



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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April 18, 2023

Governor's Office of Planning & Research

Apr 19 2023

STATE CLEARINGHOUSE

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Subject: County of Napa - 1228 Hagen LLC Agricultural Erosion Control Plan #P21-00274, Mitigated Negative Declaration, SCH No. 2023030552, Napa County

Dear Mr. Morrison:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Napa County (County) for the County of Napa - 1228 Hagen LLC Agricultural Erosion Control Plan #P21-00274 (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: 1228 Hagen LLC Trust

Objective: Perform corrective actions to address unauthorized vineyards. Primary Project activities include legalizing 0.29 acres, maintaining 0.79 acres, and installing 0.96 acres of vineyards. The Project would also remove 0.39 acres of unauthorized vineyard and restore 0.35 acres of woodland along Sarco Creek, which would include planting 12

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.

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black oaks (*Quercus velutina*) and 12 coast live oaks (*Quercus agrifolia*). The Project would remove 8 black walnut (*Juglans nigra*) agricultural trees and remove 2.06 acres of non-native annual grasslands.

Location: 1228 Hagen Road in the City and County of Napa; Longitude 38.325710°N, Longitude 122.261330°W; Assessor's Parcel Number 049-200-003.

Timeframe: Project implementation will commence in April and complete by October 15. Vineyard operations will occur year-round.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), a 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 Agreement

Notification, pursuant to Fish and Game Code sections 1600 et. seq. is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **Project activities would restore riparian habitat associated with Sarco Creek and therefore, would likely be subject to LSA Notification requirements, as further described below.** CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not

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execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Fully Protected Species

Fully Protected species, such as white-tailed kite (*Elanus leucurus*), 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.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those recommended below and in **Attachment A**, CDFW concludes that an MND is appropriate for the Project.

I. Stream and Riparian Habitat

COMMENT 1: Lake and Streambed Alteration Notification

Issue: The MND states: "The project will remove 0.35 acres of existing vines located within the required Sarco Creek setback. This area will be restored to a natural riparian state through the planting of 12 coast live oaks and 12 black oaks." This work has the potential to substantially impact the stream or riparian habitat and would likely require an LSA Notification under Fish and Game Code section 1600. Additionally, the area of impacted riparian habitat is unclear and the proposed restoration may not adequately mitigate all impacts that occurred. CDFW has not received an LSA Notification for riparian habitat removal associated with the Project, therefore, if riparian habitat was removed it may have constituted a violation of Fish and Game Code section 1600 et seq.

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Recommended Mitigation Measure:

Mitigation Measure (MM) Bio-4 LSA: The Project shall clarify the area of riparian habitat that was impacted and submit an LSA Notification to CDFW for the proposed restoration and comply with the LSA Agreement, if issued. The LSA Agreement may include measures to avoid and minimize impacts to special-status species and other wildlife, including, but not limited to, the recommended mitigation measures in this letter and those listed below:

- Surveys for western pond turtle (*Emys marmorata*) and other special-status herpetofauna;
- CDFW approval of the restoration plan and additional restoration requirements based on the overall riparian habitat area impacted and temporal habitat loss; and
- Implementation of a five-year monitoring and maintenance plan of the revegetation area

II. MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have potential to degrade quality of environment, substantially reduce habitat of a fish or wildlife species, cause fish or wildlife population to drop below self-sustaining levels?

COMMENT 2: Swainson’s Hawk – Environmental Setting Shortcoming

Issue: The Project may impact nesting Swainson’s hawk, which occurs in Napa County. The California Natural Diversity Database (CNDDDB) documents a Swainson’s hawk nesting occurrence less than five miles south of the Project site.

Specific impacts and why they may occur and be significant: There are many potentially suitable Swainson’s hawk nest trees on and adjacent to the Project site, and open areas potentially suitable for foraging. If active Swainson’s hawk nests are not detected by surveys or appropriate buffer zones are not established, Swainson’s hawk could be directly impacted by the removal of nest trees or experience indirect impacts from noise and visual disturbance from Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species.

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

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to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

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

Recommended Mitigation Measure: For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends adding the following mitigation measure:

Mitigation Measure (MM) Bio-5 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000)² survey protocol, within 0.5-mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

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

COMMENT 3: Nesting Birds – Environmental Setting Shortcoming

Issue: The Project would remove eight black walnut trees which may provide suitable habitat for nesting birds, including white-tailed kite, which is a fully protected species. The MND does not include any measures to avoid or minimize impacts to special-status nesting birds.

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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Specific impacts and why they may occur and be significant: If appropriate surveys are not conducted and appropriate buffer zones are not established, nesting birds including, but not limited to, fully protected species, such as white-tailed kite, could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young. Additionally, nesting birds are protected by Fish and Game Code section 3500 et seq. and the federal MBTA. Therefore, if nesting birds such as passerines or waterfowl occur within 250 feet of the Project site, or nesting raptors occur within 500 feet of the Project site, impacts to nesting birds would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to less-than-significant and comply with Fish and Game Code and MBTA, CDFW recommends including the following mitigation measure:

MM Bio-6: Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. The Project is responsible for complying with Fish and Game Code section 3503 et seq. and the MBTA of 1918.

- a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a qualified biologist within three days prior to the beginning of Project-related activities. If a lapse in Project-related work of seven days or longer occurs, another focused survey shall be required before Project work can be reinitiated.
- b) Active Nest Buffers. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.
 - Buffers shall be at a distance necessary to ensure disturbance to nesting birds is avoided. The buffer distance shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors unless otherwise approved by a qualified biologist. The buffer distances shall be determined by a qualified biologist based on site conditions and 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

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

COMMENT 4: American Badger– Environmental Setting Shortcoming

Issue: The Project is within the range³ of the American badger (*Taxidea taxus*). The Project is located within grassland habitat and oak woodland habitat that may be suitable for American badger. Badgers range throughout most of California and can dig burrows in a single day; therefore, the species may occupy the Project site and adjacent habitat prior to Project construction (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015). Additionally, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the grassland portions of the site is mapped as Medium Suitability.

Specific impacts and why they may occur and be significant: American badger is a California Species of Special Concern (SSC). CDFW designates certain vertebrate species as SSC because declining population levels, limited ranges, and/or continuing threats have made them vulnerable to extinction or extirpation in California. Though not listed pursuant to the federal Endangered Species Act or CESA, the goal of designating taxa as SSC is to halt or reverse the decline of these species by addressing issues of conservation concern early enough to help secure their long-term viability.

The Project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, if American badgers are present on or adjacent to the Project area, Project impacts to American badger would be potentially significant.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to less-than-significant, CDFW recommends that the MND include the following mitigation measure:

³ The American badger range map is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=2598&inline=1>

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MM Bio-7: American Badger Avoidance. A qualified biologist shall survey the Project site and adjacent habitat for signs of American badger and suitable burrows. If occupied burrows are detected, the project shall avoid occupied burrows and establish a sufficient buffer as determined by a qualified biologist and approved by CDFW. If badgers are found on or adjacent to the Project site and cannot be avoided the Project shall prepare and implement a CDFW-approved relocation plan.

COMMENT 5: Pallid Bat– Environmental Setting Shortcoming

Issue: The Project will remove eight black walnut trees which may provide suitable habitat for roosting bats, including pallid bat (*Antrozous pallidus*), an SSC which is known to roost in tree bark, hollows, or foliage (Johnston 2004). CNDDDB indicates occurrences of pallid bat within five miles of the Project site. The MND does not include any measures to avoid or minimize impacts to special-status bats.

Specific impacts and why they may occur and be significant: Tree removal activities may result in injury or mortality of roosting or breeding pallid bats. Pallid bats are experiencing population declines in California (Brylski et al. 1998). Bats are long-lived and have a low reproductive rate (Johnston 2004); therefore, each mortality can have a protracted effect on the reproductive rate of the population. Therefore, if pallid bats are present in trees that would be removed, Project impacts to pallid bats would be potentially significant.

Recommended Mitigation Measure:

MM Bio-8: Bat Tree Habitat Assessment and Surveys. Prior to any tree removal, a Qualified Biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <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 MND to assist the County in identifying and mitigating Project impacts on biological resources.

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

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

Attachment A: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023030552)

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REFERENCES

Bloom, P. H. 1980. The status of the Swainson's hawk in California, 1979. Bureau of Land Management, Sacramento, CA, USA.

Brehme, C.S.; Hathaway, S.A.; Booth, R.; Smith, B.H.; and Fisher, R.N. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix).

Brylski, Phillip V.; Collins, Paul W.; Peirson, Elizabeth D.; Rainey, William E.; and Kucera, Thomas E. 1998. Draft Terrestrial Mammals Species of Special Concern in California. Report submitted to California Department of Fish and Game, Sacramento, CA.

California Department of Fish and Wildlife (CDFW), 2016. 5-year Status Review: Swainson's hawk (*Buteo swainsoni*). Prepared for the California Fish and Game Commission. Nongame Bird and Mammal Program 1416 Ninth Street, Sacramento, CA.

Johnston, D., Tartarian, G., and Poerson, E. 2004. California Bat Mitigation Techniques, Solutions, and Effectiveness. California Department of Transportation Office of Biological Studies and Technical Assistance. Sacramento, CA.

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ATTACHMENT A

Draft Mitigation Monitoring and Reporting Program (MMRP)

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

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM Bio-4	<p>LSA. The Project shall clarify the area of riparian habitat that was impacted submit an LSA Notification to CDFW for the proposed restoration and comply with the LSA Agreement, if issued. The LSA Agreement may include measures to avoid and minimize impacts to special-status species and other wildlife, including, but not limited to, the recommended mitigation measures in this letter and those listed below:</p> <ul style="list-style-type: none"> • Surveys for western pond turtle (<i>Emys marmorata</i>) and other special-status herpetofauna • CDFW approval of the restoration plan and additional restoration requirements based on the overall riparian habitat area impacted and temporal habitat loss • Implementation of a five-year monitoring and maintenance plan of the revegetation area. 	<p>Prior to Ground Disturbance or Impacts to Vegetation and continuing over the course of the Project</p>	<p>Project Applicant</p>
MM Bio-5	<p>Swainson's Hawk Surveys and Avoidance. If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the <i>Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk</i> (2000) survey protocol, within 0.5-mile of the Project site each year that</p>	<p>Prior to Ground Disturbance or Impacts to Vegetation and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	<p>Project activities occur (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline). Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project’s initiation. The Project shall obtain CDFW’s written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson’s hawks, the Project shall implement a 0.5-mile no-disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, unless otherwise approved in writing by CDFW. If take of Swainson’s hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>		
<p>MM Bio-6</p>	<p>Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. The Project is responsible for complying with Fish and Game Code section 3503 et seq. and the MBTA of 1918.</p> <p>a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a qualified biologist within 3 days prior to the beginning of Project-related activities. If a lapse in Project-related work of seven days or longer occurs, another focused survey shall be required before Project work can be reinitiated.</p> <p>b) Active Nest Buffers. Active nest sites shall be designated as “ESA” and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.</p>	<p>Prior to Ground Disturbance or Impacts to Vegetation and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	<ul style="list-style-type: none">• Buffers shall be at a distance necessary to ensure disturbance to nesting birds is avoided. The buffer distance shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors unless otherwise approved by a qualified biologist. The buffer distances shall be determined by a qualified biologist based on-site conditions and 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. <p>c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a qualified biologist.</p>		
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MM Bio-7	<p>American Badger Avoidance. A qualified biologist shall survey the project site and adjacent habitat for signs of American badger and suitable burrows. If occupied burrows are detected, the project shall avoid occupied burrows and establish a sufficient buffer as determined by a qualified biologist and approved by CDFW. If badgers are found on or adjacent to the project site and cannot be avoided the project shall prepare and implement a CDFW-approved relocation plan.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>
MM Bio-8	<p>Bat Tree Habitat Assessment and Surveys. Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked. Trees shall be removed only if: a) presence of bats is presumed, or documented during the surveys described below, in trees with suitable habitat, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices, or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p>	<p>Prior to Ground Disturbance or Impacts to Vegetation</p>	<p>Project Applicant</p>