



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 8, 2020

Governor's Office of Planning & Research

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Sep 08 2020

STATE CLEARINGHOUSE

Subject: Pleasant Hills Ranch Estates Southeast Extension Project, Mitigated Negative Declaration, SCH No. 2020089017, Solano County

Dear Mr. Fuchslin:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Solano Irrigation District for the Pleasant Hills Ranch Estates Southeast Extension Project (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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 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 Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Solano Irrigation District

Objective: The objective of the Project is to expand an existing 8-inch diameter water transmission line along Pleasants Valley Road and across agricultural land. This will

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

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allow potable water delivery to residents in the area. Primary Project activities include grading, trenching, installing pipe, crossing an ephemeral creek, and removing understory vegetation. The Project includes three alternative routes for the water transmission line. The routes are similar, but Alternative One spans approximately 5,300 linear feet and does not require any creek crossing, Alternative Two spans approximately 6,350 linear feet and requires a creek crossing at an existing culvert, and Alternative Three spans approximately 6,256 linear feet and requires a new creek crossing.

Location: The Project is located approximately 2.4 miles west of the City of Vacaville and approximately 0.75 miles northwest of the unincorporated Town of Bucktown, in Solano County. The Project is broadly bounded by Pleasants Valley Road on the west and Bucktown Lane to the east. The approximate Project centroid is Latitude 38.39951°, -122.03684°.

Timeframe: The Project timeframe is not specified in the MND.

ENVIRONMENTAL SETTING

The Project area is approximately 26.7 acres in the Vaca Valley between the English Hills and the Vaca Mountains in unincorporated Solano County. The Project area is dominated by farmland and non-native grassland. Roadside portions of the Project area include barren or disturbed habitat. An unnamed ephemeral tributary to Ulatis Creek crosses the western edge of the Project area. The riparian corridor of the unnamed tributary includes interior live oak (*Quercus wislizeni*), valley oak (*Quercus lobata*), Fremont cottonwood (*Populus fremontii*), poison oak (*Toxicodendron diversilobum*), toyon (*Heteromeles arbutifolia*), and Himalayan blackberry (*Rubus armeniacus*). Special-status species with the potential to occur in the Project area include, but are not limited to, Swainson's hawk (*Buteo swainsoni*), burrowing owl (*Athene cunicularia*), white-tailed kite (*Elanus leucurus*), western pond turtle (*Emys marmorata*), foothill yellow-legged frog (*Rana boylei*), California red-legged frog (*Rana draytonii*), and Brewer's western flax (*Hesperolinon breweri*).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Solano Irrigation District 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below, CDFW concludes that an MND is appropriate for the Project.

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Project Description and Related Impact Shortcoming

The MND describes three alternative routes for the proposed water transmission line (page v). Alternative Two and Alternative Three would cross the unnamed tributary to Ulatis Creek “above the existing channel culvert” (page 17) or by excavating “an approximately 15-foot deep, approximately 4-foot wide trench through the creek channel” (pages 17-18), respectively. The MND does not provide design plans for these creek crossings, and the details of the crossings are limited. In addition, for Alternative Two, the MND states that “regulatory permits would not be required” (page 17). Due to the lack of specific details for these crossings and the potential for significant impacts to the riparian corridor and the unnamed tributary from equipment, excavation, vegetation removal, and other ground disturbing activities, CDFW recommends including the following mitigation to reduce impacts to less-than-significant:

Mitigation Measure BIO-10: Notification of Lake or Streambed Alteration

For Project activities that may substantially alter the bed, bank, or channel of the unnamed tributary to Ulatis Creek, including Alternative Two and Alternative Three, a Notification will be submitted to CDFW pursuant to Fish and Game Code section 1602. If CDFW determines that a Lake or Streambed Alteration Agreement (Agreement) is warranted, the Solano Irrigation District will comply with all required measures in the Agreement.

Ultimately, CDFW recommends that the Solano Irrigation District implement Alternative One, which completely avoids crossing the unnamed tributary to Ulatis Creek, significantly reducing and avoiding potential impacts to biological resources.

Environmental Setting and Related Impact Shortcoming

Swainson’s Hawk:

The MND identifies that Swainson’s hawk, listed as threatened pursuant to CESA, may occur within the Project area (page 15). Suitable nesting trees exist in the riparian areas near the Project area, and the farmland and grassland within the Project area provide suitable foraging habitat. In addition, there are California Natural Diversity Database (CNDDDB) occurrences of Swainson’s hawk near the Project area (page 15). The MND does not require Swainson’s hawk protocol surveys prior to Project activities, relying instead on the generic pre-construction nesting bird surveys identified in Mitigation Measure BIO-5. This measure requires nesting bird surveys to occur within the Project area and the 50 feet surrounding the Project area. It also requires these surveys within 15 days before commencing Project activities. Mitigation Measure BIO-5 does not provide adequate survey techniques to effectively identify nesting Swainson’s hawk in and near the Project area. Surveys should be conducted up to a half-mile radius around the Project area and surveys should be completed for at least the two survey periods

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immediately prior to Project commencement, requiring multiple site visits potentially spanning four months. As noted in the MND, the breeding population in California has declined by an estimated 91% since 1900 (page 15). The proposed Mitigation Measure BIO-5 has a high probability of failing to detect nesting Swainson's hawks that could be disturbed by Project activities, leading to a potentially significant impact to Swainson's hawk through nest abandonment or reduced health and vigor of young. To reduce impacts to less-than-significant, CDFW recommends including the following mitigation:

Mitigation Measure BIO-11: Swainson's Hawk Surveys

If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on this Project, a qualified biologist shall survey for Swainson's hawk nesting activity. The qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*². 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 will be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys will occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. For a reduced buffer, the Project shall consult with CDFW and provide rationale that considers visual and auditory disturbances. If take of Swainson's hawk cannot be avoided, the Project will consult with CDFW pursuant to CESA and obtain an Incidental Take Permit. CDFW Bay Delta Region staff is available to provide guidance on the Incidental Take Permit application process.

Burrowing Owl:

The MND identifies that burrowing owl, a California Species of Special Concern, is documented within 4 miles of the Project area in CNDDDB and that potentially suitable grassland habitat exists on-site (Appendix A, page 20). However, the MND concludes based on a single site visit limited to the Project area and a 50-foot buffer around the Project area that burrowing owls are absent (*ibid.*). In accordance with CDFW's *Staff*

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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*Report on Burrowing Owl Mitigation, Appendix C: Habitat Assessment and Reporting Details*³ (CDFW 2012 Staff Report), owls may be disturbed up to 1,640 feet (500 meters) from a project. Therefore, the buffer area surveyed should be increased commensurate with the type of disturbance anticipated as outlined in the CDFW 2012 Staff Report and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features. The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults. Burrowing owls are a California Species of Special Concern due to population decline and breeding range retraction. Based on recent reports from biological consultants and species experts working in Solano County, there are few known nest burrows on conserved lands or lands suitable for conservation, and the species is nearly extirpated from the county (Sean Smallwood, pers. comm., 17 April 2020). Based on the above, the Project may potentially significantly impact burrowing owls. To reduce impacts to less-than-significant CDFW recommends the following mitigation:

Mitigation Measure BIO-12: Burrowing Owl Habitat Assessment, Surveys, and Avoidance

Prior to Project activities, a habitat assessment shall be performed following *Appendix C: Habitat Assessment and Reporting Details* of the *CDFW Staff Report on Burrowing Owl Mitigation*. The habitat assessment will extend at least 150 meters from the Project area boundary and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the *CDFW Staff Report on Burrowing Owl Mitigation* survey methodology. Surveys will encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or Project activities will trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist will have a minimum of two years of experience implementing the CDFW survey methodology resulting in detections. Detected nesting burrowing owls will be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any passive relocation plan for non-nesting owls will be subject to CDFW review.

Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of evicting burrowing owls to less-than-significant, Mitigation Measure BIO-13 outlined below should require habitat compensation with the acreage amount identified in the eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of

³ Department of Fish and Wildlife (then Fish and Game), 2012.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

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excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction; therefore, eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

Mitigation Measure BIO-13: Burrowing Owl Habitat Preservation

If the Project would impact an unoccupied active burrowing owl burrow or burrow surrogate (i.e., a burrow used in the past 3 years for nesting or a burrow where a non-nesting owl would be evicted as described above), the following habitat preservation will be implemented prior to Project construction:

Impacts to each nesting site will be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, through a conservation easement and provision of an endowment for long-term management.

Impacts to burrowing owl roosting, overwintering, and foraging habitat will be mitigated by permanent preservation of offsite habitat occupied by burrowing owl at a 2:1 mitigation to impact ratio, through a conservation easement and provision of an endowment for long term management. The CDFW 2012 Staff Report states, “current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal...”

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW. Finding suitable habitat to preserve as described above may be infeasible, and in this case impacts to burrowing owl as described above will be fully avoided in order to avoid potentially significant impacts.

Western Pond Turtle:

The MND identifies that the Project is adjacent to aquatic habitat and is approximately five miles from a CNDDDB occurrence of western pond turtle, a California Species of Special Concern (Appendix A, page 29). The MND concludes, based on the intermittent nature of the unnamed tributary and a single site visit, that western pond turtles are absent from the Project area. Western pond turtle has been observed downstream of the unnamed tributary in Ulatis Creek within 1.5 miles of the Project area (unpublished CNDDDB observation). Western pond turtles can move more than 4 miles up or down stream; therefore, the Project area is within the mobility range of the Ulatis Creek observation (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al.

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2017; Zaragoza et al. 2015). The timing of the Project remains undefined in the MND and could occur when water is present in the unnamed tributary. The Project, particularly Alternative Two and Alternative Three, may result in loss of western pond turtle adults, young, or their nests, or disturbance to these species from construction activities. Western pond turtle is declining throughout its range, primarily due to loss of habitat from urbanization and conversion to agriculture (Spinks et al. 2003). Additionally, bouts of prolonged drought have exacerbated species decline (Purcell et al. 2017). Based on the above, the Project would potentially substantially adversely affect western pond turtle. Therefore, Project impacts to western pond turtle would be potentially significant. To reduce impacts to less-than-significant, CDFW recommends the following mitigation:

Mitigation Measure BIO-14: Western Pond Turtle Habitat Assessment, Surveys, and Relocation

A qualified biologist will conduct a habitat suitability assessment to determine where western pond turtles may occur in or adjacent to the Project area. In areas of suitable habitat, the qualified biologist will conduct a pre-construction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist will have a minimum of two years conducting habitat assessments and surveys for western pond turtles, with detections. If any pond turtles or their nests are found, the biologist will prepare a relocation plan and submit it to CDFW for written acceptance, and then implement the plan.

Foothill Yellow-Legged Frog:

The MND identifies that the Project is adjacent to aquatic habitat and is approximately 1.2 miles from the nearest CNDDDB occurrence of foothill yellow-legged frog (Appendix A, pages 19-20). Based on topographical features and the intermittent nature of the unnamed tributary, the MND concludes that foothill yellow-legged frog is absent from the Project area. Different life stages of the species use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about foothill yellow-legged frog terrestrial movements and the species may travel farther from streams. The species also occur in swales or other moist areas. While the MND correctly identifies that this genetic clade of the foothill yellow-legged frog is not listed pursuant to CESA, CDFW still considers it a Species of Special Concern (CDFW 2019). This genetic clade has been extirpated from much of the southern segment of its range in the San Francisco Bay Area and is at risk from urbanization, severe wildland fires, and climate change (*ibid.*). The Project may result in injury or mortality to foothill yellow-legged frog through crushing, killing, or injuring individuals from vehicles, equipment, and workers during Project activities, particularly under Alternative Two or Alternative Three. Project impacts to foothill yellow-

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legged frog would be potentially significant. To reduce impacts to less-than-significant, CDFW recommends the following Mitigation Measure:

Mitigation Measure BIO-15: Foothill Yellow-Legged Frog Habitat Assessment, Surveys, and Relocation

A qualified biologist will conduct a habitat suitability assessment to determine where foothill yellow-legged frogs may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist will provide a foothill yellow-legged frog survey methodology to CDFW for review and approval a minimum of two weeks prior to Project construction. No Project activities will begin until foothill yellow-legged frog surveys have been completed using a method approved by CDFW in writing. The survey methodology will target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area will include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified biologist will also conduct a pre-construction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist will have a minimum of two years conducting habitat assessments and surveys for foothill yellow-legged frog, with detections. If any foothill yellow-legged frogs are found, the biologist will prepare an avoidance, minimization, and relocation plan and submit it to CDFW for written acceptance, and then implement the plan.

California Red-legged Frog:

According to the MND, California red-legged frog, a federally listed as threatened species and California Species of Special Concern, has been documented within approximately 9 miles of the Project area, but due to a lack of dense, emergent riparian vegetation and deep water, the species is presumed absent (Appendix A, page 19). California red-legged frogs require a variety of habitats including aquatic breeding habitats and upland dispersal habitats, and a lack of documented records does not indicate species absence as CNDDDB is a positive indicator only database. The Project is within the range and potentially suitable habitat of the species. Breeding sites of the species are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons. Additionally, California red-legged frogs frequently breed in artificial impoundments such as stock ponds (U.S. Fish and Wildlife Service (USFWS) 2002). Breeding sites are generally found in deep, still or slow-moving water (>2.5 feet) and can have a wide range of edge and emergent cover amounts. California red-legged frogs can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails or overhanging willows, or can proliferate in ponds devoid of emergent vegetation (i.e., stock ponds). Habitat includes

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nearly any area within one to two miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even man-made structures (i.e., culverts, livestock troughs, spring-boxes, and abandoned sheds) (USFWS 2017c). 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 growth of cities and suburbs, mining, overgrazing by cattle, 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 the species (Thomson et al. 2016, USFWS 2017c). The Project could injure or kill California red-legged frogs if they occur on-site. Therefore, Project activities have the potential to significantly impact California red-legged frog. To reduce impacts to less-than-significant, CDFW recommends the following mitigation:

Mitigation Measure BIO-16: California Red-Legged Frog Habitat Assessment and Surveys, and U.S. Fish and Wildlife Service Consultation

The Project will consult with USFWS to ensure compliance under the federal Endangered Species Act for potential impacts to California red-legged frog. If warranted based on USFWS consultation, a qualified biologist will implement the *Revised Guidance on Site Assessment and Field Surveys for the California Red-Legged Frog* (USFWS, 2005)⁴ including a site assessment and surveys as appropriate, as therein described. The qualified biologist will have a minimum of two years conducting habitat assessments and surveys for California red-legged frog, with detections. The Project will avoid all California red-legged frogs unless take authorization is obtained from USFWS. The Project will implement all requirements of any USFWS authorization issued to the Project for impacts to California red-legged frog. If any California red-legged frog are found, the biologist will prepare an avoidance, minimization, and relocation plan and submit it to USFWS and CDFW for written acceptance, and then implement the plan.

Special-Status Plants:

The MND identifies a list of special-status plants with potential to occur in the area, but presumes all are absent from the Project area based on a single site visit in March (Appendix A pages 30-40). While the majority of the habitat in the Project area is disturbed or managed, without appropriately timed botanical surveys one cannot conclude that no special-status plants are present. Without strong evidence of absence, the Project has the potential to crush and kill special-status plants and could

⁴ https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/crf_survey_guidance_aug2005.pdf

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significantly impact special-status plants on-site or those that could be indirectly impacted by the Project through, for example, changes in hydrology or introduction of invasive species. To reduce impacts to less-than-significant, CDFW recommends the following Mitigation Measure:

Mitigation Measure BIO-17: Special-Status Plant Surveys

A qualified biologist will conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site the season prior to the start of construction. Surveys will be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*⁵. If special-status plants are found during surveys, the Project will be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, the Project will provide compensatory mitigation including offsite habitat preservation or another method accepted in writing by CDFW. The qualified biologist will be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols.

Mitigation Measure and Related Impact Shortcoming

The MND identifies Mitigation Measure BIO-4 to restore temporarily disturbed riparian areas and streambanks and BIO-5 to avoid potentially significant impacts to nesting birds (pages 21-22). It is unclear if the Project may result in the removal of trees; if so, CDFW recommends adding the below requirements to Mitigation Measure BIO-4 and reevaluating impacts to bats, and for Mitigation Measure BIO-5 making the following deletions in ~~strike through~~ and additions in **bold** to fully reduce impacts to less-than-significant:

Mitigation Measure BIO-4: Riparian Revegetation and Restoration

All riparian areas and streambanks temporarily disturbed during Project construction will be restored onsite to pre-Project conditions or better prior to Project completion. Where possible, vegetation will be trimmed rather than fully removed with the guidance of the Project biologist. When feasible riparian vegetation will be cut above soil level.

Any trees removed or impacted as a result of the Project will be replaced pursuant to the below mitigation to impact ratios.

⁵ Department of Fish and Wildlife, 2018. <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

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Oak trees:

- 3:1 replacement for trees 5 to 8 inches diameter at breast height (DBH)
- 5:1 replacement for trees greater than 8 inches to 16 inches DBH
- 15:1 replacement for trees greater than 16-inch DBH, which are considered old-growth oaks

Replacement oaks will come from nursery stock grown from locally sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they are planted.

Other trees species will be mitigated at the following ratios:

- 1:1 replacement for non-native trees
- 3:1 replacement for trees up to 6-inch DBH
- 6:1 replacement for trees greater than 6-inch DBH

The must survive the last two years of the minimum five-year monitoring period without irrigation. Replanted trees will have the same five-year monitoring requirements. All temporarily affected waters will be re-contoured to pre-construction conditions and seeded with a native seed mix. All hydroseed and plant mixes must be native species, approved by a qualified biologist, and sourced within the same ecoregion as the Project area.

Mitigation Measure BIO-5: Nesting Bird Surveys

If feasible, vegetation removal should be conducted between September 16 and February 15 to avoid impacts on nesting birds. If construction activities, including vegetation removal, are scheduled to occur during the breeding season for migratory birds and raptors (generally between February 16 and ~~August 31~~**September 15**), the Project biologist will conduct nesting surveys before the start of construction. The nesting surveys ~~will~~ be conducted within ~~457~~ days before the initiation of construction activities (including tree removal) that are scheduled between February 16 and ~~August 31~~**September 15**. Surveys for active nests will occur in the Project area and trees within ~~50~~**500**-feet of the work area. If no active nests are detected during these surveys, no additional mitigation is required. If surveys indicate that migratory bird or raptor nests are present in the Project area, a no-disturbance buffer will be established around the sites to avoid disturbance or destruction of the nest site until after the breeding season or until after the Project biologist determines that the young have fledged and are no longer reliant on parental care and the nest. The extent of these buffers will be determined by the biologist (in coordination with CDFW) and will depend on the level of noise or construction disturbance, line-of-sight between the nest and disturbance, ambient

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levels of noise and other disturbances, and other topographic or artificial barriers. These factors will be analyzed to make an appropriate decision on buffer distances. Suitable buffer distances may vary by species.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) 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 ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the project proponent’s obligation to comply with CESA.

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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 will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include Sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests

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or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Solano Irrigation District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at amanda.culpepper@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C83C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse (SCH # 2020089017)

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REFERENCES

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