



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

January 25, 2023

**JAN 26 2023**

## STATE CLEARING HOUSE

David Feinstein, Community Development Director  
City of Fairfield  
1000 Webster Street  
Fairfield, CA 94533  
[DFeinstein@fairfield.ca.gov](mailto:DFeinstein@fairfield.ca.gov)

Subject: City of Fairfield 2023-2031 Housing Element Update, Negative Declaration, SCH No. 2022120605, Solano County

Dear Mr. Feinstein:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Negative Declaration (ND) from the City of Fairfield (City) for the City of Fairfield 2023-2031 Housing Element Update (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the ND to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

### CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Incidental Take Permit (ITP), a Native Plant Protection Act Permit, a Lake and Streambed Alteration (LSA) Agreement, or approval under other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

### PROJECT DESCRIPTION SUMMARY

This Project is a Housing Element Update (HEU) to the City's General Plan for the planning period of 2023 to 2031. The Project would rezone seven parcels near Cordelia and east of Oliver Road from allowing housing conditionally to allowing housing by right. In additional parcels located in the Heart of Fairfield Specific Plan Area, the Train Station Specific Plan area, near the Fairfield Transportation Center, along key corridors

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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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such as North Texas Street, and in other infill areas throughout the City, affordable housing development would be enhanced through the City's actions to create sustainable revenue streams for affordable housing; infill housing and small-lot development incentives; development of design standards for 'missing middle' housing; permitting of sites included in prior cycles to develop with affordable housing by right; and rezoning to allow higher densities on certain parcels in areas that are more moderately resourced. The Project is located in the City's Planning Area which encompasses the City and its' adjacent Sphere of Influence. All sites where rezoning or other Project activities would occur are within the limits of the City of Fairfield.

## REGULATORY REQUIREMENTS

### California Endangered Species Act

Please be advised that a CESA ITP must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has the potential to impact CESA listed species including, but not limited to Swainson's hawk (*Buteo swainsoni*) and California tiger salamander (*Ambystoma californiense*), CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

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

### Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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. **Sites where Project activities would occur appear to contain streams such as tributaries to Nurse Slough and Cordelia Slough (ND page 9), and therefore an LSA Notification may be warranted, as further described below.** Work

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within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

### **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 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.

### **Fully Protected Species**

Fully Protected species may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. A Draft Mitigation and Monitoring Reporting Plan is included in **Attachment 1**. Based on the Project's avoidance of significant impacts on biological resources through the implementation of mitigation measures, including those recommended by CDFW below, CDFW concludes that a Mitigated Negative Declaration (MND) would be more appropriate for the Project.

### **I. Clarify CEQA Evaluation**

**COMMENT 1:** It is unclear why a CEQA document was prepared because the ND concludes that there will be "No Impact" to all environmental factors including biological resources and identifies that "The HEU is a policy document, consisting of a housing program. While implementation of the HEU would ultimately require rezones ... rezones would not be approved as part of the current action. Therefore, its adoption would not, in itself, produce environmental impacts." However, CEQA only applies to a project if it has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (CEQA Guidelines,

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§ 15378). The ND and Notice of Intent (NOI) appear to indicate that the Project may result in physical changes to the environment as they state “future development in the city may have the potential to affect important biological resources” (ND page 15), “implementation of the programs contained in the document would accommodate development required to meet the City's RHNA allocation...” (ND page 11), and affordable housing development “would be enhanced through the City's streamlined review of affordable housing pursuant to the requirements of Senate Bill (SB) 35. Such procedures to expedite review and approval may include the development of an application process and SB 35 eligibility checklist that allows completely affordable housing projects to be reviewed through an administrative process” (NOI page 2). *Please clarify if the Project would result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment,* and if so, CDFW believes that an MND would be appropriate for the Project, as further described below. Note that the City of Benicia recently prepared an Environmental Impact Report for the City of Benicia 2023-2031 Housing Element & Safety Element Updates project and incorporated several mitigation measures including those recommended by CDFW (see: <https://ceganet.opr.ca.gov/Project/2022060021>).

Additionally, please clarify if future projects may use the Project's CEQA document for CEQA compliance, meaning the CEQA document would be a “program” document consistent with CEQA Guidelines section 15168. If so, CDFW recommends providing a clear checklist or procedure for evaluating future project impacts and clearly citing the portions of the CEQA document, including page and section references, containing the analysis of the Project activities' potentially significant effects, to ensure impacts to fish and wildlife resources are appropriately evaluated in compliance with CEQA and impacts are mitigated to less-than-significant (CEQA Guidelines, § 15168, subd. (c)(4)).

## **II. Environmental Setting and Related Impact Shortcomings**

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

And,

**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)?**

**COMMENT 2: Deferred Mitigation, Pages 14 and 15**

**Issue, specific impacts, why they may occur and be potentially significant:** If the Project may result in physical changes in the environment, such as facilitating

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development, then the Project could have a substantial adverse effect, either directly or through habitat modifications, on candidate, sensitive, or special-status species. Parcels in the Train Station Specific Plan Area and near Cement Hill Road have potential to support special-status species including, but not limited to Swainson's hawk and California tiger salamander, CESA listed as threatened species, and burrowing owl (*Athene cunicularia*), a California Species of Special Concern.

The ND states that "future development would not be anticipated to significantly impact biological resources" (ND page 15). There are approximately 9 occurrences of Swainson's hawk, 17 occurrences of California tiger salamander, and 13 occurrences of burrowing owl in the California Natural Diversity Database (CNDDDB) within five miles of parcels where Project activities would occur, and some of the parcels appear to contain suitable habitat for these species.

If the work associated with the Project occurs during nesting season, any nesting Swainson's hawks within 0.5 miles of the Project site could be disturbed by Project activities resulting in nest abandonment or reduced health and vigor of young, take of the species pursuant to CESA, and a substantial reduction in the species' population, which would be a mandatory finding of significant impact (CEQA Guidelines, § 15065).

The Project could result in the removal of potential foraging habitat for Swainson's hawk; however, no compensatory habitat mitigation is proposed. The breeding population of Swainson's hawks in California has declined by an estimated 91% since 1900 and the species continues to be threatened by on-going and cumulative loss of foraging habitat (CDFW 2016). Therefore, reduction of Swainson's hawk foraging habitat would be a potentially significant impact.

Earthmoving work associated with the Project could result in direct injury to or mortality of California tiger salamanders, which spend the dry period of the year in underground burrows (USFWS 2017). Conversion of habitat to development could destroy California tiger salamander upland and breeding habitat (USFWS 2017). Urbanization also creates and widens roads, which are both a cause of direct mortality to California tiger salamander and a cause of habitat fragmentation, which results in isolation of metapopulations and makes populations more vulnerable to stochastic extinctions (USFWS 2017). Development activities within California tiger salamander habitat could result in take of the species pursuant to CESA, and a substantial reduction in the species' population, which would be a mandatory finding of significant impact (CEQA Guidelines, § 15065).

The Project could result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, injury or mortality of adults, and permanent wintering (i.e., non-nesting) or nesting habitat loss. Additionally, the Project may result in a permanent reduction of burrowing owl foraging habitat in Solano County. Burrowing owl is a

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California Species of Special Concern because the species' population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels (*Otospermophilus beecheyi*) resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owls have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (*Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, Esther Burkett, May 13, 2022). Based on the foregoing, if burrowing owls are wintering or nesting on or within 500 meters of the Project site, or if burrowing owl foraging habitat is removed, Project impacts to burrowing owl would be potentially significant.

The ND also states that the "impacts to various biological resources of future residential projects would be assessed at the time specific development projects are proposed. Mitigation measures would then be adopted as necessary, in conformance with CEQA." (ND page 15). CEQA Guidelines section 15126.4, subdivision (b) states: "The specific details of a mitigation measure; however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards."

As this document is a ND, no mitigation measures are proposed. The lead agency (the City) has not committed itself to the mitigation, nor does the ND adopt specific performance standards for mitigation goals, nor does it identify types of actions<sup>2</sup> that could meet these standards.

It is conceivable based on the lack of mitigation measures that Swainson's hawk, California tiger salamander, burrowing owl, and other special-status species would: 1) not be appropriately evaluated in subsequent biological surveys, or 2) that future

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<sup>2</sup> Actions that could meet performance standards include, for example, conducting work outside of nesting seasons, avoiding special-status plants or requiring compensatory mitigation for habitat loss.

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environmental review pursuant to CEQA would not require appropriate mitigation measures to reduce impacts to less-than-significant.

Therefore, if special-status species occur on or adjacent to Project sites, impacts to special-status species would be potentially significant, and impacts to species considered threatened, endangered, or rare may be considered a mandatory finding of significance (CEQA Guidelines, §§ 15065, 15380).

**Recommended Mitigation Measures:** If Project impacts to special-status species may occur, to reduce potential impacts to less-than-significant CDFW recommends preparing an MND which evaluates such impacts and includes specific mitigation measures for foreseeable potentially significant impacts. Where future site-specific impacts may not be presently foreseeable based on Project's broad scope, the checklist discussed in Comment 1 above should be used to determine if a future CEQA environmental document is required. CDFW would appreciate the opportunity to review the MND and may have further comments once more specific species information is provided.

For example, CDFW recommends including the below mitigation measures in the MND:

*Mitigation Measure BIO-1 (Swainson's Hawk Surveys and Avoidance Buffer):* If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

*Mitigation Measure BIO-2 (Swainson's Hawk Foraging Habitat Mitigation):* Impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Consistent with the draft Solano Habitat

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Conservation Plan (HCP), prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a 1:1 ratio which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank in Solano County.

*Mitigation Measure BIO-3 (California Tiger Salamander):* Prior to impacting potentially occupied California tiger salamander habitat, the Project shall obtain CESA take authorization for this species through an ITP from CDFW and federal Endangered Species Act (ESA) take authorization from USFWS. Habitat compensation shall be provided at a minimum 3:1 mitigation to impact ratio for permanent loss of habitat and 1:1 for temporary loss of habitat; therefore, shall include placement of a conservation easement and development and funding of a long-term management plan in perpetuity, in a manner accepted in writing by CDFW.

*Mitigation Measure BIO-4 (Burrowing Owl Surveys):* A qualified biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment, following the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) methodology.<sup>3</sup> The habitat assessment and surveys shall encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist should have a minimum of two years of experience implementing the above methodology. Any detected burrowing owls shall be avoided pursuant to the buffer distances outlined in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012), unless otherwise approved in writing by CDFW.

*Mitigation Measure BIO-5 (Burrowing Owl Foraging Habitat Mitigation):* Impacts to burrowing owl foraging habitat shall be mitigated as described in *Mitigation Measure Bio-2* above.

*Mitigation Measure BIO-6 (Burrowing Owl Burrow Mitigation):* If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.

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<sup>3</sup> CDFW, 2012. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>



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Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of potentially evicting burrowing owls to less-than-significant, Mitigation Measure Bio-6 outlined above should require habitat compensation with the acreage amount identified in any eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction; therefore, eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

**III. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or USFWS?**

**COMMENT 3:** Streams, Riparian Habitat, Wetlands, Sensitive Natural Communities, and LSA Notification compliance, Page 15.

**Issue, specific impacts, why they may occur and be potentially significant:** If the Project may result in physical changes in the environment where streams, riparian habitat, wetlands, or sensitive natural communities occur, such as tributaries to Nurse Slough and Cordelia Slough, then the Project could result in a potentially significant impact to these resources.

**Recommended Mitigation Measures:** If Project impacts to streams, riparian habitat, wetlands, or sensitive natural communities would occur, to reduce potential impacts to less-than-significant CDFW recommends including the below mitigation measures.

*Mitigation Measure BIO-7 (Habitat Restoration and Compensation):* The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to sensitive natural communities, riparian habitat, and wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for

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acres and linear feet of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan in perpetuity, unless otherwise approved in writing by CDFW.

*Mitigation Measure BIO-8 (Applicable Permits):* The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. for Project activities affecting lakes or streams and associated riparian habitat; therefore, shall comply with the LSA Agreement, if issued. Projects shall also obtain permits from the Regional Water Quality Control Board (RWQCB) and the U.S. Army Corps of Engineers (USACE) pursuant to the Clean Water Act for impacts to Waters of the State, Waters of the United States, and wetlands, as applicable.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the 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**

CDFW appreciates the opportunity to comment on the ND to assist the City in identifying and mitigating Project impacts on biological resources. Due to the issues presented in this letter, CDFW concludes that the ND may not adequately identify or mitigate the Project's significant, or potentially significant, impacts on biological resources. Deficiencies in the Lead Agency CEQA document can affect later project approvals by CDFW in its role as a Responsible Agency. In addition, because of these issues, CDFW has concerns that the City may not have the basis to approve the project

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or make “findings” as required by CEQA unless the environmental document is modified to eliminate and/or mitigate significant impacts, as reasonably feasible (CEQA Guidelines, §§ 15074, 15091 & 15092).

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist at (707) 799-4210 or [Alex.Single@wildlife.ca.gov](mailto:Alex.Single@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov) or (707) 210-4415.

Sincerely,

DocuSigned by:

*Erin Chappell*

B77E9A6211EF486  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1: Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022120605)

## REFERENCES

- CDFW. 2016. Status Review: Swainson’s Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>
- CDFW. 2012. Department of Fish and Game Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA.
- 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.
- USFWS. 2017. Recovery Plan for the Central California Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*) USFWS, Sacramento, CA.

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## ATTACHMENT 1

### Draft Mitigation and Monitoring Reporting Plan

CDFW provides the following language to be incorporated into the Mitigation and Monitoring Program for the Project as examples of mitigation measures. As stated in the enclosed letter, CDFW believes that an MND may be more appropriate for the Project, and the MND should evaluate potential Project impacts to special-status species and include additional specific mitigation measures for foreseeable potentially significant impacts.

| <b>Biological Resources (BIO)</b> |  |   |                          |
|-----------------------------------|--|---|--------------------------|
| <b>Mitigation Measures</b>        | <b>Description</b>   | <b>Timing</b>   | <b>Responsible Party</b> |
| <b>BIO-1</b>                      | <p><i>Swainson's Hawk Surveys and Avoidance Buffer:</i> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i>. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.</p> | <p>Prior to the Lead Agency issuing construction related permits and ground disturbance</p> | <p>Project Applicant</p> |

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|                     |   |   |                          |
|---------------------|---|---|--------------------------|
| <p><b>BIO-2</b></p> | <p><i>Swainson's Hawk Foraging Habitat Mitigation:</i> Impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Consistent with the draft Solano HCP, prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a 1:1 ratio which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank in Solano County.</p>   | <p>Prior to the Lead Agency issuing construction related permits and ground disturbance</p> | <p>Project Applicant</p> |
| <p><b>BIO-3</b></p> | <p><i>California Tiger Salamander:</i> Prior to impacting potentially occupied California tiger salamander habitat, the Project shall obtain CESA take authorization for this species through an ITP from CDFW and ESA take authorization from USFWS. Habitat compensation shall be provided at a minimum 3:1 mitigation to impact ratio for permanent loss of habitat and 1:1 for temporary loss of habitat, and shall include placement of a conservation easement and development and funding of a long-term management plan in perpetuity, in a manner accepted in writing by CDFW.</p>   | <p>Prior to the Lead Agency issuing construction related permits and ground disturbance</p> | <p>Project Applicant</p> |
| <p><b>BIO-4</b></p> | <p><i>Burrowing Owl Surveys:</i> A qualified biologist shall conduct a habitat assessment and surveys, if warranted based on the habitat assessment, following the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)</i> methodology. The habitat assessment and surveys shall encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist should have a minimum of two years of experience implementing the above methodology. Any detected burrowing owls shall be avoided pursuant to the buffer distances outlined in the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)</i>, unless otherwise approved in writing by CDFW.</p> | <p>Prior to the Lead Agency issuing construction related permits and ground disturbance</p> | <p>Project Applicant</p> |

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| <p><b>BIO-5</b></p> | <p><i>Burrowing Owl Foraging Habitat Mitigation:</i> Impacts to burrowing owl foraging habitat shall be mitigated as described in <i>Mitigation Measure BIO-2</i> above.</p>   | <p>Prior to the Lead Agency issuing construction related permits and ground disturbance</p> | <p>Project Applicant</p> |
| <p><b>BIO-6</b></p> | <p><i>Burrowing Owl Burrow Mitigation:</i> If the Project would impact an unoccupied nesting burrowing owl burrow or burrow surrogate (i.e., a burrow known to have been used in the past three years for nesting), or an occupied burrow (where a non-nesting owl would be evicted as described below), the following habitat mitigation shall be implemented prior to Project construction.</p> <p>Impacts to each nesting site shall be mitigated by permanent preservation of two occupied nesting sites with appropriate foraging habitat within Solano County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity. The same requirements shall apply for impacts to non-nesting evicted owl sites.</p> <p>The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.</p> <p>Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of potentially evicting burrowing owls to less-than-significant, Mitigation Measure Bio-6 outlined above should require habitat compensation with the acreage amount identified in any eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction; therefore, eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”</p> | <p>Prior to the Lead Agency issuing construction related permits and ground disturbance</p> | <p>Project Applicant</p> |

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| <b>BIO-7</b> | <i>Habitat Restoration and Compensation:</i> The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to sensitive natural communities, riparian habitat, and wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan in perpetuity, unless otherwise approved in writing by CDFW. | Prior to the Lead Agency issuing construction related permits and ground disturbance | Project Applicant |
| <b>BIO-8</b> | <i>Applicable Permits:</i> The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. for Project activities affecting lakes or streams and associated riparian habitat; therefore, shall comply with the LSA, if issued. Projects shall also obtain permits from the RWQCB and USACE pursuant to the Clean Water Act for impacts to Waters of the State, Waters of the United States, and wetlands, as applicable.   | Prior to the Lead Agency issuing construction related permits and ground disturbance | Project Applicant |