



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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Fresno, California 93710
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

July 23 2021

STATE CLEARINGHOUSE

July 23, 2021

Jennifer Guetschow
Project Manager
County of San Luis Obispo Planning and Building Department
976 Osos Street
San Luis Obispo, California 93401

**Subject: Dana Reserve Specific Plan (Project)
Notice of Preparation (NOP) of an Environmental Impact Report (EIR)
SCH No.: 2021060558**

Dear Ms. Guetschow:

The California Department of Fish and Wildlife (CDFW) received a NOP of an EIR from County of San Luis Obispo Planning and Building Department for the 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.

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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 may 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Dana Reserve, LLC

Objective: The Project consists of an adoption of a Specific plan, vesting master tentative tract map number 3149, conditional use permit, and development agreement for a phased master planned community. The objective of the Project is to define a guide for development of the Reserve, by defining land use and development standards for residential, commercial, and open space land uses.

Location: The Project area is located within the unincorporated area of San Luis Obispo County and adjacent to the Urban Reserve Line of the community of Nipomo. The cross streets are Willow Road and Highway 101. The Project is a total of 288-acres.

- Longitude: 35° 2' 43.59"; Latitude: -120° 30' 1.73"
- Assessor's Parcel Numbers: 091-301-073; 091-301-031; 091-301-030; 091-325-022; 091-301-029; 090-031-003

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist County of San Luis Obispo Planning and Building Department 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 many special-status resources present within and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

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The NOP indicates there is potential for significant impacts unless mitigation measures are implemented, however, the measures listed are general and non-specific and/or may be inadequate to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: Federal candidate Monarch butterfly (*Danaus plexippus pop. 1*), the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*), State species of special concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), western spadefoot (*Spea hammondi*), legless lizard (*Anniella pulchra*), coast horned lizard (*Phrynosoma blainvillii*), special-status bat species, and federally and State-listed special-status plant species.

In order to adequately assess any potential impacts to biological resources, CDFW recommends that focused protocol-level surveys be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features are present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

Additionally, when an EIR is prepared, mitigation measures must be specific and clearly defined and cannot be deferred to a future time. The specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation, when an EIR is prepared. The CEQA document must provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels.

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 United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Monarch Butterfly

Issue: Monarchs can be found overwintering along the California coast, specifically in non-native eucalyptus trees (Pelton 2016). Project-related activities have the potential to impact special-status species. Overwintering monarchs have been documented to occur near the Project area (CDFW 2021). CDFW recommends that the EIR includes an impact analysis on monarchs with the potential to occur in the Project area.

Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's construction include roost destruction, inadvertent entrapment, reduced reproductive

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success, reduction in health and vigor of eggs and/or young, and direct mortality of individual monarchs.

Evidence impact would be significant: During the last decade overwintering monarch populations have declined by nearly 90-percent (Jepsen et al. 2015). Habitat loss and fragmentation is among the primary threats to the population (USFWS 2020). Project activities have the potential to significantly impact the species by reducing possible roosting habitat.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts of the Project to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval in the Project's EIR.

Recommended Mitigation Measure 1: Monarch Butterfly Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation, to determine if individual project area or its immediate vicinity contain habitat suitable to support monarchs.

Recommended Mitigation Measure 2: Monarch Butterfly Surveys

If suitable habitat is present, CDFW recommends assessing presence of monarchs by conducting surveys following recommended protocols or protocol-equivalent surveys.

Recommended Mitigation Measure 3: Monarch Butterfly Take Avoidance

Detection of monarchs within or in the vicinity of the Project area, warrants consultation with CDFW and USFWS to discuss how to implement ground-disturbing activities and avoid take.

COMMENT 2: American Badger

Issue: American badger are known to occur in the area near the Project site (CDFW 2021). 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 site may support these requisite habitat features. Therefore, the Project has the potential to impact American badger.

Specific impact: Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include direct mortality or natal den abandonment, which may result in reduced health or vigor of young.

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Evidence impact is potentially significant: Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project has the expectation to promote the growth of the City of Nipomo, resulting in a high degree of land conversion and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of American badger.

Recommended Potentially Feasible Mitigation Measure(s):

To evaluate potential impacts to American badger associated with the Project, CDFW recommends conducting the following evaluation of the Project sites, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 4: American Badger Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 5: American Badger Avoidance

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around occupied dens and a 250-foot no-disturbance buffer around natal dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

COMMENT 3: California Red-Legged Frog (CRLF)

Issue: CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). CRLF have been documented to occur in the vicinity of the Project site (CDFW 2021). The Project site contains upland habitat that may support the species. Avoidance and minimization measures are necessary to reduce impacts to CRLF to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include loss of upland refugia, inadvertent entrapment, destruction of eggs and oviposition (i.e., egg-laying) sites, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF

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(Thomson et al. 2016, USFWS 2017). Project activities have the potential to significantly impact CRLF.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to CRLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 6: CRLF Surveys

CDFW recommends that a qualified wildlife biologist conduct protocol level surveys for CRLF in areas where potential habitat exists. CDFW recommends surveys in accordance with the “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if the species is within or adjacent to the Project area. Please note that dip-netting would constitute take as defined by Fish and Game Code section 86, so it is recommended this survey technique be avoided. In addition, CDFW advises surveyors adhere to Appendix E “The Declining Amphibian Task Force Fieldwork Code of Practice,” of the CDFW “Considerations for Conserving the Foothill Yellow-Legged Frog” (CDFW 2018a).

Recommended Mitigation Measure 7: CRLF Avoidance

If any CRLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (October 15 and May 1). When ground-disturbing activities must take place between October 15 and May 1, CDFW recommends a qualified biologist monitor construction activity daily for CRLF.

COMMENT 4: Burrowing Owl (BUOW)

Issue: The Project location is within the known range of BUOW and the species occurs throughout the area (CDFW 2021). BUOW inhabit open grassland or adjacent canal banks, rights-of-ways (ROWs), vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery indicates that the Project site has annual grassland, thus BUOW has the potential to occur on the Project site.

Specific impact: 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.

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Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California (Gervais et al. 2008). The Project site is some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture and residential use. Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 8: BUOW Surveys

CDFW recommends that a qualified biologist assess if suitable BUOW habitat features are present within or adjacent to the Project site (e.g., burrows). If suitable habitat features are present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "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.

Recommended Mitigation Measure 9: BUOW Avoidance

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)

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Recommended Mitigation Measure 10: BUOW Passive Relocation and Mitigation

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.

COMMENT 5: Western spadefoot

Issue: Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Review of aerial imagery indicates that the Project contains upland habitat and near vicinity of the site there are other habitat elements where the species could be supported.

Specific impact: 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, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: 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 near possible breeding sites (i.e., seasonal wetlands, vernal pools and swales). As a result, ground-disturbing activities associated with development of the Project site have the potential to significantly impact local populations of this species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to western spadefoot associated with the Project, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

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Recommended Mitigation Measure 11: Western Spadefoot Surveys

CDFW recommends that a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 12: Western Spadefoot Avoidance

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If western spadefoot 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.

COMMENT 6: Other Special-Status Species

Issue: Project-related activities have the potential to impact other special-status species. Northern California legless lizard, coast horned lizard, Pallid bat, Townsend's big-eared bat, and western mastiff bat has the potential to occur within the vicinity of the Project area (CDFW 2021). CDFW recommends that the CEQA document includes an impact analysis on all species with the potential to occur in the Project area including, but not limited to, these species listed above.

Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's construction include burrow or den collapse, nest or roost destruction, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individual special-status wildlife species.

Evidence impact would be significant: Habitat loss resulting from development is among the primary threats to special-status species. As a result, ground disturbance resulting from development of the Project has the potential to impact habitat that supports special-status species, which may result in significant impacts to local populations of these species.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts of the Project to special-status species, CDFW recommends conducting the following assessment of the Project area, including the following mitigation measures, and requiring them as conditions of approval in the Project's CEQA document.

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Recommended Mitigation Measure 13: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation, to determine if individual project areas or their immediate vicinity contain habitat suitable to support special-status plant or animal species, including, but not limited to, those mentioned above.

Recommended Mitigation Measure 14: Species-Specific Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of special-status species by conducting surveys following recommended protocols or protocol-equivalent surveys. Recommended protocols vary by species. 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>).

Recommended Mitigation Measure 15: Take Avoidance

Detection of special-status plant or animal species within or in the vicinity of the Project area, warrants consultation with CDFW to discuss how to implement ground-disturbing activities and avoid take.

Recommended Mitigation Measure 16: Take Authorization

In the case of State-listed species, 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).

COMMENT 7: Special-Status Plant Species

Issue: Several special-status plant species have been documented to occur within and near the vicinity of the Project area (CDFW 2021). The Project site contains habitat suitable to support numerous special-status plant species meeting the definition of rare or endangered under CEQA Guidelines Section 15380 including, but not limited to, the federally endangered and state threatened La Graciosa thistle (*Cirsium scariosum* var. *loncholepis*) and the federally endangered and State Rare Pismo clarkia (*Clarkia speciosa* ssp. *immaculata*). The NOP states that these species may be impacted, but does not list any mitigation measures to reduce impacts to a level that is less than significant. CDFW recommends that the EIR includes an impact analysis on all species with the potential to occur in the Project area including, but not limited to, these species listed above.

Specific impact: Without appropriate avoidance and minimization measures for special-status plants, potential significant impacts resulting from ground- and vegetation-

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disturbing activities associated with Project construction include inability to reproduce and direct mortality.

Evidence impact would be significant: Special-status plant species known to occur in the vicinity of the Project site are threatened by residential development, road maintenance, vehicles, grazing, trampling, and invasive, non-native plants (CNPS 2021), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to special-status plant species associated with the Project, CDFW recommends conducting the following evaluation of the Project area, editing the IS/MND to include the following additional measures, and including the following mitigation measures as conditions of approval.

Recommended Mitigation Measure 17: Special-Status Plant Surveys

If suitable habitat is present, CDFW recommends that the Project site be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Recommended Mitigation Measure 18: Special-Status Plant Avoidance

CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 19: State-Listed Plant Take Authorization

If a plant species listed pursuant to CESA or State designated as rare is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b) for State listed threatened or endangered plants or pursuant to the Native Plant Protection Act and Fish and Game Code section 1900 et seq. for State designated rare plants.

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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 through mid-September), 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 Code sections 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 site 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 area 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, monarch butterfly and CRLF. Take under 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.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or

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

FILING FEES

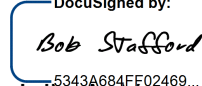
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist County of San Luis Obispo Planning and Building Department in identifying and mitigating Project 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>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist at (559) 977-3352 or aimee.braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachments

- A. MMRP for CDFW Recommended Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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REFERENCES

- California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012
- California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.
- CDFW. 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 19, 2021.
- California Native Plant Society (CNPS), Rare Plant Program. 2019. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website <http://www.rareplants.cnps.org>. Accessed July 19, 2021.
- Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.
- Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne. 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.
- Jepsen, S., D. F. Schweitzer, B. Young, N. Sears, M. Ormes, and S. H. Black. 2015. Conservation Status and Ecology of Monarchs in the United States. 36pp. NatureServe, Arlington, Virginia, and the Xerces Society for Invertebrate Conservation, Portland, Oregon.
- Pelton, E., Jepsen, C. Schultz, C. Fallon, and S.H. Black. 2016. State of the Monarch Butterfly Overwintering Sites in California. 40+vi pp. Portland, Oregon: The Xerces Society for Invertebrate Conservation. www.xerces.org
- 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.
- United States Fish and Wildlife Service (USFWS). 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

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USFWS. 2017. Species Account for California Red-legged frog. March 2017. 1 pp.

USFWS. 2020. Monarch (*Danaus plexippus*) Species Status Assessment Report. V2.1 96 pp + appendices.

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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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
 (MMRP)**

PROJECT: Dana Reserve Specific Plan

SCH No.: 2021060558

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: Monarch Butterfly Habitat Assessment	
Mitigation Measure 2: Monarch Butterfly Surveys	
Mitigation Measure 4: American Badger Surveys	
Mitigation Measure 6: CRLF Surveys	
Mitigation Measure 8: BUOW Surveys	
Mitigation Measure 10: BUOW Passive Relocation and Mitigation	
Mitigation Measure 11: Western Spadefoot Surveys	
Mitigation Measure 13: Special-Status Species Habitat Assessment	
Mitigation Measure 14: Species-Specific Species Surveys	
Mitigation Measure 16: Special-Status Species Take Authorization	
Mitigation Measure 17: Special-Status Plant Surveys	
Mitigation Measure 19: State-Listed Plant Take Authorization	
<i>During Construction</i>	
Mitigation Measure 3: Monarch Butterfly Take Avoidance	
Mitigation Measure 5: American Badger Avoidance	
Mitigation Measure 7: CRLF Avoidance	
Mitigation Measure 9: BUOW Avoidance	

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Mitigation Measure 12: Western Spadefoot Avoidance	
Mitigation Measure 15: Special-Status Species Take Avoidance	
Mitigation Measure 18: Special-Status Plant Avoidance	