 26, 2019

Governor's Office of Planning & Research

AUG 26 2019

STATE CLEARINGHOUSE

Paul Scheibel, AICP, Project Planner
City of Visalia
315 East Acequia Avenue
Visalia, California 93291

**Subject: Packwood Creek Bridge Crossing at Cameron Parkway, Visalia,
Tulare County, California (Project),
INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION
SCH # 2019079101**

Dear Mr. Scheibel:

The California Department of Fish and Wildlife (CDFW) received an Initial Study and proposed Mitigated Negative Declaration (IS/MND) from the City of Visalia (City) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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, construction associated with the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & Game 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 & Game 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 §§ 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Payntor Realty & Investments, Inc.

Objective: The Project consists of the construction of a box culvert bridge across Packwood Creek. The bridge will connect Cameron Parkway with an existing shopping center that currently houses several commercial anchors. The bridge is proposed to be 50 feet wide and 170 feet in length. It will have two drive lanes and a left turn pocket. There will be a sidewalk on one side of the bridge. The Project goal is to provide a southern ingress and egress point for vehicle and pedestrian traffic.

Location: The Project site is located at Packwood Creek, north of the Cameron Avenue alignment, approximately 700 feet east of Mooney Boulevard in the City of Visalia, Tulare County, California. Assessor's Parcel Number 126-062-072.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Environmental Setting and Related Impact

Currently, the IS/MND indicates that the Project will not have a significant impact on the environment with implementation of mitigation measures described in the MND. However, as currently drafted, it is unclear whether the provisions described in these measures will be enforceable or sufficient in reducing impacts to a level that is less than significant. Specifically, CDFW is concerned regarding adequacy of mitigation measures for the State threatened Swainson's hawk (*Buteo swainsoni*) and nesting birds. In addition, CDFW is concerned regarding impacts to the State species of special concern burrowing owl (*Athene cunicularia*). Pre-Construction Impact Mitigation Measures 3 and 4 call for "general" bird surveys but do not specify survey methodology or include guidance should listed species or nesting birds be found on the Project site.

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: Swainson's Hawk (SWHA)

Issue: Review of aerial imagery indicates large trees, which may support nesting SWHA, are present on the Project site. Pre-Construction Impact Mitigation Measure 4 states a SWHA survey will be conducted "if directed by jurisdictional agency regulators." The measure does not require SWHA surveys nor does it specify survey protocols to be used. It also does not provide guidance should SWHA be detected on site. For these reasons, it is unclear if the provisions within this measure are adequate or enforceable to reduce impacts to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts associated with development of the Project include loss of nest trees, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: Lack of suitable nesting habitat in the San Joaquin Valley limits the local distribution and abundance of SWHA (CDFW 2016). Depending on the timing and proximity of construction, activities including noise, vibration, and movement of workers or equipment could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for SWHA is present on the Project site, CDFW recommends editing the MND to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 1: Focused SWHA Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for nesting raptors following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation. If ground-disturbing activities take place during the normal bird breeding season (February 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 construction.

Recommended Mitigation Measure 2: SWHA Avoidance

If an active SWHA nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer 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.

Recommended Mitigation Measure 3: SWHA Take Authorization

If SWHA are detected and the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If SWHA cannot be avoided, acquisition of an Incidental Take Permit, pursuant to Fish and Game Code § 2081(b) prior to ground-disturbing activities may be necessary to comply with CESA.

Recommended Mitigation Measure 4: Tree Removal

CDFW recommends that the removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity. This mitigation would offset the temporal impacts of nesting habitat loss.

COMMENT 2: Burrowing Owl (BUOW)

Issue: BUOW occupy open grassland and shrub lands that contain small mammal burrows. BUOW can also occupy burrows within the banks of earthen canals (Coulombe 1971). Review of aerial imagery indicates that the Project area contains

earthen berms and is adjacent to undeveloped grassland habitat, which may provide suitable foraging habitat for BUOW. In addition, the habitat assessment included with the IS/MND identified California Ground Squirrel burrows on the Project site. The presence of these habitat features increases the likelihood of BUOW occurrence both on and within the vicinity of the Project area. However, the IS/MND does not consider impacts to BUOW.

Specific impact: Potentially significant direct impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project area is within the range of BUOW and suitable burrow habitat is present on or in the vicinity of the Project area. Therefore, the Project has the potential to significantly impact local BUOW populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site and including the following measures as conditions of approval in the MND.

Recommended Mitigation Measure 5: BUOW Surveys

CDFW recommends assessing presence/absence of BUOW 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.

Recommended Mitigation Measure 6: BUOW Avoidance

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 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)

Recommended Mitigation Measure 7: BUOW Passive Relocation and Mitigation

If BUOW are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a 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 of the Project site during Project activities, at a rate that is sufficient to detect BUOW if they return.

II. Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-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 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 work 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 CDFW 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 that may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be 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. 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

The Project, as proposed, has the potential to impact fish and/or wildlife, and assessment of filing fees may 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.)

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CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the City of Visalia in identifying and mitigating subsequent project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jennifer Giannetta, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 216, or by electronic mail at Jennifer.Giannetta@wildlife.ca.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie A. Vance".

Julie A. Vance
Regional Manager

REFERENCES

- 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), 2016. Status Review: Swainson's hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.
- 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.
- SWHA TAC, 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.