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Subject: **Nash Road Quarry Reclamation Plan Amendment (Mine ID# 91-35-0015) – Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) Project (Project)**
SCH No.: 2023030649

Dear Arielle Goodspeed:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from San Benito County Resource Management Agency (San Benito County) for the above--referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for

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

biologically sustainable populations of those species (*Id*., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project will be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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

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

PROJECT DESCRIPTION SUMMARY

Proponent: Sandman, Inc.

Objective: The Project proposes to implement a reclamation plan for the Nash Road Quarry (CA Mine ID #91-35-0015) that would allow resumption of sand and gravel mining at the site which ceased in the river channel in 1989 and other areas of the site in 1996. The proposed reclamation plan describes proposed mining operations and reclamation actions at the site. If approved by the County, the proposed reclamation plan would supersede the 1977 Hillsdale Rock Company Reclamation Plan and would also supersede an Interim Management Plan approved by the County on June 16, 2021. The proposed reclamation plan provides for mining of an approximately 32.95-acre portion of the 131-acre site within and adjacent to the San Benito River channel. Mining is proposed to be performed in phases pursuant to an adaptive management plan such that the depth of mining may be increased incrementally to a maximum depth of five feet below the existing thalweg elevation (i.e., the elevation of the lowest point along the length of the riverbed) if monitoring between each phase of mining indicates that no significant impacts to river channel conditions attributable to mining have occurred.

As part of the proposed Project, the phased adaptive management plan provides for the assessment of river system conditions (e.g., stream bank erosion, bridge footing scour) prior to increasing the depth of mining and restricts further mining if adverse effects attributable to mining are observed. The Surface Mining and Reclamation Act (SMARA) of 1975 (mine plan) provides a comprehensive surface mining and reclamation policy with regulation of surface mining operations to assure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition for seasonal mining operations during periods with low or no surface water flow, with provisions to avoid work in the river during flow periods. A low-flow channel would be created each mining season and an upstream transition slope with rock armoring would be installed to reduce upstream erosion (head cutting). The proposed mine plan would initially mine sand and gravel from the along the river channel and lateral bank and adjacent areas without mining below the river thalweg (i.e., a line defining the lowest point along the length of the riverbed). The initial phase of mining may take place over several mining seasons and would extract an estimated 419,527 cubic yards of aggregate. No further mining would occur until a winter with a two-year recurrence interval stream discharge, after which an assessment of river conditions would be performed to determine if the initial mining phase resulted in adverse impacts. If adverse impacts are not observed, a second phase of mining would be then permitted to proceed to a depth of 2.5 feet below the established thalweg elevation, extracting an estimated 78,233 cubic yards of aggregate. This second phase would be followed by another period of no mining until at least two winters, with at least one winter including a minimum 4.3-year flow, after which an assessment of river conditions would be performed to determine if adverse effects attributable to mining have occurred. If adverse impacts to the river are not observed, a third phase of mining would then be permitted for an additional depth of 2.5 feet, resulting in a maximum of depth of 5 feet below the established thalweg elevation. An estimated 97,112 cubic yards of aggregate would be available in this third phase of mining. Subsequent mining would be

dependent on replenishment of sand and gravel into the mining area from upstream areas.

The proposed mine plan includes measures to reduce biological resources impacts of mining, provides for groundwater monitoring and a commitment to maintain a minimum three-foot separation between surface mining and the underlying groundwater table, and includes additional impact avoidance and mitigation provisions. As proposed, approximately 45.26 acres of riparian and upland scrub and associated habitats on the east and west banks of the river in the northern portion of the site would be preserved (i.e., not disturbed by mining or reclamation activities) and approximately 2.24 acres of buffer habitat around the west and northern boundaries of the aggregate processing area in the southeast portion of the site would be preserved. Approximately 31.82 acres of previously mined lands on the southern end of the site are proposed to be cleared and graded to reclaim the area for agricultural uses. Sand and gravel extracted during mining would be crushed, washed, and sorted within the aggregate processing area in the southeastern portion of the site. Process water would be directed to a settling/containment pond. The Applicant proposes that all mined material removed from the site would be transported via specifically defined routes to a concrete batch plant and supply yard in the City of Hollister (151 Hillcrest Road), from where it would be sold. The Applicant also proposes that all trucks entering and leaving the Nash Road Quarry site to transport mined material would be powered by compressed natural gas to reduce air pollutant emissions and noise.

Location: The Project site is located at 1070 Nash Road, west of the city of Hollister and south of Nash Road. The site is approximately 131 acres composed of eight contiguous parcels (Assessor's Parcel Numbers [APNs] 021-040-010, 021-050-011, 021-050-012, 021-050-013, 021-050-019, 021-050-025, 020-060-042, and 020-060-043).

Per Google aerials (2023), and street views, the proposed Project site contains the San Benito River, willow species, disturbed grassland, upland scrub habitat, various dirt trails mainly on the east side of the river, and numerous trees and with shrub species throughout the site. There are large residential neighborhoods adjacent to the east and northeast of the proposed Project site along with two large ponding basins to the east/northeast. Rural residential properties are present on the west/southwest of the proposed Project. Per Project information, the northern portion of the Project site has a higher concentration of human disturbance.

Timeframe: No timeframe given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist San Benito County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Editorial comments or other suggestions may also be included to improve the Draft Environmental Impact Report (DEIR) for this Project.

Based on aerial imagery, and species occurrence records from the California Natural Diversity Database (CNDDB, 2023), the proposed Project site and/or surrounding area has the potential to support numerous special-status species. These resources may need to be evaluated and addressed prior to any approvals that would allow ground disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the federally endangered (FE)/State threatened (ST) San Joaquin kit fox (*Vulpes macrotis mutica*); the federally threatened (FT)/ST California tiger salamander (*Ambystoma californiense*; the ST bank swallow (*Riparia riparia)*; the FT/State species of concern (SSC) California red-legged frog (*Rana draytonii*); the ST and SSC tricolored blackbird (*Agelaius tricolor*); the State candidate-listed as endangered crotch bumble bee (*Bombus crotchii*); and SSC burrowing owl (*Athene cunicularia*), American badger (*Taxidea taxus*), San Joaquin coachwhip (*Masticophis flagellum ruddocki*), western pond turtle (*Actinemys marmorata*), western spadefoot (*Spea hammondii*), and the Monterey hitch (*Lavinia exilicauda harengus*).

San Joaquin Kit Fox (SJKF)

SJKF have been observed approximately 0.30-mile to the west of the Project site (CDFW, 2023). SJKF den in a variety of areas including right-of-ways, agricultural and fallow/ruderal habitat, and dry stream channels such as the San Benito River. SJKF may be attracted to the Project area due to the type and level of ground-disturbing activities and the loose-friable soils in the San Benito riverbed. SJKF may also be attracted to homeless encampments if there is a food source.

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

California Tiger Salamander (CTS)

CTS have been observed approximately 0.46-mile to the southwest of the Project site (CDFW, 2023). Annual grasslands that may be suitable upland refugia habitat for CTS are present on both sides of the San Benito River per Google aerial imagery. This area could potentially contain subterranean habitat for CTS based on the presence of small mammal burrows scattered throughout the area. Additionally, the northwest corner of the project site may potentially constitute upland dispersal habitat. This portion of the Project is near a set of potentially suitable breeding ponds with one potentially gravid CTS occurrence (CNDDB Occurrence No. 1256) detected during construction of the West Hills Treatment Plant located approximately 0.5-mile west of the Project site. With this information, any portions of the uplands at this site would be suitable for CTS burrows and dispersal.

CDFW recommends that potential Project-related impacts to CTS in and surrounding the Project footprint be evaluated by a qualified biologist using the *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (USFWS and CDFW, 2003) as part of the biological technical studies conducted in support of the CEQA document. This methodology requires that surveys be conducted during at least two seasons, with sufficient precipitation, to be considered complete. If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

If CTS protocol level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain an ITP in accordance with Fish and Game Code section 2081 subdivision (b).

Bank Swallow (BASW)

BASW have been previously observed within the proposed Project site and adjacent area (CDFW, 2023). The proposed Project will involve activities within the streambed area and near the bank of the San Benito River, where BASW may potentially nest. Project information states that surveys conducted in 2020 showed that potential nesting cavities were detected on the Project site in vertical cut banks of the San Benito River in the southern part of the Project site.

BASW, historically common in California (Grinnell and Miller, 1944), have underwent a range reduction of approximately 50% since 1900 (CDFG 1988). The main cause of their decline was channelization and stabilization of riverbanks used as nesting habitat as well as other disturbance of this habitat (CDFG, 1988).

CDFW recommends that surveys be conducted for BASW by a qualified biologist as part of the biological technical studies conducted in support of the CEQA document and that the DEIR include language that a minimum 50-foot no disturbance buffer be delineated around active nest burrows until the breeding season has ended or until a qualified biologist has determined that the young birds have fledged. CDFW recommends that in the event that active BASW nests are detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

California Red-Legged Frog (CRLF)

Per Project information, suitable refugia for CRLF was observed on the Project site within ruderal and non-native annual grassland habitats in the form of gopher burrows or California ground squirrel burrows. CRLF have been observed approximately 0.45-mile northwest of the Project site, near San Juan Road in the San Benito River area (CDFW, 2023). Additionally, the Hollister Wastewater Treatment Plant is located immediately north of the Project site and encompasses approximately 1.3-miles of open water and levees. This large water treatment facility may be considered potentially suitable CRLF breeding habitat based on its proximity to existing CNDDB records.

CDFW recommends that a qualified biologist conduct protocol surveys for CRLF in accordance with the USFWS *Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog* (USFWS, 2005) as part of the biological technical studies conducted in support of the CEQA document. In addition to the protocol surveys, two nights of pre-construction surveys following the USFWS 2005 guidelines are recommended immediately prior to construction or as otherwise required by the USFWS. Finally, the DEIR should include the recommended avoidance and minimization measures referenced above, and include language that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 through March 31). If ground-disturbing activities must take place between November 1 and March 31, CDFW recommends that a qualified biologist monitor construction activity daily.

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

Tri-colored Blackbird (TRBL)

TRBL have been observed in a large, ponded area approximately 1.6-miles southwest of the Project site (CDFW, 2023). There are disturbed grasslands in between the pond and the Project site where overwintering blackbirds may be able to forage.

CDFW recommends that surveys be conducted for TRBL by a qualified biologist as part of the biological technical studies conducted in support of the CEQA document and that the DEIR include language that Project activities be timed to avoid the normal bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

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

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

Crotch Bumble Bee (CBB)

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

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

CDFW recommends that a qualified biologist with experience in bumble bee species prepare and submit a CBB survey protocol to CDFW for approval, conduct focused surveys for CBB and their requisite habitat features as part of the biological technical studies conducted in support of the CEQA document, and that the DEIR include avoidance and minimization measures for this species.

CDFW also recommends that the U.S. Fish and Wildlife (USFWS) Rusty Patch Bumble Bee (*Bombus affinis*) Survey Protocol (April, 2019) be modified during preparation of the CBB survey protocol that would be submitted for approval.

Burrowing Owl (BUOW)

BUOW have been observed within the Project vicinity (CDFW, 2023). This is a mobile species that has the potential to move onto the Project site. The Project site contains disturbed grassland along with burrows. These features could provide habitat for this species.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC, 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG, 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

CDFW also recommends that the DEIR include language that no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG, 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG, 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

American Badger (AMBA)

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

Habitat loss is a primary threat to AMBA (Gittleman et al., 2001). The Project will result in a high degree ground disturbance and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of AMBA. CDFW recommends that a qualified biologist conduct focused surveys for AMBA as part of the biological technical studies conducted in support of the CEQA document, perform an analysis of the Project's direct, indirect, and cumulative impacts to AMBA in this area and that the DEIR include the recommended avoidance and minimization measures outlined below for this species.

In addition to the focused surveys, CDFW recommends that pre-construction surveys for AMBA be performed for each phase of the Projects development at least ten days prior to the beginning of project activities. Avoidance of potential or occupied AMBA dens whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

San Joaquin Coachwhip (SJCW)

The SJCW has been observed within the Project site (CDFW, 2023). This species can inhabit grassland and upland scrub habitats (Thompson et al. 2016). Per Project information, this species utilizes open terrain, and uses rodent burrows, bushes, trees, and rock piles for cover.

CDFW recommends that a qualified biologist conduct focused surveys for SJCW as part of the biological technical studies conducted in support of the CEQA document and that the DEIR include avoidance and minimization measures for this species. Avoidance whenever possible is encouraged via delineation, and observance of a 50-foot no-disturbance buffer around burrows suitable for SJCW until it is determined through non-invasive means that individuals inhabiting the burrow have dispersed.

Western Pond Turtle (WPT)

The Project vicinity contains aquatic features with basking sites that may support WPT. WPT are known to nest in the spring or early summer within 100 meters (328 feet/0.06 mile) of a water body, although nest sites as far away as 500 meters (1,640 feet/0.31 mile) have also been reported (Thomson et al., 2016). Noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

CDFW recommends that a qualified biologist conduct focused surveys for WPT as part of the biological technical studies conducted in support of the CEQA document, perform an analysis of the Project's direct, indirect, and cumulative impacts to WPT in this area, and that the DEIR include the following avoidance and minimization measures for this species:

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

Western Spadefoot (WESP)

WESP have been documented southwest of the Project vicinity (CDFW, 2023). CDFW recommends that a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features as part of the biological technical studies conducted in support of the CEQA document to evaluate potential impacts resulting from ground- and vegetation-disturbance, and that the DEIR include avoidance and minimization measures for this species.

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If western spadefoot are observed on the Project site, CDFW recommends that Project activities in their immediate vicinity cease and individuals be allowed to leave the Project site on their own accord. Alternatively, a qualified biologist with appropriate take authorization can move them out of harm's way and to a suitable location.

Other State Species of Special Concern

Monterey hitch have been observed onsite in the San Benito River (CDFW, 2023). Without appropriate avoidance and minimization measures, potentially significant impacts associated with ground and water disturbance due to Project activities may include habitat loss in the form of aquatic resources. This may result in reduced health, vigor, and direct mortality to local populations of this species.

CDFW recommends surveys be conducted by a qualified biologist for the Monterey hitch as part of the biological technical studies conducted in support of the CEQA document. In addition to the focused surveys, CDFW recommends pre-construction surveys for these special-status species be performed for each phase of the Projects development at least ten days prior to the beginning of project activities and that the DEIR include avoidance and minimization measures for this species. CDFW recommends consultation with CDFW if impacts are anticipated to this species.

Editorial Comments and/or Suggestions

CDFW requests that the DEIR fully identify potential impacts to biological resources, including the above-mentioned species. In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

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

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, the San Joaquin kit fox, California red-legged frog, and the California tiger salamander. Take under the

Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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

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

Lake and Streambed: The Project is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature.

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

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

Wildlife Movement and Connectivity: The Project area supports significant biological resources and contains habitat connections and supports movement across the broader landscape, sustaining both transitory and permanent wildlife populations. Project information includes a proposal to install wildlife exclusion fencing in appropriate areas to direct wildlife around the Project site. This could result in temporarily blocked areas on the San Benito River wildlife corridor. As such, CDFW recommends that on-site features that contribute to habitat connectivity should be evaluated and maintained. Aspects of the Project that could create physical barriers to wildlife movement, such as the installation of wildlife exclusion fencing, should be identified, and addressed as part of the Draft EIR. CDFW also recommends that the preparation of a wildlife exclusion fencing plan be included as a measure prior to construction during the document's discussion of connectivity as part of the DEIR.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the following species as part of the Draft EIR due to these species being in poor or declining health or at risk: San Joaquin kit fox, California tiger salamander, bank swallow, California red-legged frog, tricolored blackbird, Crotch bumble bee, American badger, San Joaquin coachwhip, western pond turtle, western spadefoot, and the Monterey hitch.

CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist San Benito County in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

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