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Governor's Office of Planning & Research

October 13, 2023

Oct 13 2023

STATE CLEARINGHOUSE

Jim Bermudez, Development Services Director
City of Suisun City
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Subject: Highway 12 Logistics Center, Draft Environmental Impact Report,
SCH No.2021040016, City of Suisun City, Solano County

Dear Mr. Bermudez:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Suisun City (City) for the Highway 12 Logistics Center Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the draft EIR to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project. CDFW previously provided comments in response to the Notice of Preparation for the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA 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) or Native Plant Protection Act, 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: Buzz Oates Construction, Inc.

Objective: Rezone and annex approximately 161 acres of the 487-acre Project site into the City. Develop approximately 93.4 acres of land for warehouse and logistic uses, including six warehouse buildings totaling 1.26 million square feet and appurtenant truck

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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and trailer parking, stormwater facilities, water, wastewater, electricity, natural gas, and telecommunications utilities. Rezone approximately 393.2-acre to Managed Open Space and manage this land to protect existing habitat and mitigate development impacts.

Location: The proposed Project is located primarily in unincorporated land in Solano County; however, approximately 4.5 acres of the Project is in the City of Suisun City. The Project is bordered by State Route 12 to the north, a drainage channel and warehouse development to the west, the Union Pacific Railroad to the east, and Suisun Marsh to the south. The approximate centroid of the Project is at the intersection of Cordelia Road, Cordelia Street, and Pennsylvania Avenue at 38.235822 °N, - 122.053554 °W (NAD 83).

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. **The Project has potential to impact Swainson’s hawk (*Buteo swainsoni*), CESA listed as threatened species. Thank you for including a mitigation measure to avoid impacts to nesting Swainson’s hawks, and please see the below comment regarding loss of foraging habitat for this species. The Project also has potential to impact salt marsh harvest mouse (*Reithrodontomys raviventris*), CESA listed as endangered species; Sacramento River winter-run Evolutionarily Significant Unit (ESU) of Chinook salmon (*Oncorhynchus tshawytscha*), CESA listed as endangered ESU; Central Valley spring-run ESU of Chinook salmon, CESA listed as threatened ESU; California black rail (*Laterallus jamaicensis coturniculus*), CESA listed as threatened species; tricolored blackbird (*Agelaius tricolor*), CESA listed as threatened species; and Crotch bumble bee (*Bombus crotchii*), a candidate for listing as endangered under CESA. Thank you for including mitigation measures to avoid impacts to the above species.** Issuance of an ITP 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 an 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, & 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).

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The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required 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 LSA Notification requirements. **As described in the draft EIR (page 4.3-89), the Project would build a stormwater outfall culvert that may impact a slough channel. If this outfall impacts the slough, an LSA Notification pursuant to Fish and Game Code section 1602 would be required, as further described below.** CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Fully Protected Species

Fully Protected species, such as California black rail, also CESA listed as threatened species, and salt-marsh harvest mouse, also CESA listed as endangered species, as described above, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for: 1) collecting these species for necessary scientific research, including efforts to recover fully protected species; 2) relocation of the bird species for the protection of livestock; 3) if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan, or 4) certain infrastructure projects pursuant to Fish and Game Code section 2081.15, subdivision (a).

Raptors and Other Nesting Birds

CDFW 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 or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in

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adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an EIR is appropriate for the Project.

I. Mitigation Measure Related Impact Shortcomings

MANDATORY FINDINGS OF SIGNIFICANCE: Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict range of a rare or endangered plant or animal?

AND

Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

AND

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Habitat Mitigation Land, draft EIR pages 4.3-70, 73, 74, 76, 79, 92, and 94.

Issue: The draft EIR includes Mitigation Measure 4.3-17e, Implement Mitigation and Monitoring Plan. Mitigation Measure 4.3-17e states that "the Mitigation and Monitoring Plan shall include a site protection instrument (e.g., deed restriction or conservation easement[s]) that will restrict use of the proposed Managed Open Space area of the Project Site to offset impacts to wetlands and impacts to rare plants" (draft EIR page 4.3-94). As described below, deed restrictions and open space easements provide a lesser degree of certainty than conservation easements that wetlands and special-status species will be protected in perpetuity. If a site protection instrument that is not a conservation easement is used, Mitigation Measure 4.3-17e may not be effective in mitigating the Project's effect on special-status fish and wildlife resources.

Specific impacts, why they may occur and be potentially significant: The Project would result in a loss of individuals of the federally listed as endangered Contra Costa goldfields (*Lasthenia conjugens*) (draft EIR page 4.3-70), foraging habitat for CESA listed as threatened Swainson's hawk (draft EIR page 4.3-79), and an estimated 12 individual alkali milk-vetch (*Astragalus tener* var. *tener*) plants (draft EIR page 4.3-73), an estimated 465 individual saline clover (*Trifolium hydrophilum*) plants (draft EIR page 4.3-74), and an unquantified number of long-styled sand spurrey (*Spergularia*

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macrotheca var. longistyla) plants (draft EIR page 4.3-76), as well as the loss of both occupied and suitable habitat for these species (draft EIR page 4.3-73, 74, and 76). Alkali milk-vetch, saline clover, and long-styled sand spurrey all have a California Rare Plant Rank (CRPR) of 1B.2 (CNPS 2023). Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century (CNPS 2023). The plants discussed above have the additional threat rank of 0.2, indicating that 20 to 80 percent of their occurrences are threatened (CNPS 2023). Contra Costa goldfields, Swainson's hawk, and the other above plants are considered threatened, endangered, or rare species, respectively, pursuant to CEQA Guidelines section 15380, and lack of permanent protection of mitigation land as further described below may result in a mandatory finding of significance pursuant to CEQA Guidelines section 15065, subdivision (a), due to a substantial reduction in the numbers or restriction of the ranges of these species.

The Project would result in permanent loss of wetlands due to placement of fill material into 16.3 acres of Seasonally Saturated Annual Grassland; 14.1 acres of Vernal Pools; 7.4 acres of Alkali Seasonal Wetlands; and 0.002 acres of Perennial Brackish Marsh and may result in hydrological alterations to wetlands during the creation of mitigation wetlands (draft EIR page 4.3-92). As described in the draft EIR, this is a potentially significant impact to wetlands (draft EIR page 4.3-92) and lack of permanent protection of mitigation land as further described below would result in a potentially significant impact to wetlands.

The wetlands described above are not categorized into natural communities in the draft EIR; however, they are likely to contain natural communities considered sensitive by CDFW, including Fremont's goldfields (*Lasthenia fremontii*) – downingia (*Downingia bicornuta*) vernal pools alliance, including Fremont's goldfields (*Lasthenia fremontii*) – Downingia (*Downingia bicornuta*) vernal pools alliance, VegCAMP CaCode (VC) 42.007.00, smooth goldfields (*Lasthenia glaberrima*) – pale spike rush (*Eleocharis macrostachya*) vernal pool bottoms alliance (VC 44.140.00), Fremont's goldfields (*Lasthenia fremontii*) – salt grass (*Distichlis spicata*) alkaline vernal pools alliance (44.119.00), or undescribed special stands where Contra Costa goldfields are the dominant plant species (CDFW 2023b). These natural communities have a NatureServe rank of G2S2, indicating that they are at high risk of extinction and elimination at both a global and subnational level due to restricted range, few populations or occurrences, steep declines, severe threats, or other factors (CDFW 2023b). While the draft EIR does not identify mitigation for sensitive natural communities, it is reasonably expected that wetland restoration and conservation of existing wetlands as described in the draft EIR would result in restoration of these sensitive natural communities. If sensitive natural communities would be impacted and there is a lack of permanent protection of mitigation land as further described below, the Project would result in potentially significant impacts to sensitive natural communities.

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The losses above would be mitigated in part through perpetual conservation of a portion of the Project site designated as the Managed Open Space area (draft EIR page 4.3-94). As the mitigation for these impacts depends in part on the perpetual conservation of the Managed Open Space area, *CDFW strongly recommends modifying Mitigation Measure 4.3-17e to strike the reference to a deed restriction and to specify using a conservation easement.*

Conservation easements provide relatively greater certainty that long-term management of mitigation lands consistent with conservation purposes can be assured, compared to any other currently available mechanism. Conservation easements created under Civil Code section 815 et seq. enjoy special protections in condemnation proceedings. Under the Code of Civil Procedure provisions relating to condemnation actions, a conservation easement qualifies as “property appropriated to public use” and can only be condemned as provided in section 1240.055. (Code Civ. Proc., § 1240.055, subd. (a)(3), (b)). The person seeking to condemn the land must give notice to the holder of the conservation easement, describing the property to be condemned and the public use that the property will be used for, and informing the easement holder that they have the opportunity to submit written comments. (Code Civ. Proc., § 1240.055, subd. (c)(1)). The easement holder in turn is required to notify the public entity that required or funded the purchase of the conservation easement and notify the person seeking to condemn the land of any public entities that are involved. (Code Civ. Proc., § 1240.055, subd. (c)(2)). Both the easement holder and the public entity may submit comments on the proposed condemnation, including identifying conflicts between the potential use and the terms of the conservation easement. (Code Civ. Proc., § 1240.055, subd. (c)(3)). The person seeking to condemn the property must respond to those comments. (Code Civ. Proc., § 1240.055, subd. (d)). Both the easement holder and any notified public entities have the right to appear and be heard at the court hearing related to the necessity of the condemnation. Importantly, should the condemnation continue, the conservation easement holder is identified by statute as the owner of a property interest that is entitled to compensation. (Code Civ., Proc., § 1240.055, subd. (g)). These protections are not available for the other types of instruments discussed below.

Any person trying to acquire property appropriated to public use through eminent domain can only do so if the proposed use supporting the eminent domain proceeding will not unreasonably interfere with or impair the existing public use, or if that person can show a more necessary public use. (Code Civ. Proc., §§ 1240.501, 1240.610). In the case of an argument regarding a “more necessary public use,” the Code of Civil Procedure creates a hierarchy of uses dependent on the governmental entity that required the conservation easement to be placed. For example, property appropriated to public use by the state (which would include conservation easements for mitigation purposes) are presumed to be a more necessary public use than any other uses the property might be put to by another person. (Code. Civ. Proc., § 1240.640, subd. (b)). In some circumstances, a conservation easement can automatically be considered the

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best and most necessary public use, which would greatly hinder the ability of any person to condemn the easement. (See Code Civ. Proc, §§ 1240.670, 1240.680). Additionally, if condemnation proceedings continue to move forward, the parties involved may be required to agree on the terms and conditions of use of the easement property. (Code Civ. Proc., §§ 1240.530, 1240.630).

In contrast, deed restrictions, also known as restrictive covenants, can be freely amended or terminated and are not guaranteed to bind subsequent owners of the property (or “run with the land”) (Civ. Code, § 1461). Under California law, only certain types of covenants run with the land. (Civ. Code, § 1461). As a general principle, only the benefit of a covenant runs with the land, while the burden (for example a restriction or promise not to do an act) does not. More specifically, according to statute covenants that run with the land only include: (1) covenants that benefit the land that is transferred, for example mineral rights, warranties of title, or a right of first refusal; (2) covenants between owners of two properties that the covenantor will refrain from acts on his land for the benefit of the land of the covenantee; (3) covenants by a landlord related to acts on adjoining or nearby properties that are for the benefit of the tenant; and (4) environmental covenants that are necessary for health and safety concerns due to the presence of hazardous substances. (Civ. Code, §§ 1462, 1468, 1469, 1471).

Furthermore, restrictive covenants lack statutory protections that apply to conservation easements, in particular those related to condemnation proceedings and the limitations on who can hold or manage the protected habitat. In addition, deed restrictions are more easily amended or terminated than conservation easements. Finally, should a restrictive covenant be challenged in court, it would be construed in favor of free use of the land, not in favor of conservation purposes.

The Open-Space Easement Act does provide procedures for termination of an open-space easement through abandonment. (Gov. Code, §§ 51090, 51093). The underlying landowner can petition the local government for abandonment of an open-space easement, and the local government can approve that abandonment if it makes certain findings. (Gov. Code, § 51093, subd. (a)). Specifically, it must find that none of the public purposes listed above that would support the initial approval of an open-space easement would be served by keeping the land as open space; that abandonment is not inconsistent with the purposes of the Open-Space Easement Act; that abandonment is consistent with the applicable general plan; and that abandonment is necessary to avoid substantial financial hardship to the landowner. (Id.).

Recommended Mitigation Measure: To reduce potential for the several impacts to special-status fish and wildlife resources described above to less-than-significant, CDFW strongly recommends replacing Mitigation Measure 4.3-17e with the below mitigation measure, which removes reference to an unspecified site protection

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instrument or deed restriction, leaving a conservation easement as the legal tool used to protect mitigation values in perpetuity.

Mitigation Measure 4.3-17e (Implement Mitigation and Monitoring Plan): To compensate for loss of wetlands and impacts to rare plant populations, the Project applicant shall implement an Agency-approved Mitigation and Monitoring Plan. A draft Mitigation and Monitoring Plan for the proposed Managed Open Space portion of the Project Site (Appendix C, Attachment 7), has been prepared in accordance with the Subpart J – Compensatory Mitigation for Losses of Aquatic Resources outlined in the State Water Resources Control Board Procedures, and in accordance with the State Water Resources Control Board Implementation Guidance dated April 2020. The referenced Mitigation and Monitoring plan may be modified based on recommendations from the U.S. Army Corps of Engineers (USACE), USFWS, and the Regional Water Quality Control Board (RWQCB) during the permitting process. In summary, the Mitigation and Monitoring Plan shall:

- Establish within the Managed Open Space a minimum of 16.33 acres of Seasonally Saturated Annual Grassland; 14.09 acres of Vernal Pools; 7.42 acres of Alkali Seasonal Wetlands; and 0.002 acre of Perennial Brackish Marsh;
- Provide financial assurances to ensure a high level of confidence that the Mitigation and Monitoring Plan will be successfully completed, in accordance with applicable performance standards;
- Design ecological performance standards to assess whether the Mitigation and Monitoring Plan is achieving the overall objectives, so that it can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected conditions or function, and attaining any other applicable metrics such as acres, percent cover of native plants, structural patch richness, control of invasive plants, water depth etc.;
- Monitor the site for a minimum of 10 years to determine if the Mitigation and Monitoring Plan is meeting the performance standards; and
- Assess the potential effects of changing weather patterns that are currently occurring, and that may occur due to climate change in the foreseeable future and how these changes may impact the long-term viability of the constructed wetlands. The purpose of this assessment is to locate and design the wetlands to avoid and minimize impacts from climate change and to develop adaptive management measures into the Mitigation and Monitoring Plan specifically to minimize these potential effects.

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The Mitigation and Monitoring Plan shall include a conservation easement[s] that will restrict use of the proposed Managed Open Space area of the Project Site to offset impacts to wetlands and impacts to rare plants and shall include a long-term endowment funded by the proposed Project to manage the entire 393.2-acre Managed Open Space area in perpetuity and in accordance with the Mitigation and Monitoring Plans' Long-Term Management Plan (see Property Analysis Record in the Mitigation and Monitoring Plan, in Appendix C).

MANDATORY FINDINGS OF SIGNIFICANCE: Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict range of a rare or endangered plant or animal?

COMMENT 2: Swainson's hawk, draft EIR pages 4.3-2, and 79

Issue: The Project would impact Swainson's hawk foraging habitat, however much of the proposed compensatory mitigation habitat is already protected from development.

Specific impacts, why they may occur and be potentially significant: The draft EIR proposes to preserve 205.4 acres of Swainson's hawk foraging habitat in the Managed Open Space area to mitigate the loss of 92.0 acres of Swainson's hawk foraging habitat (draft EIR page 4.3-79). The majority of this proposed mitigation land is within the Suisun Marsh Preservation Act area (draft EIR page 4.3-2), in which only extremely limited development is permitted. As this land is already protected from the overwhelming majority of development, further preserving the land would not be effective mitigation for Swainson's hawk foraging habitat. Approximately 61.5 acres of Managed Open Space area would be outside the Suisun Marsh Preservation Act area (draft EIR page 4.3-2); however, it is not clear how much of this area is suitable foraging habitat.

The breeding population of Swainson's hawks in California has declined by an estimated 91 percent since 1900 and the species continues to be threatened by on-going and cumulative loss of foraging habitat (CDFW 2016). The California Natural Diversity Database (CNDDDB) includes seven occurrences of Swainson's hawk within 5 miles of the Project, with the nearest occurrence approximately 1.4 miles west of the Project (CNDDDB 2023, draft EIR page 4.3-79). Therefore, reduction of Swainson's hawk foraging habitat would be a potentially significant impact.

The Project site is within the draft Solano Multispecies Habitat Conservation Plan (Solano HCP) Valley Floor Grassland Conservation Area, and according to the draft Solano HCP Mitigation Measure SH 2 for Swainson's hawk, Valley Floor Grassland Foraging habitat should be mitigated at a ratio of 1:1 (see Section 6.4.8 and Figure 4-21 of the draft Solano HCP at: <https://www.scwa2.com/solano-multispecies-habitat-conservation-plan/>).

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Recommended Mitigation Measure: To reduce potential for impacts to Swainson's hawk foraging habitat to less-than-significant, CDFW strongly recommends replacing Mitigation Measure 4.3-8a with the below mitigation measure, which removes reference to additional Swainson's hawk foraging habitat mitigation being required by CDFW and specifies additional off-site mitigation.

Mitigation Measure 4.3-9c (Preserve Swainson's Hawk Foraging Habitat): To offset impacts to 92.0 acres of Swainson's hawk foraging habitat, the Project applicant shall provide habitat preservation at a location that will provide foraging habitat value to Swainson's hawks consistent with CDFW guidance as set forth in the 1994 Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California. CDFW 1994 guidance provides that mitigation lands should be provided if an active nest is located within a 10-mile radius of the Project Site, mitigation habitat value shall be equal to or higher than what currently occurs on the Project Site, and at a minimum of 1:1 ratio.

The Project will determine the amount of Swainson's hawk foraging habitat within the Managed Open Space area that is outside of the Suisun Marsh Preservation Act area. This area shall be preserved and protected in perpetuity by a conservation easement. To reach the minimum 1:1 compensation acreage for Swainson's hawk foraging habitat, the Project applicant shall purchase mitigation credits from an approved Swainson's hawk mitigation bank which services the Project Site or preserve suitable foraging habitat off-site at an approved CDFW location using a conservation easement. Land area protected by Swainson's hawk foraging habitat mitigation credit purchase or other habitat preserved on-site and off-site shall be outside the Suisun Marsh Preservation Act area and shall not total less than 92.0 acres.

Furthermore, the Project proposes that the preserved 205.39 acres of Swainson's hawk foraging habitat would be enhanced by grazing the Managed Open Space area to control the buildup of thatch.

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 USFWS?

COMMENT 3: Burrowing owl (*Athene cunicularia*), draft EIR pages 4.3-80 and 81

Issue: The draft EIR includes Mitigation Measure 4.3-9b, Avoid Impacts to Occupied Burrows. Mitigation Measure 4.3-9b specifies that burrows occupied by burrowing owls will be avoided by a non-disturbance buffer to be determined in consultation with CDFW (draft EIR page 4.3-81). It further states that during the non-breeding season, if an occupied burrow may be impacted even with implementation of non-disturbance buffers,

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a burrowing owl burrow exclusion plan likely including habitat mitigation may be prepared and implemented according to the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) (draft EIR page 4.3-81).

However, Mitigation Measure 4.3-9b does not require habitat mitigation for impacts to unoccupied burrows used by breeding burrowing owls within the last three years. The draft Solano HCP, prepared by the Solano County Water Agency, stipulates that any nest site occupied by owls within the last three years is considered a known nest site and impacts to known nests sites require mitigation (see: <https://www.scwa2.com/solano-multispecies-habitat-conservation-plan/>, Section 6-Mitigation Measures, Pages 6-70 and 6-71) (Solano County Water Agency 2014).

Burrowing owls may use the Project site for breeding. Suitable breeding habitat for burrowing owl appears to exist on the Project site (draft EIR page 4.3-80). Despite being characterized in the draft EIR as “off the site adjacent to Cordelia Road” (draft EIR page 4.3-80), there is a CNDDDB occurrence of two adult burrowing owls observed during the breeding season located “east of South Pennsylvania Avenue, between Cordelia Street and Highway 12, south of Fairfield and west of Suisun City” (CDFW 2023a). This location as described in CNDDDB appears to be within the Project site.

Specific impacts, why they may occur and be potentially significant: The Project may result in a permanent loss of burrowing owl breeding sites in Solano County. Burrowing owls are philopatric, meaning they show strong fidelity to their nest site and territory from year to year, especially where resident. Burrowing owl is a California Species of Special Concern because the species’ population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from breeding sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels resulting in a loss of suitable burrows required by burrowing owls for breeding, protection from predators, and shelter (Shuford and Gardali 2008; *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owls have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (*Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, Esther Burkett, May 13, 2022). Based on the foregoing, if an unoccupied burrow used by breeding burrowing owls within the last three years occurs on the Project site and is removed, Project impacts to burrowing owl would be potentially significant.

Recommended Mitigation Measures: To reduce potential impacts to burrowing owl to less-than-significant, CDFW recommends including the below mitigation measures.

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Mitigation Measure 4.3-9c (Burrowing Owl Burrow Mitigation): If the Project would impact an unoccupied breeding burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for breeding), or an occupied burrow (where a non-breeding owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.

Impacts to each burrowing owl unoccupied breeding site shall be mitigated by permanent preservation of two burrowing owl occupied breeding sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-breeding evicted owl sites except two burrowing owl occupied non-breeding (i.e., wintering) sites shall be preserved. Note that the draft Solano HCP states that burrowing owl burrows shall be mitigated at a 1:1 ratio, however due to the likely further decline of burrowing owl since the Habitat Conservation Plan (HCP) was drafted, a 2:1 ratio is appropriate.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

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. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of 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.” Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW’s written acceptance of the eviction plan.

Mitigation Measure 4.3-9d (Cap Pipe and Hose): To prevent burrowing owls from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each work day and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.

II. Project Description Related Impact Shortcoming

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

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AND

Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

COMMENT 4: LSA Agreement for Stream Impacts, draft EIR page 4.3-89

Issue: The draft EIR states that construction associated with a stormwater outfall culvert “may impact 0.002 acres of a slough channel categorized as a perennial brackish marsh” (draft EIR page 4.3-89). However, the Mitigated Negative Declaration does not include a mitigation measure requiring LSA Notification and compliance with the LSA Agreement, if issued.

Specific impacts, why they may occur and evidence impact would be potentially significant: The Project may result in impacts to perennial brackish marsh wetlands in a slough channel tributary to Suisun Slough. The “perennial brackish marsh” may be one of several natural communities considered sensitive by CDFW, including salt marsh bulrush (*Bolboschoenus maritimus*) marshes alliance (VC 52.112.00), alkali heath (*Frankenia salina*) marshes alliance (VC 52.500.00), or alkali weed (*Cressa truxillensis*) - salt grass (*Distichlis spicata*) playas and sinks alliance (VC 46.100.00) (CNPS 2023).

Wetlands, including the sensitive natural communities described above, are of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. More than 90 percent of California’s historic wetlands have been lost to development and other human activity. Wetlands are a critical natural resource that protect and improve water quality and provide habitat for fish and wildlife. Absent the LSA Agreement which would include measures to avoid and minimize impacts to streams, hydrologically connected habitat, wetlands, and associated species, impacts to the slough and associated riparian habitat, sensitive natural community, or wetlands would be potentially significant.

Recommended Mitigation Measure: To reduce potential impacts to the slough containing perennial brackish marsh wetlands and potentially sensitive natural community to less-than-significant and comply with Fish and Game Code section 1600 et seq., CDFW recommends including the mitigation measure below.

Mitigation Measure 4.3-17f (Lake and Streambed Alteration Notification): The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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).

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021040016)

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM 4.3-8a	<p><i>Preserve Swainson's Hawk Foraging Habitat:</i> To offset impacts to 92.0 acres of Swainson's hawk foraging habitat, the Project applicant shall provide habitat preservation at a location that will provide foraging habitat value to Swainson's hawks consistent with CDFW guidance as set forth in the 1994 Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California. CDFW 1994 guidance provides that mitigation lands should be provided if an active nest is located within a 10-mile radius of the Project Site, mitigation habitat value shall be equal to or higher than what currently occurs on the Project Site, and at a minimum of 1:1 ratio.</p> <p>The Project will determine the amount of Swainson's hawk foraging habitat within the Managed Open Space area that is outside of the Suisun Marsh Preservation Act area. This area shall be preserved and protected in perpetuity by a conservation easement. To reach the minimum 1:1 compensation acreage for Swainson's hawk foraging habitat, the Project applicant shall purchase mitigation credits from an approved Swainson's hawk mitigation bank which services the Project Site, preserve suitable foraging habitat off-site at an approved CDFW location using a conservation easement, or use another conservation method approved by CDFW. A total of 92.0 acres of on-site and off-site Swainson's hawk foraging habitat, both outside of the Suisun Marsh Preservation Act area, shall be protected in perpetuity by a conservation easement.</p> <p>Furthermore, the Project proposes that the preserved 205.39 acres of Swainson's hawk foraging habitat would be enhanced by grazing the Managed Open Space area to control the buildup of thatch.</p>	Prior to Ground Disturbance	Project Applicant
MM 4.3-9c	<p><i>Burrowing Owl Burrow Mitigation:</i> If the Project would impact an unoccupied breeding burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for breeding), or an occupied</p>	Prior to Ground Disturbance and for	Project Applicant

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	<p>burrow (where a non-breeding owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.</p> <p>Impacts to each burrowing owl unoccupied breeding site shall be mitigated by permanent preservation of two burrowing owl occupied breeding sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-breeding evicted owl sites except two burrowing owl occupied non-breeding (i.e., wintering) sites shall be preserved. Note that the draft Solano HCP states that burrowing owl burrows shall be mitigated at a 1:1 ratio, however due to the likely further decline of burrowing owl since the HCP was drafted, a 2:1 ratio is appropriate.</p> <p>The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.</p> <p>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. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of 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.” Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW’s written acceptance of the eviction plan.</p>	<p>Duration of Construction</p>	
<p>MM 4.3-9d</p>	<p><i>Cap Pipe and Hose:</i> To prevent burrowing owls from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each workday and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.</p>	<p>For Duration of Construction</p>	<p>Project Applicant and Construction Contractors</p>

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<p>MM 4.3-17e</p>	<p><i>Implement Mitigation and Monitoring Plan</i>): To compensate for loss of wetlands and impacts to rare plant populations, the Project applicant shall implement an Agency-approved Mitigation and Monitoring Plan. A draft Mitigation and Monitoring Plan for the proposed Managed Open Space portion of the Project Site (Appendix C, Attachment 7), has been prepared in accordance with the Subpart J – Compensatory Mitigation for Losses of Aquatic Resources outlined in the State Water Resources Control Board Procedures, and in accordance with the State Water Resources Control Board Implementation Guidance dated April 2020. The referenced Mitigation and Monitoring plan may be modified based on recommendations from the USACE, USFWS, and RWQCB during the permitting process. In summary, the Mitigation and Monitoring Plan shall:</p> <ul style="list-style-type: none"> • Establish within the Managed Open Space a minimum of 16.33 acres of Seasonally Saturated Annual Grassland; 14.09 acres of Vernal Pools; 7.42 acres of Alkali Seasonal Wetlands; and 0.002 acre of Perennial Brackish Marsh; • Provide financial assurances to ensure a high level of confidence that the Mitigation and Monitoring Plan will be successfully completed, in accordance with applicable performance standards; • Design ecological performance standards to assess whether the Mitigation and Monitoring Plan is achieving the overall objectives, so that it can be objectively evaluated to determine if it is developing into the desired resource type, providing the expected conditions or function, and attaining any other applicable metrics such as acres, percent cover of native plants, structural patch richness, control of invasive plants, water depth etc.; • Monitor the site for a minimum of 10 years to determine if the Mitigation and Monitoring Plan is meeting the performance standards; and • Assess the potential effects of changing weather patterns that are currently occurring, and that may occur due to climate change in the foreseeable future and how these changes may impact the long-term viability of the constructed wetlands. The purpose of this assessment is to locate and design the wetlands to avoid and minimize impacts from climate change and to develop adaptive management measures into the Mitigation and Monitoring Plan specifically to minimize these potential effects. 	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>
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	<p>The Mitigation and Monitoring Plan shall include a conservation easement[s] that will restrict use of the proposed Managed Open Space area of the Project Site to offset impacts to wetlands and impacts to rare plants and shall include a long-term endowment funded by the proposed Project to manage the entire 393.2-acre Managed Open Space area in perpetuity and in accordance with the Mitigation and Monitoring Plans' Long-Term Management Plan (see Property Analysis Record in the Mitigation and Monitoring Plan, in Appendix C).</p>		
<p>MM 4.3-17f</p>	<p><i>Mitigation Measure 4.3-17f (Lake and Streambed Alteration Notification):</i> The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>