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October 4, 2022

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Subject: Napa County General Plan Housing Element and Safety Element
Amendments, Draft Environmental Impact Report, SCH No. 2022010309,
Napa County

Dear Mr. Hawkes:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a draft Environmental Impact Report (DEIR) from Napa County (County) for the Napa County General Plan Housing Element and Safety Element Amendments (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

CDFW is submitting comments on the DEIR to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with 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), a Lake or Streambed Alteration Agreement, 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: Napa County

Objective: Update the County's General Plan, focusing on the Housing Element and Safety Element. The Housing Element Update (HEU) would identify sites for

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.

Trevor Hawkes
County of Napa
October 4, 2022
Page 2

development of multifamily housing and rezone those sites as necessary. The HEU would allow for development of up to 302 single family homes and 458 units of multifamily housing.

Location: The planning area encompasses all of Napa County. The HEU will focus on four areas designated for housing development. The Spanish Flat site is located immediately west of Lake Berryessa on Accessor Parcel Number (APN) 019-261-041, at the north end of the loop formed by Spanish Flat Loop Road and Berryessa Knoxville Road. The Northeast Napa sites are located in an unincorporated area of Napa County, northeast of the City of Napa, at 1806 Monticello Road and 1011 Atlas Peak Road. The Imola Avenue site is located within an area of Skyline Park immediately adjacent to the Office of Education on Imola Avenue, south and east of the City of Napa and adjacent to the Napa State Hospital. The Foster Road site is located south of Imola Avenue on APN 043-062-008 and APN 043-102-016.

REGULATORY AUTHORITY

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 the potential to impact Swainson’s hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), which are CESA listed as threatened, as further described below.** 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 a Statement of Overriding Considerations. The CEQA Lead Agency’s Statement of Overriding Considerations does not eliminate the project proponent’s obligation to comply with CESA.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated

Trevor Hawkes
County of Napa
October 4, 2022
Page 3

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 notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. 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 bald eagle (*Haliaeetus leucocephalus*), white-tailed kite (*Elanus leucurus*), golden eagle (*Aquila chrysaetos*) and American peregrine falcon (*Falco peregrinus anatum*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources, including but not limited to those listed in Attachment 1. A Draft Mitigation Monitoring and Reporting Program is also included, with recommend measures to incorporate into the DEIR (Attachment 2). Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

I. Potentially Significant Impacts Due to Unenforceable Mitigation Measures

COMMENT 1: The DEIR proposes the Imola Avenue site for development and inclusion in the Housing Sites Inventory of the HEU. However, as noted throughout the DEIR, the site is owned by the State of California and "development on the site would not be subject to County review or regulations" (page 3-14). CEQA Guidelines section 15126.4, subdivision (a)(2) requires that "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design" (also see Pub. Resources Code, § 21081.6, subd. (b)). Potentially significant impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Considerations (Pub. Resources Code, § 21081; CEQA Guidelines, § 15093). To comply with CEQA, CDFW recommends that mitigation

Trevor Hawkes
County of Napa
October 4, 2022
Page 4

measures necessary to reduce impacts to biological resources to less-than-significant at the Imola Avenue site be fully enforceable and incorporated into the General Plan or other legally binding instruments.

II. Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Environmental Setting and Mitigation Measures

COMMENT 2: Swainson's Hawk

Issue: The Project may impact nesting Swainson's hawk, which occurs in Napa County. The California Natural Diversity Database (CNDDDB) documents a Swainson's hawk mating pair occurrence approximately 2.3 miles to the southwest of the Foster Road Site and several nesting occurrences approximately 3 miles to the southeast. There are also several occurrences between 2.5 and 5 miles to the south of the Imola Avenue site.

The proposed nesting bird survey mitigation measure would only survey for raptors present within 500 feet of the Project; however, nesting Swainson's hawks may be impacted up to 0.5 miles from the Project

Specific impacts and why they may occur and be significant: If active Swainson's hawk nests are not detected by the proposed surveys or appropriate buffer zones are not established, Swainson's hawk could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species.

Swainson's hawk is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Trevor Hawkes
County of Napa
October 4, 2022
Page 5

Recommendation: For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends including an evaluation of Swainson's hawk in the impact analysis and adding the following mitigation measure for the Foster Road site and the Imola Avenue site.

Mitigation Measure BIO-6 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000) survey protocol, within 0.5 mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

COMMENT 3: Bald Eagle

Issue: The Project may impact nesting bald eagle, which occurs in Napa County. The Bald Eagle Observations Database managed by CDFW's Wildlife Branch and Biogeographic Data Branch documents several bald eagle occurrences at Lake Berryessa, including less than one mile from the Spanish Flat site to the north/northeast.

Specific impacts and why they may occur and be significant: Bald eagle is CESA listed as endangered, fully protected under Fish and Game Code, and protected under the federal Bald and Golden Eagle Protection Act. Current threats to bald eagles include habitat loss and modification from development and roads, collision with infrastructure, human disturbance, and environmental contaminants (CDFW 2017).

If active bald eagle nests are not detected by the proposed surveys or appropriate buffer zones are not established, bald eagle could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of an endangered and fully protected species which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Trevor Hawkes
County of Napa
October 4, 2022
Page 6

Recommendation: For an adequate environmental setting and to reduce impacts to bald eagle to less-than-significant, CDFW recommends including an impact analysis of bald eagle in the DEIR, and including the following measure.

Mitigation Measure BIO-7 Surveys and Avoidance of Fully Protected Raptors. Surveys shall be conducted for fully protected raptors. The survey area shall be determined by a qualified Raptor Biologist in consultation with CDFW based on the species, and if the nest of any fully protected raptor is identified during pre-construction nesting surveys, a biologically based justification for the buffer zone, as determined by a qualified Raptor Biologist, shall be submitted to CDFW for review. Project activities shall not proceed between March 1 and August 31 unless CDFW provides written approval of the buffer zone around any nest of a fully protected raptor species.

COMMENT 4: Tricolored blackbird

Issue: The project may impact tricolored blackbird, which occurs in Napa County. The Project sites fall within the range and predicted habitat of tricolored blackbird. CNDDDB documents an occurrence approximately 2.5 miles from the Foster Road and Imola Avenue sites.

Specific impacts and why they may occur and be significant: If active tricolored blackbird nests are not detected by the proposed surveys or appropriate buffer zones are not established, tricolored blackbird could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Tricolored blackbird is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active tricolored blackbird nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommendation: For an accurate environmental setting and to reduce impacts to tricolored blackbird to less-than-significant, CDFW recommends including an impact analysis for tricolored blackbird and including the following mitigation measure:

Mitigation Measure BIO-8: Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA Incidental Take Permit before Project activities may commence.

Trevor Hawkes
County of Napa
October 4, 2022
Page 7

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

Environmental Setting and Mitigation Measures

COMMENT 5: Special-Status Plants

Issue: The Project may impact several special-status plant species with the potential to occur at or adjacent to the Project sites (see Attachment 1) that were not evaluated in the DEIR, two of which are federally listed as endangered.

Additionally, the DEIR proposes a 1:1 replacement ratio by acreage for impacts to habitat where special-status plants occur, which may be insufficient to reduce impacts to less-than-significant and would not account for the temporal loss resulting from the Project.

Recommendation: For an accurate environmental setting and to reduce impacts to special-status plants to less-than-significant, CDFW recommends that all special-status plants with the potential to occur in the vicinity of the Project, including those listed in Attachment 1, be evaluated in the impact analysis, and the DEIR should provide a justification for why each species may or may not be impacted by the Project. If take of federally listed species cannot be avoided, the Project should consult with USFWS pursuant to the federal Endangered Species Act.

CDFW also recommends revising BIO-1 to include the following language:

If special-status plants will be impacted, the Project shall provide mitigation prior to Project start in a form accepted in writing by CDFW which may include on-site restoration pursuant to a restoration plan prepared by the Project and approved by CDFW, off-site habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage or number of plants as appropriate, unless otherwise approved in writing by CDFW.

COMMENT 6: Special-Status Invertebrates

Issue: The Project may impact special-status invertebrates with the potential to occur in the vicinity of the Project, such as western bumble bee (*Bombus occidentalis*) or obscure bumble bee (*Bombus caliginosus*), which are both designated as California Terrestrial and Vernal Pool Invertebrates of Conservation Priority.² The Project sites contain grasslands that are potentially suitable habitat for these species.

² The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

Trevor Hawkes
County of Napa
October 4, 2022
Page 8

Specific impacts and why they may occur and be potentially significant: The Project could result in crushing or killing bees, reduction in sufficient food resources such as nectar and pollen, and removal of nesting and overwintering sites. Western bumble bee, once common in the western United States, has undergone a dramatic decline in both distribution and abundance and is now extirpated from much of its historic range (Hatfield et al. 2018). Many bumble bees are threatened with extinction due primarily to reductions in habitat from urbanization, intensive agriculture, and invasive species introductions (ibid.). Therefore, if the Project impacts western bumble bee or obscure bumble bee, impacts to these special-status species would be potentially significant.

Recommendation: To reduce potential impacts to western bumble bee and obscure bumble bee to less-than-significant, CDFW recommends including an impact analysis for these two species and including the following mitigation measure:

Mitigation Measure BIO-9: Special-Status Bee Habitat Assessment and Avoidance: A qualified wildlife biologist shall conduct visual surveys of areas planned for ground disturbance, including but not limited to, installation of water main, new roads, leach fields, and building sites, and within a 100-foot buffer of ground-disturbing activities. Surveys shall be conducted to coincide with the blooming period of locally common nectar sources such as vetch (*Vicia* spp.) and California poppy (*Eschscholzia californica*) during the flight season for the western and obscure bumble bee (generally late February through late June). Between two and four evenly spaced surveys shall be conducted for the highest detection probability, including surveys in early spring (late March/early April) and early summer (late June/July). Surveys shall take place when temperatures are above 60°F, preferably on sunny days with low wind speeds (e.g., less than 8 miles per hour) and at least 2 hours after sunrise and 3 hours before sunset. On warm days (e.g., over 85°F), bumble bees will be more active in the mornings and evenings. The qualified biologist shall conduct transect surveys following the *Streamlined Bee Monitoring Protocol for Assessing Pollinator Habitat* (https://www.xerces.org/sites/default/files/2018-05/14-021_01_XercesSoc_Streamlined-Bee-Monitoring-Protocol_web.pdf), focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars.

If western or obscure bumble bee nests are identified within the ground disturbance area or 100-foot buffer area, a plan to protect bumble bee nests and individuals shall be developed and implemented in consultation with CDFW. The plan shall include, but not be limited to: 1) specifications for construction timing and sequencing requirements (e.g., avoidance of raking, mowing, tilling, or other ground disturbance until late March to protect overwintering queens); 2) preconstruction surveys conducted within 30 days and consistent with any current available protocol standards prior to the start of ground-disturbing activities to identify active nests; 3) establishment of appropriate no-disturbance buffers for nest sites and construction monitoring by a qualified biologist to

Trevor Hawkes
County of Napa
October 4, 2022
Page 9

ensure compliance with buffers; 4) restrictions associated with construction practices, equipment, or materials that may harm bumble bees (e.g., avoidance of pesticides/herbicides, measures to minimize the spread of invasive plant species); and 5) prescription of an appropriate restoration seed mix targeted for the bumble bees, including native plant species known to be visited by native bumble bee species and containing a mix of flowering plant species with continual floral availability through the entire active season for bumble bees (March to October).

COMMENT 7: Special-Status and Common Nesting birds

Issue: Birds that are California Species of Special Concern and common bird species have the potential to occur in the vicinity of the project, such as purple martin (*Progne subis*), saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), and San Pablo song sparrow (*Melospiza melodia samuelis*).

Mitigation Measure BIO-2 (page 4.4-18-19) is insufficient to reduce potential impacts to nesting birds to less-than-significant. The DEIR acknowledges that grassland habitat and landscaped areas in otherwise urban environments, both of which is present at all four HEU sites, provide suitable nesting habitat for birds. However, Mitigation Measure BIO-2 states that nesting bird surveys will only be conducted in areas of “well-developed riparian or oak woodlands.” The measure also states that the nesting season starts February 15; however, CDFW considers the nesting season to start February 1. Furthermore, the measure states additional surveys would only be conducted if there is two-week lapse of construction.

Specific impacts and why they may occur and be significant: If surveys are not conducted at the start of the nesting season (February 1) and in all habitat types where nesting birds could be present, and appropriate buffer zones are not established, nesting birds could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young. Additionally, nest building can be completed rapidly and the time from nest initiation to egg laying can occur in a matter of days. If additional surveys are not conducted when there has been a one week lapse in construction, there is an increased risk that nests may become established and be disturbed by Project activities. Given these concerns, the Project may have significant impacts on nesting birds.

Recommendation: The DEIR should evaluate impacts for all special-status birds that have the potential to occur within the vicinity of the Project, including those listed in Attachment 1.

Furthermore, CDFW recommends replacing Mitigation Measure BIO-2 with the measure below, which requires nesting surveys for construction in any habitat type, considers the

Trevor Hawkes
County of Napa
October 4, 2022
Page 10

nesting season to start February 1, and requires another survey if there is a one-week lapse of construction.

Mitigation Measure BIO-2: Nesting Bird Avoidance: Active nests occurring at or near the Project site shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.

- a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. **If a lapse in Project-related work of 7 days or longer occurs**, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.
- b) Active Nest Buffers. If an active nest is found during surveys, the Project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.
 - Buffer distances for bird nests shall be site specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
 - The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

Trevor Hawkes
County of Napa
October 4, 2022
Page 11

- c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.

COMMENT 8: Golden Eagle and American Peregrine Falcon

Issue: DEIR does not address potential impacts to golden eagle or American peregrine falcon, which both occur in Napa County. All four proposed sites in the HEU are within the range of and contain suitable habitat for golden eagle and American peregrine falcon. CNDDDB documents a golden eagle occurrence off of Stanly Crossroad, approximately 2.3 miles from the Foster Road site and approximately 3.7 miles from the Imola Avenue site. There are also many citizen scientist sightings of American peregrine falcon with the Napa Valley (Sullivan et al. 2009).

Mitigation Measure BIO-2 is the only measure included to address impacts to birds and indicates surveys will be conducted to locate raptor nests within 500 feet of construction activities, which may be insufficient to reduce impacts to golden eagle and American peregrine falcon to less-than-significant. Additionally, CDFW should be consulted to determine the appropriate buffer zone to ensure protection of any nesting golden eagle or American peregrine falcon detected during surveys.

Specific impacts and why they may occur and be significant: Golden eagle and American peregrine falcon are fully protected species and may not be taken or possessed at any time, except as described above (Fish & G. Code, §§ 3511), and golden eagle is also protected under the federal Bald and Golden Eagle Protection Act.

Golden eagle is highly sensitive to human disturbance which can result in lower brood size (Steenhof et al. 2014), lower nest attendance (Spaul and Heath 2016), and increased time spent away from the nest (Spaul and Heath 2017).

Continued threats to the peregrine falcon include human disturbance, climate change, collisions with man-made structures and habitat degradation from development, particularly in wetland areas (that are habitat for their primary prey—shorebirds and waterfowl) (Comrack and Logsdon 2008).

If appropriate buffer zones are not established around active golden eagle and American peregrine falcon nests, Project impacts to these fully protected species would be potentially significant.

Recommendation: For an accurate environmental setting and to reduce impacts to golden eagle and American peregrine falcon to less-than-significant, CDFW recommends including an impact analysis for golden eagle and American peregrine falcon, as well as including Mitigation Measure BIO-7 (see above comment for bald eagle).

Trevor Hawkes
County of Napa
October 4, 2022
Page 12

COMMENT 9: Burrowing Owl

Issue: The Project may impact burrowing owl (*Athene cunicularia*), which occurs in Napa County. CNDDDB documents a burrowing owl occurrence approximately 4 miles southeast of the Foster Road site and 3.5 miles south of the Imola Avenue site. According to the Burrowing Owl Connectivity Modeling for the California Bay Area Linkage Network dataset produced by Science & Collaboration for Connected Wildlands, the Foster Road site and Imola site contain potential patches of breeding habitat for burrowing owl.

Specific impacts and why they may occur and be significant: The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults, and a permanent reduction of burrowing owl habitat in Napa County.

Burrowing owl is an California Species of Special Concern (SSC) 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 nesting sites without habitat mitigation; human disturbance; and eradication of California ground squirrels (*Spermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; CDFW 2012 Staff Report; 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 (CDFW 2012 Staff Report; personal communication, Esther Burkett, May 13, 2022).

Habitat loss caused by development is the most immediate threat to burrowing owls in high growth areas of the San Francisco Bay Area, and loss of burrowing owl habitat will likely continue well into the future (Townsend and Lenihan 2007). As urbanization increases and local burrowing owl populations decline, they become vulnerable to stochastic events (demographic, genetic, and environmental) associated with small population size, creating the potential for an extinction "vortex" (Gilpin and Soulé 1986 as cited in Townsend and Lenihan 2007).

Based on the above, if the Project would result in impacts to burrowing owl, Project impacts to burrowing owls would be potentially significant.

Recommended: For an adequate environmental setting and to reduce impacts to burrowing owl to less than significant, CDFW recommends including an impact analysis for burrowing owl and including the following mitigation measure:

Trevor Hawkes
County of Napa
October 4, 2022
Page 13

Mitigation Measure BIO-10: Burrowing Owl Habitat Assessment and Surveys. A Qualified Biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment. Surveys shall be conducted within 500 meters (1,640 feet) of the Project site for breeding or non-breeding burrowing owls pursuant to the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)* survey methodology prior to the commencement of project activities. If burrowing owl is detected, a Qualified Biologist shall establish suitable buffers to ensure the owl is not disturbed by the project pursuant to the above survey methodology's buffer distances of 500 meters, unless otherwise approved in writing by CDFW. To prevent encroachment, the established buffers shall be clearly marked by high visibility material. The established buffers shall remain in effect until the burrow is no longer occupied as confirmed by the Qualified Biologist, unless a burrowing owl exclusion plan (for wintering, non-breeding owls only) is submitted to CDFW for review, including but not limited to habitat compensation and funding for management in perpetuity. The habitat compensation and funding shall be approved in writing by CDFW and completed prior to project start unless, otherwise approved in writing by CDFW.

IV. 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?

Environmental Setting and Mitigation Measures

COMMENT 10: Valley Oak Woodland

Issue: The DEIR states that the Lightning Complex Fire in 2020 burned valley oak (*Quercus lobata*) woodland at the Spanish Flat site and that all trees were burned and few large oaks survived, suggesting that this site might no longer be considered valley oak woodland (pages 4.4:3-5, 23-24).

Additionally, Mitigation Measure BIO-5 only requires a 2:1 replacement ratio for acreage lost and does not specify oak tree replacement ratios. This mitigation may be insufficient to reduce impacts to valley oak woodland to less-than-significant.

Specific impacts and why they may occur and be significant: Valley oak woodland is an endemic, CDFW-designated rare natural community and only remnant patches of this habitat type remain (CDFG 2010; Standiford et al. 1996; CIWTG). Rare natural communities have limited distribution and are often vulnerable to project impacts (CDFW 2009).

Research suggests that valley oak trees are not regenerating enough for eventual replacement (Zavaleta et al. 2007). Therefore, trees removed by the Project may never be replaced, and loss of regenerating trees may further reduce the ability of valley oak woodland to persist. Introduced alien annual grasses that limit available moisture

Trevor Hawkes
County of Napa
October 4, 2022
Page 14

appear to be a causal factor (Danielson and Halvorson 1991). Other factors may include fire suppression, cattle grazing and herbivory of oak shoots by cattle and native mammals (Zack et al. 2002).

Oaks have evolved to be extremely resilient to fire, and generally have very high survival rates after a fire (Schwan et al. 1997). Even under high-intensity fire that kills above-ground vegetation and makes oaks appear dead, oak survival is high and they will often rapidly regenerate (Hammett et al. 2017) and may even exhibit a more robust response with greater fire severity (Nemens et al. 2018). Given the high likelihood that the valley oak woodland impacted by the Lightning Complex Fire will regenerate if left undisturbed, this site should be considered as suitable oak woodland habitat and Project impacts on valley oak woodland would be potentially significant.

Recommendation: Areas where valley oak woodland was present before the 2020 fire and where regeneration is probable, such as at the Spanish Flat site, should continue to be categorized as valley oak woodland and be mitigated for as such. Additionally, any permanent impacts to sensitive natural communities should be mitigated for at a 3:1 ratio by acreage and oak trees should be replaced at the following minimum ratios:

- 1:1 replacement for trees up to 4 inches diameter at breast height (DBH)
- 3:1 replacement for trees 5 to 8 inches DBH
- 5:1 replacement for trees greater than 8 inches to 16 inches DBH
- 10:1 replacement for trees greater than 16-inch DBH, which are considered old-growth oaks

V. Editorial Comments and/or Suggestions

On page 4.4-18 there is a typo halfway down the page stating, “Mitigation Measure Mitigation Measure BIO-2” instead of “Mitigation Measure BIO-2.”

If CDFW issues an LSA Agreement for the Project, the above recommended mitigation measures will likely be included in the Agreement, as applicable.

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:

Trevor Hawkes
County of Napa
October 4, 2022
Page 15

<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 DEIR to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or Alicia.Bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-status species that have the potential to occur at the Project sites and were not evaluated in the DEIR

Attachment 2: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022010309)

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Trevor Hawkes
County of Napa
October 4, 2022
Page 16

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Trevor Hawkes
County of Napa
October 4, 2022
Page 17

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Trevor Hawkes
 County of Napa
 October 4, 2022
 Page 18

Attachment 1: Special-status species that have the potential to occur at the Project sites and were not evaluated in the DEIR

Scientific Name	Common Name	Status
Birds		
<i>Buteo swainsoni</i>	Swainson's hawk	ST
<i>Agelaius tricolor</i>	tricolored blackbird	ST
<i>Haliaeetus leucocephalus</i>	bald eagle	SE, FP, BGEPA
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Aquila chrysaetos</i>	golden eagle	FP, BGEPA
<i>Progne subis</i>	purple martin	SSC
<i>Geothlypis trichas sinuosa</i>	saltmarsh common yellowthroat	SSC
<i>Melospiza melodia samuelis</i>	San Pablo song sparrow	SSC
<i>Falco peregrinus anatum</i>	American peregrine falcon	FP
Mammals		
<i>Antrozous pallidus</i>	pallid bat	SSC
Invertebrates		
<i>Bombus caliginosus</i>	obscure bumble bee	ICP
<i>Bombus occidentalis</i>	western bumble bee	ICP
Plants		
<i>Sidalcea keckii</i>	Keck's checkerbloom	FE, CRPR 1B.1
<i>Trifolium amoenum</i>	two-fork clover	FE, CRPR 1B.1
<i>Amorpha californica var. napensis</i>	Napa false indigo	CRPR 1B.2
<i>Amsinckia lunaris</i>	bent-flowered fiddleneck	CRPR 1B.2

FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; BGEPA = federal Bald and Golden Eagle Protection Act; ICP = California Terrestrial and Vernal Pool Invertebrate of Conservation Priority³; SSC = State Species of Special Concern; CRPR = California Rare Plant Rank⁴

³ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

⁴ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

Trevor Hawkes
 County of Napa
 October 4, 2022
 Page 19

Attachment 2

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-1	<p><i>The following language is recommended for incorporation to the existing MM BIO-1:</i></p> <p>If special-status plants will be impacted, the Project shall provide mitigation prior to Project start in a form accepted in writing by CDFW which may include on-site restoration pursuant to a restoration plan prepared by the Project and approved by CDFW, off-site habitat preservation at a minimum 3:1 mitigation to impact ratio based on acreage or number of plants as appropriate, unless otherwise approved in writing by CDFW.</p>	Prior to Ground Disturbance	Project Applicant
MM BIO-2	<p><u>Mitigation Measure BIO-2: Nesting Bird Avoidance.</u> Active nests occurring at or near the Project site shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.</p> <p>a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey for active nests shall be conducted by a Qualified Biologist within 7 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 7 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be</p>	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant

Trevor Hawkes
County of Napa
October 4, 2022
Page 20

	<p>reinitiated.</p> <p>b) Active Nest Buffers. If an active nest is found during surveys, the Project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.</p> <ul style="list-style-type: none">• Buffer distances for bird nests shall be site specific and an appropriate distance, as determined by a Qualified Biologist. The buffer distances shall be specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.• The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW. <p>c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young</p>		
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Trevor Hawkes
 County of Napa
 October 4, 2022
 Page 21

	have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.		
MM BIO-5	<p><i>The following language is recommended for incorporation into MM BIO-5:</i></p> <p>Any permanent impacts to sensitive natural communities shall be mitigated for at a 3:1 ratio by acreage and oak trees shall be replaced at the following minimum ratios:</p> <ul style="list-style-type: none"> • 1:1 replacement for trees up to 4 inches diameter at breast height (DBH) • 3:1 replacement for trees 5 to 8 inches DBH • 5:1 replacement for trees greater than 8 inches to 16 inches DBH • 10:1 replacement for trees greater than 16-inch DBH, which are considered old growth oaks 	Within the same year as the project start	Project Applicant
MM BIO-6	<p><u>Mitigation Measure BIO-6: Swainson's Hawk Surveys and Avoidance:</u> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the <i>Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk</i> (2000) survey protocol, within 0.5 mile of the Project site <u>each year</u> that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist</p>	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant

Trevor Hawkes
 County of Napa
 October 4, 2022
 Page 22

	identifies nesting Swainson's hawks, the Project shall implement a <u>0.5 mile no disturbance buffer zone</u> around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.		
MM-BIO-7	<u>Mitigation Measure BIO-7: Surveys and Avoidance of Fully Protected Raptors.</u> Surveys shall be conducted for fully protected raptors. The survey area shall be determined by a qualified Raptor Biologist in consultation with CDFW based on the species, and if the nest of any fully protected raptor is identified during pre-construction nesting surveys, a biologically based justification for the buffer zone, as determined by a qualified Raptor Biologist, shall be submitted to CDFW for review. Project activities shall not proceed between March 1 and August 31 unless CDFW provides written approval of the buffer zone around any nest of a fully protected raptor species.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-8	<u>Mitigation Measure BIO-8: Tricolored Blackbird Avoidance.</u> If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. Presence of nesting tricolored blackbird may require a CESA Incidental Take Permit before Project activities may commence.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-9	<u>Mitigation Measure BIO-9: Special-Status Bee Habitat Assessment and Avoidance:</u> A qualified wildlife biologist shall conduct visual surveys of areas planned for ground disturbance, including but not limited to, installation of water main, new roads, leach fields, and building sites, and within a 100-foot buffer of	Prior to Ground Disturbance and continuing over the	Project Applicant

Trevor Hawkes
 County of Napa
 October 4, 2022
 Page 23

	<p>ground-disturbing activities. Surveys shall be conducted to coincide with the blooming period of locally common nectar sources such as vetch (<i>Vicia</i> spp.) and California poppy (<i>Eschscholzia californica</i>) during the flight season for the western and obscure bumble bee (generally late February through late June). Between two and four evenly spaced surveys shall be conducted for the highest detection probability, including surveys in early spring (late March/early April) and early summer (late June/July). Surveys shall take place when temperatures are above 60°F, preferably on sunny days with low wind speeds (e.g., less than 8 miles per hour) and at least 2 hours after sunrise and 3 hours before sunset. On warm days (e.g., over 85°F), bumble bees will be more active in the mornings and evenings. The qualified biologist shall conduct transect surveys following the <i>Streamlined Bee Monitoring Protocol for Assessing Pollinator Habitat</i> (https://www.xerces.org/sites/default/files/2018-05/14-021_01_XercesSoc_Streamlined-Bee-Monitoring-Protocol_web.pdf), focusing on detection of foraging bumble bees and underground nests using visual aids such as binoculars. If western or obscure bumble bee nests are identified within the ground disturbance area or 100-foot buffer area, a plan to protect bumble bee nests and individuals shall be developed and implemented in consultation with CDFW. The plan shall include, but not be limited to: 1) specifications for construction timing and sequencing requirements (e.g., avoidance of raking, mowing, tilling, or other ground disturbance until late March to protect overwintering queens); 2) preconstruction surveys conducted within 30 days and consistent with any current available protocol standards prior to the start of ground-disturbing activities to identify active nests; 3) establishment of appropriate no-disturbance buffers for nest sites and construction monitoring by a qualified biologist to ensure compliance with buffers; 4) restrictions associated with construction practices, equipment, or materials that may harm bumble bees (e.g., avoidance of</p>	<p>course of the Project</p>	
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Trevor Hawkes
 County of Napa
 October 4, 2022
 Page 24

	<p>pesticides/herbicides, measures to minimize the spread of invasive plant species); and 5) prescription of an appropriate restoration seed mix targeted for the bumble bees, including native plant species known to be visited by native bumble bee species and containing a mix of flowering plant species with continual floral availability through the entire active season for bumble bees (March to October).</p>		
<p>MM BIO-10</p>	<p><u>Mitigation Measure BIO-10: Burrowing Owl Habitat Assessment and Surveys.</u> A Qualified Biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment. Surveys shall be conducted within 500 meters (1,640 feet) of the Project site for breeding or non-breeding burrowing owls pursuant to the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)</i> survey methodology prior to the commencement of project activities. If burrowing owl is detected, a Qualified Biologist shall establish suitable buffers to ensure the owl is not disturbed by the project pursuant to the above survey methodology's buffer distances of 500 meters, unless otherwise approved in writing by CDFW. To prevent encroachment, the established buffers shall be clearly marked by high visibility material. The established buffers shall remain in effect until the burrow is no longer occupied as confirmed by the Qualified Biologist, unless a burrowing owl exclusion plan (for wintering, non-breeding owls only) is submitted to CDFW for review, including but not limited to habitat compensation and funding for management in perpetuity. The habitat compensation and funding shall be approved in writing by CDFW and completed prior to project start unless, otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>