



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 12, 2023

Sean Trippi, Supervising Planner  
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Subject: Nova Business Park North, Tentative Map (#P22-00093-TM), Mitigated Negative Declaration, SCH No. 2023110424, Napa County

Dear Mr. Trippi:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from Napa County (County) for the Nova Business Park North, Tentative Map (#P22-00093-TM) (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

## CDFW ROLE

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

## PROJECT DESCRIPTION SUMMARY

**Proponent:** Nova Business Park, LLC, represented by Ron Fedrick

**Objective:** Subdivide a total of six lots with a combined area of approximately 93.2 acres to create 13 new parcels ranging in size from 2.20 to 12.15 acres. Upgrade roads and associated infrastructure including drains and streetlights. No new buildings or developments are included in the Project, but future development of the proposed parcels is expected.

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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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**Location:** The Project is in an unincorporated area of Napa County, on the west side of Devlin Road, south of Suscol Creek; APNs of 057-020-092; -093; -094 and 057-170-024, -025, -027; with a center point at approximately 38.235504° north, -122.266991° west (NAD 83).

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson’s hawk (*Buteo swainsoni*), CESA listed as threatened species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. I & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

### **Raptors and Other Nesting Birds**

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project’s avoidance of significant impacts on biological resources with

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implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

## **I. Environmental Setting and Mitigation Measure Related Impact Shortcomings**

**Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

**Comment 1:** Swainson's hawk, MND Page 15

**Issue:** The MND does not adequately mitigate potential impacts to Swainson's hawk. The California Natural Diversity Database (CNDDDB) documents 14 occurrences of nesting Swainson's hawk within five miles of the Project site, including three Swainson's hawk occurrences partially inside the Project site (CNDDDB 2023). The MND (page 12) also mentions instances of the fledging of three Swainson's hawk chicks in 2012 and two chicks in 2013 from a nest 0.25 miles from the Project site. According to CNDDDB, there is a relatively high density of documented Swainson's hawk nesting sites in close proximity to the Project site, and the species is known to have high nest site fidelity, meaning they return to the same site year after year (Estep 1989, Woodbridge et al. 1995).

**Specific impacts, why they may occur and be potentially significant:** The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels. Disturbances from Project activities may result in Swainson's hawk nest abandonment and loss of eggs or reduced health and vigor and loss of young. Language proposed by Mitigation Measure BIO-2 (page 15) may not detect nesting Swainson's hawk and; therefore, may not prevent impacts to the species. For example, BIO-2 states that "the intent of the survey should be to determine if active nests are present within or adjacent to the construction zone within approximately 250 feet", whereas the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* is intended to detect Swainson's hawk nests within 0.5 miles of the Project site. The MND does mention the above survey methodology, however it is within the Method of Mitigation Monitoring section; therefore, it is unclear whether surveys within 250 feet or 0.5 miles would be conducted, as outlined in the Editorial Comments section below. Swainson's hawk is CESA listed as a threatened species and therefore, is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

The MND (Page 12) cites a study (Woodbridge 1998) in which Swainson's hawk were found to forage up to 18 miles from their nest. However, the same study affirms that

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Swainson's hawk often aim to minimize flight distance on foraging trips. Furthermore, the study states that fledgling chicks are limited in their foraging scope to within just 0.5 miles from the nest. Thus, individuals, nesting pairs, and young could be at an energetic disadvantage if foraging habitat is displaced, forcing them to travel greater distances in search of food.

The MND (Page 12) also states that in addition to the apparent recovery and expansion of Swainson's hawk range, "foraging habitat mitigation has generally not been required in the business park area" and refers to a biological opinion from a consulting firm stating they were "not aware of any projects in Napa County that have required mitigation for loss of Swainson's hawk foraging habitat" (LSA 2015). In 2016, CDFW released a Status Review for Swainson's hawk in California and recommended the species retain its status as threatened under CESA (CDFW 2016). The review states there is no indication the species has reoccupied its historical range and the distribution of Swainson's hawk remains largely unchanged and restricted. Additionally, the review cites that the **primary threat** to Swainson's hawk continues to be habitat loss, **especially the loss of suitable foraging habitat**. Additionally, mitigation for the loss of Swainson's hawk foraging habitat has been included in a CDFW-issued ITP for the State Route 29/State Route 221 Soscol Junction Improvement Project in Napa County (ITP No. 2081-2021-020-03), located just north and east of the Project site, and the associated permittee purchased Swainson's hawk foraging habitat credits at a conservation bank. Additionally, CDFW has provided comments as a CEQA Trustee Agency on projects occurring in the County recommending that Swainson's hawk foraging habitat be included as a mitigation measure, for example for the Giovannoni Logistics Center Project (SCH No. 2021010104).

Finally, regarding the on-site area of potential Swainson's hawk foraging habitat (approximately 93 acres), the MND states that "given the relatively small amount of relatively poor-quality potential habitat, which would not make a significant contribution to the loss of foraging habitat for the Swainson's hawk, the loss of ruderal and grassland habitat is not a significant impact to this species." However, the MND also inconsistently states "The site contains moderately suitable foraging habitat for raptor species..." Swainson's hawk is known to utilize a broad range of land cover types, including agriculture and ruderal grasslands. Furthermore, the loss of 93 acres of potential foraging habitat could constitute significant impacts to the Swainson's hawk nesting locations that are in close proximity and are likely to be re-occupied by nesting Swainson's hawk due to high nest site fidelity as described above.

The Project would therefore result in the removal of potential foraging habitat for Swainson's hawk; however, no compensatory habitat mitigation is proposed in the MND. The breeding population of Swainson's hawk in California has declined by an estimated 91 percent since 1900 and the species continues to be threatened by on-

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going and cumulative loss of foraging habitat (CDFW 2016). Therefore, reduction of Swainson's hawk foraging habitat would be a potentially significant impact.

**Recommended Mitigation Measure:** To reduce potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measures.

*Mitigation Measure BIO-7 (Swainson's Hawk Surveys and Avoidance Buffer):* If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.

*Mitigation Measure BIO-8 (Swainson's Hawk Foraging Habitat Mitigation):* Impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank, unless otherwise approved in writing by CDFW.

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

**Comment 2:** Burrowing owl (*Athene cunicularia*), MND Page 15

**Issue:** The MND does not adequately evaluate potential impacts to wintering burrowing owl. The MND states that “burrowing owls are unlikely to be found on the site” due to compact soils, tall grass, a history of farming, and lack of ground squirrels (*Otospermophilus beecheyi*) (MND Page 13); however, the Project is surrounded by fallow land, agricultural land, and unpaved road shoulders. Any of these surrounding lands may contain California ground squirrels or other fossorial rodents or may provide foraging habitat. Ground squirrels or other rodents may easily cross property boundaries into the Project and excavate burrows, providing refugia habitat for burrowing owl.

Furthermore, the MND states that surveys for burrowing owls will be conducted within 14 days of the start of construction activities. This is inconsistent with the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) which states that surveys for non-breeding burrowing owls should be spread over four visits during the non-breeding season (i.e., wintering), September 1 to January 31.

**Specific impacts, why they may occur and be potentially significant:** The Project would result in a permanent reduction of potential burrowing owl foraging habitat in the County and may impact wintering burrowing owls utilizing burrows or burrow surrogates on or within 500 meters (1,640 feet) of the Project site. The Project could result in injury or mortality of adults, and permanent wintering (i.e., non-nesting) habitat loss. Burrowing owl is a California Species of Special Concern because the species’ population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (Shuford and Gardali 2008; *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owls have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (*Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012); personal communication, Esther Burkett, May 13, 2022). Based on the foregoing, if burrowing owls are wintering on or within 500 meters of the Project

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site, or if burrowing owl foraging habitat is removed, Project impacts to burrowing owl would be potentially significant.

**Recommended Mitigation Measures:** To reduce potential impacts to burrowing owl to less-than-significant, CDFW recommends including the below mitigation measures.

*Mitigation Measure BIO-9 (Burrowing Owl Habitat Assessment and Surveys):* A qualified biologist shall conduct a habitat assessment and surveys for wintering burrowing owls prior to construction if construction starts during the burrowing wintering season (September 1 to January 31) Surveys shall be conducted if warranted based on the habitat assessment. The habitat assessment and surveys shall follow the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)* methodology (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) and the qualified biologist shall prepare a report documenting the survey results. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Surveys for non-breeding burrowing owls shall be spread over four visits during the non-breeding season (i.e., wintering), September 1 to January 31. Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)*, which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW.

*Mitigation Measure BIO-10 (Burrowing Owl Foraging Habitat Mitigation):* Impacts to burrowing owl foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Prior to Project construction, the Project shall provide burrowing owl foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of burrowing owl foraging habitat credits at a CDFW-approved mitigation bank, unless otherwise approved in writing by CDFW.

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*Mitigation Measure BIO-11 (Burrowing Owl Burrow Mitigation):* If the Project would impact an occupied burrow where a non-nesting owl would be evicted as described below, the following habitat mitigation shall be implemented prior to Project construction.

Impacts to each non-nesting (i.e., wintering) burrowing owl site shall be mitigated by permanent preservation of one burrowing owl occupied non-nesting (i.e., wintering) sites with appropriate foraging habitat within the County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.” Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW’s written acceptance of the eviction plan.

*Mitigation Measure BIO-12 (Cap Pipe and Hose):* To prevent burrowing owls from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each work day and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.

## **II. Editorial Comment**

**Issue:** The MND includes mitigation measures followed by a subsequent “Method of Mitigation Monitoring.” It is unclear if the “Method of Mitigation Monitoring” is part of an enforceable Mitigation Measure, which could result in overlooked protections for sensitive fish and wildlife resources. For example, the Method of Mitigation Monitoring for Mitigation Measure BIO-2 includes conducting Swainson’s hawk surveys pursuant to the *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in*



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*California's Central Valley*, however this survey methodology is not included in Mitigation Measure BIO-2, therefore its implementation may be overlooked.

**Recommendation:** Include each "Method of Mitigation Monitoring" within the applicable Mitigation Measure.

## ENVIRONMENTAL DATA

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

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

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

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**Attachment 1:** Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2023110424

**REFERENCES**

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

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Estep, J.A. 1989. Biology, movements, and habitat relationships of the Swainson's Hawk in the Central Valley of California, 1986–87. California Department of Fish and Game, Nongame Bird and Mammal Section Report.

LSA Associates. September 2015. Biological Resources Assessment for the Fedrick Property; Napa County, California.

Shuford, W. D., and Gardali, T., editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

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Woodbridge, B. 1998. Swainson's Hawk (*Buteo swainsoni*). In The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California. California Partners in Flight.

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### Attachment 1

### Draft Mitigation Monitoring and Reporting Program (MMRP)

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

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-7	<p><i>Swainson's Hawk Surveys and Avoidance Buffer.</i> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i> (<a href="https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&amp;inline">https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&amp;inline</a>) and prepare a report documenting the survey results. The Project shall obtain CDFW's written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall immediately notify CDFW and implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved by CDFW in writing. Any detected nesting Swainson's hawk shall be monitored by the qualified</p>	<p>Prior to Ground Disturbance and Continuing over the Course of the Project</p>	<p>Project Applicant</p>

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	biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities may commence.		
<b>BIO-8</b>	<i>Swainson's Hawk Foraging Habitat Mitigation:</i> Impacts to Swainson's hawk foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Prior to Project construction, the Project shall provide Swainson's hawk foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of Swainson's hawk foraging habitat credits at a CDFW-approved mitigation bank, unless otherwise approved in writing by CDFW.	Prior to Ground Disturbance	Project Applicant
<b>BIO-9</b>	<i>Burrowing Owl Habitat Assessment and Surveys:</i> A qualified biologist shall conduct a habitat assessment and surveys for wintering burrowing owls prior to construction if construction starts during the burrowing wintering season (September 1 to January 31) Surveys shall be conducted if warranted based on the habitat assessment. The habitat assessment and surveys shall follow the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation</i> (2012) methodology ( <a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds</a> ) and the qualified biologist shall prepare a report documenting the survey results. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur each year of Project construction, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Surveys for non-breeding burrowing owls shall be spread over four visits during the non-breeding season (i.e., wintering), September 1 to January 31. Time lapses between surveys or Project activities	Prior to Ground Disturbance and Continuing over the Course of the Project	Project Applicant

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	<p>shall trigger subsequent surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the above methodology resulting in burrowing owl detections. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the <i>Department of Fish and Game Staff Report on Burrowing Owl Mitigation</i> (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities, unless otherwise approved in writing by CDFW.</p>		
<b>BIO-10</b>	<p><i>Burrowing Owl Foraging Habitat Mitigation:</i> Impacts to burrowing owl foraging habitat shall be quantified by a qualified biologist based on the final Project design plans, and the Project shall obtain written acceptance of the acreage of habitat impacts from CDFW. Prior to Project construction, the Project shall provide burrowing owl foraging habitat mitigation at a minimum 1:1 ratio, which shall include: 1) permanent preservation of the species' foraging habitat through a conservation easement and implementing and funding a long-term management plan in perpetuity, or 2) purchase of burrowing owl foraging habitat credits at a CDFW-approved mitigation bank, unless otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>
<b>BIO-11</b>	<p><i>Burrowing Owl Burrow Mitigation:</i> If the Project would impact an occupied burrow where a non-nesting owl would be evicted as described below, the following habitat mitigation shall be implemented prior to Project construction.</p> <p>Impacts to each non-nesting (i.e., wintering) burrowing owl site shall be mitigated by permanent preservation of one burrowing owl occupied non-nesting (i.e., wintering) sites with appropriate foraging habitat within the County, unless otherwise approved by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity.</p> <p>The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>Please be advised that CDFW does not consider exclusion of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction, therefore eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or “take” which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.” Habitat compensation shall be provided for any evicted owl as described above and the Project shall obtain CDFW’s written acceptance of the eviction plan.</p>		
<p><b>BIO-12</b></p>	<p>Mitigation Measure BIO-7 (Cap Pipe and Hose): To prevent burrowing owls from sheltering or nesting in exposed material; all construction pipes, culverts, hoses or similar materials greater than two inches in diameter stored at the Project site shall be capped or covered before the end of each work day and shall be inspected thoroughly for wildlife before the pipe or similar structure is buried, capped, used, or moved.</p>	<p>Prior to Ground Disturbance and Continuing over the Course of the Project</p>	<p>Project Applicant</p>