



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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**GAVIN NEWSOM, Governor**  
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December 26, 2024

Lea Simvoulakis, Community Development Director  
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Subject: **Copper Trails Specific Plan & Annexation Project (Project)**  
**Draft Environmental Impact Report (DEIR)**  
**SCH: 2023090637**

Dear Lea Simvoulakis:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Ceres for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 the 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 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

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

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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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

**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).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Ceres

**Objective:** The Project establishes the plan for annexation, and eventual development of approximately 260.3 acres of low, medium, medium high, and high-density residential units within the Project site. The total dwelling units that would be potentially developed is 2,392. Approximately 107.4 acres is proposed for Regional Commercial development, which is estimated at 1,169,586 square feet of floor area. The Project also proposes approximately 42.3 acres of parks and open space, including street landscapes, and 3.4 acres for new public uses that would be in addition to the 74.1 acres already occupied by the Central Valley High School and Hidahl Elementary School, both operated by the Ceres Unified School District. The Project would utilize and improve existing roads, add new roads and streets, and provide for development of new bicycle and pedestrian trails and open space linkages to provide access to and between the residential neighborhoods, commercial areas, schools, and parks of the developed Project site.

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**Location:** The Project is located in unincorporated Stanislaus County south of and adjacent to the City of Ceres.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City of Ceres 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 DEIR prepared for the Project.

CDFW submitted a Notice of Preparation (NOP) comment letter to the City of Ceres for the Project on October 30, 2023, with recommended mitigation measures for special-status species that could potentially be impacted by the Project. Currently, the DEIR acknowledges that the Project site is within the geographic range of special-status species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for the State threatened Swainson's hawk (*Buteo swainsoni*); the State and federally threatened California tiger salamander Central California Distinct Population Segment (DPS) (*Ambystoma californiense* pop. 1); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); and the State species of special concern western spadefoot (*Spea hammondi*).

### **Swainson's Hawk**

The DEIR notes that the Project could potentially impact (Impact BIO-1) Swainson's hawk (SWHA) and mitigation measure (MM) BIO-1 is provided to mitigate for potential impacts. MM BIO-1 provides for a pre-construction survey and if nests are detected during breeding season, a ½-mile buffer shall be established around active nests until the breeding season has ended or a qualified biologist has determined the birds have fledged the nest. CDFW concurs with this measure and recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

### **California Tiger Salamander**

The Project site is within the range of California tiger salamander (CTS) and based on aerial imagery and the information provided in DEIR, suitable habitat appears present within certain portions of the Project site such as near Central Avenue and East

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Redwood Road. It does not appear that the DEIR evaluated CTS, and no mitigation measures were proposed to mitigate for potential Project-related impacts to the species. As such, CDFW recommends the following:

**Recommended Mitigation Measure 1: Focused CTS Protocol-level Surveys**

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS “Interim 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 within the Project site. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey also include a 100-foot buffer around the Project site in all areas that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

**Recommended Mitigation Measure 2: CTS Avoidance Buffer**

If CTS protocol-level surveys as described in Recommended Mitigation Measure 1 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 1.3 miles of potential CTS breeding pools. 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 CTS individuals.

**Recommended Mitigation Measure 3: CTS Take Authorization**

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 through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

**Western Burrowing Owl**

The Project site is within the known geographic range of western burrowing owl (BUOW), and the DEIR notes that the species is unlikely to occur, although it does not appear that focused BUOW surveys were conducted. CDFW does not concur that

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BUOW are unlikely to occur within the agricultural and grassland habitats found throughout the Project site, particularly within or adjacent to the agricultural canals located throughout the area. CDFW would like to note that the California Fish and Game Commission (FGC) approved BUOW as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

As BUOW have the potential to be present within the Project site or Project vicinity, it does not appear that focused BUOW surveys were conducted, and no mitigation measures were proposed to mitigate for potential Project-related impacts to the species, CDFW recommends the following:

**Recommended Mitigation Measure 4: BUOW Preconstruction Surveys**

CDFW recommends that surveys, following CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) be conducted within areas of suitable habitat the survey season immediately prior to construction.

**Recommended Mitigation Measure 5: BUOW Avoidance Buffer**

Should a BUOW or known BUOW den (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

**Recommended Mitigation Measure 6: BUOW Take Authorization**

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and 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.

**Crotch's Bumble bee**

The Project site is within the range of Crotch's bumblebee (CBB) and the DEIR notes that the species is unlikely to occur, although it does not appear that focused CBB surveys were conducted. CDFW does not concur that CBB are unlikely to occur within certain portions of the Project site. CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal

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burrows and bunch/thatched grasses, and these habitat elements may be present within portions of the Project site, such as along Central Avenue.

As CBB have the potential to be present within the Project site or Project vicinity, it does not appear that focused CBB surveys were conducted, and no mitigation measures were proposed to mitigate for potential Project-related impacts to the species, CDFW recommends the following:

**Recommended Mitigation Measure 7: CBB Habitat Assessment**

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment.

**Recommended Mitigation Measure 8: CBB Surveys**

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

**Recommended Mitigation Measure 9: CBB Avoidance**

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. 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.

**Recommended Mitigation Measure 10: CBB Take Authorization**

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.

**Western Spadefoot**

The Project site is within the known geographic range of western spadefoot (WESP) and based on aerial imagery and the information provided in DEIR, suitable habitat may be present within certain portions of the Project area such as near Central Avenue and East Redwood Road. It does not appear that the DEIR evaluated WESP, and no

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mitigation measures were proposed to mitigate for potential Project-related impacts to the species. As such, CDFW recommends the following:

**Recommended Mitigation Measure 11: WESP Habitat Assessment.**

CDFW recommends that a qualified biologist conduct a habitat assessment to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support WESP.

**Recommended Mitigation Measure 12: WESP Surveys**

If suitable habitat is identified, CDFW recommends a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features immediately prior to construction.

**Recommended Mitigation Measure 13: WESP Avoidance**

If burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources. If WESP are observed on the Project site, Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord. Alternately, a qualified biologist with appropriate authorization can relocate them to a more suitable location out of harm's way.

**Editorial comments and/or suggestions**

**Nesting Birds:** CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), 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 Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that 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, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends

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halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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 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 a compelling biological or ecological reason to do so, such as when the Project site 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 Stream Alteration:** CDFW's October 30, 2023, NOP comment letter noted that potential streams such as Turlock Irrigation District's (TID) Lateral and other waterbodies located within the Project site may be subject to notification under Fish and Game Code Section 1602. The DEIR states, "The TID canals are potential jurisdictional Waters of the U.S., as they convey water from a reservoir that would be considered a jurisdictional water (Turlock Lake), and water from the canals is eventually discharged into another jurisdictional water (San Joaquin River)." It follows by stating, "It is expected that future development would not directly affect the TID canals." CDFW would like to note that storm drainage infrastructure installation was identified as a component of the Project serving future development in the Project area. As such, CDFW would like to reiterate that implementation of Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are 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 (including the removal of riparian vegetation); (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 and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.



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**Cumulative Impacts:** CDFW's October 30, 2023, NOP letter recommended a cumulative analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project. The DEIR has a very limited analysis for cumulative impacts for biological resources in Section 18.3.4 and states, "However, with applicable policies in place as described in the direct impact analysis in the GPEIR, the General Plan's contribution to this potentially significant cumulative impact is less than cumulatively considerable." CDFW would like to note this DEIR serves primarily as a planning level document and should consider the cumulative impacts of reasonably foreseeable projects. As such, CDFW recommends that a more focused cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, and potentially impacted by future tiered projects, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the individual project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff are available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

**California Natural Diversity Database:** Please note that the California Natural Diversity Database (CNDDDB) is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present.

## ENVIRONMENTAL DATA

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

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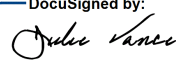
## FILING FEES

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 DEIR to assist the City of Ceres in identifying and mitigating Project 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>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or [john.riedel@wildlife.ca.gov](mailto:john.riedel@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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## REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA.

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 12 December 2024

United States Fish and Wildlife Service (USFWS). 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.

**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)**

**PROJECT: Copper Trails Specific Plan Annexation Project**

**SCH No.: 2023090637**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<b><i>Before Disturbing Soil or Vegetation</i></b>	
California Tiger Salamander (CTS)	
<b>Recommended Mitigation Measure 1:</b> CTS protocol-level surveys	
<b>Recommended Mitigation Measure 3:</b> CTS take authorization	
Burrowing Owl (BUOW)	
<b>Recommended Mitigation Measure 4:</b> BUOW preconstruction surveys	
<b>Recommended Mitigation Measure 6:</b> BUOW take authorization	
Crotch's Bumble Bee (CBB)	
<b>Recommended Mitigation Measure 7:</b> CBB habitat assessment	
<b>Recommended Mitigation Measure 8:</b> CBB surveys	
<b>Recommended Mitigation Measure 10:</b> CBB take authorization	
Western Spadefoot (WESP)	
<b>Recommended Mitigation Measure 11:</b> WESP habitat assessment	
<b>Recommended Mitigation Measure 12:</b> WESP surveys	
<b><i>During Construction</i></b>	
California Tiger Salamander (CTS)	
<b>Recommended Mitigation Measure 2:</b> CTS avoidance buffers	
Burrowing Owl (BUOW)	

<b>Recommended Mitigation Measure 5:</b> BUOW avoidance buffers	
Crotch's Bumble Bee (CBB)	
<b>Recommended Mitigation Measure 9:</b> CBB avoidance buffers	
Western Spadefoot (WESP)	
<b>Recommended Mitigation Measure 13:</b> WESP avoidance buffers	