



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



January 7, 2025

Trevor Hawkes, Supervising Planner  
County of Napa, Planning, Building, and Environmental Services  
1195 Third Street, Suite 210  
Napa, CA 94559  
[Trevor.Hawkes@countyofnapa.org](mailto:Trevor.Hawkes@countyofnapa.org)

Subject: Napa 55 Logistics, Use Permit #P19-00421-UP, Initial Study/Mitigated Negative Declaration, SCH No. 2024120595, Napa County

Dear Mr. Hawkes:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Napa County for the Napa 55 Logistics, Use Permit #P19-00421-UP (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the IS/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 or 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:** Sonya Kinz, Panattoni Development Company, Inc.

**Objective:** The Project is limited to the development of a new 697,000 square-foot warehouse/industrial facility comprised of four buildings on an existing, developed industrial site with associated infrastructure. The Project would demolish an existing 100,000 square-foot building, another 6,000 square-foot building, and other remnant structures from prior industrial uses including storage yards, trailer parking, old casting equipment and outbuildings, and steel fabrication areas. The Project includes 484 parking spaces. In addition, the Project includes loading spaces for delivery trucks. The

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Project does not propose development within the riparian habitat along Arroyo Creek nor within the County's Stream setback for Arroyo Creek. Prior uses on the site have installed unpermitted improvements or caused vegetation removal within this riparian zone through the inclusion of asphalt, a fence, an above-ground concrete drainage channel, large stockpile of sediment material and other various industrial detritus. As part of the Project, the applicant intends to restore the riparian zone to pre-existing natural conditions through the removal of unpermitted improvements and restoration of disturbed/paved areas. Restoration work within this area would be subject to U.S. Clean Water Act, Section 404 permitting by the U.S. Army Corps of Engineers (Corps), Section 401 Water Quality Certification by the Regional Water Quality Control Board (RWQCB) and a Section 1602 Lake and Streambed Agreement from the CDFW.

**Location:** The Project is located at 11 Basalt Road, Napa, CA 94559; at approximately 38.26726°N, -122.26635°W, on a 55.27-acre site approximately 900 feet east from the intersection of Basalt Road and Highway 221. Section 23, Township 5 North, Range 4 West of the Napa, California 7.5-minute USGS quadrangle. APN: 046-370-024.

## 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 or candidate species under CESA either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), CESA listed as threatened species, and burrowing owl (*Athene cunicularia*), CESA candidate species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (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.

### 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.

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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. **The Project has the potential to impact Arroyo Creek. Thank you for including Mitigation Measure BIO-4 requiring the Project to obtain necessary permits for work impacting Arroyo Creek, including an LSA Agreement from CDFW.** Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. 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.

### **California 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
- 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). Project proponents should consult with CDFW early in the Project planning process. **The Project has the potential to impact white-tailed kite (*Elanus leucurus*), a state fully protected species, as further described below.**

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

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

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## 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 those CDFW recommends below and included in **Attachment 1** Draft Mitigation Monitoring and Reporting Program, CDFW concludes that an MND is appropriate for the Project.

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

***MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?***

***And,***

***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?***

#### COMMENT 1: Swainson's Hawk

**Issue:** The IS/MND does not adequately mitigate potential impacts to Swainson's hawk, which exhibits a high level of documented occurrences near the Project site and may be impacted if nesting within 0.5 miles from the Project site. Fourteen Swainson's hawk nesting records are recorded within approximately five miles of the Project site from 2007 to 2022 according to the California Natural Diversity Database (CNDDDB). There are also seven additional unprocessed CNDDDB records of Swainson's hawk within five miles of the Project site, including one unprocessed record 0.92 miles southwest of the Project site. To address potential Swainson's hawk impacts, the MND Mitigation Measure (MM) BIO-2, section 1, states that "A pre-construction nesting bird survey shall be conducted on-site within 15 days prior to construction, vegetation clearing and/or earth disturbing activities if those activities would commence between March 1st and September 1st ("the nesting season")." MM BIO-2, section 2, states that "If Swainson's hawk are identified as nesting on the Project site, a non-disturbance buffer of 75-feet shall be established or as otherwise prescribed by a qualified ornithologist." The MM BIO-2 survey and avoidance buffer do not follow typical survey methods and buffers and may not be adequate to detect or avoid impacts to Swainson's hawk, and therefore MM BIO-2 likely insufficient to avoid impacts to Swainson's hawk.

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**Specific impacts and why they may occur and be significant:** The Project has the potential to impact nesting Swainson's hawk through auditory or visual disturbances above ambient levels, and direct destruction and loss of active nests from tree removal, if appropriate surveys are not conducted to detect nesting Swainson's hawk 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.

The Project may also result in the removal of Swainson's hawk foraging habitat in the form of grassland habitat interspersed with oak (*Quercus* sp.) woodland. In 2016, CDFW released a Status Review for Swainson's hawk in California and recommended the species retain its status as threatened under CESA (CDFW 2016). The review states there is no indication the species has reoccupied its historical range and the distribution of Swainson's hawk remains largely unchanged and restricted. Additionally, the review cites that the primary threat to Swainson's hawk continues to be habitat loss, especially the loss of suitable foraging habitat. 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. Swainson's hawk is also protected by the federal MBTA.

Therefore, if an active Swainson's hawk nest is disturbed by the Project or its foraging habitat is removed, the Project may result in a substantial reduction in the number or restriction in the range 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 and MBTA, CDFW recommends replacing MM BIO-2 with the below mitigation measure.

Mitigation Measure BIO-2: Swainson's Hawk Surveys, Avoidance, and Foraging Habitat Mitigation. If Project activities are scheduled during the nesting season for Swainson's hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, dated May 31, 2022 (<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

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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 commence and shall comply with the ITP.

A qualified biologist shall evaluate and quantify the acreage of Swainson's hawk foraging habitat that will be permanently removed and provide this information to CDFW and obtain CDFW's written approval off the assessment prior to Project construction start. If Swainson's hawk foraging habitat will be permanently removed, the Project shall purchase Swainson's hawk foraging habitat credits from a CDFW approved conservation or mitigation bank at a 1:1 mitigation to impact ratio, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written approval of the type and amount of credits prior to purchasing the credits and provide the Bill of Sale for the credit purchase to the lead agency and CDFW, and obtain CDFW's written approval of these documents, prior to Project construction start.

## **COMMENT 2: Burrowing Owl**

**Issue:** The IS/MND does not adequately evaluate potential impacts to burrowing owl. The Project is within 0.7 miles of the burrowing owl year-long range according to the California Wildlife Habitat Relationships model. The Project site appears to include and is adjacent to grassland habitat which may provide habitat for burrowing owl. Ground squirrels (*Otospermophilus beecheyi*) or other fossorial mammals likely occur on or near the Project site and can excavate burrows, providing refugia habitat for burrowing owl. Additionally, burrowing owl has been recorded approximately 2.5 miles south of the Project site by CNDDB.

**Specific impacts and why they may occur and be significant:** The Project could result in injury or mortality of resident, wintering, and nesting burrowing owl in burrows or other suitable refugia on or within up to 500 meters (1,640 feet) of the Project site, and permanent habitat loss. Burrowing owl have been extirpated from 16 percent of their former range and are at risk of being extirpated from another 13 percent of their range in the State (CDFW 2024). Information indicates a decline in burrowing owl range over time, burrowing owl has experienced population declines

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in regions of California and threats to burrowing owl, coupled with long-term population declines, suggest a high degree and immediacy of threat to burrowing owl in California (CDFW 2024). Burrowing owl population viability and survival are adversely affected by risk factors such as precipitous declines from habitat loss, fragmentation, and degradation; evictions from nesting sites without habitat mitigation; wind turbine mortality; human disturbance; and eradication of California ground squirrels resulting in a loss of suitable burrows required by burrowing owl for nesting, protection from predators, and shelter (Shuford and Gardali 2008; Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012); personal communication, CDFW Statewide Burrowing Owl Coordinator Esther Burkett, May 13, 2022). Preliminary analyses of regional patterns for breeding populations of burrowing owl have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced breeding range retraction (Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012). Burrowing owl is a candidate species under CESA and is federally protected by the MBTA. Based on the foregoing, if burrowing owl are wintering or nesting on or within up to 500 meters (1,640 feet) of the Project site, the Project may result in a substantial reduction in the number of a CESA candidate 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 burrowing owl to less-than-significant and comply with CESA and the MBTA, CDFW recommends adding the following mitigation measure to the MND.

Mitigation Measure BIO-5: Burrowing Owl Habitat Assessment and Surveys. A qualified biologist shall conduct a habitat assessment and surveys, if habitat is present, for wintering burrowing owl prior to construction if construction starts during the burrowing wintering season (September 1 to January 31). Surveys for breeding burrowing owl shall be conducted during the breeding season if construction starts during the breeding season, February 1 to August 31. The habitat assessment and surveys shall follow the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation* (2012) methodology (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>) and the qualified biologist shall prepare a report documenting the survey results, and submit the report to CDFW, and obtain CDFW's written approval of the report prior to Project construction. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. Habitat assessments and surveys shall occur annually for the duration of the Project, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Surveys for either non-breeding or breeding burrowing owl shall

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be spread over four visits during the nonbreeding and breeding season (September 1 to January 31 and February 1 to August 31, respectively). Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. If the habitat assessment does not identify suitable habitat and surveys are not conducted, an additional habitat assessment should be conducted within 14 days prior to construction. If new refugia are present, surveys should be conducted as described above, unless otherwise approved in writing by CDFW. The qualified biologist shall have a minimum of two years of experience implementing the above methodology. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the *Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012)*, which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities.

If burrowing owl is detected, it shall be avoided by 500 meters (1,640 feet), unless otherwise approved in writing by CDFW, and monitored by a qualified biologist to ensure avoidance. If the Project cannot ensure burrowing owl and their burrows are fully avoided, the Project shall consult with CDFW and obtain a CESA take authorization or otherwise demonstrate compliance with CESA. Take is likely to occur and the Project shall obtain an ITP if: 1) burrowing owl surveys of the Project site detect burrowing owl occupancy of burrows or burrow surrogates, or 2) there is sign of burrowing owl occupancy on the Project site within the past three years and habitat has not had any substantial change that would make it no longer suitable. Occupancy means a site that is assumed occupied if at least one burrowing owl has been observed occupying a burrow or burrow surrogate within the last three years. Occupancy of suitable burrowing owl habitat may also be indicated by burrowing owl sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site. If burrowing owl, or their burrows or burrow surrogates, are detected within 500 meters (1,640 feet) of the Project site during burrowing owl surveys, but not on the Project site, the Project shall consult with CDFW to determine if avoidance is feasible or an ITP is warranted.

### **COMMENT 3: Roosting Bats**

**Issue:** The IS/MND does not evaluate impacts to special-status bats including pallid bat (*Antrozous pallidus*) that may be using trees and structures within the Project site for roosting, nor does it require bat surveys or habitat assessments prior to commencement of Project activities.

**Specific impacts and why they may occur and be significant:** Bats including pallid bat may be using trees or structures on-site for roosting. According to page 11



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of the IS/MND, “An Arborist Report and Tree Inventory Summary submitted by Sierra Nevada Arborists (May, 2022) identified 227 inventoried trees on the project site measuring 6 inches in diameter or larger, with 27 of those trees identified as ‘precaution trees’ trees due to identified defects, compromised health and/or structural instability noted at the time of field inventory. Some of these trees would be removed as part of the project...” Pallid bat is a California Species of Special Concern (SSC) and documented to occur within five miles of the Project site according to CNDDDB (for more information on SSC see: <https://wildlife.ca.gov/Conservation/SSC>). If impacts to special-status bats such as pallid bat are not identified and mitigated, Project activities could result in substantial adverse effect on special-status bat species through population reduction and habitat removal.

**Recommended mitigation measure:** To reduce impacts to special-status bats such as pallid bat to less-than-significant, CDFW recommends that the MND incorporate the following mitigation measure.

**Mitigation Measure BIO-6: Bat Tree and Structure Habitat Assessment and Surveys.**

Prior to Project activities that would remove trees or modify structures such as buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.

For tree removal, the habitat assessment shall include a visual inspection of potential roosting features of trees to be removed (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. If the presence of bats is presumed or documented, trees may be removed only: a) using the two-step removal process detailed below during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.

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For modification of structures such as buildings, the qualified biologist shall conduct a survey for roosting bats as described above. If roosting bats are detected, a bat avoidance and exclusion plan (plan) shall be implemented. The Project shall obtain CDFW's written approval of the plan prior to implementation. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.

#### **COMMENT 4: White-Tailed Kite and Other Nesting Birds**

**Issue:** The IS/MND does not evaluate the potential for nesting birds such as white-tailed kite, to occur and be impacted by the Project.

**Specific impacts and why they may occur and be significant:** Human activity and removal of habitat has contributed to the loss of a significant proportion of the total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). Nesting birds such as white-tailed kite, a California Fully Protected species for which take is prohibited except in limited circumstances as described above, may be disturbed by habitat removal, Project noise and visual disturbances, which could result in active nest loss or abandonment or reduced health and vigor of young, *a potentially significant impact*.

**Recommended mitigation measure:** To reduce impacts to white-tailed kite and other nesting birds to less-than-significant and comply with Fish and Game Code sections 3500 et seq. and the federal MBTA, CDFW recommends including the below mitigation measure.

Mitigation Measure BIO- 7: Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, February 1 to September 15, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations

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directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.

**Please be advised that an LSA Agreement, if issued for the Project, would likely include the above recommended mitigation measures, 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 IS/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,

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

Sincerely,

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

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse No. 2024120595

## REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. Petition Evaluation for Western Burrowing Owl (*Athene cunicularia hypugaea*). Report to the Fish and Game Commission. California Department of Fish and Wildlife, Post Office Box 944209, Sacramento, CA.

California Department of Fish and Wildlife. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California, reported to the California Fish and Game Commission, five-year status report. State of California Natural Resources Agency, Sacramento, CA.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=133622&inline>

California Department of Fish and Wildlife (CDFW). 2012. Department of Fish and Game Staff Report on Burrowing Owl Mitigation. State of California Natural Resources Agency, Sacramento, CA.

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

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avirind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. Science: 120-124.

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**ATTACHMENT 1**

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

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

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-2	<p><b><u>Replace Mitigation Measure BIO-2 with the following:</u></b></p> <p><u>Swainson’s Hawk Surveys, Avoidance, and Foraging Habitat Mitigation.</u> If Project activities are scheduled during the nesting season for Swainson’s hawk (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the <i>Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley</i>, dated May 31, 2022 (<a href="https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&amp;inline">https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&amp;inline</a>) and prepare a report documenting the survey results. The Project shall obtain CDFW’s written approval of the qualified biologist and survey report prior to starting construction activities between March 1 and September 15. Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, unless otherwise approved by CDFW in writing, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. <u>Surveys shall occur annually for the duration of the Project.</u> 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</p>	<p>Prior to Ground Disturbance and During Project Construction</p>	<p>Project Applicant</p>

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	<p>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 commence and shall comply with the ITP.</p> <p>A qualified biologist shall evaluate and quantify the acreage of Swainson's hawk foraging habitat that will be permanently removed and provide this information to CDFW and obtain CDFW's written approval off the assessment prior to Project construction start. If Swainson's hawk foraging habitat will be permanently removed, the Project shall purchase Swainson's hawk foraging habitat credits from a CDFW approved conservation or mitigation bank at a 1:1 mitigation to impact ratio, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written approval of the type and amount of credits prior to purchasing the credits and provide the Bill of Sale for the credit purchase to the lead agency and CDFW, and obtain CDFW's written approval of these documents, prior to Project construction start.</p>		
<p><b>MM BIO-5</b></p>	<p><u>Burrowing Owl Habitat Assessment and Surveys.</u> A qualified biologist shall conduct a habitat assessment and surveys, if habitat is present, for wintering burrowing owl prior to construction if construction starts during the burrowing wintering season (September 1 to January 31). Surveys for breeding burrowing owl shall be conducted during the breeding season if construction starts during the breeding season, February 1 to August 31. The habitat assessment and surveys shall follow the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012) methodology (<a href="https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds">https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds</a>) and the qualified biologist shall prepare a report documenting the survey results, and submit the report to CDFW, and obtain CDFW's written approval of the report prior to Project construction. The habitat assessment and surveys shall encompass the Project site and a sufficient buffer zone to detect owls nearby that may be impacted, which is up to 500 meters (1,640 feet) around the Project site pursuant to the above methodology. <u>Habitat assessments and surveys shall occur annually for the duration of the Project</u>, as conditions may change annually and suitable refugia for burrowing owl, such as small mammal burrows, can be created within a few hours or days, unless otherwise approved in writing by CDFW. Surveys for either non-breeding or breeding burrowing owl shall be spread over four visits during the</p>	<p>Prior to Ground Disturbance and During Project Construction</p>	<p>Project Applicant</p>

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	<p>nonbreeding and breeding season (September 1 to January 31 and February 1 to August 31, respectively). Time lapses between surveys or Project activities shall trigger subsequent surveys including, but not limited to, a final survey within 24 hours prior to ground disturbance. If the habitat assessment does not identify suitable habitat and surveys are not conducted, an additional habitat assessment should be conducted within 14 days prior to construction. If new refugia are present, surveys should be conducted as described above, unless otherwise approved in writing by CDFW. The qualified biologist shall have a minimum of two years of experience implementing the above methodology. The Project shall immediately notify CDFW if burrowing owl is detected and implement a construction avoidance buffer around any detected burrowing owl pursuant to the buffer distances outlined in the Department of Fish and Game Staff Report on Burrowing Owl Mitigation (2012), which may be up to 500 meters (1,640 feet). Any detected owl shall be monitored by the qualified biologist to ensure it is not disturbed during construction activities.</p> <p>If burrowing owl is detected, it shall be avoided by 500 meters (1,640 feet), unless otherwise approved in writing by CDFW, and monitored by a qualified biologist to ensure avoidance. If the Project cannot ensure burrowing owl and their burrows are fully avoided, the Project shall consult with CDFW and obtain a CESA take authorization or otherwise demonstrate compliance with CESA. Take is likely to occur and the Project shall obtain an ITP if: 1) burrowing owl surveys of the Project site detect burrowing owl occupancy of burrows or burrow surrogates, or 2) there is sign of burrowing owl occupancy on the Project site within the past three years and habitat has not had any substantial change that would make it no longer suitable. Occupancy means a site that is assumed occupied if at least one burrowing owl has been observed occupying a burrow or burrow surrogate within the last three years. Occupancy of suitable burrowing owl habitat may also be indicated by burrowing owl sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site. If burrowing owl, or their burrows or burrow surrogates, are detected within 500 meters (1,640 feet) of the Project site during burrowing owl surveys, but not on the Project site, the Project shall consult with CDFW to determine if avoidance is feasible or an ITP is warranted.</p>		
<p><b>MM BIO-6</b></p>	<p><u>Bat Tree and Structure Habitat Assessment and Surveys</u>. Prior to Project activities that would remove</p>	<p>Prior to Ground</p>	<p>Project Applicant</p>

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	<p>trees or modify structures such as buildings, a qualified biologist shall conduct a habitat assessment for bats. A qualified biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to the beginning of Project activities.</p> <p>For tree removal, the habitat assessment shall include a visual inspection of potential roosting features of trees to be removed (e.g., cavities, crevices in wood and bark, exfoliating bark for colonial species, suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, CDFW shall be notified immediately, and tree trimming or removal shall not proceed without approval in writing from CDFW. If the presence of bats is presumed or documented, trees may be removed only: a) using the two-step removal process detailed below during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist, under prior written approval of the proposed survey methods by CDFW, conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats. Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices or deep bark fissures shall be avoided, and 2) the second day the entire tree shall be removed.</p> <p>For modification of structures such as buildings, the qualified biologist shall conduct a survey for roosting bats as described above. If roosting bats are detected, a bat avoidance and exclusion plan (plan) shall be implemented. The Project shall obtain CDFW's written approval of the plan prior to implementation. The plan shall recognize that both maternity and winter roosting seasons are vulnerable times for bats and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15 when temperatures are sufficiently warm. Work operations shall cease if bats are found roosting within the Project area and CDFW shall be consulted.</p>	<p>Disturbance and During Project Construction</p>	
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<p><b>MM BIO-7</b></p>	<p><u>Nesting Bird Surveys.</u> If construction, grading, vegetation removal, or other Project-related activities are scheduled during the avian nesting season, February 1 to September 15, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of Project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in Project-related work of seven days or longer occurs, another survey shall be conducted before Project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <p>The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by Project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.</p>	<p>Prior to Ground Disturbance and During Project Construction</p>	<p>Project Applicant</p>
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