

State of California
Department of Fish and Wildlife



Memorandum

Date: May 19, 2022

To: Alexandra Stehl
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C/o Katie Metraux
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Erin Chappell

From: Erin Chappell, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Carnegie State Vehicular Recreation Area General Plan Update, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022030810, Alameda and San Joaquin Counties

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) provided for the Carnegie State Vehicular Recreation Area General Plan Update (Project) located in unincorporated Alameda and San Joaquin Counties.

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) §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 the California Endangered Species Act (CESA) Permit, a Native Plant Protection Act Permit, a Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The Project is a General Plan Update to update the long-term management framework set in the 1981 General Plan and to establish the foundation for future park improvements. A General Plan is the primary management document for each park unit within the State Park System and establishes the park unit's primary purpose and management direction. An approved General Plan is required before State Parks can move forward with site-specific improvements that are beyond minor capital outlay projects.

The General Plan Update will describe recreational opportunities and management strategies for the Carnegie State Vehicular Recreation Area (Carnegie SVRA or the SVRA). The General Plan Update will document existing conditions and include a proposed land use plan, including specific use areas. The General Plan Update will also contain goals and guidelines that will guide Carnegie SVRA management and provide long-term direction for the development of future facilities. The location and extent of future facilities will be disclosed, where appropriate, and associated impacts will be analyzed in the General Plan Update EIR. If approved, the General Plan Update will supersede the 1981 General Plan and guide longer-term and day-to-day management at the Carnegie SVRA.

The Carnegie SVRA is a 1,575-acre off-highway vehicle (OHV) park overseen by the Off-Highway Motor Vehicle Recreation (OHMVR) Division and operated by the Diablo Range District of State Parks. Carnegie SVRA is located within unincorporated Alameda and San Joaquin Counties, approximately 15 miles east of Livermore and 12 miles west of Tracy. To the north is the Lawrence Livermore Laboratory property. Open space and rural residential areas (ranchland) are located to the east, west, and south. Carnegie SVRA lies south of Corral Hollow Road/Tesla Road and is largely located on a northern hillside.

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, and that it contain sufficient information to evaluate and review the project's environmental impact. Please include a complete description of the following project components in the project description, as applicable:

- Land use and existing recreational facilities.
- Footprints of proposed permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Existing and proposed trails for OHV use, hiking, etc.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, and stationary machinery.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Description of existing facilities and use, description of proposed facilities, descriptions of current uses and projected future uses of proposed facilities of the Carnegie SVRA, if available.
- Construction schedule, activities, equipment, and crew sizes.

- Mitigation monitoring and reporting program.

ENVIRONMENTAL SETTING

The draft EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternatives’ (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§15125 & 15360). CDFW recommends that the draft EIR prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, or endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands, vernal pools, breeding ponds, and/or waters of the U.S. or State, the existence of upland burrow complexes for species such as California tiger salamander and burrowing owl, historic nesting sites, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>). Fully protected, threatened or endangered, candidate, and other special status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to those listed in the table below:

Common Name	Scientific Name	Status
Large-flowered fiddleneck	<i>Amsinckia grandiflora</i>	State rank S2, California Rare Plant Rank (CRPR) ¹ 1B.2
California tiger salamander	<i>Ambystoma californiense</i>	CESA listed as threatened; Central California Distinct Population Segment ESA listed as threatened
Grasshopper sparrow	<i>Ammodramus savannahrum</i>	California Species of Special Concern (SSC)
Northern California legless lizard	<i>Anniella pulchra</i>	SSC
Golden eagle	<i>Aquila chrysaetos</i>	California Fully Protected species; Bald and Golden Eagle Protection Act
California glossy snake	<i>Arizona elegans occidentalis</i>	SSC

¹ CRPR rank definitions are 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>).

Burrowing owl	<i>Athene cunicularia</i>	SSC
Big tarplant	<i>Blepharizonia plumosa</i>	S2, CRPR 1B.1
Swainson's hawk	<i>Buteo swainsoni</i>	CESA listed as threatened
Chaparall harebell	<i>Campanula exigua</i>	S2, CRPR 1B.2
Lemmon's jewelflower	<i>Caulanthus lemmonii</i>	S3; CRPR 1B.2
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	SSC
Hospital Canyon larkspur	<i>Delphinium californicum</i> spp. <i>Interius</i>	S3, CRPR 1B.2
White-tailed kite	<i>Elanus leucurus</i>	California Fully Protected species
Western pond turtle	<i>Emys marmorata</i>	SSC
Diamond-petaled California poppy	<i>Eschscholzia rhombipetala</i>	S1, CRPR 1B.1
Brewer's western flax	<i>Hesperolinon breweri</i>	S2, CRPR 1B.2
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC
Showy golden madia	<i>Madia radiata</i>	S3, CRPR 1B.1
San Joaquin coachwhip	<i>Masticophis flagellum ruddocki</i>	SSC
Alameda whipsnake	<i>Masticophis laterallus eruyxanthus</i>	CESA listed as threatened, ESA listed as threatened
Coast horned lizard	<i>Phrynosoma blainvilli</i>	SSC
Foothill yellow-legged frog (west/Central coast clade)	<i>Rana boylei</i>	CESA listed as endangered
California red-legged frog	<i>Rana draytonii</i>	SSC, ESA listed as threatened
Western spadefoot toad	<i>Spea hammonidii</i>	SSC
American badger	<i>Taxidea taxus</i>	SSC
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	CESA listed as threatened; ESA listed as endangered

COMMENTS AND RECOMMENDATION

CDFW offers the following comments and recommendations to assist California Department of Parks and Recreation in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§§ 15126, 15126.2, & 15358) necessitate that the draft EIR discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts, that may occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Potential for “take” of special-status species;
- Encroachments into drainage ditches, dry streambeds, wetlands, breeding ponds, nesting areas, burrow habitat, or other sensitive areas;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alteration of soils and hydrology, soil erosion, and removal of habitat structural features (e.g., snags, roosts, breeding ponds, burrows, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance; noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors or access to water sources and other core habitat features.

The draft EIR also should identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a listed species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines (§§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370) direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and mitigate significant impacts of the Project on the environment. This includes a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service, the National

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Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species such as white-tailed kite and golden eagle may not be taken or possessed at any time (Fish and Game Code § 3511). Therefore, the draft EIR is advised to include measures to ensure complete take avoidance of these fully protected species.

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the draft EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to distribution of the draft EIR, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Findings of any such surveys should be included and referred to in the impacts analysis section of the draft EIR. As detailed elsewhere in this letter, these findings should be presented together with an analysis and proposal for how any potential impacts to sensitive resources will be avoided, minimized, and/or mitigated to a level less than significant. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those including those with a California Rare Plant Rank listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially impacted by the Project within the Project area and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements, available at: <https://www.wildlife.ca.gov/Conservation/Plants>. Please follow the reporting requirements in the protocols and provide the findings in a botanical surveys report as part of the draft EIR.

The draft EIR should map the existing natural resources and sensitive habitats and provide avoidance and minimization measures to monitor and protect them in the future. CDFW recommends incorporating the following avoidance, minimization, and mitigation measures into the Project’s draft EIR, and that the following measures be made required mitigation measures for the Project:

- Habitat and Wildlife Surveys. Perform surveys that identify and map habitats on-site used by special-status species, perform surveys that identify and map habitat features on-site (e.g. breeding ponds, burrow complexes, dens, friable soils, potential nesting trees, bat roosting habitat like large trees, crevices, loose bark,

etc.), perform wildlife surveys, and perform vegetation surveys. Surveys should be performed during the time of day and the time of year when detection is most likely for wildlife and plants. Survey methods and results should be provided for review and feedback. Survey protocols for wildlife and plants are available at <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

- Robust Monitoring Surveys. Not only should surveys be implemented to map the habitat, habitat features, wildlife, and vegetation, but a robust monitoring program should be developed. The purpose is to monitor if avoidance and minimization measures are effective, to identify where on-going avoidance measures are needed, and to assess if compensatory mitigation for impacts to protected species is required and the amount. *A long-term schedule for the surveys above should be planned and performed to monitor the health of the habitats and habitat features (e.g., breeding ponds) in the Carnegie SVRA on which wildlife rely. The schedule should include criteria that will trigger remedial action/additional protection if surveys show that the special-status species habitats or features are being degraded.*
- Amphibian (e.g., western spadefoot toad, California tiger salamander) Avoidance. Breeding pools for western spadefoot toad are known to occur on the Carnegie SVRA site and they are impacted by off-road vehicles driving through them and near them. Construction and use of off-road trails, roads, practice areas, facilities, and other motorized activities occurring within dispersal distance of known or potential breeding ponds could cause take of CTS and other special-status amphibians. Filling of breeding ponds and aggradation of stream channels with sediments eroding from disturbed hillsides can eliminate aquatic habitat and shorten the hydroperiod, thus causing mortality of larvae prior to successful metamorphosis.

The draft EIR should determine and quantify impacts to amphibians and then present take avoidance and minimization measures and mitigation for impacts to breeding and/or upland habitat, to conclude that the impacts have been mitigated to less-than-significant levels. This should include any impacts to hydrology and/or breeding ponds resulting from OHV use on-site.

- Avoidance and minimization measures could include the following: erecting protective fencing during the breeding season to block off breeding areas and allow amphibians to disperse without being disturbed or crushed by vehicles; specific areas could be restricted from use during breeding and dispersal times of year or after rains (e.g., from May 1 through August 31 when salamander metamorphs are likely to be migrating away from their natal ponds); and establishing adequate buffer areas. Activities that will impede or cause take of CTS during movement periods should be avoided after the first 0.5 inches of rain in the fall until mid-March and from mid-May until the breeding ponds are dry. Based on existing literature, a buffer of 5,587 feet surrounding a breeding pond would protect 95% of the CTS population associated with that pond. If impacts

cannot be avoided and fully minimized, then compensatory mitigation should be proposed.

- Western spadefoot toad (*Spea hammondi*) is a California Species of Special Concern and has been documented in the Original Carnegie SVRA. Western spadefoot toads are almost completely terrestrial and enter water only to breed (Dimmitt and Ruibal 1980). Recently metamorphosed juveniles emerge from water and seek refuge in the immediate vicinity of natal ponds. They spend several hours to several days near these ponds before dispersing. CDFW staff observed western spadefoot toadlets seeking refuge in drying mud cracks in the breeding pools at the Original Carnegie SVRA. Sound or vibration from rain striking the ground appears to be the primary emergence cue used by spadefoot toads, and even the vibrations of a motor can cause toads to emerge (Dimmitt and Ruibal 1980). Based on calculations from upland habitat use data analyzed by Semlitsch and Brodie (2003), a buffer of 1,207 feet from suitable breeding wetlands or pools may provide protection for western spadefoot toads.
- Western pond turtles (*Actinemys marmorata*) use aquatic habitat mainly for foraging, thermoregulation, and avoidance of predators. Gravid females leave drying creeks from May through July to oviposit in sunny upland habitats, including grazed pastures. Nesting has been reported to occur up to 1,391 feet from water (Jennings and Hayes 1994), but is usually closer, averaging 92 feet from aquatic habitat (Rathbun et al. 2002). In an arid habitat similar to Carnegie SVRA, radio-tagged turtles left ponds as water levels receded in the fall, traveled 837 to 3,596 feet overland, and remained terrestrial for periods ranging from 10 to 30 weeks (Pilliod et al. 2013). An adequate buffer for western pond turtles should include the upland surrounding their known aquatic habitat.
- Swainson's Hawks. CDFW recommends conducting protocol-level surveys for Swainson's hawk nest sites to determine the appropriate mitigation to reduce impacts to less-than-significant. CDFW recommends using the Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (TAC Report) available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>.

To mitigate for the loss of Swainson's hawk foraging habitat in a method consistent with the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California*, CDFW 1994, (SWH Staff Report), CDFW recommends the draft EIR to incorporate the following language:

- For projects within one-mile of an active nest tree (the SWH Staff Report defines an active nest as used during one or more of the last five years), provide one-acre of land for each acre of development authorized (1:1 ratio).

- For projects within five miles of an active nest tree, but greater than one mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree, but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

CDFW recommends that Project-related disturbance within a minimum of 0.25 miles (and up to 0.5 miles depending on site-specific conditions) of active Swainson's hawk nest site should be reduced or eliminated during the critical phases of the nesting cycle (March 1 through September 15) in order to avoid significant impacts to the hawk. If Project activities must be conducted during this critical phase, then appropriate buffers should be established by a qualified biologist until September 15 (or until the young have fully fledged and are feeding independently).

- Burrowing Owl. Burrowing owl surveys should be conducted by a qualified CDFW-approved biologist. Consistent with the CDFW *Appendix D: Breeding and Non-breeding Season Surveys* of the CDFW *Staff Report on Burrowing Owl Mitigation* (Staff Report), a *minimum* of four survey visits should be conducted during the owl breeding season which is typically between February 1 and August 31. 1) At least one site visit between February 15 and April 15, and 2) a minimum of three survey visits, at least three weeks apart, between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

If burrowing owls are documented within or adjacent to proposed facilities, then the project may have a significant impact to burrowing owls. If suitable burrowing owl nest sites are present within or adjacent to the Project area, then the draft EIR should include "take" avoidance and minimization measures for the owl. It should also include measures to avoid or minimize loss of burrowing owl foraging habitat. At a minimum, if burrowing owls have been documented to occupy burrows at the project site in recent years, the current scientific literature supports the conclusion that the site should be considered occupied, and mitigation should be required by the CEQA lead agency to address project specific significant and cumulative impacts (Staff Report). Please refer to the Staff Report, section on *Mitigation Methods*, on avoiding disturbance of occupied burrows through establishment of exclusion zones. Please be advised that CDFW does not consider exclusion of burrowing owls or "passive relocation" as a "take" avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures

should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take.”

The draft EIR for the Project should also include measures to avoid or minimize loss of burrowing owl foraging habitat. Any permanent impacts to owl foraging habitat should be effectively mitigated, and the draft EIR should outline the mitigation. Mitigation lands for owls should include presence of burrows, burrow surrogates, presence of fossorial mammal dens, well-drained soils, abundant and available prey within close proximity to burrows, as well as foraging, wintering, and dispersal areas. The location of mitigation areas for burrowing owls should be approved by CDFW prior to the start of Project-related activities. Mitigation may be partially or fully accomplished in conjunction with mitigation associated with loss of Swainson’s hawk foraging habitat.

- **Nesting Birds.** The lead agency is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act of 1918 or Fish and Game Code section 3503. CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every 14 days during Project activities 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. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the 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.
- **Nesting Bird Buffers.** If continuous monitoring of identified nests by a qualified avian 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 Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.
- **Mammal Buffer Zone.** CDFW recommends non-disturbance buffers of a minimum of 500 feet around active San Joaquin kit fox or American badger dens.

- Bats. Bat species are known to occur within and surrounding the project site. The Townsend's big-eared bat is highly sensitive to disturbance at roosts sites, particularly during the reproductive season and during hibernation. Disturbances during these times likely contribute to reduced reproductive output. Humans simply entering a maternity roost can cause a colony to abandon the young or move to another roost (Graham 1966). Populations are especially susceptible to variations in survival and reproductive output. Therefore, it is critical that human activity in and near roosts be minimized or eliminated, especially during reproductive (April 1 to September 1) and hibernal periods (approximately November 1 to April 1) (Gruver, Keinatch 2006). To evaluate and avoid potential impacts to bat species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and requiring these measures as conditions of approval for the Project.
 - Bat Habitat Assessment. To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at work sites seven (7) days prior to the start of Project activities and every 14 days during Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.
 - Bat Habitat Monitoring. If any habitat features identified in the habitat assessment will be altered or disturbed by Project activities, the qualified bat biologist should monitor the feature daily to ensure bats are not disturb, impacted, or fatalities are caused by the Project.
 - Bat Project Avoidance. If bat colonies are observed at the Project site, at any time, all Project activities should stop until the qualified bat biologist develops a bat avoidance plan to be implement at the Project site. Once the plan is implemented, Project activities may recommence.
 - Due to the transmission of noise and the proposed level of disturbance in the project area, CDFW recommends an updated study of the Townsend's big-eared bat population be conducted to evaluate the appropriate buffer zones. The study should include all bats in the area and be conducted by a scientist with demonstrable experience with each species of bat that could be impacted by the Project.
- Noise Effect Studies. The lead agency should perform noise effect studies to assess the impact of the Carnegie SVRA activities on special-status species. Excessive noise (decibel levels/noise durations well above those of typical background noise) and other disturbance associated with OHV activities have significant effects on wildlife. Disturbance effects can range from physiological impacts including stress, inner ear bleeding, and mortality to damage of nesting habitat, to collapsed burrows, to an increase in vehicle-animal collisions, and to

changes in behaviors and population distribution/dispersal patterns (Ouran, et al. 2007).

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take² of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. CDFW remains concerned that the current ongoing OHV and management activities are not covered for take and that the potential increase in take resulting from on-site recreational activities has not been considered or analyzed in the General Plan. CDFW strongly recommends obtaining an ITP for threatened and endangered species. The Project is within potential upland and breeding habitat of the California tiger salamander (*Ambystoma californiense*), a CESA listed as threatened species; foothill yellow-legged frog (*Rana boylei*), a CESA listed as endangered species; San Joaquin kit fox (*Vulpes macrotis mutica*), a CESA listed as threatened species, and Alameda whipsnake (*Masticophis laterallus euryxanthus*), A CESA listed as threatened species. Ground disturbing activities have the potential for take of these species. In addition, Swainson's hawk (*Buteo swainsoni*), a CESA listed as threatened species, is known to forage in the Project area. Noise-generating or vegetation-disturbing activities could result in take of Swainson's hawks. If the Project will impact CESA or NPPA listed species, including but not limited to California tiger salamander, foothill yellow-legged frog, San Joaquin kit fox, Alameda whipsnake and, Swainson's hawk, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially impact, substantially restrict the ranger of, or reduce the population of threatened or endangered species (Public Resources Code §§ 21001(c), 21083, & CEQA Guidelines §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code § 2080.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Agreement, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities affecting lakes or streams and associated riparian

² Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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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 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 (Public Resources Code § 21000 et seq.) as the responsible agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Fully Protected birds such as white-tailed kite (*Elanus leucurus*), and golden eagle (*Aquila chrysaetos*) may not be taken or possessed at any time (Fish & G. Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 online field survey form and other methods for submitting data can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

If you have any questions, please contact Andrea Boertien, Environmental Scientist at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at (707) 339-6052 or Michelle.Battaglia@wildlife.ca.gov.

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