

**Mitigation Monitoring and Reporting Program
County File #CDLP22-02019**

**3777 Bixler Road
Byron, CA 94514**

May, 2024

SECTION 4: BIOLOGICAL RESOURCES

Potentially Significant Impacts:

Potential Impact (Swainson's Hawk) BIO-1: Project activities could result in direct impacts to Swainson's Hawk through the destruction or abandonment of active nests, if present.

Potential Impact (Swainson's Hawk) BIO-2: The proposed project could result in the loss of approximately 16-acres of suitable Swainson's Hawk foraging habitat.

Potential Impact (Burrowing Owl) BIO-3: Project activities could result in direct impacts to burrowing owl through the destruction or abandonment of active nests, if present.

Potential Impact (Burrowing Owl) BIO-4: Project activities could result in the loss of suitable burrowing owl habitat.

Potential Impact (Roosting Bats) BIO-5: Project activities, including demolition and tree removal associated with the proposed project could result in the direct removal of active bat roosts protected under California Fish and Game Code and the California Environmental Quality Act.

Potential Impact (Nesting Birds) BIO-6: Project activities could result in the destruction or abandonment of nests of special-status or non-special status bird species protected under the Migratory Bird Treaty Act, California Fish and Game Code, and California Environmental Quality Act.

Potential Impact BIO-12: Construction activities adjacent to the saline wetland may result in unintentional fill or discharge into this feature.

Mitigation Measures(s):

Mitigation Measure BIO-1 (Swainson's Hawk): Prior to any ground disturbance or tree removal activities that occur during the nesting season (March 1 – September 15), a CDFW-approved Qualified Biologist will conduct protocol-level surveys for Swainson's hawk nest sites within 5-miles of the project site. The survey period timing and methodology will be conducted in accordance with the Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

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Community Development Division (CDD)

Mitigation Monitoring Program

CDLP22-02019

If nesting Swainson's hawks are found during survey(s), or at any time during project activities, a 0.5 miles non-disturbance buffer will be established and implemented in the field by a Qualified Biologist. Buffers will be maintained until a Qualified Biologist has determined that all young have fully fledged and are able to self-provision. If site-specific conditions or the nature of the activity (e.g. steep topography, dense vegetation, limited activities) indicate that a reduced buffer could be used, the implementing entity will coordinate with CDFW to determine an appropriate buffer size.

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 within the buffer zone. If the active nest site is shielded from view and noise from the project site by other development, topography, or other features, the project applicant can apply to the implementing entity for a waiver of this avoidance measure. Any waiver must also be approved by CDFW. While the nest is occupied, activities outside of the buffer can take place.

All active nest trees will be preserved on site, if feasible. Nest trees, including non-native trees, lost to covered activities will be mitigated by the project proponent in a manner deemed adequate by the implementing agency.

Mitigation Measure BIO-2 (Swainson's Hawk): *The project proponent shall 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. If the project is 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), at least one acre of land for each acre of development authorized will be provided. If the project is within five miles of an active nest tree, but greater than one mile from the nest tree, at least 0.75 acres of land for each acre of development authorized will be provided. Alternatively, the project proponent may elect to obtain take coverage via the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation plan.*

Mitigation Measure BIO-3 (Burrowing Owl): *A CDFW-approved biologist will 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 in writing by CDFW. Surveys shall include four non-breeding season surveys spread evenly throughout the nonbreeding season, pursuant to the*

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Condition of Approval (COA)
Community Development Division (CDD)

Mitigation Monitoring Program
CDLP22-02019

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 including off-site habitat compensation shall be subject to CDFW review.

Mitigation Measure BIO-4 (Burrowing Owl): *If preconstruction surveys determine that owls are occupying the Project site, the Project proponent should place a conservation easement (CE), onto any 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. Alternatively, the project proponent may elect to obtain take coverage via the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation plan.*

Mitigation Measure BIO-5 (Roosting Bats): *A preconstruction survey for bats will be conducted by a CDFW-approved Qualified Biologist prior to the initiation of project activities. The survey will include a visual inspection of any 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.) within the project footprint and surrounding 50 feet. 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.).*

Mitigation Measure BIO-6 (Nesting Birds): *To the extent feasible, Project-related activities shall be avoided during the nesting bird season, generally defined as February 15 – September 15. If project work must occur during the nesting bird season, 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 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*

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Condition of Approval (COA)
Community Development Division (CDD)

Mitigation Monitoring Program
CDLP22-02019

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 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.

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.

Mitigation Measure BIO-7 (General Wildlife Protection): *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.*

Mitigation Measure BIO-8 (General Wildlife Protection): 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.

Mitigation Measure BIO-9 (General Wildlife Protection): 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.

Mitigation Measure BIO-10 (General Wildlife Protection): 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.

Mitigation Measure BIO-11 (General Wildlife Protection): 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).

Mitigation Measure BIO-12: Prior to ground disturbing activities, sensitive habitats adjacent to the project construction areas will be flagged and silt fencing will be installed in the areas adjacent to wetlands.

If suitable habitat for covered shrimp will be retained on site, project proponents will establish a buffer from the outer edge of all hydric vegetation associated with seasonal wetlands occupied (or assumed to be occupied) by covered shrimp. This buffer zone will be determined in the field by the biologists as the immediate watershed feeding the seasonal wetland or a minimum of 50 feet, whichever is greater. Buffers will be marked by brightly colored fencing or flagging throughout the construction process. Activities will be prohibited in this buffer in accordance with the minimization measure above.

Implementing Action:	COA
Timing of Verification:	Prior to ground disturbance, continuing throughout construction activities
Party Responsible for Verification:	CDD staff, Consulting Biologist.
Compliance Verification:	Review of Biologist's report, Mitigation measures and biologists recommendations printed on construction plans

SECTION 5: CULTURAL RESOURCES

Potentially Significant Impacts:

***Potential Impact CUL-1:** Subsurface construction activities could potentially damage or destroy previously undiscovered historic and prehistoric resources.*

***Potential Impact CUL-1:** Surface construction activities could potentially damage or destroy previously undiscovered archeological resource.*

***Potential Impact CUL-1:** Surface construction activities could potentially damage or destroy previously undiscovered human remains*

Mitigation Measure(s):

***Mitigation Measure CUL-1:** The following Mitigation Measures shall be implemented during project related ground disturbance, and shall be included on all construction plans:*

a. *All construction personnel, including operators of equipment involved in grading, or trenching activities will be advised of the need to immediately stop work if they observe any indications of the presence of an unanticipated cultural resource discovery (e.g. wood, stone, foundations, and other structural remains; debris-filled wells or privies; deposits of wood, glass, ceramics). If deposits of prehistoric or historical archaeological materials are encountered during ground disturbance activities, all work within 50 feet of the discovery shall be redirected and a qualified archaeologist, certified by the Society for California Archaeology (SCA) and/or the Society of Professional Archaeology (SOPA), shall be contacted to evaluate the finds and, if necessary, develop appropriate treatment measures in consultation with the County and other appropriate agencies. If the cultural resource is also a tribal cultural resource (TCR) the representative (or consulting) tribe(s) will also require notification and opportunity to consult on the findings.*

If the deposits are not eligible, avoidance is not necessary. If eligible, deposits will need to be avoided by impacts or such impacts must be mitigated. Upon completion of the archaeological assessment, a report should be prepared documenting the methods, results, and recommendations. The report should be submitted to the Northwest Information Center and appropriate Contra Costa County agencies.

b. *Should human remains be uncovered during grading, trenching, or other on-site excavation(s), earthwork within 30 yards of these materials shall be stopped until the County coroner has had an opportunity to evaluate the significance of the human remains and determine the proper treatment and disposition of the remains. Pursuant to California Health and Safety Code Section 7050.5, if the coroner determines the remains may those of a Native American, the coroner is responsible for contacting the Native American Heritage Commission (NAHC) by telephone within 24 hours. Pursuant to California Public Resources Code Section 5097.98, the NAHC will then determine a Most Likely Descendant (MLD) tribe and contact them. The MLD tribe has 48 hours from the time they are given access to the site to make recommendations to the land owner for treatment and disposition of the ancestor's remains. The land owner shall follow the requirements of Public Resources Code Section 5097.98 for the remains.*

Implementing Action:	COA
Timing of Verification:	Prior to CDD stamp approval of plans for the issuance of building/grading permits.
Party Responsible for Verification:	CDD staff

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Condition of Approval (COA)
Community Development Division (CDD)

Mitigation Monitoring Program
CDLP22-02019

Compliance Verification:	Review of construction plans verifying that CUL-1 measures are included on plan notes printed thereon.
SECTION 18: TRIBAL CULTURAL RESOURCES	
Potentially Significant Impacts:	
<p><i>Potential Impact:</i> Construction and grading could cause ground disturbance which may impact heretofore undocumented tribal cultural resources.</p> <p><i>Potential Impact:</i> The project could cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. The expected construction and grading could cause ground disturbance which may impact heretofore undocumented cultural resources.</p>	
<p><i>Mitigation Measure:</i> Implementation of mitigations measure CUL-1 would reduce the impact on previously undiscovered tribal cultural resources to a less than significant level.</p>	
Implementing Action:	COA
Timing of Verification:	Prior to CDD stamp approval of plans for the issuance of building/grading permits.
Party Responsible for Verification:	CDD staff
Compliance Verification:	Review of construction plans verifying that CUL-1 measures are included on plan notes printed thereon.