State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

February 22, 2023

Stan Ketchum, Principal Planner
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, California 95023-2513
(831) 637-5313
sketchum@cosb.us

Subject: **Strada Verde Innovation Park Project (PLN1900029) – Notice of Preparation (NOP) (Project)**
SCH No.: 2022040235

Dear Stan Ketchum:

The California Department of Fish and Wildlife (CDFW) received a NOP from San Benito County for the above-referenced Project pursuant to 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, CDFW appreciates 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 Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

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

[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.

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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project will 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 will 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).

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to streams/lakes include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to "Waters of the State".

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: San Benito County Resource Management Agency (RMA)

Objective: The San Benito County RMA proposed Project includes an application for a General Plan Amendment, a Specific Plan, a Zone Change, a Vesting Tentative Map, and a Development Agreement for development of a new automotive research and development campus and business center (the "Strada Verde Innovation Park" Project, or SVIP Project) on an approximately 2,767-acre, triangular-shaped site in San Benito County. At maximum build-out, the proposed Project would include approximately 7,221,159 square feet (sf) of testing grounds, research park, e-commerce, and commercial uses. The proposed Project includes the following proposed land uses: testing grounds, a research park, e-commerce, commercial, greenway, agricultural, biological preserve, and infrastructure.

Development of the site would use a phased approach. The configuration, number and timing of each phase would be based on the demands of the market and individual users and would be determined by the Project applicant or their designee(s).

Two areas in the Project Area (Pajaro River Wetlands and Riparian Preserve (394 gross acres), and California Tiger Salamander Upland Habitat Preserve (153 gross acres)) are designated as biological preserves to protect and enhance natural resources in the Project Area. By means of conservation easements, both preserves shall be managed and maintained by a qualified public and/or non-profit agency, as approved by San Benito County and responsible state and federal regulatory agencies. The Preserves will also provide areas for potential mitigation for wetlands disturbed in the developed Project Area.

Location: The SVIP Project site is located in the northwest corner of San Benito County along the southern boundary of Santa Clara County and is approximately seven miles south of Gilroy and nine miles northwest of Hollister. The site is bounded by the Union Pacific Railroad (UPRR) "Hollister Spur Line" to the northeast, Highway 101 (US-101) to the west, the Pajaro River to the northwest, and agricultural land to the south. The proposed primary access to the site would be a new road connecting the southwestern corner of the site to the Betabel interchange at US-101. An existing farm road, which connects to State Route (SR) 25 may be used for a future emergency vehicle access.

The proposed Project site is located within the Bolsa Study Area, one of four identified "New Community Study Areas" that are potentially suitable for new development in the San Benito County 2035 General Plan. A rezoning of the property will be required as part of the proposed Project to allow development under a Specific Plan. The proposed Project will also require an amendment to the San Benito County 2035 General Plan to redesignate the SVIP Project area.

Timeframe: No timeframe given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist San Benito County 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 environmental document for this Project.

The NOP indicates that the Environmental Impact Report (EIR) for the Project will consider potential environmental effects of the proposed Project to determine the level of significance of the environmental effect and will analyze these potential effects to the detail necessary to make a determination on the level of significance. The EIR will also identify and evaluate alternatives to the proposed Project. When an EIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

The Project area is approximately 2,767-acres and contains numerous community types including: agriculture, agricultural storage and maintenance facilities in developed areas, non-native grassland, coyote brush scrub, ornamental woodland, a man-induced wetland, coast live oak riparian forest, red willow riparian forest, disturbed ruderal floodplain below top of bank, alkali meadow, seasonal wetland, emergent wetland, riverine wetland, and streams. In addition, per Project mapping, there is a 100-year floodplain that runs north to south through the proposed Project, and then turns west/southwest back into Project limits and under US-101.

Special-Status Species: Based on aerial imagery, and species occurrence records from the California Natural Diversity Database (CNDDB, 2023), along with Project information including the January 2022 SVIP Biological Resources Technical Report, the proposed Project site and/or surrounding area is known to and/or has the potential to support numerous special-status species. These resources may need to be evaluated and addressed prior to any approvals that would allow ground disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the California Fully Protected (CFP) golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*); the Federally Endangered (FE)/State Endangered (SE)/CDFW Species of Special Concern (SSC) Least Bell's vireo (*Vireo bellii pusillus*); the FE/State Threatened (ST) San Joaquin kit fox (*Vulpes macrotis mutica*); the Federally threatened (FT)/ST California tiger salamander (*Ambystoma californiense*); the FT/State Species of Concern (SSC) California red-legged frog (*Rana draytonii*); the ST and SSC Tricolored blackbird (*Agelaius tricolor*); the State threatened Swainson's hawk (*Buteo swainsoni*); the SSC Burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), western red bat (*Lasiurus frantzii*), San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), Short-eared owl (*Asio flammeus*), Northern harrier (*Circus hudsonius [cyaneus]*), yellow-breasted chat (*Icteria virens*), yellow warbler (*Setophaga*

petechia), western pond turtle (*Actinemys marmorata*), Monterey hitch (*Lavinia exilicauda harengus*), and the American badger (*Taxidea taxus*); the State candidate-listed as endangered crotch bumble bee (*Bombus crotchii*); the 1B.2 listed plant, San Joaquin spearscale (*Extriplex joaquinana*); and the FT steelhead – Population 9, South/Central Coast DPS (*Oncorhyncus mykiss*).

Golden Eagle (GOEA)

The California fully protected (CFP) (a species that may not be taken or possessed at any time) GOEA has the potential to occur within the Project area. Suitable GOEA nesting habitat includes cliffs of all heights and large trees in open areas. Large trees occur in and surrounding the Project area that could provide suitable nesting habitat for GOEA.

Habitat loss and breeding are the primary threats to GOEA (Smith et al., 2008; WRI 2009) and with suitable nesting habitat for GOEA occurring within and adjacent to the Project area, the Project is likely to contribute to direct, indirect, and cumulative impacts to this species. Therefore, subsequent ground-disturbing activities have the potential to significantly impact GOEA. CDFW recommends that a qualified biologist conduct a habitat assessment and protocol surveys for GOEA as part of the biological technical studies conducted in support of the CEQA document. In addition, CDFW recommends that this species be included as part of the cumulative impact analysis recommended for inclusion in the DEIR.During implementation of any phase of the Project, CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for GOEA in accordance with the USFWS' "Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations" (USFWS, 2010), no more than 10 days prior to the start of implementation to evaluate presence/absence of GOEA in proximity to Project activities and to evaluate potential Project-related impacts.

If a GOEA is found during preconstruction surveys, CDFW recommends implementation of a minimum ½ mile no disturbance buffer. CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon parental care for survival**.** In the event that a GOEA is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

White-tailed Kite (WTK)

This CFP species occurs in the Project site per Project information. To avoid potential Project-related impacts to the species, CDFW recommends the Lead Agency require a qualified avian biologist to conduct surveys for nesting WTK as part of the biological

technical studies conducted in support of the CEQA document and then repeat those surveys, regardless of the initial results, prior to commencing Project-related activities to reasonably assure CDFW that take of this species will not occur as a result of disturbance associated with Project implementation. CDFW recommends surveys be conducted for a ½ mile radius around all project activities. In addition, CDFW recommends that this species be included as part of the cumulative impact analysis recommended for inclusion in the DEIR.

CDFW recommends a minimum no-disturbance buffer of ½ mile be delineated around active nests of white-tailed kites 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 parental care for survival. CDFW advises the Lead Agency not to allow reductions in no-disturbance buffer size for WTK or any fully protected bird species absent a compelling biological or ecological reason to do so. In the event that WTK are detected during surveys, consultation with CDFW is warranted to discuss Project implementation and take avoidance.

Tree structure is apparently the most important determinant of use. No studies have quantified microhabitat characteristics in and around a nest (i.e. within 20 meters/approximately 65 feet) or examined nest-site selection (Erichsen et al., 1996). Erichsen et al. examined habitat characteristics within 0.8 km/0.5 mile of 22 nests in a largely agricultural setting and found that plots around successful nests contained more natural vegetation and human development, though not urban. Successful nests were placed on the habitat edge and were > 100 meters/approximately 328 feet from a road.

Least Bell's Vireo (LBV)

LBV was observed foraging in agricultural fields and nesting near Llagas Creek approximately two miles north of the Project site in 2021 (CNDDB, 2023). In addition, suitable riparian habitat along Pajaro River may support breeding by this species. If suitable habitat is present within the Project site as well, CDFW recommends that a qualified biologist conduct a habitat assessment and protocol surveys for LBV as part of the biological technical studies conducted in support of the CEQA document.

LBV should be avoided if possible. CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). If Project activities must take place during the typical bird breeding season, and suitable LBV habitat is detected during habitat assessments, CDFW recommends assessing presence/absence of LBV by conducting surveys following the USFWS' "Least Bell's Vireo Survey Guidelines" (2001) well in advance of the start of Project implementation to evaluate presence/absence of LBV nesting in proximity to Project activities, and to evaluate potential Project-related impacts and permitting needs. Additionally, CDFW advises conducting focused pre-construction surveys for LBV in all areas of potentially suitable habitat within 10 days of Project implementation, when initiated during the bird breeding season.

LBV 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).

San Joaquin Kit Fox (SJKF)

SJKF den in a variety of areas including right-of-ways, agricultural and fallow/ruderal habitat, and dry stream channels. Information in the Strada Verde Innovation Project Biological document for this Project states that the Project area is within this species dispersal range. SJKF may be attracted to the Project area due to the type and level of ground-disturbing activities and the loose-friable soils resulting from intensive ground disturbance. Per information on a 2015 Endangered Species Recovery Program (ESRP) map, there have been SJKF occurrences in the north, southwest, and southeast areas of San Benito County. (Endangered Species Recovery Program Data and Maps Endangered Species Recovery Program Data and Maps (http://esrp.csustan.edu)).

CDFW recommends that a qualified biologist conduct a habitat assessment to identify potential habitat and determine presence/absence of SJKF within the proposed Project area and a 500-foot buffer. Based on the results of the habitat assessment, protocol surveys to detect SJKF and their sign should be completed as part of the biological technical studies completed in support of the DEIR. Depending on the results of this initial analysis, CDFW recommends considering the need to repeat these surveys in advance of each phase, or particular phases, of Project construction. CDFW recommends following the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

California Tiger Salamander (CTS)

The southeastern portion of the Project site contains annual grasslands (CNDDB, 2023) that may be suitable upland habitat for CTS. Per Project information, this upland habitat is assumed to be inhabited due to the proximity of suitable aquatic breeding habitats immediately south in the foothill area.

If CTS protocol level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence

of CTS within the Project site and obtain from CDFW a State ITP in accordance with Fish and Game Code section 2081 subdivision (b).

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b). As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

California Red-Legged Frog (CRLF)

CRLF have been observed within and adjacent to the Project site (CNDDB, 2023). Per Project information, this species was not observed in the Project area during focused surveys in 2018. CDFW recommends that a qualified biologist conduct protocol surveys for CRLF as part of the biological technical studies conducted in support of the CEQA document and, regardless of the results of the initial surveys, repeated within 48 hours prior to commencing work for any phase of the Project (two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS, 2005) to determine if CRLF are within or adjacent to individual project sites.

If any CRLF are found during the initial protocol surveys conducted as part of the biological technical studies, the preconstruction surveys, or at any time during construction CDFW recommends that CDFW be contacted to discuss a relocation plan for CRLF. If CRLF are found at any time during construction, CDFW recommends that construction cease immediately and that CDFW be contacted to discuss a relocation plan for CRLF.

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 through March 31). If ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily.

Tri-colored Blackbird (TRBL)

Suitable breeding habitat containing willows and/or cattails is present along the Pajaro River per Project information. In addition, TRBL may forage in agricultural areas of the site.

CDFW recommends that surveys be conducted for TRBL by a qualified biologist as part of the biological technical studies conducted in support of the CEQA document. CDFW

further recommends Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015" (CDFW, 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony should be reassessed to determine the extent of the breeding colony within 10 days for Project initiation.

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Swainson's Hawk (SWHA)

SWHA were observed on-site in 2018 per Project information and observed in 2020 approximately four miles southeast near San Felipe Road (CNDDB, 2023). The Project area contains riparian habitat and agricultural fields that are suitable for nesting and foraging per Project information. SWHA exhibit high nest-site fidelity year after year (CDFW, 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA as part of the biological technical studies conducted in support of the CEQA document following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000). The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities. CDFW recommends results of the surveys, along with an overall habitat assessment for SWHA nesting and foraging and an analysis of the Projects potential direct, indirect, and cumulative impacts be included as part of the DEIR for the Project.

If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no disturbance buffer of ½-mile be delineated around active nests 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 parental care for survival.

CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based on CDFW's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG, 1994), which recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites and the amount of habitat compensation is dependent on nest proximity. In addition to fee title acquisition or conservation easement recorded on property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Burrowing Owl (BUOW)

BUOW are present within the Project site per Project information. The species has been observed along roads and roadside ditches in 2018 and 2019 per the Biological Resources Technical Report written for this Project in January 2022, and has also been documented in CNDDB in 2019.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document 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. These surveys are to determine if there are more BUOW in addition to the 2018/2019 observations on-site.

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)

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.

Western Pond Turtle (WPT)

Per Project information, the Project area contains aquatic features with basking sites that may support WPT. These sites include man-made ditches and the Pajaro River. WPT are known to nest in the spring or early summer within 100 meters (328 feet/0.06 mile) of a water body, although nest sites as far away as 500 meters (1,640 feet/0.31 mile) have also been reported (Thomson et al., 2016). In addition, the WPT has been documented in Tick Creek, approximately 0.94-mile northwest of the Project site per CNDDB 2023. Noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

CDFW recommends that a qualified biologist conduct focused surveys for WPT as part of the biological technical studies conducted in support of the CEQA document and perform an analysis of the Project's direct, indirect, and cumulative impacts to WPT in this area. CDFW recommends that focused surveys for nests occur during the egg-

laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched. Regardless of the initial surveys, CDFW recommends pre-construction surveys for WPT be performed for each phase of the Projects development at least ten days prior to the beginning of project activities. CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project activities, they be allowed to move out of the area on their own.

American Badger (AMBA)

Burrows of suitable size were observed in an uncultivated section of the Project area in the southeastern corner. AMBA has been documented to occur within 0.5 mile of the Project site per CNDDB records.

Habitat loss is a primary threat to AMBA (Gittleman et al., 2001). The Project will result 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 AMBA.

CDFW recommends that a qualified biologist conduct focused surveys for AMBA as part of the biological technical studies conducted in support of the CEQA document and perform an analysis of the Project's direct, indirect, and cumulative impacts to AMBA in this area. Regardless of the initial surveys, CDFW recommends pre-construction surveys for AMBA be performed for each phase of the Projects development at least ten days prior to the beginning of project activities. Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

Other State Species of Special Concern

Loggerhead shrike, San Francisco woodrat, long-eared owl, short-eared owl, northern harrier, yellow-breasted chat, yellow warbler, pallid bat, Townsends' big-eared bat, western red bat, and Monterey hitch have been observed onsite or have the potential to occur in the vicinity of the Project site, which supports requisite habitat elements for these species (CDFW, 2023). The entrances of burrows can also provide refuge for small mammals, reptiles, and amphibians.

Habitat loss threatens all of the species mentioned above (Shuford and Gardali, 2008; Thomson et al., 2016). Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground and vegetation disturbance due to Project activities may include habitat loss in the form of nest/den/roost sites, and/or aquatic resources. This may result in reduced health, vigor, and direct mortality to local populations of these species.

CDFW recommends surveys be conducted by a qualified biologist for each of the species referenced above as part of the biological technical studies conducted in support of the CEQA document. Regardless of the results of the initial surveys, CDFW recommends pre-construction surveys for these special-status species be performed for each phase of the Projects development at least ten days prior to the beginning of project activities and that the DEIR include the recommended avoidance and minimization measures for each species identified below.

CDFW recommends avian species of special concern surveys encompass the entire construction area and the surrounding 500 feet. If an active nest is located, an exclusion zone where no construction would be allowed should be established around any active nests of any protected avian species. A qualified biologist should determine an appropriate exclusion zone based on the species, location, and placement of the nest. A minimum exclusion zone of 250 feet from non-raptor species and 500 feet from raptors is recommended to assure protection of any nesting birds on or near the Project Area.

Prior to vegetation removal and/or ground disturbance within suitable habitat, CDFW recommends a pre-construction survey for woodrat structures/houses by a qualified biologist. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for woodrats and their requisite habitat features to evaluate potential impacts resulting from ground-disturbance. Avoidance whenever possible is encouraged via delineation and observing a 50- foot no-disturbance buffer around burrows and dens.

CDFW recommends that a qualified biologist conduct focused special status bat surveys to establish species and seasonal usage. CDFW recommends that individual Project areas be assessed for potential to support roosting bats as part of the biological technical studies conducted in support of the CEQA document and that pre-activity surveys occur within two weeks prior to the start of work. Surveys are recommended well in advance of Project activities to allow adequate time for exclusionary measure planning and implementation, if necessary.

Focused survey methodology is advised to include visual surveys of bats (observation of presence of bats during foraging period), inspection for suitable habitat or bat sign (guano) and use of ultrasonic detectors during all dusk emergence and pre-dawn re-entry. To maximize detectability, surveys should be conducted within one 24-hour period.

If bats are found to occupy the Project site, CDFW recommends establishing a 100- foot no-disturbance buffer around roost sites, installing temporary exclusionary devices at the appropriate time of year to avoid take, and installing new roost sites prior to initiation of Project-related activities to allow enough time for bats to relocate. CDFW recommends consultation and specific notice if bats may be disturbed by Project-related activities.

Per Project information, approximately 178.82 acres of the Pajaro River Floodplain and tributaries will be restored with the construction of this Project. The Monterey hitch is present in the Pajaro River per CNDDB records. CDFW recommends a 75-foot buffer around waterways to avoid impacts to the Monterey hitch.

Avoidance whenever possible for the above-mentioned species is encouraged via delineation and observance of a 50 foot no-disturbance buffer around nesting birds, woodrat nests, potential bat roosts, and waterways within the Project site.

Crotch Bumble Bee (CBB)

The proposed Project location is within CBB range (CDFW, 2023). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows and it appears there is suitable habitat within and surrounding the Project area. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush-piles, in old bird nests, and in dead trees or hollow logs (Williams et al., 2014; Hatfield et al., 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson, 2010), or under leaf litter or other debris (Williams et al., 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

CBB was once common throughout most of central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al., 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

CDFW recommends that a qualified biologist with experience in invertebrate, and particularly bee species, conduct focused surveys for CBB and their requisite habitat features as part of the biological technical studies conducted in support of the CEQA document to evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from the construction of the Project.

The U.S. Fish and Wildlife (USFWS) Rusty Patch Bumble Bee (*Bombus affinis*) Survey Protocol (April, 2019) is currently being used for this species. CDFW recommends a qualified biologist modify the rusty patch bumble bee protocol for use for CBB and submit the proposed CBB protocol for review and approval to CDFW until the CDFW CBB protocol is completed.

San Joaquin Spearscale (SJS)

SJS is an annual herb between 1 and 3 feet tall (Hickman, 1993). It blooms from April to October (California Native Plant Society, 2005). Typical SJS habitat is composed of

alkali grassland and alkali meadow, or on the margins of alkali scrub. It occurs on clay soils, often in areas of high alkalinity. This plant species is ranked 1B.2 and has been documented within the Project area in highly disturbed seasonal wetlands and agricultural fields in alkaline clay soils. Plants ranked 1B.2 are rare throughout their range and have declined significantly over the last century. They are eligible for State listing and impacts to these species or their habitat must be analyzed during the preparation of the DEIR.

Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code. Listed plant species above are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS, 2020), 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.

CDFW recommends that the Project area 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 Sensitive Natural Communities” (CDFW, 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Due to variability in rainfall and other environmental conditions important to special-status plant species growth, CDFW recommends that plant surveys be completed over two separate surveys seasons that span early spring to late fall.

CDFW recommends special-status plant species be avoided whenever possible by delineation 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.

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. However, if take cannot be avoided, take authorization would need to occur through issuance of an ITP by CDFW to comply with Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

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).

Editorial Comments and/or Suggestions

CDFW requests that the DEIR fully identify potential impacts to biological resources, including the above-mentioned species. In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat features may be 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, and to identify any Project-related impacts under CESA and other species of concern.

CDFW recommends the DEIR address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols).

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to Federally listed species including, but not limited to, the California red-legged frog, California tiger salamander, and the South-Central California Coast steelhead. Take under the Federal Endangered Species Act (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.

Waters of the State and U.S.: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project area include the following: increased sediment input from road or structure runoff; construction-related activity runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement through the area. The Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) also have jurisdiction regarding discharge and pollution to Waters of the State.

Lake and Streambed: The Project is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change

or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement. If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be able to issue the Final LSAA Lake and Streambed Alteration Agreement until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be

mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist the San Benito County RMA in identifying and mitigating the Project's 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). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

cc: Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706-2020

United States Army Corps of Engineers
San Joaquin Valley Office
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

ec: California Department of Fish and Wildlife
LSA Program; R4LSA@wildlife.ca.gov

United States Fish and Wildlife Service
Patricia Cole; Patricia_Cole@fws.gov

LITERATURE CITED

California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.

California Department of Fish and Wildlife. 2023. Biogeographic Information and Observation System (BIOS). https://www.wildlife.ca.gov/Data/BIOS.

California Native Plant Society. 2005. Inventory of rare and endangered plants (online edition, v6-05d). Sacramento, CA.

California Native Plant Society, Rare Plant Program (CNPS). 2018. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.39). Website http://www.rareplants.cnps.org. Accessed January 24, 2020.

CDFG. 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks. November 8, 1994.

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

CDFW. 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agriculture Fields in 2015. March 19,2015.

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.

Erichsen, A.L., Smallwood, S.K., Commandatore, A.M., Wilson, B.W., & Fry, M.D. (1996). White-tailed Kite Movement and Nesting Patterns in an Agricultural Landscape.

Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne, 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.

Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.

Hatfield, R, S. Colla, S. Jepsen, L. Richardson, R. Thorp, and S. Foltz Jordan. 2014. Draft IUCN Assessments for North American *Bombus* spp. for the North American IUCN Bumble Bee Specialist Group. The Xerces Society for Invertebrate Conservation, www.xerces.org, Portland, OR.

Hatfield, R., Jepsen, S., Thorp, R., Richardson, L., Colla, S. & Foltz Jordan, S. 2015. *Bombus occidentalis*. The IUCN Red List of Threatened Species 2015.

Hickman, J. C. (ed.). 1993. The Jepson Manual. University of California Press, Berkeley, CA.

Rusty Patch Bumble Bee (*Bombus affinis*) Survey Protocol: https://www.fws.gov/midwest/Endangered/insects/rpbb/surveys.html

Shuford, W.D., and Gardali, T., 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.

Smith, J.P., Farmer, C.J., Hoffman, S.W., Kaltenecker, G.S., Woodruff, K.Z., and Sherrington, P.F. 2008. Trends in autumn counts of migratory raptors in western North America. Pages 217-254.

Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000). Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

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.

USFWS, 2001. Least Bell's Vireo Survey Guidelines. United States Fish and Wildlife Service, January 19, 2001.

USFWS. 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.

USFWS 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog March 2005. 26 pp.

USFWS, 2010. Golden Eagle inventory and monitoring protocols; and other recommendations. Division of Migratory Bird Management. 31 pp.

USFWS. 2011. Standard recommendations for the protection of the San Joaquin kit fox prior to or during ground disturbance. United States Fish and Wildlife Service, January 2011.

Williams, P. H., R. W. Thorp, L. L. Richardson, and S .R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.

WRI [Wildlife Research Institute, Inc.]. 2009. Western Mohave 2008 raptor survey;

BLM Johnson Valley and Stoddard Valley open areas and environs. WRI for U.S. Bureau of Land Management, Moreno Valley, CA