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August 30, 2024

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Subject: LSPGC Power the South Bay Project, Notice of Preparation of a Draft
Environmental Impact Report, SCH No. 2024071095; Santa Clara County

Dear Tommy Alexander:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the California Public Utilities Commission (Lead Agency) for the LSPGC Power the South Bay Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, 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.

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 over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed

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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Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project 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 REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86). CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any Project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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 permit.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, does not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting rivers, lakes or streams and 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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject

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to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

Fully Protected Species

Several Fully Protected Species (Fish & G. Code § 3511 and 4700) have the potential to occur within or adjacent to the Project area, including, but not limited to: salt-marsh harvest mouse (*Reithrodontomys raviventris*), white-tailed kite (*Elanus leucurus*), golden eagle (*Aquila chrysaetos*), California least tern (*Sternula antillarum browni*), and California Ridgway's rail (*Rallus obsoletus obsoletus*).

Project activities described in the draft EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. 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
- 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 (Fish & G. Code §2081.15).

CDFW also recommends the draft EIR analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will

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reduce indirect impacts to fully protected species. Project proponents should consult with CDFW early in the Project planning process.

PROJECT DESCRIPTION SUMMARY

Proponent: California Public Utilities Commission

Objective: The Project would include the construction of two new high-voltage direct current (HVDC) terminals and associated new transmission lines which would connect the existing Pacific Gas and Electric Company (PG&E) Newark 230 kilovolt (kV) substation and the existing Silicon Valley Power (SVP) Northern Receiving Station (NRS) 230 kV substation. The two new HVDC terminals would include a new Albrae HVDC converter station terminal (Albrae terminal) interconnected to the existing PG&E Newark substation, and a new Baylands HVDC converter station terminal (Baylands terminal) interconnected to the existing SVP NRS substation. The new transmission lines would extend approximately 12.5 miles and would be a combination of both overhead and underground lines. The Project would include all new facilities as well as modifications to the existing PG&E Newark and SVP NRS substations to accommodate interconnection specifically to the new HVDC terminals via the new transmission lines.

Location: Cities of Fremont, Milpitas, San Jose, Santa Clara, Santa Clara County, and GPS coordinates 37°25'44.7"N 121°57'08.6"W.

Timeframe: Not noted.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project (CEQA Guidelines, §§15063 & 15360). CDFW recommends that a full list or table is included in the updated Biological Resources Section of the draft EIR that notes species common name, scientific name, state and federal listing status (as applicable), habitat type preference and determination on presence, for all special-status species with the potential to occur within the Project area.

CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project area (for sensitive natural communities see:

<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20co>

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[mmunities](#)), and any stream or wetland set back distances the City or Santa Clara County may require.

CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (see *Data Use Guidelines* on the Department webpage, www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations. Only with sufficient data and information can the Lead Agency adequately assess which special-status species are likely to occur in the Project vicinity.

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 those listed in Attachment 1.

IMPACT ANALYSIS AND MITIGATION MEASURES

The draft EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas;

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- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The draft EIR should also identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

I. Environmental Setting and Related Impact Shortcoming

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 U.S. Fish and Wildlife Service (USFWS)?

COMMENT 1: Nesting Birds

The Project has the potential to disturb special-status species and nesting habitat for birds and raptors. Impacts could occur through direct damage or mortality to birds and nests as well as potential electrocution. Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the MBTA is a violation of Fish and Game Code (§ 3503, 3503.5, 3513).

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Electric distribution lines are typically placed within the range of average bird flight level and are difficult for birds to see. Many birds, particularly raptors and waterbirds, seek out tall perches like distribution poles to hunt for food or perch and roost. Frequent use of poles increases the exposure to energized parts when flying on and off a pole. Nesting material may also cause an electrical connection, or the nest material could catch on fire, killing the bird and damaging the power structure.

Linear features such as generator-tie lines and interior and perimeter fences present collision hazard to birds, and electric lines represent a potential electrocution hazard. The draft EIR should include measures that require all powerlines to be placed underground, if feasible.

Recommended Mitigation Measure 1: Nesting Bird Surveys

If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist experienced with the applicable species and habitat shall conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys shall be conducted at the appropriate times of day and during appropriate nesting times.

Recommended Mitigation Measure 2: Active Nest Buffers

If the qualified biologist identifies active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize "normal" bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

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Recommended Mitigation Measure 3: Avian Electrocutation Assessment

The Lead Agency shall investigate methods to prevent bird nesting and perching on transmission line infrastructure leading to potential electrocution through design changes or installation of deterrents to the greatest extent feasible. All aboveground lines should be fitted with bird flight diverters or visibility enhancement devices. When lines cannot be placed underground, appropriate avian protection designs should be employed. As a minimum requirement, the electrical line system should conform with the most current edition of the Avian Power Line Interaction Committee guidelines to prevent electrocutions. Resources may be found on the Avian Power Line Interaction Committee website at <https://www.aplic.org/mission>. CDFW staff are available to assist in determination of measures to protect avian species.

COMMENT 2: Golden Eagle

The NOP does not discuss potential impacts to the golden eagle (*Aquila chrysaetos*, State Fully Protected and Federally Protected under the Bald and Golden Eagle Protection Act). Please be advised that a golden eagle pair has successfully nested within the past several years approximately adjacent to the Project site (Menzel and Higgins 2020, Menzel and Higgins 2022). The Project area and surrounding grasslands are within a typical golden eagle pair's home range (Katzner et al. 2012a, Katzner et al. 2012b) and could potentially support eagle nesting and foraging habitat. See also Comment 1 on nesting habitat and electrocution risks.

Loss of nesting and foraging habitat resulting in take or reduced nesting success (loss or reduced health or vigor of eggs or young).

Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the MBTA is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). The golden eagle is a Fully Protected Species under California Fish and Game Code (§ 3511). Project impacts may result in unmitigated foraging habitat loss, impacts to nesting golden eagles, and cumulative impacts resulting in the restriction in the range of this species.

Recommended Mitigation Measure 4: Habitat Assessment and Surveys

The draft EIR should include a thorough habitat assessment of potential golden eagle nesting and foraging habitat within the Project area and surrounding areas. A qualified biologist should conduct a field assessment that includes all areas that could be directly or indirectly impacted by the Project and include data such as vegetation type, vegetation structure, and evidence of type and abundance of prey.

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A qualified biologist should conduct protocol-level surveys in all suitable golden eagle habitat within the Project area and surrounding areas where Project activities could adversely affect eagles during the nesting season (late January to August).

Guidance and resources can be found on our website at <https://wildlife.ca.gov/Conservation/Birds/Golden-Eagles> and in consultation with the USFWS Migratory Bird Program.

Recommended Mitigation Measure 5: Compensatory Mitigation

If permanent or temporary impacts of the proposed Project to golden eagle nesting or foraging habitat cannot be completely avoided, the draft EIR should include effective compensatory mitigation to offset all eagle habitat loss. A mitigation plan should be prepared in consultation with CDFW and USFWS.

COMMENT 3: Western Burrowing Owl

Burrowing owl is designated by CDFW as a California species of special concern (SSC) due to population decline and breeding range retraction. The species has also experienced a severe population decline in Santa Clara County. Known populations of burrowing owl occur within and adjacent to the Project area, including the grasslands south of the San Jose-Santa Clara Regional Wastewater Facility and other suitable habitat.

The Project includes grassland and herbaceous vegetation that may be potential burrowing owl habitat. Direct mortality could occur through crushing of adults or young within burrows, loss of nesting burrows, loss of nesting habitat, loss of foraging habitat resulting in reduced nesting success (loss or reduced health or vigor of eggs or young), nest abandonment, and reduced frequency or duration of care for young resulting in reduced health or vigor of young.

Recommended Mitigation Measure 6: Habitat Assessment and Surveys

The draft EIR should include a thorough habitat assessment of potential burrowing owl habitat within and adjacent to the Project area. A professional biologist experienced with burrowing owl and their habitat should conduct a field assessment that includes all areas that could be directly or indirectly impacted by the Project and include data such as vegetation type, vegetation structure and presence of burrows. Specific information on habitat assessment, burrowing owl survey methods, buffer distances and mitigation is provided in the CDFW Staff Report on Burrowing Owl Mitigation, dated March 7, 2012, and available at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

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COMMENT 4: Marsh and Shoreline Birds

The draft EIR does not state potential impacts to shoreline and marsh birds from the Project. A number of marsh bird species occur along the shoreline within and adjacent to the Project area, including the Don Edwards San Francisco Bay National Wildlife Refuge. These include, but are not limited to Alameda song sparrow (*Melospiza melodia pusillula*), black skimmer (*Rynchops niger*), California least tern, California black rail, California Ridgway's rail, saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), and western snowy plover (*Charadrius alexandrinus nivosus*). Any in-water and shoreline work has the potential to cause the take of state listed and fully protected marsh and shoreline bird species.

Recommended Mitigation Measure 7: Surveys

CDFW recommends the Project include a measure for marsh bird surveys following the 2017 Site-Specific Protocol for Monitoring Marsh Birds (<https://ecos.fws.gov/ServCat/Reference/Profile/68062>). CDFW recommends inclusion of avoidance and minimization measures in the Biological Resources Section of the draft EIR to reduce impacts below a level of significance.

COMMENT 5: Bats

A number of bats have the potential to occur in or adjacent to the project area, including, but not limited to Townsend's big-eared bat and Pallid bat. Townsend's big-eared bats and pallid bats are protected by CDFW as California SSC.

Construction activities may result in the disturbance of hibernation or maternal roost sites, which may result in the harm, death, displacement of individual bats and/or the disruption of reproductive success of nursery colony roosts. Proposed activities may result in the disturbance and/or loss of hibernation or maternal roost sites, which may result in the harm, death, displacement of individual bats and/or the disruption of reproductive success of nursery colony roosts.

Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). In order to determine the extent to which impacts may occur to bats and determine where habitat loss may occur from the removal of trees, the draft EIR should propose measures to conduct a bat habitat assessment of suitable bat roosting habitat.

Recommended Mitigation Measure 8: Habitat Assessment and Monitoring

The habitat assessment shall include a visual inspection of features within the work area for potential roosting features including trees, crevices, portholes, expansion joints and hollow areas (bats need not be present). include a visual inspection of features

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within 200 feet of the work area for potential roosting features including trees, crevices, portholes, expansion joints and hollow areas (bats need not be present). The draft EIR should also include a section that discusses the results of the suitable habitat assessment and if any bats or signs of bats (feces or staining at entry/exit points) are discovered. The surveys should occur at least two seasons in advance of Project initiation. The draft EIR should include:

- Bat Habitat Monitoring by a qualified biologist of suitable habitat from March 1 to April 1 or August 31 to October 15 prior to construction activities. If the focused survey reveals the presence of roosting bats, then the appropriate exclusionary or avoidance measures will be implemented prior to construction during the period between March 1 to April 15 or August 31 to October 15; and
- Bat Project Avoidance: If active bat roosts are observed during environmental assessments or during construction, at any time, all Project activities should stop until the qualified biologist develops a bat avoidance plan to be implemented at the Project site. The bat avoidance plan should utilize seasonal avoidance, phased construction as well as temporary and permanent bat housing structures developed in coordination with CDFW.

COMMENT 6: State Listed Fish Species

The NOP does not include potential impacts to state listed fish species known to be present in the Project area, including green sturgeon (*Acipenser medirostris* pop. 1), white sturgeon (*Acipenser transmontanus*), Sacramento hitch (*Lavinia exilicauda exilicauda*), Sacramento splittail (*Pogonichthys macrolepidotus*), steelhead - central California coast distinct population segment (DPS, [*Oncorhynchus mykiss irideus*]) and longfin smelt (*Spirinchus thaleichthys*) along the South Bay shoreline and throughout the Don Edwards San Francisco Bay National Wildlife Refuge. The south bay serves as nursery habitat for a number of these species and project impacts could occur as direct and indirect impacts from construction equipment, pile driving, dredging, stranding from water diversion, and erosion impacts to water quality.

Recommended Mitigation Measure 9: Construction Activities and Work Windows

The draft EIR should include mitigation measures to avoid potential impacts to aquatic species for construction methods such as pile driving and dredging. In-water construction shall only occur during the CDFW approved work window of June 1 through November 30. A vibratory pile driver shall be used to the maximum extent possible. If an impact hammer is to be considered for construction, the Lead Agency shall consult with CDFW regarding a CESA ITP for potential impacts to state listed species such as longfin smelt and Chinook salmon (*Oncorhynchus tshawytscha*).

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COMMENT 7: Western Pond Turtle

Western pond turtle (*Actinemys marmorata*) have the potential to occur in the Project site. Western pond turtle are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported.

Without appropriate avoidance and minimization measures for western pond turtle, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Recommended Mitigation Measure 10: Western Pond Turtle Surveys

CDFW recommends a qualified biologist conduct focused surveys for western pond turtle 10 days prior to Project implementation using a best available methodology for the intended purpose CDFW maintains a list of recommended survey protocols for western pond turtle and other fish and wildlife species online at:

<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281283-reptiles>.

Recommended Mitigation Measure 11: Western Pond Turtle Relocation

CDFW recommends that if any western pond turtle are discovered at the site immediately prior to or during Project activities, they should be allowed to move out of the area on their own volition. If a western pond turtle is unable to move out of the Project area on its own, a qualified biologist shall relocate western pond turtle out of the Project area into habitat similar to where it was found.

COMMENT 8: Crotch's bumble bee

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). The NOP does not address whether the proposed Project could result in impacts to Crotch's bumble bee. Crotch's bumble bee occurrences have been documented within the vicinity of the Project area and historic observations occur elsewhere in Santa Clara County (CDFW 2023, County). The Project location is within the Crotch's bumble bee range (<https://wildlife.ca.gov/Conservation/CESA>) and grassland within and adjacent to the Project area may contain potential habitat for Crotch's bumble bee.

The Project includes ground disturbance that may occur within ruderal grass and herbaceous vegetation and that may be potential Crotch's bumble bee nesting and foraging habitat. Potential impacts include direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of

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suitable breeding and foraging habitats, loss of native vegetation that may support essential foraging habitat.

Recommended Mitigation Measure 12: Habitat Assessment

A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumble bee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bee feed. Further guidance on habitat surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).

Recommended Mitigation Measure 13: Herbicide Application: To minimize impacts to bumble bees, avoid the bloom periods for herbicide application and mowing activities. If this is not possible, CDFW recommends that the Project obtain take authorization under an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

COMMENT 9: Sensitive Natural Plant Communities

The Project would go through habitat for rare species, including federally endangered species. The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

Impacts to special-status plant species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. CDFW considers plant communities, alliances, and associations with a statewide ranking of S1, S2, S3, and S4 as sensitive and declining at the local and regional level (Sawyer 2009).

Additionally, plants that have a California Native Plant Society (CNPS), California Rare Plant Rank (CRPR) of 1A, 1B, 2A, and 2B are rare throughout their range, endemic to California, and are seriously or moderately threatened in California. All plants constituting CRPR 1A, 1B, 2A, and 2B are eligible for State listing. Impacts to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA, as they meet the definition of rare or endangered (CEQA

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Guidelines, § 15380). Please see CNPS <https://www.cnps.org/rare-plants> (CNPS 2022) page for additional rank definitions.

Recommended Mitigation Measure 14: Buffers

To avoid indirect impacts to special-status plants, an appropriate buffer distance should be established between the special-status plant occurrence and the Project impact areas. Appropriate buffer distance should be based upon review of site-specific conditions (e.g. special-status plants located downstream, inland, or in lower elevational areas in relation to the impact location, special-status plants being down wind of earth moving activities, and other conditions).

Recommended Mitigation Measure 15: Compensatory Mitigation and Revegetation

A review of protocol-level survey results should be conducted to establish appropriate compensatory mitigation ratios specific to each special-status plant species. Compensatory mitigation ratios should be developed based on the biological factors specific to each species and should be sufficient to compensate for the loss of those species. Appropriate compensatory mitigation should be through preservation and protection in perpetuity of equal or higher quality habitat, or through creation, enhancement, and/or restoration. A mitigation and monitoring plan should be developed, approved by CDFW prior to any ground disturbance, and include success criteria to be met at the end of the monitoring period. If success criteria are not met, the mitigation plan should include adaptive management actions along with additional years of monitoring as well as additional mitigation for the temporal loss.

Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? 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 USFWS?

COMMENT 10: Permits for Stream, Wetland, and Other Waters Impacts, Impacts to Sensitive Natural Communities, Riparian Habitat, Wetlands, LSA Notification and Clean Water Act compliance

The Project may be subject to the Clean Water Act and the Porter-Cologne Water Quality Control Act, but not Fish and Game Code section 1600 et seq. Development facilitated by the Project may result in impacts to streams and riparian habitats, such as Guadalupe River, Coyote Creek, Coyote River, Penitencia Creek, Scott Creek, Toroges Creek, Aqua Fria Creek, individual ponds, and Coastal Marsh habitat.

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When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. Without specific mitigation measures containing performance standards CDFW considers impacts to these resources as potentially significant (CEQA Guidelines, §§ 15065, 15380).

To reduce potential impacts to streams, wetlands, and other waters to less-than-significant and comply with Fish and Game Code section 1600 et seq., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, CDFW recommends including the mitigation measure below in the draft EIR.

Recommended Mitigation Measure 16: Stream and Wetland Mitigation and Resource Agency Permits

The Project shall be designed to minimize fill of jurisdictional waters. If impacts to any streams cannot be avoided, then prior to the impacts the Project shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued. Additionally, if impacts to any streams, wetlands, or other waters cannot be avoided, the Project shall obtain authorization from the Regional Water Quality Control Board (RWQCB) and the U.S. Army Corps of Engineers (USACE) pursuant to the Porter-Cologne Water Quality Control Act and Clean Water Act sections 401 and 404, as applicable. Impacts to waters, wetlands, and riparian habitat subject to the permitting authority of CDFW, the RWQCB, or the USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by the RWQCB or USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation. The Project shall obtain written approval of this plan from CDFW, the RWQCB, or the USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.

Recommended Mitigation Measure 17: LSA Notification and other Resource Agency Permits

The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and USACE pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.

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Recommended Mitigation Measure 18: Habitat Restoration and Compensation

The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to sensitive natural communities, riparian habitat, and wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan, unless otherwise approved in writing by CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 appreciates the opportunity to comment on the NOP to assist the Lead Agency in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marcus Griswold, Senior Environmental Scientist (Specialist), at (707) 815-6451 or Marcus.Griswold@wildlife.ca.gov; or Jason Faridi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@wildlife.ca.gov.

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Sincerely,

Signed by:



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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species and Commercially/Recreationally Important Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024071095)
C. Weightman, Bay Delta Region – Craig.Weightman@wildlife.ca.gov

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ATTACHMENT 1: Special-Status Species

Species	Status
Fish and Invertebrates	
Crotch's bumble bee (<i>Bombus crotchii</i>)	State candidate (SC)
green sturgeon – southern distinct population segment (DPS [<i>Acipenser medirostris</i> pop. 1])	Federally Threatened (FT), State Species of Special Concern (SSC)
steelhead - central California coast DPS (<i>Oncorhynchus mykiss irideus</i>)	FT, SSC
longfin smelt (<i>Spirinchus thaleichthys</i>)	Proposed FT, State Threatened (ST)
white sturgeon (<i>Acipenser transmontanus</i>)	SC
Sacramento hitch (<i>Lavinia exilicauda exilicauda</i>)	SSC
Sacramento splittail (<i>Pogonichthys macrolepidotus</i>)	SSC
Birds	
Cooper's hawk (<i>Accipiter cooperii</i>)	State Watch List
Alameda song sparrow (<i>Melospiza melodia pusillula</i>)	SSC
black skimmer (<i>Rynchops niger</i>)	SSC
burrowing owl (<i>Athene cunicularia</i>)	SSC
California least tern (<i>Sternula antillarum browni</i>)	FE, State Fully Protected (FP)
California Ridgway's rail (<i>Rallus obsoletus obsoletus</i>)	FE, State Endangered (SE), FP
California black rail (<i>Laterallus jamaicensis coturniculus</i>)	ST, SSC
golden eagle (<i>Aquila chrysaetos</i>)	FP
grasshopper sparrow (<i>Ammodramus savannarum</i>)	SSC
northern harrier (<i>Circus hudsonius</i>)	SSC
saltmarsh common yellowthroat (<i>Geothlypis trichas sinuosa</i>)	SSC

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Species	Status
tricolored blackbird (<i>Agelaius tricolor</i>)	ST, SSC
western snowy plover (<i>Charadrius nivosus nivosus</i>)	FT, SSC
white-tailed kite (<i>Elanus leucurus</i>)	FP
Mammals	
pallid bat (<i>Antrozous pallidus</i>)	SSC
salt-marsh harvest mouse (<i>Reithrodontomys raviventris</i>)	Federal Endangered (FE), FP
San Francisco dusky-footed woodrat (<i>Neotoma fuscipes annectens</i>)	SSC
salt-marsh wandering shrew (<i>Sorex vagrans halicoetes</i>)	SSC
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	SSC
Reptiles and Amphibians	
western pond turtle (<i>Emys marmorata</i>)	Proposed FT, SSC
Plants	
Hoover's button-celery (<i>Eryngium aristulatum var. hooveri</i>)	S1, 1B.1
California alkali grass (<i>Puccinellia simplex</i>)	S2, 1B.2
Congdon's tarplant (<i>Centromadia parryi ssp. congdonii</i>)	S2, 1B.1
Contra Costa Goldfields (<i>Lasthenia conjugens</i>)	FE, S1, 1B.1
Point Reyes salty bird's-beak (<i>Chloropyron maritimum ssp. palustre</i>)	S2, 1B.2
California seablite (<i>Suaeda californica</i>)	FE, S1, 1B.1
saline clover (<i>Trifolium hydrophilum</i>)	S2, 1B.2