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***GAVIN NEWSOM, Governor***
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December 08, 2023



Arielle Goodspeed, Principal Planner
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Subject: **San Benito Ag Center Project (Project)**
**Notice of Preparation (NOP)**
**State Clearinghouse No. 2023100587**

Dear Arielle Goodspeed:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) for an Environmental Impact Report (EIR) from San Benito County for the San Benito Ag Center Project (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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that San Benito Couty 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, 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 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 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).

**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.

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** San Benito County

**Objective:** The Project would construct three structures: a 16,450 square feet convenience store and food hall, a 12,500 square feet truck service building, and a 13,500 square feet cold storage building, for a total of 42,450 square feet. The Project will also provide refueling services for trucks and automobiles. Three types of fuel are proposed – standard gas/diesel, compressed natural gas (CNG), and hydrogen fuel. A 60-foot-tall water tower and a 50-foot-tall windmill would also be constructed. Parking would accommodate 105 trucks and 58 cars, along with 20 loading spaces (for the cold storage building), and six parking spaces for recreational vehicles. Parking includes electric auxiliary power unit (APU) hookups for trucks to keep refrigerated units cold while waiting for delivery/pick-up appointments. Electric vehicle recharging stations will

also be provided for automobiles. Access for trucks will be from Highway 129, with an exit onto a new two-lane truck-only access road connecting to Searle Road. Two separate driveways from Searle Road would provide site access for automobile traffic. Searle Road and Highway 129 will be improved as part of the Project. The Project would operate 24 hours per day, 365 days a year.

**Location:** The Project site is located approximately 10 miles west of the City of Hollister and approximately eight miles south of the City of Gilroy in San Benito County, California. The approximately 15-acre Project site (APN 012-010-031) is located on the northwest intersection of Searle Road and Highway 129. Per Project information, the Project site is fallow and is not in active agricultural use. Currently, it is annually plowed or mowed to control weeds. There is an existing well located at the southeast corner of the site and an existing gas easement extends southwest to northeast through the Project site. The topography generally slopes down from north to south. Short Road, accessed from Highway 129, is a private dirt road that provides access into the Project site.

**Timeframe:** Undetermined.

**COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below 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 EIR.

Aerial imagery of the Project boundary and its surroundings shows that the area contains annual grassland, scattered trees, Short Road which runs east-west within Project limits, and a pond that is approximately 150-feet (0.03-mile) west of the Project site. The San Benito River is located approximately 0.84-mile northeast, across Chittenden Road/State Route (SR) 129. The Project location and surrounding areas appear to have suitable habitat for special status species. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDB) records, and the surrounding habitat, several special status species could potentially be impacted by Project activities.

The Project site is within the geographic range of several special status animal species including but not limited to, the federally threatened (FT) and State threatened (ST) California tiger salamander (*Ambystoma californiense* pop. 1); the FT and ST California red-legged frog (*Rana draytonii*); the State candidate for listing as endangered (SCE) Crotch's bumble bee (*Bombus crotchii*); the State species of special concern (SSC) and federally proposed threatened (FPT) western pond turtle (*Actinemys marmorata*); the

SSC American badger (*Taxidea taxus*); the SSC burrowing owl (*Athene cunicularia*); and the SSC western spadefoot (*Spea hammondii*).

To evaluate Project-related impacts to SSC species, CDFW recommends that a general habitat assessment be conducted as part of the biological technical studies conducted in support of the Draft EIR.

**California Tiger Salamander**

Per the CNDDB, there was an occurrence of California tiger salamander (CTS) observed within the Project limits in 2003, along with additional occurrences in the Project vicinity including two additional sightings approximately 1.71-miles south in 2013 (CDFW 2023a). This species is protected under the California Endangered Species Act (CESA) and CDFW has jurisdiction over this species under CESA. CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011). This species could be potentially impacted if ground disturbance such as discing, ripping, or grading were to occur and the appropriate avoidance, minimization, and mitigation measures are not implemented.

As part of the biological technical studies that will be conducted in support of the CEQA document, 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. 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 include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

In addition to performing surveys and conducting a subsequent analysis of potential impacts to CTS, CDFW recommends the Draft EIR include the following information and measures:

**Recommended Mitigation Measure 1: CTS Avoidance**

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 from CDFW a State Incidental Take Permit (ITP) in accordance with Fish and Game Code section 2081(b).

**Recommended Mitigation Measure 2: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, or the presence of CTS is assumed, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization is required 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(b).

**California Red-legged Frog**

The California red-legged frog (CRLF) has been documented to occur in the vicinity of the Project Area (CDFW 2023a). A ponded area is approximately 150-feet (0.03-mile) west of the Project site, and the San Benito River is approximately 0.84-mile northeast, across Chittenden Road/SR-129. CRLF primarily inhabits ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in ephemeral waters (Thomson et al. 2016). Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities may include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

To evaluate potential impacts to CRLF associated with the Project, CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document to determine if the Project Area or its immediate vicinity contains suitable habitat for CRLF. If suitable CRLF habitat is present, CDFW recommends that a qualified wildlife biologist conduct protocol surveys for CRLF as part of the biological technical studies conducted in support of the CEQA document in accordance with the USFWS "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (U.S. Fish and Wildlife Service 2005) to determine if CRLF are within or adjacent to the Project Area.

In addition to performing surveys and conducting a subsequent analysis of potential impacts to CRLF, CDFW recommends the Draft EIR include the following measure:

**Recommended Mitigation Measure 3: CRLF Avoidance**

If any CRLF are found during pre-construction surveys or at any time during construction, CDFW recommends that construction 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 construction activity daily for CRLF.

**Crotch's Bumble Bee**

Crotch's Bumble Bee (CBB) are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. 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. The Project site contains a mix of native and non-native grasses. As such, CBB could potentially use the habitats within the Project site for foraging or nesting.

CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the Draft EIR to determine if the Project site or its immediate 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. 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 2023b), as part of the biological technical studies conducted in support of the Draft EIR.

In addition to conducting a CBB habitat assessment and surveys, CDFW recommends the Draft EIR include the following measures:

**Recommended Mitigation Measure 4: CBB Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023b), be repeated the blooming period immediately prior to construction.

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

If surveys cannot be completed, 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 6: CBB Take Authorization**

If CBB is identified during 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).

**American Badger**

The Project site is within the known geographic range of the American badger (AMBA), and an occurrence of an AMBA was observed in 2017 just north of Project limits (CDFW 2023a). AMBA 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). They also can inhabit lands disturbed by agricultural activities. Based on aerial imagery and the information provided in the NOP, the Project site contains suitable habitat for AMBA denning and foraging.

As AMBA have the potential to den and/or forage within the Project site, CDFW recommends that a qualified biologist assess the presence/absence of AMBA by conducting a focused field survey in all areas of potentially suitable habitat as part of the biological studies conducted in support of the Draft EIR. If surveys indicate the presence or potential presence of AMBA, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

**Recommended Mitigation Measure 7: AMBA Surveys**

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused pre-construction surveys for AMBA and their requisite habitat features (dens) no more than 7 days prior to the beginning of construction activities.

**Recommended Mitigation Measure 8: AMBA Avoidance**

Avoidance whenever possible is encouraged via delineating and observing 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**

The Project site is within the known geographic range of the burrowing owl (BUOW). BUOW inhabit open grasslands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Based on aerial imagery, much of the Project site contains suitable habitat for BUOW nesting and foraging.

As BUOW have the potential to nest and/or forage within the Project site, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) as part of the biological studies conducted in support of the Draft EIR.

In addition to conducting BUOW surveys, CDFW recommends the Draft EIR include the following measures:

**Recommended Mitigation Measure 9: BUOW Surveys Prior to Construction**

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012) be repeated the survey season immediately prior to construction.

**Recommended Mitigation Measure 10: BUOW Avoidance Buffer**

Should a BUOW be detected, CDFW recommends 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)

**Recommended Mitigation Measure 11: BUOW Passive Relocation and Mitigation**

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), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. However, avoidance of direct impacts to BUOW and BUOW eggs and chicks is necessary to avoid violations of Fish and Game Code Sections 3503 (taking or destroying nests or eggs, 3503.5 (take of birds of prey or their eggs), and/or 3513 (take of migratory non game birds). However, if it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, by a qualified biologist, 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 one (1) burrow collapsed to one (1) artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. 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**

A western pond turtle (WPT) was observed approximately 1.27-miles south of the Project site (CDFW 2023a). Per aerial imagery, there is a small, ponded area just west of Project limits (approximately 0.03-mile). Additional potential habitat such as the San Benito River to the northeast and an un-named drainage directly across Chittenden Road/State Route 129 may also provide aquatic habitat. 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 meter (approximately 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. Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

CDFW recommends WPT surveys be conducted by a qualified biologist as part of the biological technical studies conducted in support of the CEQA document with the results and subsequent analysis included therein. Regardless of the initial survey results, CDFW recommends the Draft EIR include the following mitigation measures:

**Recommended Mitigation Measure 12: Pre-construction WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT 10 days prior to Project construction. 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.

**Recommended Mitigation Measure 13: WPT Relocation**

CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project construction activities, they be allowed to move out of the area on their own.

**Western Spadefoot**

Western spadefoot (WESP) inhabits grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season. Review of aerial imagery indicates that the Project contains these requisite habitat elements. Habitat loss and fragmentation resulting from agricultural and urban development is the primary threat to western spadefoot (Thomson et al. 2016). The Project area is within the range of western spadefoot, contains suitable upland habitat (i.e., grasslands interspersed with burrows) and breeding habitat (i.e., vernal pools, and swales). As a result, ground-disturbing activities associated with development of the Project site have the potential to significantly impact local populations of this species.

CDFW recommends that a qualified biologist conduct WESP surveys as part of the biological technical studies conducted in support of the CEQA document with the results and subsequent analysis included therein. Regardless of the initial survey results, CDFW recommends the Draft EIR include the following mitigation measures:

**Recommended Mitigation Measure 14: Pre-construction WESP Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for western spadefoot and their requisite habitat features no more than 10 days prior to construction to evaluate potential impacts resulting from ground- and vegetation-disturbance.

**Recommended Mitigation Measure 15: WESP Avoidance**

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.

**Editorial Comments and/or Suggestions**

**Nesting Birds:** The Project contains and is adjacent to habitat that provides nesting habitat for 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 through mid-September), 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 sections referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-construction surveys 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 by the Project. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to 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 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 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 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.

**Federally Listed Species:** CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) regarding potential impacts to federally listed species including but not limited to the FT California tiger salamander, the FT California red-legged frog, and the FPT western pond turtle.

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 Project activities.

**Lake and Streambed Alteration:** Per aerial imagery, the Project site itself does not appear to contain aquatic features, but the adjacent area to the west of the Project site contains the ponded basin previously mentioned, and the San Benito River is present approximately 0.84-mile to the northeast along with an un-named smaller tributary across Chittenden Road/Highway 129.

Project activities 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 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, intermittent, or episodic, as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement; therefore, if the Draft EIR 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 LSA Agreement 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 or R4LSA@wildlife.ca.gov.

**Artificial Lighting:** This Project will cover approximately 15-acres once completed and per Project information, the new buildings, facilities, and refueling services will operate 24 hours/day, 365 days/year. Installation of outdoor artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the Draft EIR for the Project include an analysis of artificial lighting as it relates to biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light fixtures as low as possible to minimize light trespass; use of light fittings that direct and confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting not be installed in ecologically sensitive areas (e.g., streams, wetlands, and habitat used by special status species, such as nesting/roosting sites and riparian corridors) and the use of the white/blue wavelengths of the light spectrum be avoided.

**Wildlife Movement and Connectivity:** The area adjacent to the Project site appears to support significant biological resources, contains habitat connections, and supports movement across the broader landscape, sustaining both transitory and permanent wildlife populations. 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, including direct or indirect Project-related activities, should be identified, and addressed in the Draft EIR.

**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 Draft EIR 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, CDFW advises that remaining impacts to sensitive biological resources be mitigated to reduce impacts to a less than significant level, if feasible.

**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 are recommended to 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 Project. An appropriate resource study area should also be identified and mapped for each resource being analyzed 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: CTS, CRLF, CBB, AMBA, BUOW, WPT, and WESP. At a minimum, the required improvements to SR 129 and Searle Road must be evaluated and their associated impacts analyzed as part of this Project's Draft EIR. These two projects, at a minimum, are reasonably foreseeable as the proposed Project appears that it cannot function without these other two projects. All associated impacts from the three projects, must be analyzed together to fully disclose the totality of the potential impacts to biological resources of concern.

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 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**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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 NOP to assist San Benito County in identifying and mitigating Project impacts on biological resources.

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

ec: Mark Ogonowski
mark_ogonowski@fws.gov
United States Fish and Wildlife Service

State Clearinghouse
state.clearinghouse@opr.ca.gov
Governor's Office of Planning and Research

## REFERENCES

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# Attachment 1

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

**PROJECT: San Benito Ag Center Project**

**SCH No.: 2023100587**

| RECOMMENDED MITIGATION MEASURE | STATUS/DATE/INITIALS |
|---|---|
| *Before Disturbing Soil or Vegetation* | |
| CTS | |
| Recommended Mitigation Measure 1: Focused CTS Protocol-level Surveys | |
| Recommended Mitigation Measure 3: CTS Take Authorization | |
| CRLF | |
| Recommended Mitigation Measure 4: CRLF Habitat Assessment | |
| Recommended Mitigation Measure 5: CRLF Surveys | |
| CBB | |
| Recommended Mitigation Measure 7: CBB surveys prior to construction | |
| Recommended Mitigation Measure 9: CBB take authorization | |
| AMBA | |
| Recommended Mitigation Measure 10: AMBA surveys | |
| BUOW | |
| Recommended Mitigation Measure 12: BUOW surveys prior to construction | |
| Recommended Mitigation Measure 14: BUOW passive relocation and mitigation | |
| WPT | |
| Recommended Mitigation Measure 15: Pre-construction WPT surveys | |
| WESP | |
| Recommended Mitigation Measure 17: Pre-construction WESP surveys | |
| *During Construction* | |
| CTS | |
| Recommended Mitigation Measure 2: CTS avoidance | |
| CRLF | |
| Recommended Mitigation Measure 6: CRLF avoidance | |
| CBB | |

| | |
|---|---|
| Recommended Mitigation Measure 8: CBB avoidance buffer | |
| AMBA | |
| Recommended Mitigation Measure 11: AMBA avoidance | |
| BUOW | |
| Recommended Mitigation Measure 13: BUOW avoidance buffer | |
| WPT | |
| Recommended Mitigation Measure 16: WPT relocation | |
| WESP | |
| Recommended Mitigation Measure 18: WESP avoidance | |