



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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May 7, 2024

Governor's Office of Planning & Research

May 07 2024

STATE CLEARINGHOUSE

Matt Ringel, Planner II
County of Napa
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Subject: Dynamo Solar Commercial Floating Solar Use Permit (P22-00340-UP), Zone Change (P23-00181-ZC), and Variance (P23- 00268-VAR), Mitigated Negative Declaration, SCH No. 2024040604, Napa County

Dear Mr. Ringel:

The California Department of Fish and Wildlife (CDFW) received a Notification of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Napa (County) for the Dynamo Solar Commercial Floating Solar Use Permit (P22-00340-UP), Zone Change (P23-00181-ZC), and Variance (P23- 00268-VAR) (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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: Dynamo Solar LLC

Objective: Construct approximately 56-acres of floating solar panels on Napa Sanitation District's existing wastewater ponds. The proposed project includes approximately two-miles of electrical transmission lines, with portions constructed above

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

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and below ground. Above ground portions of the transmission lines which are expected to exceed 35 feet in height will be supported by 8 electrical transmission towers and the underground portion will be approximately 1,800 feet in length. Also included in the Project is the 0.9-acre expansion of an existing Pacific Gas and Electric Company (PG&E) "Tulucay" electrical substation located on Anderson Road.

Location: The Project is located at 1515 Soscol Ferry Road, Napa, CA 94558 in Napa County and occupies approximately 163.59 acres; and occurs on Assessor Parcel Number (APN) 057-050-003-000, 057-010-010-000, 057-050-006-000, 057-010-038-000, 057-010-039-000, and 046-400-016; and at approximately 38.22901°N and - 122.28809°W.

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 swainsonii*) and tricolored blackbird (*Agelaius tricolor*), which are both state listed as threatened, 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. (c) & 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.

Fully Protected Species

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or

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- They are a covered species whose conservation and management is provided for, in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (See Fish & G. Code § 2081.15.). Project proponents should consult with CDFW early in the Project planning process. **The Project has the potential to impact California Ridgway's rail (*Rallus obsoletus obsoletus*), a state fully protected and state and federally listed as endangered species, and California black rail (*Laterallus jamaicensis coturniculus*), a state fully protected, and state listed as threatened species, as further described below.**

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et. seq. is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will 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 subject to LSA notification requirements. **The Project has the potential to impact Suscol Creek and an unnamed ephemeral stream, as further described below.** CDFW, as a Responsible Agency under CEQA, would 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.

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 implementation of mitigation measures, including the below recommendations and those in Draft Mitigation, Monitoring and Reporting Program (Attachment 1), CDFW concludes that a MND is appropriate for the Project.

- I. **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?**

Mitigation Measure and Environmental Setting Related Impact Shortcomings

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COMMENT 1: Swainson's Hawk

Issue: The MND does not adequately mitigate potential impacts to Swainson's hawk, which exhibits a high level of documented occurrences near the Project area and may be impacted if nesting within 0.5 miles from the Project area. Seven Swainson's hawk nesting records are recorded within approximately 0.5 miles of the Project area from 2007 to 2022 according to the California Natural Diversity Database (CNDDDB), including records immediately adjacent to the east side of the wastewater ponds. Additionally, Swainson's hawk survey results from this year (2024) received by CDFW for a nearby separate PG&E project include potential Swainson's hawk nesting sites within approximately 0.2 and 0.3 miles of the Project area near Suscol Creek and less than 0.2 miles from the existing PG&E electrical substation on Anderson Road. To address potential Swainson's hawk impacts, the MND Mitigation Measure (MM) BIO-1 states that "The preconstruction survey shall be completed in accordance with the Swainson's Hawk Technical Advisory Committee 2000 guidelines (SHTAC 2000), or current guidance." This language makes it unclear which protocol or guidance will be implemented to ensure avoidance of Swainson's hawk. Additionally, language included in MM BIO-1 (MND page 16) is not consistent with the protocol described in *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk, Technical Advisory Committee, 5/2000*. For example, MM BIO-1 states that the Project "shall conduct a preconstruction survey for nesting birds within all suitable habitat on the Project site, and where there is potential for impacts adjacent to the Project areas (within 0.25 miles of Project activities)", whereas the above protocol is intended to detect Swainson's hawk nests within 0.5 miles of the Project site. Additionally, MM BIO-1 states that "The preconstruction survey shall be conducted no earlier than seven (7) days prior to when vegetation removal and ground disturbing activities are to commence", which is inconsistent with the protocol above which outlines survey dates according to seasonality and nesting progress of Swainson's hawk.

Specific impacts and why they may occur and be significant: According to CNDDDB and current surveys described above, 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). The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels if appropriate surveys are not conducted to detect nesting Swainson's hawks to ensure avoidance. 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. 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

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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).

Recommended Mitigation Measure: To reduce potential impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends including the following Swainson's hawk mitigation measure, which should be a separate measure from the general nesting bird survey and avoidance mitigation measure to avoid confusion.

Swainson's Hawk Surveys and Avoidance. 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 *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.

COMMENT 2: California Black Rail and California Ridgway's Rail

Issue: The MND does not adequately evaluate potential impacts to California black rail and Ridgway's rail, and states that while California black rail has occurred within 0.9 miles of the Project area, there is low potential for California black rail to occur

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since the preferred habitat is not present. However, the Biological Resources Report states that the marsh habitat adjacent to the Project area “still presents a low chance for California black rail to occur near to the Project due to the presence of pickleweed and gumplant.” In addition, CDFW received results for surveys conducted this year (2024) for a nearby PG&E project which identify California black rail potential nest sites within the Project’s study area along marshlands south of the Highway 12 crossing of the Napa River between Soscol Ferry Road and Suscol Creek. Furthermore, potentially suitable California Ridgway’s rail and black rail habitat appears to be present in the marsh area adjacent to the Project’s southern boundary according to a 2011 CNDDDB record. The California Aquatic Resources Inventory also suggests potential for suitable California black rail and Ridgway’s rail habitat in the form of tidal marshlands along the western boundary of the Project area.

Specific impacts and why they may occur and be significant: The Project has the potential to impact nesting California black rail and Ridgway’s rail through auditory or visual disturbances above ambient levels. Disturbances from Project activities within 700 feet of suitable nesting habitat may result in California black rail and Ridgway’s rail nest abandonment and loss of eggs or reduced health and vigor and loss of young. Additionally, The Biological Resources Report states that the “Installation of the floating array is not likely to exceed ambient noise conditions and salt marsh habitat close to treatment ponds is too small and fragmented to support nesting. As such, no effects to California black rail are expected.” As disturbance metrics such as noise levels resulting from installation of the floating array were not specified, it is unclear if disturbance to California black rail and Ridgway’s rail could occur from floating array installation. California black rail and Ridgway’s rail are CESA listed as threatened and endangered species and therefore, are considered to be a threatened or endangered species pursuant to CEQA Guidelines section 15380. Therefore, if an active California black rail or Ridgway’s rail nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened or endangered species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: To reduce potential impacts to California black rail and Ridgway’s rail to less-than-significant and comply with the Fully Protected Species statute above, CDFW recommends including the following mitigation measure.

California Ridgway’s Rail/Black Rail – Avoidance and Surveys. A qualified biologist shall assess if suitable habitat for California Ridgway’s rail or California black rail habitat occurs on or within 700 feet of the Project area and shall obtain CDFW’s written acceptance of the assessment prior to the start of Project construction. Project activities within tidal marsh or suitable California Ridgway’s rail or black rail

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habitat, and within 700 feet of such habitat, shall be avoided during rail breeding season (January 15 – August 31 for California Ridgway’s rail, February 1 – August 31 for California black rail) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW in writing. Surveys shall focus on suitable habitat that may be disturbed by Project activities during the breeding season to ensure that these species are not nesting in these locations.

If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where California Ridgway’s rail and/or black rail have been detected during the breeding season, unless otherwise approved in writing by CDFW. If surveys have not been conducted, all work shall be conducted 700 feet from California Ridgway’s rail and/or black rail habitat during nesting season.

COMMENT 3: Tricolored Blackbird

Issue: The Project may impact tricolored blackbird, which occurs in the County. The MND states there is “Moderate potential for occurrence” but does not include detailed species-specific avoidance measures. Additionally, the Project study area falls within the range and predicted habitat of tricolored blackbird. CNDDDB documents five occurrences of the species within 5 miles of the Project site.

Specific impacts and why they may occur and be significant: If active tricolored blackbird nests are not detected by the proposed surveys or appropriate buffer zones are not established, tricolored blackbird could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Tricolored blackbird 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 tricolored blackbird 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).

Recommended Mitigation Measure: For an accurate environmental setting and to reduce impacts to tricolored blackbird to less-than-significant, CDFW recommends including an impact analysis for tricolored blackbird and including the following mitigation measure.

Tricolored Blackbird Avoidance. General nesting bird surveys shall include the Project area and a minimum 500-foot buffer around the Project area. If nesting tricolored blackbird or evidence of their presence is found during nesting bird

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surveys within 500 feet of Project activities, CDFW shall be notified immediately, and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. If take of tricolored blackbird cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

II. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or the United States Fish and Wildlife Service?

Project Description and Related Impact Shortcoming

COMMENT 4: Suscol Creek and Unnamed Ephemeral Stream

Issue: The MND and Biological Resources Report state that the Project area overlaps Suscol Creek (spelled Suscol and Soscol in the MND and attachments) and an unnamed ephemeral stream and may not impact these features because the transmission line may be installed beneath them via directional boring or similar means. However, directional boring may impact streams, as a hydraulic fracture known as a “frac-out” may occur in which drilling fluid releases to the ground surface, which may be located at the stream.

Specific impacts and why they may occur and be significant: The Project includes installation of above ground and below ground power transmission lines near Suscol Creek and the ephemeral stream including directional boring which may cause impacts to the streams due to the potential for frac-out as described above. Streams and riparian habitat are sensitive as they support a diversity of wildlife and are limited, and therefore impacts, such as frac-out or vegetation removal, to Suscol Creek or the ephemeral stream would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to stream habitat to less-than-significant and comply with Fish and Game Code section 1602, CDFW recommends including the below mitigation measure.

LSA Notification and Agreement. The Project shall notify CDFW of any potential Project impacts to Suscol Creek, the ephemeral stream, or any other streams, including, but not limited to, directional boring underneath these streams or vegetation removal. More information for the notification process is available at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>. The Project shall comply with all measures of the LSA, if issued.

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Please be advised that an LSA Agreement, if issued for the Project, would likely include the above recommended mitigation measure, as applicable, and may include additional measures to protect fish and wildlife resources.

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. (See: 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 Nicholas Magnuson, Environmental Scientist at (707) 815-4166 or Nicholas.Magnuson@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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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 (SCH No. 2024040604)

REFERENCES

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.

Woodbridge B, Finley KK, Bloom PH. 1995. Reproductive performance, age structure, and natal dispersal of Swainson's Hawks in the Butte Valley, California. *Journal of Raptor Research* 29:187–192.

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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 (BR)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-4	<p><i>Swainson's Hawk Surveys and Avoidance:</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 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:</p> <ol style="list-style-type: none"> 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. 	<p>Prior to Ground Disturbance and During the Project</p>	<p>Project Applicant</p>

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<p>MM BIO-5</p>	<p><i>California Ridgeway's Rail/Black Rail – Avoidance and Surveys.</i> A qualified biologist shall assess if suitable habitat for California Ridgeway's rail or black rail habitat occurs on or within 700 feet of the Project area and shall obtain CDFW's written acceptance of the assessment prior to the start of Project construction. Project activities within tidal marsh or suitable California Ridgeway's rail or black rail habitat, and within 700 feet of such habitat, shall be avoided during rail breeding season (January 15 – August 31 for California Ridgeway's rail , February 1 – August 31 for California black rail) each year unless appropriately timed, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW in writing. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that these species are not nesting in these locations.</p> <p>If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where California Ridgeway's rail and/or black rail have been detected during the breeding season, unless otherwise approved in writing by CDFW. If surveys have not been conducted, all work shall be conducted 700 feet from California Ridgeway's rail and/or black rail habitat during nesting season.</p>	<p>Prior to Ground Disturbance and During the Project</p>	<p>Project Applicant</p>
<p>MM BIO-6</p>	<p><i>Tricolored Blackbird Avoidance.</i> General nesting bird surveys shall include the Project area and a minimum 500-foot buffer around the Project area. If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately, and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. If take of tricolored blackbird cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.</p>	<p>Prior to Ground Disturbance and During the Project</p>	<p>Project Applicant</p>
<p>MM BIO-7</p>	<p><i>LSA Notification and Agreement.</i> The Project shall notify CDFW for any potential Project impacts to Suscol Creek, the ephemeral stream, or any other streams, including, but not limited to, directional boring underneath these streams or vegetation removal. More information for the notification process is available at https://wildlife.ca.gov/Conservation/Environmental-Review/LSA. The Project shall comply with all measures of the LSA Agreement, if issued.</p>	<p>Prior to Ground Disturbance and During the Project</p>	<p>Project Applicant</p>