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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



March 30, 2022  
*Sent via email*

Ms. Alexis Vaughn  
City of Ontario Planning Department  
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Ontario, CA 91761  
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Subject: Final Environmental Impact Report for the South Ontario Logistics Center Specific Plan Project (PSP19-001/PGPA19-004) - SCH 2021010318

Dear Ms. Vaughn:

The California Department of Fish and Wildlife (CDFW) received the Final Environmental Impact Report (FEIR) from the City of Ontario (City) for the South Ontario Logistics Center Specific Plan Project (Project) pursuant 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, 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 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 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

### **PROJECT DESCRIPTION SUMMARY**

The Project includes the development of 23 parcels that currently have various agricultural uses, including a dairy farm, row crops, six owner and worker residents, and vacant land. The Project will consist of the construction of eight warehouse buildings (maximum of 5,333,518 square feet of warehouse and office uses) on 219.39 acres. The location is in the southwest portion of the City of Ontario and is bound by Eucalyptus Avenue to the north, Campus Avenue to the west, Merrill Avenue to the south, and Grove Avenue to the east.

### **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, impacts on state special-status fish and wildlife (biological) resources. CDFW is providing below: the original CDFW comments to the DEIR (December 23, 2021); the corresponding City response provided on February 1, 2022 (in italics); along with follow up comments as provided in this letter (in bold).

#### **CDFW Comments to Draft EIR (December 23, 2021) S1-c**

Within the biological assessment report for the Project, the western boundary was delineated at Bon View Avenue; however, according to the DEIR (3.1 Project Location and Setting), the Project is bound by Campus Avenue to the west (refer to Appendices Figure 1 and Figure 2). Further, the Project is described as consisting of 23 parcels, of which the Assessor Parcel Numbers (APNs) are listed (refer to Table 1 in the Appendices or in the DEIR as Table 3-1) along with Figure 3 in the Appendices for more details. CDFW asks that the City review the DEIR and ensure that the western boundary is consistent throughout the entire DEIR and appendices for the FEIR.

CDFW also believes that this omitted portion of the Project (e.g., the western portion between Bon View Avenue and Campus Avenue), or 74 acres, may be associated with Proposition 70 funding. The Chino Agricultural Preserve (herein referred to as the Dairy Preserve) was 17,000 acres of dairy and agriculture that encompassed portions of the Cities of Chino and Ontario. The Dairy Preserve was formed in 1968 under the auspices of the California’s Williamson Act - a 1965 law that was intended to preserve California

farmland. In 1988, voters passed Proposition 70, the California, Wildlife, Coastal, and Park Land Conservation Act (Act) to fund bonds for “the acquisition, development, rehabilitation, protection, or restoration of park, wildlife, coastal, and natural lands in California, including **lands supporting unique or endangered plants and animals (emphasis added)**”. San Bernardino County was awarded a \$20 million grant under Proposition 70, to be applied towards the acquisition of dairy properties for the purpose of preserving agricultural heritage. The County of San Bernardino acquired nine dairy properties with the grant money in the early 1990s that included 366.6 acres, with approximately 201.3 acres within the City of Ontario. By 1997, half of the dairies that had been operating in the Dairy Preserve at its peak had left. In 1999, the City of Ontario annexed nearly 8,200 acres and the City of Chino claimed another 7,000 acres from the remaining acres in the Dairy Preserve.

With the economic downturn of 2007, the County of San Bernardino recognized the shifting markets within the Dairy Preserve and relocated its Proposition 70 land holdings to a more sustainable location through state legislation. SB 1124 authorized the sell or exchange of the originally acquired dairy properties purchased with Proposition 70 grant funds, under the condition that the County of San Bernardino preserve all lands and conservation easements acquired as the replacement properties in perpetuity for agricultural preservation, including agricultural and wildlife education or wildlife habitat, or for open space and conservation. Given the complexity of the funding and legislation changes, CDFW would like more information and transparency regarding how the funds are being appropriated to their intended purposes (e.g., wildlife/burrowing owl land or open space conservation) included in the FEIR.

#### **City Final EIR Response to Comments S1-c (February 21, 2022)**

*Development is only proposed on the ±130-acre site that is located north of Merrill Avenue, south of Eucalyptus Avenue, east of Bon View Avenue, and west of Grove Avenue (Phase 1). The additional parcels to the west of Bon View Avenue are associated with Phase 2 of Project development, and there is no specific development proposed at this time on those parcels. As stated on page 3-3 of Section 3.0, Project Description, of the Draft EIR, there is an active Williamson Contract (Contract #72-392) on APN 1054-051-01, 02 and 1054-061-01, 02. As there is no development proposed on the Phase 2 parcels, the surveys were not completed west of Bon View Avenue. See Response S1-d below regarding revisions to MM BIO-2.*

*Regarding the funding and legislation changes, the Draft EIR is not required, under the CEQA Guidelines, to provide information regarding funding for conservation as the funds would not result in an environmental impact. The Project would implement the stated mitigation measures to ensure that there would be no direct impacts to the sensitive species. Additional information related to the agricultural lands and preservation through*

*the Williamson Contract are provided in Section 4.1, Agriculture and Forestry, of the Draft EIR.*

### **CDFW Final EIR Response to Comments S1-c (March 30, 2022)**

**CDFW understands that the additional parcels to the west of Bon View Avenue are associated with Phase 2 of Project and “there is no specific development proposed at this time”. Within the DEIR, a “Project” as defined by the State CEQA Guidelines, means: “...the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1)...enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code §§65100-65700. (State CEQA Guidelines §15378[a]).” Section 3.4 Project Characteristics). Further, Phase 1 is being evaluated at a “project-level”, while Phase 2 is being assessed at a “programmatic” level, with potential future development (e.g., business park, industrial) occurring (DEIR Section 3.4.1 Description of the Project).**

**Pursuant to CEQA Guidelines §15168, a Program EIR is “...an EIR which may be prepared on a series of actions that can be characterized as one large project and are related...”. A Program EIR should identify and mitigate the effects of the overall program of development to the extent that they are known at that time. Although this allows for broad environmental implications being determined at an early stage, the lead agency is still responsible to incorporate feasible mitigation measures into subsequent actions to implement the program.**

**Finally, CDFW disagrees that “the Draft EIR is not required, under the CEQA Guidelines, to provide information regarding funding for conservation as the funds would not result in an environmental impact”. The purpose of CEQA is to 1) prevent or minimize significant, avoidable damage to the environment; 2) disclose potential environmental effects of a proposed discretionary project, through a variety of publicly accessible documents; 3) encourage public participation in the environmental review and decision-making process; and 4) ensure transparency in governmental decision-making process.**

**Through their selection of certain vegetation and soil characteristics, burrowing owls often use the same habitat preferred for ranching and farming. Within the DEIR (Section 4.1.1 Environmental Setting Southern California Agricultural Land Foundation Preserves), it states that “An amount of \$20 million was paid to the County from the State of California to establish and fund these lands if they remained in agricultural use within the San Bernardino County Agriculture Land Preserve (California Public Resources Code §§5905–5907). When the SoCALF**

**Preserves are no longer being used for agricultural purposes, these funds must be returned to the state or used to purchase property of equal size and similar use within the San Bernardino County Agriculture Land Preserve”.**

**Under a set of specifically defined circumstances, a contract under the Williamson Act may be cancelled without completing the process of term nonrenewal. Contract cancellation, however, involves a comprehensive review and approval process. The DEIR (Section 3.1 Project Location and Setting Williamson Act Contracts) specifies that “at the time of the publication of the Notice of Preparation (NOP), there was an active Williamson Act Contract (Contract #72-392) on APN 1054-051-01, 02 and 1054-061- 01, 02. These parcels are associated with Phase 2 of Project development. However, a notice of nonrenewal was recorded, starting the process to terminate this Contract. As one of the discretionary actions associated with the Project, these existing Williamson Act Contracts will be canceled. Cancellation would comply with provisions and requirements identified in Government Code (GC) §51280 et seq. The City would be required to make the required statutory findings (GC §51282(a)).”.**

**According to the Ontario Plan Draft EIR (SCH # 2008101140) Chapter 6 Significant Unavoidable Adverse Impacts, because buildout of the Ontario Plan will “convert 3,269 acres of California Resource Agency designated Prime Farmland, Unique Farmland, and Farmland of Statewide Importance to residential, commercial, mixed-use, and industrial land uses, it was determined that impacts to agricultural resources would remain significant, unavoidable, and adverse even after mitigation measures have been applied”. Conversely, it was determined that after the collection of the mitigation fees for the acquisition and management of habitat, implementation of the proposed Ontario Plan would not have substantial adverse impacts on sensitive animal species, including the burrowing owl.**

**There are two different conservation processes that effect burrowing owl habitat within the DEIR – compensating for loss of agricultural lands (Proposition 70) and mitigation fees for development that impacts burrowing owl habitat (Settlement Agreement). CDFW strongly urges that to promote transparency, the FEIR include within the Biological Resources (Section 4.3) relevant agricultural cancellations and how the loss of these lands will be replaced, including the locations, acreages, and expected biological/conservation values. The City should also reconsider any recommendations and/or measures for all aspects of the Project, including Phase 1, as well as future actions in Phase 2 and the “SB330 Replacement Site”.**

#### **CDFW Comments to Draft EIR (December 23, 2021) S1-d**

The DEIR (Section 4.3.5 Project Impacts and Mitigation Section *Burrowing Owl Survey*) states that burrowing owl surveys were conducted during the breeding season in 2019

(Ecological Sciences, Inc.) by “walking parallel transects (where feasible) through suitable habitat over the entire survey area [i.e., the Project site and within a 150-meter (500 feet) buffer area where feasible or at least by visual means]”. No burrowing owl or their sign were detected.

Regardless, a mitigation measure (MM BIO-2) was included to lessen the impacts to burrowing owl as follows:

**MM BIO-2** The Project Applicant shall complete an initial BUOW take avoidance survey no less than 14 days prior to initiating ground disturbance activities. Implementation of avoidance and minimization measures (e.g., eliminating actions that reduce burrowing owl forage and burrowing surrogates (e.g., ground squirrel), or introduce/ facilitate burrowing owl predators) would be triggered by positive owl presence on the site where Project activities would occur. The development of avoidance and minimization approaches would be evaluated by monitoring burrowing owls (if present on-site). BUOW may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.

In southern California, burrowing owls are partial migrants, with some individuals migrating in winter, while others within the same breeding population remaining relatively sedentary. Conservation of migratory birds requires an understanding of habitat, behavior and threats faced by birds during breeding, wintering, and migration. However, although migratory birds are protected under international treaties, the distribution of stopovers and pathways used by migrating birds is poorly understood.

CDFW believes that burrowing owl(s) may use the Project for breeding, wintering, foraging, and/or migration stopovers. Because burrowing owls detected may be year-round residents, breeding adults, young from the previous breeding season, pre-breeding territorial adults, winter residents, dispersing juveniles, migrants, transients or new colonizers, burrowing owl residency status can be difficult to ascertain. Further, disease, predation, drought, high rainfall or site disturbance may preclude presence of burrowing owls in any given year. Thus, CDFW recommends that additional focused burrowing owl surveys of the Project site and appropriate buffer are warranted given the following: 1) the entire site was not surveyed; 2) it has been over two years since surveys were performed; 3) non-breeding season surveys should be conducted if exclusion methods are contemplated; and 4) the Project contains suitable habitat with known occurrences adjacent or within close proximity. Once more comprehensive and current data is gathered, CDFW recommends it be used to assess not only breeding, but wintering and migratory stopover habitat for burrowing owls within the Project.

**City Final EIR Response to Comments S1-d (February 21, 2022)**

*A reliance letter was prepared by Ecological Sciences, Inc. on January 14, 2022 confirming there is no change in the existing site conditions compared to the time of the initial burrowing owl surveys prepared in 2019 (see Attachment S1). Therefore, the conditions as analyzed in the Draft EIR are accurate.*

**CDFW Final EIR Response to Comments S1-d (March 30, 2022)**

**CDFW reiterates that the Project, and immediately adjacent area, contains suitable burrowing owl habitat. After review of the reliance letter, the lack of changes to the site conditions over the last three years only reaffirms that suitable habitat for the species exists. Further, the reliance letter (January 2022) states:**

**“Ecological Sciences biologists conducted a reconnaissance-level survey to characterize current on-site conditions and to generally evaluate their potential to support BUOW on January 9, 2022. The purpose of the present survey was to generally assess the current site conditions in 2022 relative to those present in 2019. No additional focused BUOW surveys were conducted as a part of this general biological update primarily due to seasonal timing (i.e., outside breeding season)”.**

**CDFW strongly encourages the City to reconsider any recommendations and/or measures prior to certification of the FEIR.**

**CDFW Comments to Draft EIR (December 23, 2021) S1-e**

While CDFW appreciates the inclusion of minimization measures specific to burrowing owls that are directly referenced from the suggested buffers contained within the Burrowing Owl 2012 Staff Report (Table 4.3-2 CDFW Recommended Restricted Activity Dates and Setback Distances by Level of Disturbance for burrowing owl), the DEIR should also discuss site-specific and regionally significant and cumulative impacts, as well as mitigation. If habitat on the Project site is occupied by burrowing owls, CDFW considers impact to the habitat to be a substantial adverse and potentially significant impact based on location and species status in the area and limited remaining habitat for burrowing owls. CDFW recommends permanent conservation of occupied burrowing owl habitat that provides for nesting, foraging, wintering, and/or dispersal (i.e., during breeding and non-breeding seasons) comparable to, or better than, that of the Project.

**City Final EIR Response to Comments S1-e (February 21, 2022)**

*The City disagrees with the assertion in that the Draft EIR does address site-specific and regionally significant and cumulative impacts, as well as providing mitigation where necessary to reduce impacts to a less than significant level. As stated on page 4.3-19 of*

*the Draft EIR, the site-specific analysis states that the observations during the BUOW surveys indicated there were no direct BUOW identifications, and none of the potential burrows inspected were determined to be occupied. However, the Project would implement Mitigation Measure BIO-2 to require an avoidance survey, and avoidance and minimization approaches would be evaluated by monitoring the burrowing owls if they are present on-site. Therefore, as there were no indications of burrowing owls, and with implementation of MM BIO-2, the Draft EIR is not required to address permanent conservation of occupied burrowing owl habitat. Regarding regionally significant and cumulative impacts, as stated on page 4.3-27 of the Draft EIR, the cumulative study area for biological resources includes the southwestern San Bernardino County region. As further stated therein, the Project would implement mitigation measures to reduce impacts to the identified species, including the BUOW, to less than significant levels. Therefore, the Project would result in a less than significant contribution to cumulative impacts to these resources, and impacts would be less than cumulatively significant. Therefore, the Draft EIR adequately analyzes site-specific and regionally significant and cumulative impacts, as well as mitigation.*

#### **CDFW Final EIR Response to Comments S1-e (March 30, 2022)**

**Under Section 15355 of the CEQA Guidelines, cumulative effects refers to “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts”. Physical changes caused by a project can contribute incrementally to cumulative effects that are significant, even if individual changes resulting from a project are limited. The Lead Agency must determine whether the cumulative impact is significant, as well as whether an individual effect is “cumulatively considerable.” This means “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects” (Guidelines Section 15064(h)(1)).**

**CDFW does not consider the avoidance and minimization measures proposed, including preconstruction surveys and evicting wintering, migrating, breeding, and/or year-round residents (MM-BIO-2) as mitigation to compensate for project specific or regional habitat losses. Prior to certification of the FEIR, CDFW strongly encourages the City to consider meaningful mitigation measures that are supported by substantial evidence that will actually avoid and/or mitigate for burrowing owls and their habitat.**

#### **CDFW Comments to Draft EIR (December 23, 2021) S1-f**

Finally, CDFW has provided comments to the City on several projects where impacts to burrowing owls have occurred or potentially occurred. Specifically, the City prepared a master plan for the Dairy Preserve that spans over 20 years (was formerly known as the New Model Colony (NMC) and is currently referred to as the Ontario Ranch). The General



Plan Amendment and associated Final DEIR for the Sphere of Influence for the NMC (January 1998) assessed the impacts on biological resources of the conversion of the NMC from agricultural uses to develop urban and suburban uses. Subsequent to the adoption of the DEIR, a lawsuit was filed against the City by the Endangered Habitats League, Inc. and Sierra Club challenging the City's CEQA compliance and approval of the General Plan Amendment. A settlement agreement was reached and agreed to by all parties that set forth revised mitigation measures for potential impacts in the NMC (referred to as Annexation Area 163). Because state law requires that local jurisdictions update the DEIR General Plans every 10 years, an Ontario Plan Draft DEIR (DEIR SCH # 2008101140) was prepared by the Planning Center (April 2009) and finalized in July 2009. Measures from the settlement agreement were detailed within the Ontario Plan DEIR Section 5 *Environmental Analysis*. To date, CDFW is not aware of any lands that have been set aside, managed, and/or conserved for the benefit of burrowing owls that have been, and continue to be, impacted by development.

While the Project is just adjacent to the NMC boundary, under Section 15355 of the CEQA Guidelines, cumulative effects refers to "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts". Physical changes caused by a project can contribute incrementally to cumulative effects that are significant, even if individual changes resulting from a project are limited. The City must determine whether the cumulative impact is significant, as well as whether an individual effect is "cumulatively considerable." This means "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects" (Guidelines Section 15064(h)(1)). This is particularly true when past and continual impacts are not adequately mitigated for. Therefore, CDFW is once again strongly advising the City to maintain an interactive mapping and current inventory of burrowing owl occurrences, ensure adequate land is available and conserved **before** owls are passively relocated, and provide compensation for loss of all aspects of habitat types used (e.g., foraging, wintering, migratory stopovers, and breeding). CDFW requests that the following mitigation measure be added to the burrowing owl section of the FEIR as follows:

**MM BIO-X (Added)** The Project Proponent shall conduct surveys for burrowing owls across all suitable breeding, wintering, and foraging habitat with the Project area. If burrowing owls are identified, the Project Proponent shall either avoid all impacts onsite or conserve non-impacted occupied habitat onsite and/or conserve occupied burrowing owl habitat off-site at a minimum total 2:1 ratio of conserved to impacted habitat. Coordination with the California Department of Fish and Wildlife (CDFW) shall occur to mitigate for the loss of habitat through the acquisition, conservation, and management of in-kind habitat. Lands conserved shall include 1) sufficiently large acreage with fossorial mammals present; 2) permanent protection through a conservation easement

for the purpose of conserving burrowing owl habitat and prohibiting activities incompatible with burrowing owl use; 3) development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls; and 4) funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment (CDFW, 2012).

### **City Final EIR Response to Comments S1-f (February 21, 2022)**

*See Response S1-e. As impacts to burrowing owl habitat have been reduced to less than significant levels, no additional mitigation measures are required. However, MM BIO-2 has been revised for clarification and to include the commenter's requested mitigation language (indicated in bold underline for additions and strikethrough to deletions):*

*MM BIO-2. Burrowing Owl Surveys. Phase 1: Prior to issuance of a demolition or grading permit for any ground disturbing activity, a qualified biologist shall conduct a pre-construction presence/absence survey for burrowing owls within The Project Applicant shall complete South Ontario Logistics Center Specific Plan an initial BUOW take avoidance survey no less than 14 days prior to initiating ground disturbance activities. Surveys shall be conducted consistent with the procedures in outlined in the "California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation." If the species is absent, no additional mitigation will be required. Implementation of avoidance and minimization measures (e.g., eliminating actions that reduce burrowing owl forage and burrowing surrogates (e.g., ground squirrel), or introduce/facilitate burrowing owl predators) would be triggered by positive owl presence on the site where Project activities would occur. The development of avoidance and minimization approaches would be evaluated by monitoring burrowing owls (if present on-site). BUOW may re-colonize a site after only a few days. Time lapses between Project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.*

*If burrowing owl(s) are observed onsite during the pre-construction clearance survey;*

- Prior to disturbance of the occupied burrows, suitable and unoccupied replacement burrows shall be provided at a ratio of 2:1 within designated off-site conserved lands to be identified through coordination with CDFW and the City in which the burrowing owl(s) is(are) detected. A qualified biologist shall confirm that the artificial burrows are currently unoccupied and suitable for use by owls.*
- Until suitable replacement burrows have been provided/confirmed within the off-site conserved lands to be identified through coordination with CDFW and the City of Ontario, no disturbance shall occur within 50 meters (approximately 160 feet) of occupied burrows during the nonbreeding season (September 1 through January 31) or*

*within 75 meters (approximately 250 feet) during the breeding season (February 1 through August 31).*

- Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) 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.*
- If burrowing owls are present at the time that the occupied burrows are to be disturbed, then the owls shall be excluded from the site following the 2012 CDFG Staff Report.*

*Phase 2 and SB 330 Replacement Site: Prior to any site-specific development, potential future residential development would be required to conduct site-specific biological resource surveys, including an arborist report, as part of the City's standard discretionary review process, including compliance with CEQA and applicable local, state, and federal regulations.*

*Furthermore, subsequent to the adoption in 1998 of the Sphere of Influence (SOI) General Plan and EIR, a lawsuit was filed against the City of Ontario (City) by the Endangered Habitats League, Inc., and the Sierra Club, challenging the City's CEQA compliance and approval of the SOI General Plan Amendment. A Settlement Agreement was reached and agreed to by all parties that set forth revised mitigation measures for potential impacts in the New Model Colony (referred to as Annexation Area 163 in the agreement) to the burrowing owl, the DSFLF, raptor foraging and wildlife habitat, loss of open space, actual and potential habitat and agricultural land, and sensitive (listed and nonlisted) species. These measures will be in effect until all the developable acres in the New Model Colony (Ontario Ranch) reach full buildout, as determined by the City.*

*Since the Settlement Agreement, the City has established a habitat mitigation fee to cover potential environmental impacts to the Burrowing Owl, the Delhi Sands Flower-loving Fly, raptor foraging, loss of open space, and agricultural lands. Mitigation fees have been collected by the City and have been deposited into a trust fund to be used for the acquisition, restoration, rehabilitation, and maintenance of lands deemed to have long-term conservation value. In 2010, the Ontario City Council approved the selection of the Riverside Land Conservancy (today known as River and Land Conservancy) as the administrator of the habitat mitigation fees and to create a habitat program pursuant to the requirements of the Settlement Agreement between the City of Ontario, the Endangered Habitats League, Inc., and the Sierra Club. However, due to the economic downturn shortly after 2010, the contract between the City and the Riverside Land Conservancy was never ratified. It was anticipated that once development in Ontario Ranch began to commence, the City would ratify the contract.*

*In 2022, the City will be going out with a Request for Proposals (RFP) to select a non-profit land trusts and/or organization specializing in habitat conservation. The selected non-profit and/or organization will be responsible for the administration of the habitat mitigation fees and create a habitat program pursuant to the requirements of the Settlement Agreement between the City of Ontario, the Endangered Habitats League, Inc., and the Sierra Club. In partnership with the California Department of Fish and Wildlife, the City will work with the selected non-profit and/or organization to maintain an interactive mapping and current inventory of the burrowing owl occurrences and in the selection of adequate lands for passive relocation.*

**CDFW Final EIR Response to Comments S1-f (March 31, 2022)**

***Please see CDFW Final EIR Response to Comments S1-e above. While CDFW appreciates that the City is planning on selecting a non-profit organization to administer the habitat mitigation fees and create a habitat program; as with previous comments, CDFW continues to be concerned by the continued loss of burrowing owl habitat and the lack of acquisition to offset the losses. CDFW understands the City's citing the economic downturn after 2010 as a reason for not ratifying a contract, or otherwise moving forward on expending the mitigation fees. However, the City had been collecting mitigation fees beginning with the development impact fees for the New Model Colony, adopted on June 23, 2003 (City of Ontario 2005), and continuing with several additional large developments (e.g., Edenglen, Countryside, Rich Haven, West Haven, and the Avenue) occurring before 2010. Similarly, the City has continued to approve projects and collect development fees after 2010, without following through on expending those funds for the benefit of the species. CDFW recommends the City set clear objectives and timelines to acquire, restore, rehabilitate, and maintain suitable mitigation lands to avoid further temporal losses.***

***CDFW is also concerned regarding the City's reference to passively relocating owls in the context of the mitigation fee administration. The FEIR states, "the City will work with the selected non-profit and/or organization to maintain an interactive mapping and current inventory of the burrowing owl occurrences and in the selection of adequate lands for passive relocation." Passive relocation of owls should not be considered mitigation; it is an impact. CDFW strongly recommends that the City avoid altering or destroying suitable burrowing owl habitat and excluding burrowing owls from burrows, until appropriate mitigation lands are acquired, conserved, and managed. Continued relocation of owls in the absence of mitigation (i.e., the identification, acquisition, and management of mitigation lands) exacerbates the severity and significance of the ongoing impacts, and should be avoided.***

### **CDFW Comments to Draft EIR (December 23, 2021) S1-g**

For other state special-status avian species that have been identified as having the potential to occur within the Project (tricolored blackbird, grasshopper sparrow, great blue heron, Swainson's hawk, yellow rail, California horned lark, and merlin), CDFW recommends implementation of a mitigation measure (MM BIO-1) to lessen Project related impacts as stated below.

**MM BIO-1** Prior to commencement of ground disturbance, establish the following:

- Vegetation removal is recommended to be conducted outside of the nesting season for migratory birds to avoid direct impacts.
- If vegetation removal will occur during the migratory bird nesting season, between February 1 and September 15, pre-construction nesting bird surveys shall be performed within three days prior to vegetation removal.
- If active nests are found during nesting bird surveys, they shall be flagged. A 250-foot buffer shall be fenced around songbird nests and a 500-foot buffer shall be fenced around raptor nests.
- A biological monitor shall visit the site once a week during ground disturbing activities to ensure all fencing is in place and no special-status species are being impacted.

### **CDFW Comments to Draft EIR (December 23, 2021) S1-i**

The tricolored blackbird, a state threatened species, has been documented within the vicinity of the Project (eBird, California Natural Diversity Database [CNDDDB]). Nesting tricolored blackbirds are known to prefer marsh (emergent cattails [*Typha* spp.] and bulrush [*Scirpus* spp.]) habitat but will also use upland breeding substrates (e.g., milk thistle (*Silybum marianum*), cheeseweed mallow (*Malva parviflora*), mustard (*Brassica* spp.), bull thistle (*Cirsium vulgare*), prickly lettuce (*Lactuca serriola*), sandbar willow (*Salix exigua*), as well as cultivated fields of triticale and fava beans (*Vicia fava*) (Beedy and Hamilton 1999). Tricolored blackbirds also forage in agricultural landscapes known to support large insect populations, including alfalfa (*Medicago sativa*), sunflowers (*Helianthus* spp.), and rice (*Oryza sativa*). These areas can sustain nearby tricolored blackbird colonies, and individuals have been observed to travel up to 5 km between their nests and suitable foraging substrates even in highly urbanized environments (e.g., a colony in Riverside County in 2014). Further, most tricolored blackbirds forage over a wide area, possibly due to an inability to acquire sufficient resources at one colony site for the entire breeding season, prospecting among colonies to assess availability of nesting and foraging resources or access to mates, and/or the availability of multiple proximate nesting locations allows the species to compensate for early-season nesting failures and variation in habitat and forage conditions over time (Beedy and Hamilton 1997).

Given the Project and the adjacent lands contains suitable foraging and breeding habitat for tricolored blackbirds, CDFW recommends the DEIR include the following measure to require focused surveys and should tricolored blackbirds be observed nesting or foraging, appropriate mitigation.

**MM BIO-X (Added)** The Project Proponent shall conduct surveys for tricolored blackbird across all suitable breeding and foraging habitat with the Project area. If tricolored blackbirds are identified, the Project Proponent shall avoid all occupied habitat onsite. If onsite avoidance is infeasible, the Project Proponent shall apply for an incidental take permit (ITP) with California Department of Fish and Wildlife (CDFW) and shall mitigate for the loss of all habitat through the acquisition, conservation, and management of in-kind habitat at a minimum 3:1 ratio, or as approved by the final ITP.

Habitat shall be conserved in perpetuity via conveyance of a conservation easement to a CDFW-approved conservation entity and a management fund (endowment) shall be established by the Project Proponent consisting of an interest-bearing account with the amount of capital necessary to generate sufficient interest and/or income to fund all monitoring, management, and protection of the conservation area(s), including but not limited to, reasonable administrative overhead, biological monitoring, invasive species and trash removal, fencing and signage replacement and repair, law enforcement measures, long-term management reporting, and other actions designed to maintain and improve the habitat of the conserved land(s), in perpetuity. A Property Analysis Record, or substantially equivalent analysis, shall be conducted to determine the management needs and costs described above, which then will be used to calculate the capital needed for the management of the fund. Except for uses appropriate to a habitat conservation area, the public shall not have access to the mitigation area(s), and no activities shall be permitted within the site, except maintenance of habitat, including the removal of nonnative plant species, trash, and debris, and the installation of native plant materials.

#### **City Final EIR Response to Comments S1-i (February 21, 2022)**

According to the California Natural Diversity Data Base (CNDDDB), tricolored blackbird colonies have been recorded within the vicinity of the Project site. *Tricolored blackbirds require open accessible water, a secure substrate in which to place their nests, and suitable nearby foraging areas that provide adequate food sources for breeding. If any one of these required elements is missing, the species will not breed in that location. Although the GBA prepared for the Project found that suitable habitat for this species occurs on the Project site; breeding habitat is contingent upon the onsite waste filled stock ponds. However, the onsite stock ponds do not contain water throughout the year; therefore, the ponds do not provide a reliable source of open water necessary for breeding/nesting habitat. The species' preferred foraging habitats include agricultural crops such as rice, alfalfa, irrigated pastures, and ripening or cut grain fields, as well as*

*annual grasslands, cattle feedlots, and dairies. Therefore, the site does provide potentially suitable foraging habitat for tricolored blackbird.*

*The site was not occupied by tricolored blackbird individuals or colonies at the time of the GBA. Further, suitable breeding/nesting habitat does not occur on the site. As such, protocol surveys are not warranted.*

*Furthermore, the tricolored blackbird is not a federally listed species. Tricolored blackbird is a State-listed species, and a California Endangered Species Act (CESA) incidental Take Permit (ITP) is only required to be obtained from CDFW for potential “take” of the species. “Take” is defined by Fish and Game Code Section 86 as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” There is no occupied tricolored blackbird habitat on the site. Therefore, the Project is not expected to result in “take” of tricolored blackbird.*

*Measures included in MM BIO-1 are intended to avoid permanent direct impacts to nesting birds, which includes tricolored blackbird, year-round. Therefore, no further mitigation is required.*

#### **CDFW Final EIR Response to Comments S1-i (March 30, 2022)**

**Tricolored blackbirds have been recorded nesting in a variety of substrates (cheeseweed mallow (*Malva parviflora*)). They also forage over a wide-range (i.e., regularly travelling up to 5 km [3 mi]) from active breeding colonies), utilizing many different land-uses that support large insect populations, including dairy lots and agricultural that are contained within the Project. Accordingly, the biological assessment for the project stated that there is suitable habitat to support tricolored blackbirds. Given this information, and the lack of surveys for nesting or foraging tricolored, CDFW disagrees with the assertion that “no occupied tricolored blackbird habitat is onsite”. While the FEIR makes a distinction between the federal status for the tricolored blackbird and the usage of the Fish and Game Code Section 86, the status and specific regulations should not inform the level of analysis CEQA provides. Under CEQA, the Project should be analyzed to determine if it would 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 USFWS.**

**CDFW strongly encourages the City to reconsider any recommendations and/or measures prior to certification of the FEIR.**

#### **CONCLUSION**

CDFW appreciates the opportunity to comment on the FEIR for the South Ontario Logistics Center Specific Plan Project (SCH No. 2021010318) and recommends that the

Alexis Vaughn, Assistant Planner  
City of Ontario  
March 30, 2022  
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City address the CDFW's comments prior to certification. If you should have any questions pertaining to the comments provided in this letter, please contact Kim Romich, Senior Environmental Scientist, at [Kimberly.Romich@wildlife.ca.gov](mailto:Kimberly.Romich@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
 for  
84F92FFEEFD24C8...

Scott Wilson  
Environmental Program Manager

#### Attachments

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#### REFERENCES

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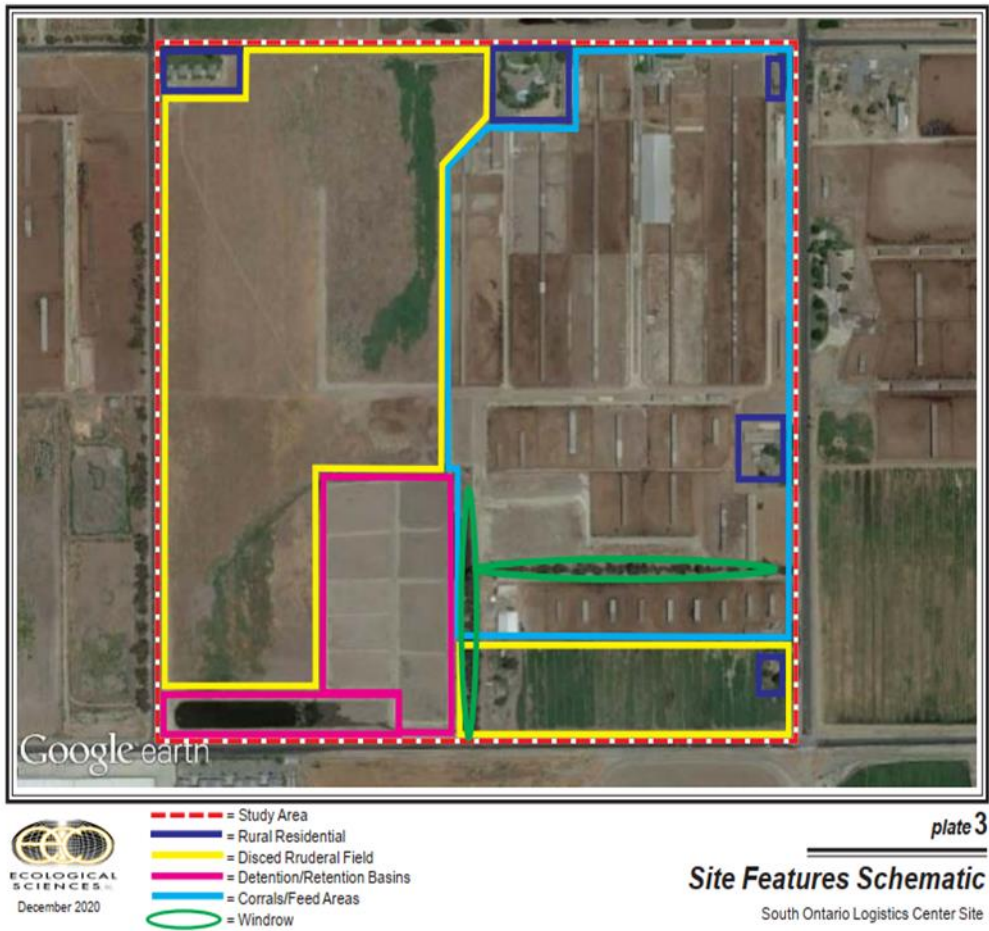
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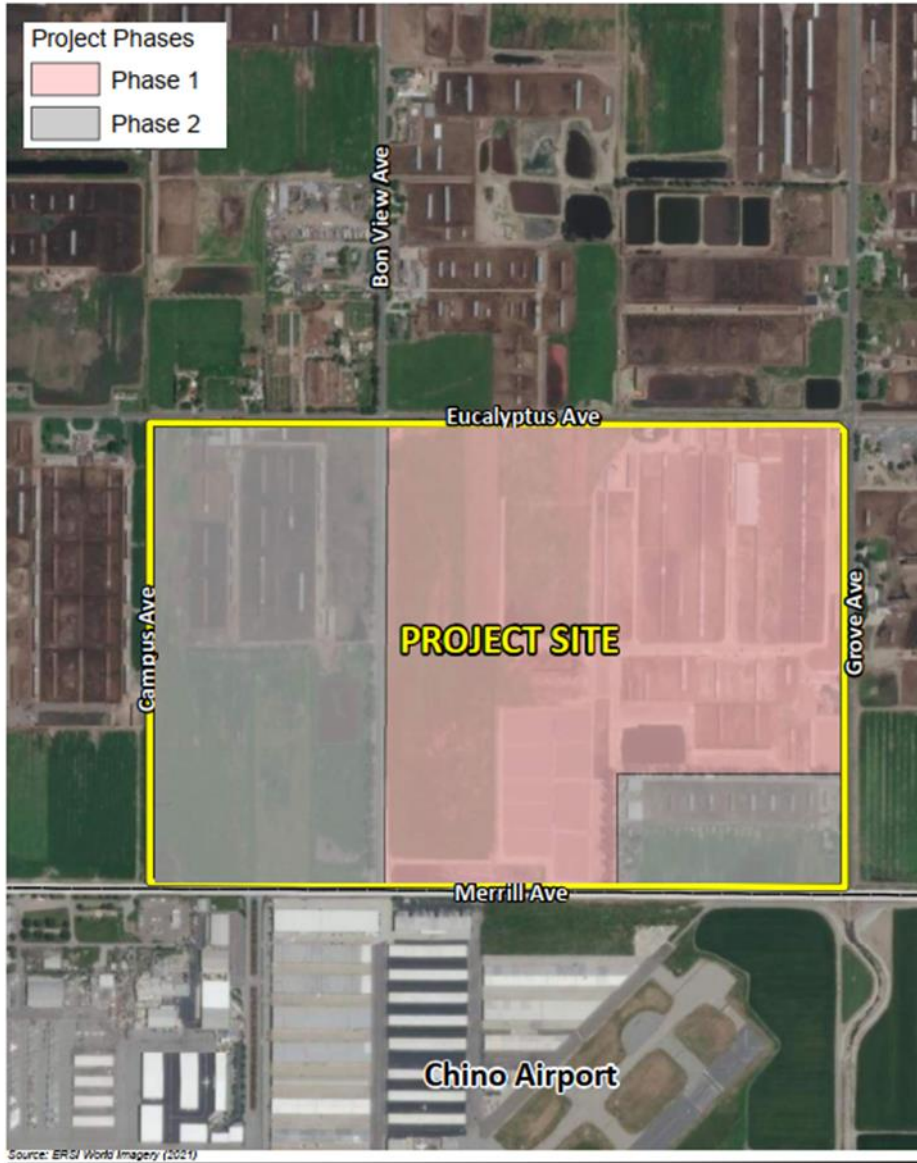


**Figure 1**  
*Project Vicinity Map (see DEIR Figure 3-1)*



**Figure 2**

*Aerial Vicinity Map (refer to DEIR Figure 3-2)*



**Figure 3.** A map of the corresponding APNs not included within the DEIR Biological Resources



**Table 1 (refer to DEIR Table 3-1).** Assessor Parcel Numbers

1054-071-01	1054-071-02	1054-081-03	1054-091-01	1054-091-02
1054-101-01	1054-101-02	1054-231-01	1054-231-02	1054-241-01
1054-241-02	1054-321-01	1054-321-02	1054-311-01	1054-311-02
1054-051-01	1054-051-02	1054-061-01	1054-061-02	1054-251-01
1054-251-02	1054-301-01	1054-301-02		