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July 14, 2023

Governor's Office of Planning & Research

Jul 14 2023

STATE CLEARINGHOUSE

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**Subject: County Planning File PLN220024 (Minor Subdivision 4701 Santa Ana Valley Road) Project (Project)
Initial Study (IS)/Mitigated Negative Declaration (MND)
State Clearinghouse Number (SCH): 2023050235**

Dear Jonathan Olivas:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration from San Benito County for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

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

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

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

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.

Lake and Streambed Alteration: CDFW has regulatory authority over certain activities affecting rivers, streams and lakes, pursuant to Fish and Game Code section 1600 *et seq.* If the Project would substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, sediment, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, notification to CDFW is required.

PROJECT DESCRIPTION SUMMARY

Proponent: San Benito Engineering

Objective: The Project proposes to subdivide an existing 562.8-acre parcel into three parcels of 165.8-acres, 136.9-acres, and 260.1-acres. There are two existing

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residences on the proposed parcels 1 and 2. No development is proposed on parcel 1, 2, or 3 at this time. However the project could result in an additional dwelling unit, three accessory dwelling units, and multiple potential accessory buildings.

Any future structure and/or significant ground-disturbing activities shall be processed through the County of San Benito and other jurisdictional agencies by means of standard agency permitting protocols that may include a standard building application submittal and potentially supplemental CEQA or additional CEQA analyses.

Location: The proposed Project is located at 4701 Santa Ana Valley Road, Hollister, CA 95023, within San Benito County, California. The Project site is approximately 7 miles east of downtown Hollister in the eastern portion of the unincorporated area of San Benito County approximately 14 miles east of US 101. The Project lies on the north side of the intersection of John Smith and Santa Ana Valley Road in a rural area, surrounded by grassland habitat and agricultural row crops. Santa Ana Creek, which is ephemeral, runs through the proposed Project site in a north/south direction.

Timeframe: N/A

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 CEQA document prepared for this Project.

There are special-status resources that may utilize the Project site and/or surrounding area, and these resources 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 federal endangered (FE) and State threatened (ST) San Joaquin kit fox (*Vulpes macrotis mutica*), the federal threatened (FT) and ST California tiger salamander (*Ambystoma californiense*), the FT and State Species of Special Concern (SSC) California red-legged frog (*Rana draytonii*), the ST tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*), the State candidate endangered (CE) Crotch bumble bee (*Bombus crotchii*), and the SSC, American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), western pond turtle (*Emys marmorata*), and western spadefoot (*Spea hammondi*). These resources may need to be evaluated and addressed prior to any approvals that would allow future structure and/or significant ground-disturbing activities.

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San Joaquin Kit Fox (*Vulpes macrotis mutica*)

San Joaquin kit fox (SJKF) have been observed 0.90 mile and 1.6 miles southwest of the Project site in previous years (CDFW 2023). SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. It is important to note that SJKF populations are known to fluctuate and a negative finding from biological surveys in any one year does not necessarily demonstrate absence of SJKF on a site. In addition, SJKF may be attracted to both construction materials (pipes, etc.) and construction footprints due to the type and level of activity (excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

CDFW recommends that a qualified biologist assess the Project site to determine if habitat suitable to support SJKF is present prior to ground- or vegetation-disturbing activities. If suitable habitat is present, CDFW recommends that a qualified biologist assess presence/absence of SJKF by conducting surveys following the United States Fish and Wildlife Service's "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) and implementing no-disturbance buffers around den sites, as described in the USFWS document. 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).

For future projects, CDFW recommends that any CEQA documents quantify and describe the potential for the project to result in direct and indirect impacts to SJKF, including SJKF dispersal and habitat connectivity. The evaluation should include an analysis of cumulative impacts to SJKF from other past, present, and reasonably foreseeable future developments in the Project vicinity that may contribute to habitat fragmentation and loss. This information, in addition to an adequate description of habitat features on the Project site, is essential to adequately assess project impacts.

California Tiger Salamander (*Ambystoma californiense*)

California tiger salamander (CTS) have been documented 2.9 miles northwest of the Project site (CDFW 2023). Review of aerial imagery indicates the presence of a ponded feature adjacent to the Project limits on the western boundary that has been present since approximately 2007 and another pond feature 1.7 miles north, across Santa Ana Valley Road, which one or both could support CTS breeding. CTS are capable of dispersing up to 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and grassland habitat and disturbed grassland within and adjacent to the Project site have the potential to support overland dispersal and refugia habitat for CTS and may support small mammal burrows, a requisite upland habitat feature for CTS.

CDFW recommends that a qualified biologist conduct protocol level surveys in accordance with the United States Fish and Wildlife Service (USFWS) "Interim

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Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat ahead of any ground-disturbing activities. The protocol level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. Please be advised that protocol level survey results are viable for two years after the results are reviewed by CDFW. 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 prior to commencing with any ground- and/or vegetation-disturbance activities. 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, presence of CTS can be assumed and an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b) can be acquired.

For future projects, CDFW recommends that any CEQA documents quantify and describe the potential for the project to result in direct and indirect impacts to CTS, including CTS dispersal and habitat connectivity. The evaluation should include an analysis of cumulative impacts to CTS from other past, present, and reasonably foreseeable future developments in the Project vicinity that may contribute to habitat fragmentation and loss. This information, in addition to an adequate description of habitat features on the Project site, is essential to adequately assess project impacts.

California Red-legged Frog (*Rana draytonii*)

California red-legged frog (CRLF) have been documented 1.7 miles northwest of the Project site in Santa Ana Creek (CDFW 2023). CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons and will also breed in ephemeral waters (Thomson et al. 2016). Wetland/ponded features within and in the vicinity of the Project site may be suitable to support CRLF.

CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of non-native plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017).

CDFW recommends that a qualified biologist conduct surveys for CRLF within 48-hours prior to commencing work (two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *“Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog”* (USFWS 2005) to determine if CRLF are within or adjacent to the Project site.

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If any CRLF are found during pre-activity surveys or at any time during vegetation or ground-disturbing activities, CDFW recommends that activities cease and that CDFW be contacted to discuss a relocation plan for CRLF with relocation conducted by a qualified biologist, holding a Scientific Collecting Permit for the species. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor vegetation and ground-disturbing activity daily for CRLF.

For future projects, CDFW recommends that any CEQA documents quantify and describe the potential for the project to result in direct and indirect impacts to CRLF, including CRLF dispersal and habitat connectivity. The evaluation should include an analysis of cumulative impacts to CRLF from other past, present, and reasonably foreseeable future developments in the Project vicinity that may contribute to habitat fragmentation and loss. This information, in addition to an adequate description of habitat features on the Project site, is essential to adequately assess project impacts.

Tri-colored Blackbird (*Agelaius tricolor*)

A tricolored blackbird (TRBL) occurrence was documented within the Project site and 1.7 miles southwest of the Project site (CDFW 2023). TRBL colonies require suitable nesting habitat, nearby freshwater, and nearby foraging habitat including semi-natural grasslands, agricultural croplands or alkali scrub (Beedy et al. 2017). Habitat surrounding the Project site may provide suitable foraging habitat for TRBL and the ponded areas within or just south of the Project site may be suitable nesting habitat.

CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL and then repeat those surveys no more than 10 days prior to the start of ground- or vegetation-disturbing activities. If an active TRBL nesting colony is found during the biological technical studies or pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural 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. For this reason, CDFW also recommends conducting pre-activity surveys of an identified nesting colony within 10 days prior to the start of ground- or vegetation-disturbing activities to reassess the colony's ariel extent. If 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.

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For future projects, CDFW recommends that any CEQA documents quantify and describe the potential for the project to result in direct and indirect impacts to TRBL, including TRBL dispersal and habitat connectivity. The evaluation should include an analysis of cumulative impacts to TRBL from other past, present, and reasonably foreseeable future developments in the Project vicinity that may contribute to habitat fragmentation and loss. This information, in addition to an adequate description of habitat features on the Project site, is essential to adequately assess project impacts.

Swainson's Hawk (*Buteo swainsonii*)

Swainson's hawks (SWHA) have been observed 1.4 miles northwest of the Project site (CDFW 2023). SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). Additionally, SWHA are known to travel several miles to forage for food resources. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success.

If the Project will involve conversion of low-crop agricultural fields to support new dairy facilities, CDFW recommends compensation for the loss of Swainson's hawk foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Staff Report) (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

CDFW recommends surveys be conducted by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). CDFW recommends that the survey be conducted by a qualified biologist again within the survey season immediately prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid

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take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

For future projects, CDFW recommends that any CEQA documents quantify and describe the potential for the project to result in direct and indirect impacts to SWHA, including SWHA dispersal and habitat connectivity. The evaluation should include an analysis of cumulative impacts to SWHA from other past, present, and reasonably foreseeable future developments in the Project vicinity that may contribute to habitat fragmentation and loss. This information, in addition to an adequate description of habitat features on the Project site, is essential to adequately assess project impacts.

Crotch Bumble Bee (*Bombus crotchii*)

The Crotch bumble bee (CBB) has the potential to occur within the Project site. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, 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.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. 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, ground disturbance and vegetation removal associated with project activities has the potential to significantly impact local CBB populations.

CDFW recommends that a habitat assessment be conducted for suitable CBB habitat and that surveys be conducted for CBB, CBB nesting habitat, and CBB foraging resources. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement project activities and avoid take. Any detection of CBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

For future projects, CDFW recommends that any CEQA documents quantify and describe the potential for the project to result in direct and indirect impacts to CBB, including CBB dispersal and habitat connectivity. The evaluation should include an

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analysis of cumulative impacts to CBB from other past, present, and reasonably foreseeable future developments in the Project vicinity that may contribute to habitat fragmentation and loss. This information, in addition to an adequate description of habitat features on the Project site, is essential to adequately assess project impacts.

American Badger (*Taxidea taxus*)

There is suitable grassland habitat for the American badger (AMBA) in and adjacent to the Project site, and there are occurrences of this species within the Project vicinity (CDFW 2023). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The approximately 563 acre Project site has the potential to impact AMBA.

Habitat loss is a primary threat to AMBA (Gittleman et al. 2001). Per the proposed Project information, if additional home(s) or dwelling potentially built in this area, could result in habitat fragmentation and ground-disturbing activities could have the potential to significantly impact local populations of AMBA.

CDFW recommends assessing presence/absence of AMBA by having a qualified biologist conduct surveys for AMBA and their requisite habitat features (dens) prior to any ground-disturbing activities and then repeat the focused surveys, regardless of the initial results, 10 days prior to any ground-disturbing activities. Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

Burrowing Owl (*Athene cunicularia*)

Burrowing owls (BUOW) have been observed approximately 1.5 miles west of the Project site (CNDDDB 2023). BUOW inhabit open grassland or adjacent canal banks, rights of way, vacant lots, and any other habitat containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery shows that the proposed Project site and adjacent areas contain mainly grassland and agriculture. Potentially significant direct impacts associated with subsequent ground-disturbing activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys for BUOW and then repeat the focused surveys, regardless of the initial results, 10 days prior to any ground-disturbing activities. Surveys would follow the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl

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

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

* meters (m)

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

Western Pond Turtle (*Emys marmorata*)

The Western pond turtle (WPT) has been observed approximately 1.9 miles northwest of the Project site in Santa Ana Creek (CDFW 2023). In addition, there is a pond directly adjacent to the Project site to the west along with another pond approximately 1.7 miles to the north. WPT are known to nest in the spring or early summer within 100 meters (approximately 0.06-mile) of a water body, although nest sites as far away as 500 meters (approximately 0.31-mile) have also been reported (Thomson et al. 2016).

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CDFW recommends assessing presence/absence of WPT by having a qualified biologist conduct surveys for WPT prior and then repeat the focused surveys, regardless of the initial results, 10 days prior to any ground-disturbing activities. In addition, 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. 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 accord.

Western Spadefoot (*Spea hammondi*)

Western spadefoot (WESP) have been observed approximately 1 mile to the southwest of the Project site (CNDDDB 2023). The Project site is within the WESP range. Without appropriate avoidance and minimization measures for WESP, potentially significant impacts associated with ground disturbance include the collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Habitat loss and fragmentation resulting from agricultural and urban development is the primary threat to western spadefoot (Thomson et al. 2016). The Project site and surrounding area appears to contain suitable upland habitat (i.e., grasslands interspersed with burrows) and breeding habitat (i.e., ponds and the ephemeral creek listed previously). As a result, ground-disturbing activities associated with any development of the Project site have the potential to significantly impact local populations of this species.

CDFW recommends assessing presence/absence of WESP by having a qualified biologist conduct surveys for WESP and their requisite habitat features then repeat the focused surveys, regardless of the initial results, 10 days prior to any ground-disturbing activities. Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If WESP 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.

Special-Status Plants (SSP)

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities” (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

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CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

II. Editorial Comments and/or Suggestions

This comment letter addresses the Project as described above. Any future structures and/or significant ground-disturbing activities shall be processed through the County of San Benito and appropriate jurisdictional agencies.

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct a habitat assessment and analysis of impacts to nesting birds as part of the biological technical studies conducted in support of the CEQA document. Pre-activity surveys for active nests should be conducted regardless of the initial results, no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Lake and Streambed Alteration: Per aerial imagery, Santa Ana Creek flows through the Project site. In addition to this ephemeral creek, there appears to be a wetland area on the east side of the parcel that is above the smaller ponded area to the south. Any ground-disturbing activities that have the potential to impact this stream and/or wetland area may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires the project proponent 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 LSA Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

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 site 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.

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,

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§ 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/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, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

E9964E60293D40A...
Sarah Paulson for Julie A. Vance
Regional Manager

ec: Patricia Cole (patricia_cole@fws.gov)
United States Fish and Wildlife Service

Linda Connolly
California Department of Fish and Wildlife

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