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Subject: General Plan Amendment for the John Smith Road Landfill (JSRL) Expansion Project (Project)
Early Consultation (CON)
State Clearinghouse No: 2021020371

Dear Stan Ketchum:

The California Department of Fish and Wildlife (CDFW) received a CON from San Benito County 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 the exercise of its own regulatory authority under Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statue 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,

[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.

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. CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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

PROJECT DESCRIPTION SUMMARY

Proponent: Waste Solutions Group of San Benito, LLC

Objective: The Project proposes a General Plan amendment to change the 388.05-acre expansion property's land use designations of Rangeland (RG) and Agriculture (A) to Public/Quasi-Public (PQP) to be consistent with the existing JSRL's land use designations and to accommodate the proposed waste disposal activities. The proposed project also requires issuance of a Conditional Use Permit, an Entrance Encroachment Permit, and building permits by San Benito County. The County also would need to update the San Benito County Integrated Waste Management Plan to include the expansion area.

Location:

The 388.05-acre proposed expansion project site is located adjacent to the JSRL to the west, north, and east of the existing JSRL property. This includes an approximately 200-foot-wide buffer around the Project site that was visually surveyed in January 2020 during pedestrian surveys; a 3.1-mile-wide radius around the project site that was examined through GIS analysis to evaluate suitable breeding habitat for special-status amphibians within dispersal distance of the project site; and a 5-mile-wide radius around the project site that was examined through desktop analysis for documented occurrences of special-status plant and wildlife species.

Annual grassland occupies nearly the entire study area according to the Project information provided. There is a 0.63-acre pond within the project limits in the northcentral portion of the study area with a maximum depth of 1-2-feet. The pond is located just south of Santa Ana Creek.

Although the project boundary includes 70 acres of the 101.3-acre County-owned property south of John Smith Road, the use of this property would be as a potential preserve area for habitat mitigation purposes only and would not include any physical changes that would affect the property's existing biological conditions. Therefore, this property was not included in the study area. Waste management activities are already approved on the existing 95.16-acre JSRL and the project would not change the biological impacts associated with the approved use; therefore, the existing JSRL was also not included in the study area.

The JSRL is located at 2650 John Smith Road approximately 2 miles directly east of the eastern boundary of the City of Hollister. The site is located in a hilly grassland/rural area east of the Hollister Valley and west of the rural Santa Ana Valley in unincorporated San Benito County.

The existing 95.16-acre JSRL includes two parcels owned by San Benito County that total 90.05 acres (Assessor Parcel Numbers [APN] 025-190-073 and 025-190-074) and one 5.11-acre parcel owned by the City of Hollister (APN 025-190-072). The two county-owned parcels contain an operating Class III landfill. Class III landfills only accept non-hazardous waste for disposal. The City of Hollister parcel includes a closed Class I waste disposal area covering less than an acre. Class I landfills may accept both hazardous and nonhazardous wastes for disposal. The County also owns 101.3 acres directly south of the JSRL and John Smith Road (APN 025-190-075).

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist San Benito County 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.

There are several special-status resources that may utilize the Project site and/or surrounding area, and these resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the Federally and State endangered and State fully protected California condor (*Gymnogyps californianus*), the Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the Federally and State threatened California tiger salamander (*Ambystoma californiense*), the State threatened tri-colored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*), the Federally threatened and State Species of Special Concern California red-legged frog (*Rana draytonii*), and the State Species of Special Concern American badger (*Taxidea taxus*), San Joaquin coachwhip (*Coluber flagellum ruddocki*), burrowing owl (*Athene cunicularia*), western pond turtle (*Actinemys marmorata*), and the western spadefoot (*Spea hammondii*).

I. Environmental Setting and Related Impact

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

California Condor (CACO)

CACO have been observed flying above the east side of the JSRL within the proposed Project site (CNDDB 2022). The California condor is a State fully protected species, which means that no Project-related take can be authorized by CDFW and the species must be fully avoided to comply with California Fish and Game Code section 2511.

Consistent with CEQA Guidelines, section 15380, the status of the California condor as an endangered species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (Fish & G. Code, § 2050 *et seq.*) and as a Fully Protected species (Fish & G. Code § 3511) qualifies it as an endangered, rare, or threatened species under CEQA.

If condor use of the area increases beyond two different sightings per year, consultation with CDFW and the USFWS would be warranted to discuss minimization measures necessary to ensure no take of condor occurs.

If at any time during the Project a California condor is found dead or injured, the Project operator shall immediately contact CDFW and USFWS by email at: R4CESA@wildlife.ca.gov for further direction.

San Joaquin Kit Fox (SJKF)

SJKF occurrences have previously been documented within the proposed Project boundary (CDFW 2022). The Project has the potential to temporarily disturb and permanently alter suitable habitat for SJKF and directly impact individuals if present during construction and other activities.

SJKF den in a variety of areas such as grassland, agricultural and fallow/ruderal habitat, and dry stream channels, and their populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). The Project site is situated in a seismically active geologic province. Soil disturbance activities associated with individual Project elements could increase soil erosion or affect soil stability. The stability of the expanded landfill could be affected by seismic activities or soil instability. SJKF may be attracted to Project areas due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. SJKF will forage in grassland, fallow and agricultural fields and utilize stream channels as dispersal corridors. Santa Ana Creek is approximately 1.1 miles northwest of the Project site. As a result, there is potential for SJKF to occupy suitable habitat in the vicinity of the landfill area.

Habitat loss resulting from land conversion to agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013). The Project vicinity contains suitable habitat including grassland and a stream channel which could be utilized as a dispersal corridor. Therefore, subsequent ground-disturbing activities have the potential to significantly impact local SJKF populations.

CDFW recommends having qualified biologists conduct a habitat assessment for SJKF followed by presence/absence surveys of the Project area along with a 500-foot buffer as part of the biological technical studies conducted in support of the CEQA document to detect SJKF and their sign. CDFW also recommends following the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011).

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to

ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

California Tiger Salamander (CTS)

CTS are known to occur in the vicinity of the Project area (CDFW 2022). Review of aerial imagery indicates the presence of several wetted/pond features in the Project's vicinity that have the potential to support breeding CTS. In addition, the Project area or its immediate surroundings may support small mammal burrows, a requisite upland habitat feature for CTS.

Google aerial imagery shows that the proposed Project site and vicinity has upland habitat along with potential breeding habitat. There is a pond approximately 0.87mile northeast of the Project site, immediately south of Santa Ana Creek, and another ponded area approximately 1mile southwest that could provide breeding habitat. Potential ground- and vegetation-disturbing activities associated with Project activities could potentially include: collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. In addition, depending on the design of any activity, the Project has the potential to result in creation of barriers to dispersal. Given the presence of suitable habitat potentially within, and adjacent to the Project site, ground-disturbing activities have the potential to significantly impact local populations of CTS.

CDFW recommends that a qualified biologist conduct a habitat assessment and protocol-level surveys for CTS as part of the biological technical studies conducted in support of the CEQA document and in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

If CTS protocol-level surveys as described above are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both

upland burrow and wetland/pond breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW an ITP in accordance with Fish and Game Code section 2081 subdivision (b).

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided as described in Mitigation Measure 5, take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through the acquisition of an ITP issued by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b). As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

Tri-colored Blackbird (TRBL)

TRBL occurrences have been documented near the Project site (CDFW 2022). Per CNDDB records, there was an occurrence of TRBL observed immediately south of the Project site, and another occurrence approximately 0.88mile northeast. TRBL colonies require suitable nesting habitat, nearby freshwater, and nearby foraging habitat including semi-natural grasslands, agricultural croplands or alkali scrub (Beedy et al. 2017). Habitat surrounding the Project area may provide suitable foraging habitat for TRBL and the ponded areas near the Project site may be suitable nesting habitat.

CDFW recommends that Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct a habitat assessment and protocol survey for nesting TRBL as part of the biological technical studies conducted in support of the CEQA document to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts. If potential habitat is identified, CDFW also recommends that surveys for nesting TRBL also occur no more than 10 days prior to the start of Project implementation.

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, a previously identified colony should be reassessed to determine the extent of the breeding colony within 10 days for Project initiation.

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

Swainson's Hawk (SWHA)

SWHA have been observed in the vicinity of the Project site in 2019 and 2020 (CNDDB, 2022). There is a potential that SWHA could nest near the Project site as there are trees that may support nesting just north of Project limits per Project maps and Google aerial photography. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct a habitat assessment and protocol surveys for nesting SWHA as part of the biological technical studies conducted in support of the CEQA document and following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

If ground-disturbing Project activities are to take place during the normal SWHAbreeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active nests 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.

CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based on CDFW's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG, 1994), which recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites and the amount of habitat compensation is dependent on nest proximity. In addition to fee title acquisition or conservation easement recorded on

property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

California Red-Legged Frog (CRLF)

CRLF are known to occur within and adjacent to the Project area (CNDDB 2022). California red-legged frog habitat includes nearly any area within 1-2 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, abandoned sheds) (USFWS 2017). Along with the pond within the Project limits, aerial imagery indicates that Santa Ana Creek and a small pond are present approximately 0.60mile north, which could serve as potential habitat to CRLF.

If suitable habitat is present within the Project site and adjoining area, CDFW recommends that a qualified biologist conduct a habitat assessment and protocol surveys for CRLF as part of the biological technical studies conducted in support of the CEQA document and, regardless of the results of the initial surveys, repeated within 48 hours prior to commencing work (two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS 2005) to determine if CRLF are within or adjacent to individual project sites.

If any CRLF are found during the initial protocol surveys conducted as part of the biological technical studies, the preconstruction surveys, or at any time during construction CDFW recommends that CDFW be contacted to discuss a relocation plan for CRLF. If CRLF are found at any time during construction, CDFW recommends that construction cease immediately and that CDFW be contacted to discuss a relocation plan for CRLF.

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 through March 31). If ground-disturbing activities must take place between November 1 and

March 31, CDFW recommends that a qualified biologist monitor construction activity daily.

American Badger (AMBA)

There is suitable grassland habitat for AMBA in and adjacent to the Project vicinity (CDFW 2022). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project area has the potential to impact AMBA.

Habitat loss is a primary threat to AMBA (Gittleman et al. 2001). The Project has the expectation to expand, resulting in 388.05-acres of land conversion and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of AMBA.

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for AMBA as part of the biological technical studies conducted in support of the CEQA document and then repeat the focused surveys, regardless of the initial results, ten days prior to Project implementation.

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

Western Spadefoot (WESP)

WESP have been observed just east of the landfill along John Smith Road. The sighting is within Project boundaries. Additional WESP are known to occur in the area (CDFW 2022). There are several ponded areas and Santa Ana Creek in and near the Project area. Without appropriate avoidance and minimization measures for western spadefoot, potentially significant impacts associated with ground disturbance include; collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Habitat loss and fragmentation resulting from agricultural and urban development is the primary threat to western spadefoot (Thomson et al. 2016). The Project area is within the range of western spadefoot, contains suitable upland habitat (i.e., grasslands interspersed with burrows) and breeding habitat (i.e., vernal pools/ponds and the seasonal creek listed previously). As a result, ground-disturbing activities associated with development/enlargement of the Project site have the potential to significantly impact local populations of this species.

CDFW recommends that a qualified biologist conduct focused surveys for WESP as part of the biological technical studies conducted in support of the CEQA document and then repeat the focused surveys, regardless of the initial results, ten days prior to Project implementation.

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If WESP are observed on the Project site, CDFW recommends that Project activities in their immediate vicinity cease and individuals be allowed to leave the Project site on their own accord. Alternatively, a qualified biologist with appropriate take authorization can move them out of harm's way and to a suitable location.

San Joaquin Coachwhip (SJCW)

San Joaquin coachwhip can inhabit grassland and upland scrub habitats (Thomson et al. 2016) and have been documented to occur in the vicinity of the Project site, which supports requisite habitat elements for these species (CDFW 2022).

Habitat loss threatens this species (Thomson et al. 2016). Ground- and vegetation-disturbing activities associated with development of the Project have the potential to significantly impact local populations of these species. CDFW recommends that a qualified biologist conduct focused surveys for SJCW as part of the biological technical studies conducted in support of the CEQA document and then repeat the focused surveys, regardless of the initial results, ten days prior to Project implementation.

Avoidance whenever possible is encouraged via delineation and observance a 50-foot no-disturbance buffer around the entrances of burrows that can provide refuge for reptiles.

Burrowing Owl (BUOW)

BUOW have been observed approximately 0.18-mile north of the Project site (CNDDB 2022). BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery shows that the Project site is predominately composed of annual grassland. Potentially significant direct impacts associated with subsequent activities 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.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys for BUOW as part of the biological technical studies conducted in support of the CEQA document and then repeat the focused surveys, regardless of the initial results, ten days prior to Project implementation. Surveys would

follow the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

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. 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)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

Western Pond Turtle (WPT)

WPT have been observed approximately 0.47-mile south and approximately 0.59-mile north of the Project area per CNDDB records. WPT are known to nest in the spring or early summer within 100 meters (approximately 0.06-mile) of a water body, although nest sites as far away as 500 meters (approximately 0.31-mile) have also been reported (Thomson et al. 2016).

CDFW recommends that a qualified biologist conduct focused surveys for WPT ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched. If any WPT are discovered at the site immediately prior to or during Project activities, CDFW recommends they be allowed to move out of the area on their own. Alternatively, a qualified biologist with appropriate take authorization can move them out of harm's way and to a suitable location.

II. Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project sites 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 that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW 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 on-site 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 areas 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.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, San Joaquin kit fox, California tiger salamander and California red-legged frog. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

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

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for

consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the City of Merced in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

LITERATURE CITED

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Zeiner, D. C., W. F. Laudenslayer, Jr, K. E. Mayer, and M. White. 1990. California's Wildlife Volume I-III. California Department of Fish and Game, editor. Sacramento, CA, USA.

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Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press

SJCW Literature Citation

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

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CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

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