



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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[www.wildlife.ca.gov](http://www.wildlife.ca.gov)**GAVIN NEWSOM, Governor****CHARLTON H. BONHAM, Director**

February 13, 2025

Rourke Healey, Trail Planner  
East Bay Regional Park District  
2950 Peralta Oaks Court  
Oakland, CA 94605  
[RHealey@ebparks.org](mailto:RHealey@ebparks.org)

Subject: Calaveras Ridge Regional Trail Project, Initial Study/Mitigated Negative Declaration, SCH No. 2025010346, Contra Costa County

Dear Rourke Healey:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to adopt an Initial Study/Mitigated Negative Declaration (ISMND) from East Bay Regional Park District for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the

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

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extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **REGULATORY AUTHORITY**

### **California Endangered Species Act and Native Plant Protection 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 or the Native Plant Protection Act (NPPA), 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.

CESA-listed species identified that may occur within the Project area include, but are not limited to, Alameda whipsnake (*Masticophis lateralis euryxanthus*), Santa Cruz tarplant (*Holocarpha macradenia*), and San Francisco popcornflower (*Plagiobothrys diffusus*).

Candidate species for listing under CESA are afforded the same legal protections as CESA-listed species while under review (Fish and Game Code § 2608). Candidate species which may occur within the Project area include, but are not limited to, western burrowing owl (*Athene cunicularia*), Crotch’s bumble bee (*Bombus crotchii*), and western bumble bee (*Bombus occidentalis*).

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, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

### **Fully Protected Species**

Fully protected species, such as white-tailed kite (*Elanus leucurus*) and golden eagle (*Aquila chrysaetos*) may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

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- 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.

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

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).

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

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, 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 horizontal directional drilling, is also generally subject 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. CDFW may not execute a final LSA Agreement until it has considered the IS/MND and complied with its responsibilities as a responsible agency under CEQA.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** East Bay Regional Park District

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**Objective:** The objective of the Project is to develop a new 2.5-mile regional trail segment of the proposed Calaveras Ridge Regional Trail, consisting of 1.2 miles of new trail and 1.3 miles of an existing dirt roadway. Primary Project activities include access improvements at the north end of the new trail, construction of a clear-span bridge over an ephemeral drainage, construction of fencing along portions of the trail, and excavation and grading associated with trail construction. No tree removal is proposed as part of Project activities.

**Location:** The Project is located within the cities of Lafayette and Walnut Creek, within the County of Contra Costa. The trail will connect the Lafayette/Moraga Regional Trail at Olympic Boulevard to the Rohrer Trail at Rohrer Drive. The approximate centroid is Latitude 37.875229°, Longitude -122.087884°.

**Timeframe:** Construction is anticipated to occur between May and October 2026.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist East Bay Regional Park District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a MND is appropriate for the Project.

### **I. Mitigation Measure or Alternative and Related Impact Shortcoming**

#### **COMMENT 1: Impacts to Movement of Native Resident or Migratory Wildlife Species Including Alameda Whipsnake**

The IS/MND concludes that the Project will not substantially interfere with wildlife movement, based upon the expectation that movement will resume following trail construction and outside of peak use hours. However, the IS/MND does not assess the potential impacts of physical barriers or increased recreational activity imposed by the trail upon the movement of local and migratory native wildlife.

Implementation of the proposed Project could prevent, result in a decline, or otherwise, alter use of existing wildlife movement corridors. Project activities include the construction of 0.7 total miles of equestrian fencing, which may prevent movement and thereby pose a connectivity barrier. Additionally, trails can create barriers to wildlife movement when their presence results in behavioral avoidance by wildlife (Burgin and Hardiman, 2012). Studies have shown that recreational activity can decrease occupancy, as well as reduce habitat use and the relative activity of reptile and mammal species (Reed et al., 2019).

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The Project area is located within an Essential Connectivity Area, and as such, provides ecological connectivity between two or more habitats that support native biodiversity. Maintaining connectivity through these linkages is critical to ensure current and future wildlife populations' abilities to move and adapt to a changing climate and habitat conditions. The Project site supports several native wildlife species, which may include state-threatened Alameda whipsnake. Alameda whipsnake populations have been reduced to five distinct subpopulations largely due to habitat encroachment and fragmentation (USFWS, 2000). The Unit 2 Critical Habitat Area is one of the Alameda whipsnake subpopulations most threatened with extinction due to its low population number and continued habitat fragmentation resulting from human encroachment. Isolation of subpopulations limit the genetic exchange of populations and increases the risk of local extirpation. Due to the proximity of the Project to Alameda whipsnake Critical Habitat and its unassessed potential to substantially interfere with their movement, the Project may substantially reduce the number or restrict the range of a rare or endangered species. This is a *mandatory finding of significance* pursuant to CEQA Guidelines § 15065(a)(1).

To reduce impacts upon wildlife movement to less-than-significant levels, CDFW recommends the following measures be incorporated as enforceable conditions of the IS/MND:

**Evaluate and Maintain Habitat Connectivity:** On-site features that contribute to habitat connectivity should be evaluated and maintained. Aspects of the Project that could create physical barriers to wildlife movement, including direct or indirect Project-related activities, should be identified and evaluated in the IS/MND.

CDFW further recommends the Project avoid developing and encroaching onto wildlife corridors, essential connectivity blocks, critical wildlife passage areas, or potential linkage areas. Where not feasible, CDFW recommends mitigation for wildlife movement impacts, including, but not limited to a 1) wildlife movement study of existing use of wildlife corridors within the Project area before and after construction, 2) on-site or off-site compensatory mitigation, such as the development or enhancement of a local wildlife movement corridor.

**Trail Use Enforcement Plan:** CDFW recommends the Project include the development and implementation of a Trail Use Enforcement Plan to reduce potential impacts of trails to wildlife connectivity. The plan should include strategies for enforcing and remediating off trail use, monitoring trail use, providing education on wildlife-human conflict, and seasonal trail closures during sensitive periods, such as breeding periods as appropriate.

**Wildlife-Friendly Fencing:** CDFW recommends installation of wildlife-friendly fencing which avoids the use of woven wire and allows wildlife of all sizes to pass

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safely. Guidance for wildlife-friendly fencing can be found within *A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind*, accessible here:

[https://fwp.mt.gov/binaries/content/assets/fwp/conservation/land-owner-wildlife-resources/a\\_landowners\\_guide\\_to\\_wildlife\\_friendly\\_fences.pdf](https://fwp.mt.gov/binaries/content/assets/fwp/conservation/land-owner-wildlife-resources/a_landowners_guide_to_wildlife_friendly_fences.pdf).

## **COMMENT 2: Potential Impacts to Alameda Whipsnake**

The IS/MND proposes mitigation for potential impacts to Alameda whipsnake during construction (Mitigation Measure BIO-1 and Construction BMP's 9, 11-15, 17) but does not evaluate impacts to Alameda whipsnake as a result of trail construction and ongoing use.

There are 27 CNDDDB records of Alameda whipsnake within five miles of the Project site, which overlaps with 0.20 acres of Alameda whipsnake Critical Habitat Unit 2 at the southern end of the proposed trail alignment. Grassland—a habitat type which has been documented to support Alameda whipsnake, particularly during breeding and egg-laying seasons—is documented throughout the Project site, and the IS/MND notes that western fence lizard, a favorite prey item, is present (USFWS, 2000; Stebbins, 1985). Project activities will result in the construction of 2.5 miles of multi-use trail, including 1.2 miles of new trail, and will result in the loss of potential habitat for Alameda whipsnake. Activities which may be permitted on the proposed trail, including hiking, biking, and horseback riding, may deter individuals from using habitat areas, the effects of which USFWS cites as having the potential to jeopardize the continued existence of the species (USFWS, 2000). In addition to loss of habitat, trail use may result in direct mortality of Alameda whipsnake. They have been known to utilize trails for basking (Miller and Alvarez, 2016), which may leave individuals vulnerable to bicycle strikes, crushing underfoot, and predation.

Alameda whipsnake populations have declined from historic numbers, and the subpopulation associated with Critical Habitat Unit 2 is threatened with extinction due to continued habitat loss associated with human encroachment (USFWS, 2000). As a state-threatened species, Alameda whipsnake is considered rare, threatened, or endangered pursuant to CEQA Guidelines §15380. Therefore, impacts to Alameda whipsnake incurred from both direct and indirect effects of trail construction may still be *potentially significant*.

To reduce impacts to Alameda whipsnake to less-than-significant levels and to comply with CESA, CDFW recommends the following mitigation measure be implemented as enforceable conditions of the Project:

*CDFW recommends that known Alameda whipsnake habitat types, including annual grassland, riparian, and areas with rock outcrop features, should be mapped on the Project site. Project impacts such as permanent destruction or*

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*fragmentation of habitat, including ongoing impacts from trail use, be identified and evaluated in a revised and recirculated IS/MND. CDFW recommends that the IS/MND require enforceable mitigation for these impacts to Alameda whipsnake and their habitats to a less-than-significant level by requiring compensatory mitigation in the form of conserved lands for permanent impacts resulting from trail construction and trail use, as well as for temporary Project impacts. Conserved lands should be protected in perpetuity under a legal instrument such as a conservation easement, be required to be managed in perpetuity through an endowment with an appointed land manager and be required to have a land trust named on the legal instrument as a beneficiary. CDFW recommends that priority for conserved lands be given to on-site locations for this Project. The IS/MND should also be revised to address cumulative impacts to the Alameda whipsnake from fragmentation of habitat, permanent loss of habitat and impacts from recreational trail use.*

### **COMMENT 3: Special-Status Plants**

The IS/MND lacks clarity needed to determine whether impacts to special-status plants have been reduced to less-than-significant levels.

The IS/MND references only one special-status plant survey conducted on August 14, 2024; however, the 2024 Biological Resource Analysis (BRA) prepared by ECORP Consulting, Inc. documents three total surveys conducted in 2024. The IS/MND discusses seven special-status plants with the potential to occur within the Project site, and because none were detected during the survey(s), their absence is presumed. It should be noted that the BRA lists 28 special-status plant species within the Project site, none of which were detected during surveys. It is unclear why some species were not disclosed in the IS/MND, nor is it clear whether they would be considered in future surveys. The IS/MND indicates that no further surveys will be conducted while the survey(s) are considered "current." Mitigation measure BIO-2 defines current as having been conducted "within 2-5 years of construction," though the IS/MND later specifies that Bio-2 shall be implemented if construction occurs 2 years after the August 14, 2024 survey dates. Construction is planned to occur between May and October 2026. If construction follows this schedule, Project mitigation measures do not require further surveys for special-status plants.

If special-status plants which occur within the Project site were undetected during survey(s), Project activities may result in direct mortality during construction and grading, permanent habitat loss, and habitat degradation due to spread of non-native plants, increased erosion, or introduction of debris and pollutants resulting from trail use and maintenance. While August may overlap with the typical blooming season for some plants, it is outside of the typical blooming season for others. Additionally, surveys conducted in one season may not capture the year-to-year variation in special-status plant species presence within a Project area. It is possible

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that special-status plants which occur within the Project area were undetected by surveys and therefore impacts to these plants may still be *potentially significant*.

Most special-status plants with potential to occur within the Project site have a California Native Plant Society (CNPS) ranking of 1B, including state-endangered Santa Cruz tarplant and state-endangered San Francisco popcornflower, and meet the definition of rare, threatened, or endangered under CEQA Guidelines §15380 (CNPS). They are rare throughout their range and are susceptible to habitat loss and habitat fragmentation. Project-related impacts to these species is a *mandatory finding of significance*.

To reduce impacts to special-status plants to less-than-significant, surveys should be repeated for a second year. Surveys should be conducted in accordance with the Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW, 2018), which can be found at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959>. Additionally, to clarify survey and mitigation requirements for the Project, CDFW recommends the following updates:

**Survey Methodology:** The IS/MND should be updated recirculated to clarify the survey methodology (including the survey timing, protocol, and species surveyed for) and the results upon which it bases its findings.

**Mitigation Measure BIO-2:** Language in mitigation measure BIO-2 should be updated to require surveys to be repeated if there is a lapse of two years or more following surveys. Impacts assessments conducted by the qualified biologist should consider impacts to special-status plants resulting from trail construction as well as ongoing potential impacts, including habitat degradation associated with trail use.

#### **COMMENT 4: Burrowing Owl**

The IS/MND does not disclose potential Project impacts to western burrowing owl. The BRA indicates that the absence of this species is presumed due to a lack of suitable habitat. However, the IS/MND documents grassland habitat within the Project site and identifies its potential to support both California ground squirrel (*Otospermophilus beecheyi*) and American badger (*Taxidea taxus*). Burrowing owl is primarily a grassland species, generally occupying areas with relatively short vegetation and suitable burrows (Shuford et. al. 2008). They most commonly occupy burrows dug by ground squirrels and may use American badger dens for nesting and roosting (Shuford et al 2008). Based on the habitat provided by the Project site and the location within burrowing owl range, burrowing owl may occur within the Project site.



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Project activities may result in direct mortality to burrowing owl through crushing of burrows during ground-disturbing activities. Burrowing owl can be impacted by auditory and visual disturbances up to 500 meters or 1,640 feet away (CDFW 2012). Construction activities and subsequent trail use may cause disturbances which could result in reduced health and vigor, or mortality, of owls from wintering burrow abandonment (Klute et. al 2003). Therefore, if burrowing owl are present on or within 1,640 feet of the Project site, Project impacts to burrowing owl would be *potentially significant*.

As a candidate for listing under CESA, burrowing owl is afforded the same legal protections as CESA-listed species while under review (Fish & G. Code § 2608) and is considered rare, threatened, or endangered pursuant to CEQA Guidelines §15380.

To reduce impacts to less-than-significant levels, CDFW recommends the following mitigation measures be incorporated as enforceable conditions of the Project:

*The qualified biologist shall follow the CDFW 2012 Staff Report on Burrowing Owl Mitigation (CDFW 2012 Staff Report) habitat assessment and survey methodology prior to initiating Project activities during the burrowing owl wintering season from September 1 to January 31. Surveys shall encompass a sufficient buffer zone to detect owls nearby that may be impacted, which shall be a minimum of 1,640 feet unless otherwise approved in writing by CDFW. Surveys shall include four non-breeding season surveys spread evenly throughout the nonbreeding season, pursuant to the CDFW 2012 Staff Report. Time lapses between surveys or Project activities shall trigger subsequent surveys, as determined by a qualified biologist, including, but not limited to, a final survey within 24 hours prior to ground disturbance and before construction equipment mobilizes to the Project area. If burrowing owl are discovered within the buffer zone at any time, work shall cease and shall not resume until CDFW has been consulted and the Project has demonstrated compliance with CESA to CDFW satisfaction.*

#### **COMMENT 5: Nesting Birds**

The surveys and avoidance buffers proposed by mitigation measure BIO-4 may not be sufficient to reduce impacts to nesting birds to less-than-significant levels.

Project activities, including grading, ground disturbance, operation of heavy machinery, and the movement of workers, may generate noise or visual disturbances which may in turn result in nest abandonment, reduced reproductive success, or loss or reduced health or vigor of eggs or young. Grading, tree removal, and vegetation removal may also result in direct take of nesting birds.

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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). Though not discussed within the IS/MND, the Biological Resources Analysis indicates that white-tailed kite was observed within the Project site during pre-Project surveys, and that golden eagle have the potential to occur as well. Both are Fully Protected species (Fish & G. Code § 3511), and this status qualifies them as rare, threatened, or endangered pursuant to CEQA Guidelines § 15380.

To reduce impacts to nesting birds, including white-tailed kite and golden eagle, to less-than-significant levels, CDFW recommends the following language replace mitigation measure BIO-4:

*To the extent feasible, Project activities shall be conducted outside of the bird nesting season (typically February 1–September 15, and as early as January 1 for raptors). If Project activities cannot happen outside of bird nesting season a preconstruction nesting bird survey shall be conducted by a qualified biologist no more than 14 days prior to the commencement of Project-related activities to identify active nests that could be impacted by construction, and a second focused survey shall be conducted with 48 hours of Project commencement. If Project activities lapse for a period longer than seven days, a focused survey shall be conducted before activities recommence. The preconstruction nesting bird survey shall include Project boundaries, including any temporary disturbance areas, and where no established survey protocol exists, CDFW recommends the following minimum survey radii: (1) 250 feet for Passerines, and (2) 1,000 feet for raptors. If active nests are found, a no-disturbance buffer shall be established around the nest. A qualified biologist, in consultation with the CDFW, shall establish a buffer distance. The following nest avoidance buffers are recommended: (1) 250 feet for passerines, (2) 1,000 feet for raptors, and (3) 0.5 mile for golden eagle. The buffer shall be maintained until the nestlings have fledged (e.g., are capable of flight and become independent of the nest), to be determined by a qualified biologist. The avoidance buffer can be removed and no further measures are necessary once the young have fledged or the nest is no longer occupied, as determined by a qualified biologist.*

Protocol-level surveys for golden eagle should be conducted prior to Project commencement according to the Interim Golden Eagle Inventory and Monitoring Protocols and Other Recommendations document, located at:  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83940>.

#### **COMMENT 6: Impacts to Riparian and Other Sensitive Natural Habitat**

Construction BMP-12, which requires biological monitoring during specific activities within riparian areas, is proposed to mitigate impacts to riparian habitat to less-than-

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significant levels. It is unclear from the IS/MND whether the Project will seek a LSA Agreement for impacts to aquatic features, and no mitigation is proposed for temporary or permanent impacts to riparian habitat as a result of Project activities. Impacts to riparian habitat may therefore still be *potentially significant*.

Three aquatic features were identified within the Biological Study Area during an Aquatic Resources Delineation: one intermittent drainage, located outside of the Project area; one culverted ephemeral drainage; and one non-culverted ephemeral drainage. A clear span bridge will be installed to allow trail users to cross the non-culverted ephemeral drainage. The Project will impact aquatic drainages and riparian areas through vegetation removal, grading activities, and ongoing operational uses. The intermittent drainage, though outside of the Project area, may still be impacted by trail operation, which can increase impacts to the riparian zone through foot traffic from visitors venturing off-path, increase the potential for trash and debris, and increase potential erosion from trail pathways. Encroachment in the riparian zone can negatively impact sensitive riparian species and can lead to increased pollutants and deleterious materials entering the stream.

Fish and Game Code § 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, as well as those that are perennial in nature. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

To reduce impacts to stream and associated riparian habitat to less-than-significant, CDFW recommends that the following enforceable measures be incorporated as a condition of approval for the Project:

*The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. for Project activities affecting lakes or streams and associated riparian habitat, and shall comply with the LSA Agreement, if issued. Projects shall also obtain permits from the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (USACE) pursuant to the Clean Water Act if applicable.*

*Temporarily impacted areas within the riparian zone or other sensitive natural communities shall be restored and planted with native trees, shrubs and grasses. CDFW recommends that permanent impacts to riparian habitat or other sensitive natural communities be replaced in-kind when possible, and be assessed on a per-species basis, and mitigation follow species-specific needs. If oak trees are impacted, a higher mitigation ratio is recommended due to their slow growth and*

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*diversity of ecological benefits, and a longer monitoring period is recommended to ensure survival. Restoration should occur on-site to the extent feasible. If off-site restoration is necessary, it should be as close to the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration should occur in the same year of the impacts.*

## **II. Editorial Comments and/or Suggestions**

CESA-listed species including state-threatened Alameda whipsnake, state-endangered Santa Cruz tarplant, and state-endangered San Francisco popcornflower, as well as CESA-candidate western burrowing owl, have the potential to occur within the Project site. If take of any CESA-candidate or listed species cannot be avoided either during Project activities or over the life of the Project, an ITP must be obtained from CDFW (pursuant to Fish and Game Code Section 2080 et seq.).

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (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 East Bay Regional Park District in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Torrey Soland, Environmental Scientist, at (707) 266-2878 or [Torrey.Soland@wildlife.ca.gov](mailto:Torrey.Soland@wildlife.ca.gov); or Sara Kern, Senior Environmental Scientist (Supervisory), or (916) 531-4465.

Sincerely,

DocuSigned by:  
  
Erin Chappell  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento

## REFERENCES

Burgin, S. and N. Hardiman. 2012. Is the evolving sport of mountain biking compatible with fauna conservation in national parks? *Australian Zoologist* 36:201–208.

California Department of Fish and Wildlife (CDFW). 2025. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed January 25, 2025.

California Department of Fish and Wildlife (formerly California Department of Fish and Game). 2012. Staff Report on Burrowing Owl Mitigation. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

CNPS. *California Rare Plant Ranks*. California Native Plant Society. <https://www.cnps.org/rare-plants/california-rare-plant-ranks>.

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTPR6001-2003, Washington, D.C

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

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Miller, Ariel, and Jeff A. Alvarez. "Habitat Use and Management Considerations for the Threatened Alameda Whipsnake (*Masticophis lateralis euryxanthus*) in Central California." *Western Wildlife*, vol. 3, Oct. 2016, pp. 29–32.

Reed, S. E., C. L. Larson, and K. R. Crooks. 2019. Effects of Human Use of NCCP Reserves on Reptile and Mammal Species in San Diego. Wildlife Conservation Society Agreement No/LAG #: P1582100

Stebbins, R.C. 1985. A Field Guide to Western Reptiles and Amphibians. Houghton Mifflin Co., Boston.

USFWS. 2000. Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Alameda Whipsnake (*Masticophis lateralis euryxanthus*). Federal Register. Vol. 65, No. 192. 58933-58962.  
[https://www.fws.gov/sites/default/files/federal\\_register\\_document/00-24763.pdf](https://www.fws.gov/sites/default/files/federal_register_document/00-24763.pdf)