



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 4, 2022

Kim Voge, Associate Planner  
Town of Windsor Community Development Department  
9291 Old Redwood Highway, Building 400  
Windsor, CA, 95492  
[kvoge@townofwindsor.com](mailto:kvoge@townofwindsor.com)



Subject: Shiloh Crossing Project, Mitigated Negative Declaration, SCH No. 2022030026, Town of Windsor, Sonoma County

Dear Ms. Voge:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Town of Windsor Community Development Department (Town) for the Shiloh Crossing Project (project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform the Town, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the project.

## CDFW ROLE

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

## REGULATORY AUTHORITY

### Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections

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

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protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Town of Windsor Community Development Department

**Objective:** Construct of a 201,050-square-foot high density, mixed use residential development for Mixed-Income occupants, or occupants earning 80 percent of Adjusted Mean Income and below. The proposed project would consist of 173 apartment dwellings, a Community Center, and 8,000 square feet of commercial space in two buildings: the South Building and the North Building. Primary project activities include site preparation and grading, construction of housing buildings, paved parking, and landscaping.

**Location:** The project site is located at 295 Shiloh Road in the southeastern part of the Town of Windsor in Sonoma County, California. The 5.92-acre project site is located on Assessor's Parcel Number 163-171-039. The project site is located on the Healdsburg, California, United States Geographical Survey 7.5-minute Topographic Quadrangle Map, Township 8 North, Range 8 West, Section 19 (Latitude 38.526705° North; Longitude -122.784791° West).

**Timeframe:** January 2023 to December 2024

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the Town in adequately identifying and/or mitigating the project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below, CDFW concludes that a Mitigated Negative Declaration is appropriate for the project. Attachment 1 includes a Draft Mitigation Monitoring and Reporting Program for CDFW's recommended mitigation measures below.

### **I. Mitigation Measure and Related Impact Shortcoming**

**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 U.S. Fish and Wildlife Service (USFWS)?**

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**COMMENT 1: Section 2.4, Pages 74, 78,79**

**Issue:** The project is within the wintering distribution of burrowing owl (*Athene cunicularia*) and contains and is adjacent to grasslands that may be suitable wintering habitat for the species (Klute et al. 2003). Burrowing owls have been documented overwintering in the project vicinity (California Natural Diversity Database Occurrence Numbers 564, 921, 2023; CDFW 2022). According to the MND, only breeding season surveys for burrowing owl were conducted; however, the project site is within the wintering range and not the breeding range of the species. Surveys conducted during the breeding season would not detect overwintering owls. Mitigation Measure BIO-1a requires pre-construction surveys for burrowing owl within 30 days prior to construction and 300 feet of the project area; however, this survey methodology may not detect burrowing owls that may be impacted by the project because according to the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) owls may be impacted up to 500 meters (1,640 feet) from a project site (see: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>).

**Specific impacts and why they may occur and be significant:** If the proposed surveys fail to detect burrowing owls that may be impacted by the project, the project may result in reduced health and vigor, or mortality, of owls from direct impacts to occupied wintering habitat or from wintering burrow abandonment caused by audio and visual disturbances. Burrowing owl is a California Species of Special Concern and protected under Fish and Game Code sections 3503 and 3503.5 and the federal Migratory Bird Treaty Act. Therefore, if wintering burrowing owls are present on or within 1,640 feet of the project site, project impacts to burrowing owl would be *potentially significant*.

**Recommendation:** To reduce impacts to burrowing owl to less-than-significant, CDFW recommends replacing Mitigation Measure BIO-1a with the following mitigation measure:

A qualified biologist shall conduct a habitat assessment for wintering burrowing owl, and surveys if habitat is present. The qualified biologist shall follow the California Department of Fish and Game (now CDFW) *2012 Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report) habitat assessment and survey methodology prior to project activities occurring during the burrowing owl wintering season from September 1 to January 31. The habitat assessment and surveys shall encompass a sufficient buffer zone to detect owls nearby that may be impacted, which shall be a minimum of 1,640 feet unless otherwise approved in writing by CDFW. Surveys shall include four non-breeding season surveys spread evenly throughout the nonbreeding season pursuant to the CDFW 2012 Staff Report. Time lapses between surveys or project activities shall trigger subsequent surveys, as determined by a qualified

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biologist, including but not limited to a final survey within 24 hours prior to ground disturbance and before construction equipment mobilizes to the project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections.

Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific conditions, and completed before project construction unless otherwise approved in writing by CDFW. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan prior to project construction.

**COMMENT 2: Section 4.1, Page 79**

**Issue:** Mitigation Measure BIO-1b requires a pre-construction nesting bird survey prior to development removing any trees or vegetation that may provide suitable nesting habitat for migratory birds or other special-status bird species. However, construction activities can impact nesting birds even if trees or vegetation is not being removed, such as impacts from auditory or visual disturbances or activities directly impacting nests that are not located on vegetation. In addition, Mitigation Measure BIO-1b states that surveys should be conducted no earlier than 30 days before construction activities are scheduled. A time lapse of this length between pre-construction surveys and construction activities increases the risk of nesting birds establishing nests undetected, and therefore, being vulnerable to impacts as a result of construction activities. Additionally, the term “should” indicates the mitigation measure would be optional and therefore may not be implemented.

**Recommendation:** To reduce impacts to nesting birds to less-than-significant, CDFW recommends replacing Mitigation Measure BIO-1b with the following mitigation measure:

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. The survey shall consist of the entire project limits, as well as a minimum 500-foot buffer. If a lapse in project-related work of 7 days or longer occurs, another focused survey shall be required before project work can be reinitiated. If an active nest is found during surveys, qualified biologist shall

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establish site- and species-specific no-work buffers. 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, unless otherwise approved in writing by CDFW.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <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**

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CDFW appreciates the opportunity to comment on the MND to assist the Town in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nick Wagner, Senior Environmental Scientist (Specialist), at (707) 428-2075 or [Nicholas.Wagner@wildlife.ca.gov](mailto:Nicholas.Wagner@wildlife.ca.gov) or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

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

## REFERENCES

California Department of Fish and Wildlife (formerly California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. Available online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

California Department of Fish and Wildlife. 2022. California Natural Diversity Database. Available online at: <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTPR6001-2003, Washington, D.C.

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## Attachment 1

### Draft Mitigation Monitoring and Reporting Program

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
<p><b>MM-BIO-1: Pre-construction Surveys for Burrowing Owl (includes avoidance and passive relocation if found):</b> A qualified biologist shall conduct a habitat assessment for wintering burrowing owl, and surveys if habitat is present. The qualified biologist shall follow the California Department of Fish and Game (now CDFW) 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report) habitat assessment and survey methodology prior to project activities occurring during the burrowing owl wintering season from September 1 to January 31. The habitat assessment and surveys shall encompass a sufficient buffer zone to detect owls nearby that may be impacted, which shall be a minimum of 1,640 feet unless otherwise approved in writing by CDFW. Surveys shall include four non-breeding season surveys spread evenly throughout the nonbreeding season pursuant to the CDFW 2012 Staff Report. Time lapses between surveys or project activities shall trigger subsequent surveys, as determined by a qualified biologist, including but not limited to a final survey within 24 hours prior to ground disturbance and before construction equipment mobilizes to the project area. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 Staff Report survey methodology resulting in detections.</p> <p>Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan. Habitat compensation acreages shall be approved by CDFW, as the amount depends on site-specific</p>	<p>Prior to ground disturbance</p>	<p>Project Applicant</p>

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<p>conditions, and completed before project construction unless otherwise approved in writing by CDFW. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan prior to project construction.</p>		
<p><b>MM-BIO-2: Pre-construction Surveys for Nesting Birds:</b> 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. The survey shall consist of the entire project limits, as well as a minimum 500-foot buffer. If a lapse in Project-related work of 7 days or longer occurs, another focused survey shall be required before project work can be reinitiated. If an active nest is found during surveys, qualified biologist shall establish site- and species-specific no-work buffers. 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.</p> <p>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, unless otherwise approved in writing by CDFW.</p>	<p>Prior to ground disturbance</p>	<p>Project Applicant</p>