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Governor's Office of Planning & Research

**Feb 15 2024**

**STATE CLEARINGHOUSE**

February 15, 2024

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Subject: Delta Bay Solar Canopy RV and Boat Storage Facility, Draft Initial Study with Mitigated Negative Declaration, SCH No. 2024010363, Contra Costa County

Dear Adrian Veliz:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt of an Initial Study with a Mitigated Negative Declaration (IS/MND) from Contra Costa County Department of Conservation and Development (County) for the Delta Bay Solar Canopy RV and Boat Storage Facility (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the IS/MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the Project. 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, we appreciate 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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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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 (LSA) 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.

## **REGULATORY AUTHORITY**

### **Lake and Streambed Alteration Agreement**

Please be advised that CDFW requires an LSA Notification, pursuant to Fish and Game Code § 1600 et seq., for any Project-related activities potentially affecting rivers, lakes, or streams, and their associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

### **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. Issuance of a CESA 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 a CESA ITP.

### **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 §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).

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## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Scott Clare

**Project Description:** The proposed Project includes approval of a land use permit to construct a solar-covered boat and recreational vehicle (RV) storage facility, commercial solar energy generating facility, and an approximately 1,476-square-foot, two-story building. The Project would install six covered parking canopies, providing a total of 592 paved, recreational vessels parking stalls. The parking canopies would double as the support structure for ground-mounted solar panels for commercial solar energy generation. The aggregate area for the solar canopies/solar panel arrays is approximately 349,494 square feet. The energy generation facility would export solar energy generated on-site by connecting to Pacific Gas and Electric Company's existing electrical distribution system via existing utility poles located within the Bixler Road right-of-way.

**Location:** The Project site is located at 3777 Bixler Road Byron, CA 94514. The Project site consists of Assessor's Parcel Number (APN) 011-210-030 in Contra Costa County. The Project site is bounded by Bixler Road to the west and State Route (SR) 4 to the north, in the Byron area of unincorporated Contra Costa County.

## **ENVIRONMENTAL SETTING**

The Project site is a 38.6-acre agricultural-zoned parcel bounded by Bixler Road to the west and SR-4 to the north, in the Byron area of unincorporated Contra Costa County. The Project proposal is located within a southerly 16-acre portion of the subject property. The overall topography of the subject property is flat, with elevations ranging from 12 to 16 feet above sea level. The largely undeveloped site predominantly consists of fallow cropland. Existing development on-site includes several barn and shed buildings in the southwestern corner of the Project site, which would be removed to accommodate the proposed facility. The surrounding areas consists of lands zoned Heavy Agricultural (A-3) and are presently used for farming, grazing, and/or single-family residential purposes. An unrelated boat and RV storage facility exists on a 30-acre parcel west of the Project site on the opposite side of Bixler Road. The communities of Byron and Discovery Bay are located immediately south and north of the subject property respectively. Ephemeral drainages are present on-site.

According to Biogeographic Information and Observation System (BIOS) records, the Project site contains positive detections of several special-status species and has the potential to support numerous special-status species and their associated habitat. Species with potential to occur on-site include, but are not limited to:

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Scientific Name	Common Name	Status
<b>Amphibians</b>		
<i>Ambystoma californiense</i>	California tiger salamander	ST, FT
<i>Rana draytonii</i>	California red-legged frog	SSC, FT
<b>Birds</b>		
<i>Agelaius tricolor</i>	Tricolored blackbird	ST, SSC
<i>Aquila chrysaetos</i>	Golden eagle	FP
<i>Athene cunicularia</i>	Burrowing owl	SSC
<i>Buteo swainsoni</i>	Swainson's hawk	ST
<i>Circus hudsonius</i>	Northern harrier	SSC
<i>Elanus leucurus</i>	White-tailed kite	FP
<i>Eremophila alpestris actia</i>	California horned lark	WL
<i>Falco peregrinus anatum</i>	American peregrine falcon	FP
<i>Falco mexicanus</i>	Prairie falcon	WL
<i>Lanius ludovicianus</i>	Loggerhead Shrike	SSC
<i>Melospiza melodia</i> pop. 1	Song sparrow ("Modesto population")	SSC
Multiple species	nesting birds	
<b>Mammals</b>		
<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	ST, FE
<i>Antrozous pallidus</i>	Pallid bat	SSC
<i>Corynorhinus townsendii</i>	American badger	SSC
<i>Taxidea taxus</i>	Townsend's big-eared bat	SSC
<b>Plants</b>		
<i>Astragalus tener</i>	Alkali milk-vetch	1B.2

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<i>Blepharizonia plumosa</i>	Big tarplant	1B.1
<i>Extriplex joaquinana</i>	San Joaquin spearscale	1B.2
<i>Tropidocarpum capparideum</i>	Caper-fruited tropidocarpum	1B.1
Multiple species	Native vegetation	
<b>Habitats</b>		
wetland, pond, and bed, bank, or channel.		
<p><b>Notes:</b> State listing under the California Endangered Species Act (CESA): SE = state endangered; SCE = state candidate for listing as endangered; ST = state threatened; SCT = state candidate for listing as threatened; FP = state fully protected; SSC = state species of special concern; SR = state rare.</p> <p>California Native Plant Society (CNPS) ranking system: 1B = plants rare, threatened, or endangered in California and elsewhere; 2B = plants rare, threatened or endangered in California, but common elsewhere. Threat ranks: 0.1 = seriously threatened in California; 0.2 = moderately threatened in California.</p> <p>Federal listing under the Federal Endangered Species Act (FESA): FE = federally endangered; FT = federally threatened; FC = federal candidate species.</p>		

## 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. Editorial comments or other suggestions may also be included to improve the document. **Bold** language indicates language to be added and ~~strike through~~ indicates language to be removed. Based on the on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

### COMMENT 1: Editorial Comments

- On page 3, "*Environmental Factors Potentially Affected*". This section is blank and needs to be completed.
- On page 14, section (a), end of paragraph 3. The IS/MND states that "Thus, the project would not expectedly...", but does not complete the sentence. Please update to disclose the determination on the Project's potential to impact special-status plants.

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- The Biological Resources Assessment (BRA) is referenced on Page 14, seemingly indicating that it is going to be included as an appendix to the IS/MND, but it is not attached to the IS/MND. Please either attach the BRA as an appendix or change the sentence to reflect the sentence's intention more clearly.
- Please review the entire document to ensure plant and wildlife species names are correctly spelled. Examples of spelling errors in the draft IS/MND include "Townshend's Big-Eared Bat" and "Swainson's Hawk".

## **COMMENT 2: Project Description**

**Issue:** The Project description should contain enough information so that the impact analysis contains a meaningful assessment of the Project's potential impacts. Currently, the Project description appears to be lacking enough detail to analyze the Project's potential impact(s).

**Recommendation:** Please include a complete description of the following Project components in the Project description and provide figures, as applicable:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas, access routes, trenching routes, ground-disturbing activities etc.;
- Plans --including proposed dimensions and materials-- for any proposed buildings/structures, gates, fencing, roadways, paving, stationary machinery/equipment (tie-in, energy storage, substations, etc.), artificial lighting, landscaping, and stormwater systems;
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, and other features;
- Discussion of demolition and disposal plan for the structures present on the Project site;
- Construction schedule, activities, equipment, and crew sizes;
- Description of vegetation and tree modification (trimming, clearing, and removal), including square feet of vegetation modified, species information, and proposed type of modification;
- Encroachments into riparian habitats, wetlands, ephemeral or perennial drainages, or other sensitive areas;

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- Map of habitat types, including wetland delineation results, within and adjacent to the Project footprint (see also Comment 7 below); and
- Figure delineating the Project footprint and associated infrastructure such as fences, power lines and stormwater drainage.

### **COMMENT 3: Species Surveys**

The botanical and wildlife surveys performed for the Project are referenced on page 14 of the IS/MND, but the cited referenced BRA is not appended, nor is the survey data incorporated into the document's text. CDFW cannot evaluate the sufficiency of surveying that has been performed if no survey details are provided. Please discuss the surveys performed in more detail. Survey information should disclose date(s) of surveys, methods, and daily timing in a revised and recirculated IS/MND.

Surveys should be conducted for special-status wildlife and plant species with potential to occur at Project locations or within a reasonable dispersal distance to the proposed Project sites. This should include areas within the Project footprint, as well as adjacent habitats, that may be directly or indirectly impacted. These surveys should be conducted by a Qualified Biologist and should follow the recommended survey protocols and guidelines available at: (<https://wildlife.ca.gov/Conservation/Survey-Protocols>). Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted by a Qualified Botanist for all species potentially impacted by the Project during the appropriate blooming period for each individual species. More than one year of surveys may be necessary given environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements (<https://wildlife.ca.gov/Conservation/Plants>). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

Even if planning surveys do not result in detection of special-status plant species, pre-construction surveys should be performed prior to initiating Project activities. Pre-construction surveys should be conducted by a Qualified Biologist using the aforementioned protocols, no earlier than seven (7) days prior to commencing Project activities (unless a more specific survey protocol is otherwise specified in this letter). Results from botanical surveys should be incorporated into a revised and recirculated IS/MND for public review.

### **COMMENT 4: Incidental Take Coverage**

**Issue:** The IS-MND indicates that the project proponent *might* seek coverage under the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation

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Plan (ECCC HCP/NCCP or “Plan”) as a participating special entity. If ineligible or opting not to seek coverage under the Plan, or if a special-status species is not covered under the Plan, the Project proponent must demonstrate CESA compliance for the following species with high potential to occur on-site: San Joaquin kit fox, Swainson’s hawk, burrowing owl, tricolored blackbird, and California tiger salamander.

**Recommendation:** If CESA-listed wildlife or plants are identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the Native Plant Protection Act.

#### **COMMENT 5: Fully Protected Species**

**Issue:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code §§ 3511, 4700, 5050, and 5515. In review of the California Natural Diversity Database (CNDDDB), there are several fully-protected special-status species with potential to be present within or adjacent to the Project area, which includes white-tailed kite (*Elanus leucurus*) and American peregrine falcon (*Falco peregrinus anatum*), and golden eagle (*Aquila chrysaetos*). Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take with only a few notable exceptions. Such exceptions include when take is determined to be necessary for scientific research, or efforts to recover a fully protected, endangered, or threatened species; live capture and relocation of a bird species for the protection of livestock; or if the project is coverable under a Natural Community Conservation Plan (NCCP) where the fully protected species is a “covered species” whose conservation and management is provided for, pursuant to Fish and Game Code § 2805. Specific types of infrastructure projects (such as solar photovoltaic projects that carry power to California-based balancing authorities) may be eligible to obtain an ITP for unavoidable impacts to fully protected species, if certain conditions are satisfied (Fish and Game Code §2081.15).

**Recommendation:** The Project proponents should be required to consult with CDFW early in the Project planning process if the Project will not participate in the ECCC HCP/NCCP and if they believe their Project qualifies for an exception under Fish and Game Code §2081.15 for the fully protected species above. If the Project is eligible to obtain take coverage of fully protected species, the Project proponent must obtain incidental take coverage for those species as described in ‘Comment 4’ above. However, if the Project does not qualify for one of these exceptions, take cannot be authorized and all impacts to fully protected species must be **fully avoided**.



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Consult with the ECCC HCP/NCCP and CDFW to determine whether the Project can obtain take coverage for fully protected species under the Plan. If the Project is not able to obtain take coverage for fully protected species, then a detailed plan and mitigation measures should be developed and to ensure that **all potential impacts to fully protected species will be completely avoided and incorporated into a revised and recirculated IS/MND.**

#### **COMMENT 6: Lake and Streambed Alteration**

**Issue:** CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes or streams and associated riparian habitat. CDFW performed a desktop review of the site using BIOS's 'California Streams' sublayer under the 'Hydrography' reference layer, as well as Google Earth Pro historical imagery. Based on this review, the Project site contains positive detections of unnamed stream and pond habitat. Therefore, it appears the IS/MND does not adequately disclose potential lake or streambed resources, including any discharge of stormwater into Kellogg Creek or its tributaries, nor does it analyze and disclose how these resources might be impacted by Project activities, and proposed avoidance, minimization, and mitigation measures to these resources.

Please indicate more clearly what watercourses and/or water bodies are present on-site, and what modifications and impacts might result from proposed Project activities. Impacts to waterbodies and watercourse include, but are not limited to: modification of bed, bank, or channel, grading, erosion and sedimentation, increased sheet flow from addition of impervious surfaces, installation of structures, and discharge of deleterious materials (oils, concrete, sediment, etc.).

**Recommendation:** Disclose and further evaluate all Project activities in a revised and recirculated IS/MND that will occur in or adjacent to streams, rivers, and/or lakes. If impacts to the bed, bank, channel, or riparian areas cannot be fully avoided, or if the Project will place materials that will discharge into a stream, the Project proponent must submit a Notification for an LSA, pursuant to Fish and Game Code 1602 and obtain a final LSA Agreement prior to initiating Project activities.

#### **COMMENT 7: Maps and Tables**

**Issue:** The IS/MND does not contain any maps of biological resources present on-site and the potential impacts to these resources. Without this disclosure, CDFW cannot sufficiently evaluate potential impacts to biological resources.

**Recommendation:** Please provide maps in a revised and recirculated IS/MND that clearly demonstrate the following: 1) proposed temporary and permanent activities, 2) biological resources (e.g., stream, ponds, trees, etc.) and habitats present on-site, and 3) potential impacts to habitats. Page 22 indicates that a Tree Inventory has been

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prepared for the Project. Please provide a Tree Inventory Map that depicts all tree species present on the Project site, giving each tree a unique identification number, and clearly demonstrating whether a tree will be removed, trimmed, or not affected. Please provide separate icons for trees remaining in place, trees being removed, and trees being trimmed. Provide an accompanying table that details each tree on-site with their unique identification numbers; indicates each tree's species (including both the common and scientific names) and its diameter at breast height (DBH); and identifies whether or not a tree will be impacted by the Project. If impacted, please describe the type of impact the tree will experience (i.e., critical root mass affected, pruning/trimming, or removal).

#### **COMMENT 8: Swainson's Hawk**

**Issue:** The IS/MND acknowledges potential for encountering Swainson's hawk on-site. Swainson's hawk nests have been identified within 0.5 miles of the Project site and reported to the CNDDDB. The IS/MND's Swainson's hawk measures are inadequate.

**Recommendation 1:** CDFW recommends conducting protocol-level surveys for Swainson's hawk nest sites to determine the appropriate mitigation to reduce impacts to less-than-significant. CDFW recommends using the Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (TAC Report) available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>.

Please update the 'Mitigation Measure BIO-1 (Swainson's Hawk)' as follows:

- 1) Add the protocol-level survey requirements discussed above;
- 2) Change nesting season to "**March 1** through September 15";
- 3) Specify "**CDFW-approved** qualified biologist";
- 4) Change "1,000 feet" to "**0.5 miles**";
- 5) Add "If nesting Swainson's hawks are found during survey(s), or at any time during Project activities, all Project activities within 0.5-mile of the nest will be postponed until a Qualified Biologist has determined that all young have fully fledged and able to self-provision";
- 6) Add details about how protective buffers will be implemented and enforced; and
- 7) Change the sentence "If young **fully** fledge (**are no longer dependent on the nest, disperse from their parent's territory, and are foraging independently**) prior to September 15, Project activities can proceed."

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**Recommendation 2:** Adequate mitigation should be sought if impacts to Swainson's hawk are unavoidable and ineligible for coverage under the ECCC HCP/NCCP. To mitigate for the loss of Swainson's hawk foraging habitat in a method consistent with the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California*, CDFW 1994, (Swainson's Hawk Staff Report), CDFW recommends the draft IS/MND incorporate the following language:

- For projects within one mile of an active nest tree (the Swainson's Hawk Staff Report defines an active nest as used during one or more of the last five years), provide at least one acre of land for each acre of development authorized; and
- For projects within five miles of an active nest tree, but greater than one mile from the nest tree, provide at least 0.75 acres of land for each acre of development authorized.

#### **COMMENT 9: Burrowing owls**

**Issue:** The IS/MND acknowledges that the Project has a high potential to impact burrowing owl. BIOS indicates that the Project site area contains potential burrowing owl predicted habitat, is within its range, and is less than one mile from "patch" of habitat as denoted by the Burrowing Owl Connectivity Modeling for the California Bay Area Linkage Network (data set 871) (CNDDDB accessed February 2024). Please be advised that pre-construction surveys alone are inadequate to determine impacts to western burrowing owl and their habitat. Burrowing owl may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting, or cover. If burrowing owl that may be impacted by the Project are not detected, the Project may result in reduced health and vigor, or direct mortality, of burrowing owl arising from impacts to occupied wintering habitat or from wintering burrow abandonment caused by auditory and visual disturbances (Klute et. al 2003). Burrowing owl is a California SSC and protected under Fish and Game Code sections 3503 and 3503.5. Therefore, if burrowing owl are present on or within 1,640 feet of the Project site, Project impacts to burrowing owl would be potentially significant.

**Recommendation:** To reduce impacts to burrowing owl to a level less-than-significant, CDFW recommends revising the IS/MND to include the following language in the Mitigation Measure BIO-3 (Burrowing Owl) and Mitigation Measure BIO-4 (Burrowing Owl):

"The qualified biologist shall follow the CDFW 2012 *Staff Report on Burrowing Owl Mitigation* (CDFW 2012 Staff Report) habitat assessment and survey methodology prior to initiating Project activities during the burrowing owl wintering season from September 1 to January 31. Surveys shall encompass a sufficient buffer zone to detect owls nearby that may be impacted, which shall be a minimum of 1,640 feet unless otherwise approved

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in writing by CDFW. Surveys shall include four non-breeding season surveys spread evenly throughout the nonbreeding season, pursuant to the CDFW 2012 *Staff Report*. Time lapses between surveys or Project activities shall trigger subsequent surveys, as determined by a qualified biologist, including, but not limited to, a final survey within 24 hours prior to ground disturbance and before construction equipment mobilizes to the Project area. The Qualified Biologist shall have a minimum of two years of experience implementing the CDFW 2012 *Staff Report* survey methodology resulting in detections.

Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW, and any eviction plan shall be subject to CDFW review. Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure; therefore, off-site habitat compensation shall be included in the eviction plan.

Prior to Project construction, the Project proponent should place a conservation easement (CE), onto areas that are occupied by special-status species or adjacent to occupied properties. The CE should have a long-term management plan and include an endowment for funding of management and protection in perpetuity. CDFW should be named as the CE’s third-party beneficiary.”

#### **COMMENT 10: Roosting Bats**

**Recommendation:** Please add the following language to Mitigation Measure BIO-5 (Roosting Bats): “Bat surveys shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species, culvert crevices, etc.) in the Project footprint and within 50 feet of the footprint. Habitat features found during the survey(s) shall be flagged or clearly marked. If any habitat features will be altered or potentially disturbed by Project activities, a phased disturbance strategy shall be employed to allow for nocturnal roost evacuation. Non-habitat trees or structural features shall be removed at least **one (1) day** prior to removal of habitat features. Potential roosting features shall not be directly disturbed (e.g., shaken, prodded, etc.).”

#### **COMMENT 11: Nesting Birds**

**Recommendation:** Please update Mitigation Measure BIO-6 (Nesting Birds) to the following:

- Nesting Bird Surveys. If Project activities will occur during nesting bird season (February 15 to September 15), a Qualified Biologist shall conduct a reconnaissance-level survey for active nests within the 14 days prior to the initiation of Project-related activities. Surveys shall be conducted in all potential

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habitat located at, and adjacent to, Project work sites and in staging and storage areas. The minimum survey radii surrounding the work area shall be the following: 250 feet for non-raptors, 1,000 feet for non-listed raptors, and 0.5 miles for special-status raptors. If a lapse in Project-related activities of seven (7) days or longer occurs, another focused survey will be required before Project activities can be reinitiated. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with the Fish and Game Code of California.

- Active Nest Buffers. Active nest sites and protective buffer zones shall be designated as “Environmentally Sensitive Areas” where no Project-related activities or personnel may enter until the Qualified Biologist determines that the young have *fully fledged* and will no longer be adversely affected by the Project. These designated areas shall be protected during Project activities by surrounding the nest site with a wildlife-safe fence or flagging barrier. The Qualified Biologist shall determine the necessary buffer distance to protect nesting birds based on existing site conditions (such as construction activity and line of sight). For golden eagles, no construction shall occur within 0.5 mile of active nests (most activity late January through August). Buffer distance shall be increased to provide sufficient protection of nesting birds and their natural behaviors, as needed.
- Active Nest Monitoring. The Qualified Biologist shall monitor any identified active nests (including seasonally used nests of migratory raptors and ground nests) prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests shall be continuously monitored for a minimum of three consecutive workdays by the Qualified Biologist to detect any signs of disturbance and behavioral changes as a result of Project activities. In addition to direct impacts (such as nest destruction), nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. After the Qualified Biologist has determined that the nesting birds are attenuated to construction presence, the nest may be monitored by a Biological Monitor, provided there are no changes in site conditions (e.g., project activities, equipment used or noise levels) relative to the observation period. If signs of disturbance and behavioral changes are observed at any time, the biological personnel shall order work causing that behavioral change to cease and contact CDFW for guidance prior to resuming Project activities.

#### **COMMENT 12: Additional General Wildlife Measures**

**Recommendation:** Please add the following requirements for general wildlife protection into a revised and recirculated IS/MND:

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No Stockpiling of Vegetation. Vegetation removed and not used for slash shall be placed directly into a disposal vehicle and removed from the Project work site. Vegetation not used for slash shall not be piled on the ground unless it is later transferred, piece by piece, under the direct supervision of the Qualified Biologist. Vegetation used for slash shall be stockpiled if placed within a biological exclusion area and shall be transferred under the supervision of the Qualified Biologist.

Open Trenches. Any open trenches, pits, or holes with a depth larger than six (6) inches shall be covered at the conclusion of work each day with a hard, non-heat conductive material (e.g., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood planking, or installed as an earthen dirt fill with walls no greater than 30 degrees in slope in each open trench, hole, or pit that is capable of allowing large (e.g., deer) and small (e.g., snakes) wildlife to escape on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, Qualified Biologist shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered it shall be allowed to leave on its own accord, if wildlife does not leave on its own accord consultation with CDFW is required before work can be initiated.

Open Pipes Restriction. All pipes, culverts, or similar structures that are stored at the site for one (1) or more overnight periods shall be thoroughly inspected for wildlife by the Qualified Biologist prior to use at the Project site. All hollow pipes or posts installed as part of the Project and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the workday in which the installation occurs.

Fence and Signpost Restriction. Any fencing, signposts, or vertical poles installed temporarily or permanently throughout the course of the Project shall have the top capped and/or the top three (3) post holes covered or filled with screws or bolts to prevent the entrapment of wildlife.

Wildlife-friendly Fencing. All new and repaired fencing shall be designed to facilitate wildlife passage to the maximum extent practicable. Wire fencing shall have a smooth top and bottom wire. Fencing shall not be constructed of materials deleterious to wildlife (e.g., sharp edges exposed at the top or bottom of chain-link fencing, braided wire where birds may become entangled, etc.). Permittee shall not install any fencing material which may ensnare, impale, or otherwise harm wildlife species. No barbed wire, or equivalent, shall be allowed where it may result in harm to birds and other wildlife (e.g., as top-wire or bottom-wire on tiered fencing).

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## 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>.

## 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. (See Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW recommends that additional CEQA analysis be performed, as discussed in the comments provided above, and the results be disclosed in a revised and recirculated IS/MND. CDFW appreciates the opportunity to comment on the IS/MND to assist the County in identifying and mitigating Project impacts on biological resources.

If you have questions regarding this letter, please contact Sabrina Dunn, Environmental Scientist, at (707) 428-2069 or [Sabrina.Dunn@wildlife.ca.gov](mailto:Sabrina.Dunn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024010363)

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## REFERENCES

- California Department of Fish and Wildlife (formerly California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. Available online at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>
- California Department of Fish & Wildlife. 2021. California Natural Diversity Database (CNDDB) Rarefind Electronic database. 3777 Bixler Road Byron, CA 94514. Accessed February 2024.
- Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTPR6001-2003, Washington, D.C.