State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 10, 2022
Sent via email

Ms. Nicole Walker
OIAA Administrative Offices
1923 East Avion Street
Ontario, CA 91761
nwalker@flyontario.com

Subject: Draft Supplemental Environmental Impact Report for the Ontario International Airport Rehabilitation of Runway 8R-26L and Associated Improvements - SCH 2021060531

Dear Ms. Walker:

The California Department of Fish and Wildlife (CDFW) received the Draft Supplemental Environmental Impact Report (DSEIR) from the Ontario International Airport Authority (OIAA) for the Ontario International Airport Rehabilitation of Runway 8R-26L and Associated Improvements Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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

CDFW ROLE

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

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

PROJECT DESCRIPTION SUMMARY

The proposed Project focuses on the rehabilitation and reconstruction of Runway 8R-26L, taxiway connector improvements and other associated airfield improvements, the relocation of objects located within the Runway Safety Area and Runway Object Free Area, and relocation of the south electrical vault. The runway program would be constructed over a three-year period in 2023, 2024 and 2025 due to FAA AIP funding availability.

The Project resides on 1,741 acres in San Bernardino County and is generally bounded by the Southern Pacific Railroad on the north, and Mission Boulevard and Union Pacific Railroad to the south. South Grove Avenue borders the airfield to the west and South Haven Avenue to the east, with the airport property being bounded to the west by South Cucamonga Avenue and to the east by South Commerce Parkway and Doubleday Avenue.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist OIAA in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on state special-status fish and wildlife (biological) resources.

Nesting Birds

According to the DSEIR (Section 4.2.4 Impacts *Migratory Species*) states:

> *"There is potential to support songbird and raptor nests due to the presence of* ***vegetation and trees*** *(****emphasize added****) in the study area. Project activities could disturb or destroy active migratory bird nests including eggs and young. Except as allowed under the USFWS Permit discussed above, disturbance to or destruction of migratory bird eggs, young, or adults is in violation of the MBTA and is considered a potentially significant impact. The nesting season is generally defined as February 15 through August 31 for songbirds and January 15 to August 31 for raptors.".*

The following mitigation measure was provided to mitigate significant impacts to nesting birds:

> **Bio-2 Nesting Birds.** *To the extent possible, construction activities (i.e., earthwork, clearing, and grubbing) will occur outside of the general bird nesting season for migratory birds, which is February 15 through August 31 for songbirds and January 15 to August 31 for raptors. If construction activities (i.e., earthwork, clearing, and grubbing) must occur during the general bird nesting season for migratory birds and raptors (January 15 and August 31), a qualified biologist will be retained to perform a pre-construction survey of potential nesting habitat to confirm the absence of active nests belonging to migratory birds and raptors afforded protection under the MBTA*

and FCG Code. The pre-construction survey will be performed no more than seven days prior to the commencement of construction activities. The results of the pre-construction survey will be documented by the qualified biologist. If construction is inactive for more than seven days during the breeding season, an additional survey will be conducted.

If the qualified biologist determines that no active migratory bird or raptor nests occur, the activities will be allowed to proceed without any further requirements. If the qualified biologist determines that an active migratory bird or raptor nest is present, no impacts within 300 feet (500 feet for raptors) of the active nest will occur until the young have fledged the nest and the nest is confirmed to no longer be active, as determined by the qualified biologist. The biological monitor may modify the buffer or propose other recommendations in order to avoid indirect impacts to nesting birds.

Regarding the protection of nesting birds, it is the Project proponent's responsibility to avoid Take of all nesting birds. Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of ***any*** bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy ***the nest or eggs*** of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

Further, there is no legally defined bird nesting season, nor are birds that form nests in substrates other than 'vegetation and trees' (e.g., burrows, ground dwelling, electrical towers, buildings, etc.) precluded from protection. While the measure establishes dates when songbirds and raptor generally tend to nest, it is important to remember that the timing of the nesting season varies greatly depending on several factors, such as the bird species, weather conditions in any given year, and long-term climate changes (e.g., drought, warming, etc.). Finally, because the duration of a pair to build a nest and incubate eggs varies considerably, CDFW does not consider seven (7) days between surveying for nesting behavior and/or nests and construction activities as appropriate. To address the above issues and help the Project applicant avoid unlawfully taking of nests and eggs, CDFW recommends that the measure be revised to the following:

BIO-2 Nesting Birds (Revised). To the extent possible, construction activities (i.e., earthwork, vegetation clearing, and grubbing) will occur outside of the peak nesting season, or February 15 through August 31 for songbirds and January 15 to August 31 for raptors. During the duration of the Project:

- **Nesting bird surveys will be conducted by the qualified biologist no more then three days prior to any Project activities. The survey(s) will occur at**

the appropriate time of day/night, during appropriate weather conditions. Surveys will encompass all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration will take into consideration the acreage of the Project impacts; density, and complexity of the habitat; number of survey participants; survey techniques employed; and will be sufficient to ensure the data collected is complete and accurate. Pre-construction surveys will focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (i.e., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the qualified biologist will establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The qualified biologist will not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (i.e., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the qualified biologist will monitor the nest for 1 hour (4 hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The qualified biologist will use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate.

- **If active nests are located within the Project or buffer, the qualified biologist will immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The buffer will be delineated to ensure that its location is known by all persons working within the vicinity but will not be marked in such a manner that it attracts predators.**

- **Once the buffer is established, the qualified biologist will document baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the qualified biologist may choose to make adjustments to the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The qualified biologist will monitor the nest at the onset of Project activities, and at the onset of any changes in Project activities (i.e., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the qualified biologist**

determines that Project activities may be causing an adverse reaction, the qualified biologist will adjust the buffer accordingly.

- **The qualified biologist will be onsite daily to monitor all existing nests, the efficacy of established buffers, and to document any new nesting occurrences. The qualified biologist will document the status of all existing nests, including the stage of reproduction and the expected fledge date. If a nest is suspected to have been abandoned or failed, the qualified biologist will monitor the nest for a minimum of 1 hour (4 hours for raptors), uninterrupted, during favorable field conditions. If no activity is observed during that time, the qualified biologist may approach the nest to assess the status. Permittee, under the direction of the qualified biologist, may also take steps to discourage nesting on the Project site, including moving equipment and materials daily, covering material with tarps or fabric, and securing all open pipes and construction materials. The qualified biologist will ensure that none of the materials used pose an entanglement risk to birds or other species.**

Burrowing Owls

The DSEIR (Section 4.2.4 *Sensitive Animal Species*) references burrowing owl surveys that were conducted during the non-breeding season. In addition, the DSEIR provides the following mitigation measure (Section 4.2.5 *Mitigation Measures*) to detect burrowing owl presence during breeding season, and prior to construction:

BIO-1 Burrowing Owl. *Prior to commencement of construction activities (i.e., demolition, earthwork, clearing, and grubbing), focused surveys will be conducted by a qualified biologist during the breeding season, as defined by the Staff Report on Burrowing owl Mitigation (CDFG 2012). Take avoidance surveys for burrowing owl will be conducted within the study area. The take avoidance surveys will be conducted within 14 days and repeated 24 hours prior to construction activities (i.e., demolition, earthwork, clearing, and grubbing) to determine presence of burrowing owl. If take avoidance surveys are negative and burrowing owl is confirmed absent, then ground-disturbing activities will be allowed to commence, and no further mitigation would be required.*

If burrowing owl is observed during focused surveys and/or take avoidance surveys within any portion of the study area, active burrows will be avoided by the project in accordance with the CDFW's Staff Report (CDFG 2012). CDFW will be immediately informed of any burrowing owl observations. A Burrowing Owl Protection and Relocation Plan (plan) will be prepared by a qualified biologist, which must be sent for approval by CDFW prior to initiating ground disturbance. The plan will detail avoidance measures that will be implemented during construction and passive or active relocation methodology. Relocation will only occur outside of the nesting season (September 1 through January 31).

While CDFW appreciates the inclusion of performing burrowing owl breeding surveys, in southern California, burrowing owls are partial migrants, with some individuals migrating in winter, while others within the same breeding population remaining relatively sedentary. CDFW considers burrowing owl residency status difficult to ascertain – with the distribution of stopovers and pathways used by migrating birds being poorly understood, as well as disease, predation, drought, high rainfall, or site disturbances possibly precluding the presence of burrowing owls in any given year. Finally, while CDFW agrees with the inclusion of a process to avoid direct take, impacts to habitat should be mitigated by assessing the way the habitat onsite is used, or could be used by owls, and the effects the Project will have on those uses. Since the habitat on the Project site is occupied by burrowing owls (2018-2020), CDFW considers impacts to the habitat to be potentially significant based on location and species status in the area and limited remaining habitat for burrowing owls. OIAA should be aware that for individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The DSEIR should also discuss site-specific and regionally significant and cumulative impacts, as well as address mitigation goals. In particular, the Burrowing Owl 2012 Staff Report recognizes that "*in order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions*. *The current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow* (Staff Report Appendix A).

To reduce the impacts to burrowing owls to less than significant, the mitigation measure for burrowing owls should be updated as follows:

BIO-1 Burrowing Owl (Revised): Prior to commencement of construction activities (i.e., demolition, earthwork, clearing, and grubbing), focused surveys, as defined by the Staff Report on Burrowing Owl Mitigation (CDFG 2012) will be conducted by a qualified biologist across all suitable breeding, wintering, and foraging habitat within the project and appropriate buffer. Take avoidance surveys will also be conducted within 14 days and repeated 24 hours prior to construction activities to determine presence of burrowing owl.

If a burrowing owl is observed during focused surveys and/or take avoidance surveys, CDFW will be immediately informed of its location and status. The project will avoid all impacts to burrowing owls onsite. If this is not feasible, a Burrowing Owl Protection Plan (plan) will be prepared by a qualified biologist, which must be approved by CDFW prior to initiating the project. The plan will include conserving all nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are maintained and/or replaced. Further coordination with CDFW will occur to mitigate for the loss of habitat through the acquisition,

> **conservation, and management of in-kind habitat. Lands conserved will 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).**

Finally, the DSEIR (5.0 Cumulative Impacts; *5.3 Offsite Project Summary*) determined that "*The majority of the off-airport projects identified by the City are categorically exempt from CEQA, approved as part of a mitigated negative declaration (MND), or approved under an Addendum to the 2010 Ontario Plan EIR or the Meredith International Centre Specific Plan Amendment (SPA) EIR (2020). Projects eligible for categorical exemptions are generally considered not to have potential impacts on the environment; an MND is a negative declaration (ND) that incorporates revisions (mitigation measures) in the proposed project that will avoid or mitigate impacts to a point where no significant impacts on the environment would occur.*"

As a result, cumulative impacts for the Project were "*less than significant impact with mitigation incorporated to sensitive animal species and migratory species. Development projects on- and off-airport property involving ground-disturbing activities to sensitive habitat and species would not occur within the project study area, and thus when combined with the Proposed Project, cumulative impacts would remain less than significant impact with mitigation incorporated. OIAA would continue to implement its active and aggressive wildlife management program, and the applicable mitigation measures specified in Section 4.2.5 would be implemented as part of the Proposed Project to minimize or avoid impacts to biological resources."* (DSEIR Section 5.4.2 *Biological Resources*) *.*

Under Section 15355 of the CEQA Guidelines, cumulative effect(s) 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 OIAA 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 concur that OIAA has adequately evaluated the cumulative impact of past and continual projects to conclude that Project Impacts *remain less than significant impact with mitigation incorporated to burrowing owl.*

This is particularly true when past and continual impacts are not adequately mitigated for. Therefore, CDFW recommends the follow measure be added:

> **BIO-2 Burrowing Owl (Added):** OIAA will develop and maintain an interactive mapping and current inventory of burrowing owl occurrences within the active airport and adjacent airport owned parcels, along with an adequate buffer to provide analysis that burrowing owl distribution and cumulative impacts are not significantly impacted by past and present activities. Further, OIAA shall ensure adequate land is available and conserved **before** owls are relocated, and provide compensation for loss of all aspects of habitat types used (e.g., foraging, wintering, migratory stopovers, and breeding).

CONCLUSION

CDFW appreciates the opportunity to comment on the DSEIR for the Ontario International Airport Rehabilitation of Runway 8R-26L and Associated Improvements (SCH No. 2021060531) and recommends that the OIAA address the CDFW's comments prior to certification. If you will have any questions pertaining to the comments provided in this letter, please contact Kim Romich, Senior Environmental Scientist, at Kimberly.Romich@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Heather Pert
DF423498814B441...

Heather Pert
Acting Environmental Program Manager

Ec: Kim Freeburn, Senior Environmental Scientist, Supervisor
Inland Deserts Region
kim.freeburn@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov