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SECTION 1: INTRODUCTION

Although not required by the California Environmental Quality Act (CEQA), the City of Napa has prepared the following responses to significant environmental comments received on the Browns Valley Subdivision Project Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND). The Responses to Comments and Errata, which are included in this document, together with the Draft IS/MND, Draft IS/MND appendices, and the Mitigation Monitoring and Reporting Program (MMRP), comprise the Final IS/MND for use by the City of Napa in its review and consideration of the Browns Valley Subdivision Project. All public comments regarding the Draft IS/MND are included for consideration by the City.

This document is organized into three sections:

- **Section 1—Introduction.**
- **Section 2—Responses to Written Comments:** Provides a list of the agencies, organizations, and individuals who commented on the Draft IS/MND. Copies of all of the letters received regarding the Draft IS/MND and responses thereto are included in this section.
- **Section 3—Errata:** Includes an addendum listing refinements and clarifications on the Draft IS/MND, which have been incorporated.

The Final IS/MND includes the following contents:

- Draft IS/MND (provided under separate cover)
- Draft IS/MND appendices (provided under separate cover)
- Responses to Written Comments and Errata (Sections 2 and 3 of this document)
- Mitigation Monitoring and Reporting Program (provided under separate cover)

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SECTION 2: RESPONSES TO WRITTEN COMMENTS

2.1 - List of Authors

A list of public agencies, organizations, and individuals that provided comments on the Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) is presented below. Each comment has been assigned a code. Individual comments within each communication have been numbered so comments can be cross-referenced with responses. Following this list, the text of the communication is reprinted and followed by the corresponding response.

Author	Author Code
State Agencies	
California Department of Fish and Wildlife	CDFW
Individuals	
Morris, Michael	MORRIS1
Morris, Michael	MORRIS2

2.2 - Responses to Comments

2.2.1 - Introduction

Although a lead agency is not required to provide written responses to comments on proposed Negative Declarations (NDs) or Mitigated Negative Declarations (MNDs) under the California Environmental Quality Act (CEQA), the City of Napa has evaluated the comments received on the proposed Browns Valley Subdivision Project (proposed project) Draft IS/MND and has elected to provide responses to the following comments. None of the comments received results in the need to recirculate the Draft IS/MND or to prepare an Environmental Impact Report (EIR).

2.2.2 - Comment Letters and Responses

The comment letters reproduced in the following pages follow the same organization as used in the List of Authors.

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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

CDFW

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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 12, 2022

Michael Allen, Senior Planner
City of Napa
1600 First Street
Napa, CA 94559
mallen@cityofnapa.org

Subject: Browns Valley Subdivision Project, Mitigated Negative Declaration,
SCH No. 2022090306, City and County of Napa

Dear Mr. Allen:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt Mitigated Negative Declaration (MND) from the City of Napa (City) for the Browns Valley Subdivision Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state’s fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Edenbridge Homes

Objective: Construct 11 new single-family homes with landscaping and a new public cul-de-sac street with driveways on a 3.77-acre residential infill site. Project activities include demolishing all existing pavement and structures (barn, two residences and sheds), some of which are within the riparian zone, adjacent to Browns Valley Creek.

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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The Project will also install a bioretention area and stormwater detention that will empty onto a rock energy dissipater within the edge of riparian vegetation.

Location: The Project is located at 3090 Browns Valley Road, Napa, CA 94558. The Assessor's Parcel Number is 041-170-009.

Timeframe: Construction is anticipated to begin January 2023 and would last approximately 14-18 months.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact California freshwater shrimp (*Syncaris pacifica*), a CESA listed as endangered species, and tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*), both CESA listed as threatened 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

CDFW will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. **The Project would impact Browns Valley Creek and therefore an LSA Notification would be required, as further described below.** Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will

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consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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 (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Attachment 1 Draft Mitigation Monitoring and Reporting Program includes the below recommended mitigation measures. 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, including those recommended below, CDFW concludes that an MND is appropriate for the Project.

- I. **Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?**

Environmental Setting and Mitigation Measures

COMMENT 1: Swainson's Hawk

Issue: The Project may impact nesting Swainson's hawk, which occurs in Napa County. The California Natural Diversity Database (CNDDDB) documents a Swainson's hawk mating pair occurrence less than 4 miles from the Project site.

The proposed nesting bird survey mitigation measure would only survey for raptors present within 1,000 feet of the Project, however nesting Swainson's hawks may be impacted up to 0.25 miles from the Project within urban areas and may not be detected using the proposed nesting bird surveys.

Specific impacts and why they may occur and be significant: If active Swainson's hawk nests are not detected by the proposed surveys or appropriate buffer zones are not established, Swainson's hawk could be disturbed by Project

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activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species.

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. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends including an evaluation of Swainson's hawk in the impact analysis and adding the following mitigation measure:

Mitigation Measure (MM) BIO-13 Swainson's Hawk Surveys and Avoidance: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk* (2000) survey protocol², within 0.25 mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.25 mile no disturbance buffer zone around the nest, unless otherwise approved in

² Swainson's Hawk Technical Advisory Committee, 2000.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, 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.

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COMMENT 2: Tricolored blackbird

Issue: The project may impact tricolored blackbird, which occurs in Napa County. The Project sites fall within the range and predicted habitat of tricolored blackbird. CNDDDB documents an occurrence within 5 miles of the Project site.

Specific impacts and why they may occur and be significant: If active tricolored blackbird nests are not detected by the proposed surveys or appropriate buffer zones are not established, tricolored blackbird could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Tricolored blackbird is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active tricolored blackbird nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

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

MM BIO-14: Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. If take of tricolored blackbird cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

Mitigation Measures

COMMENT 3: California freshwater shrimp

Issue: The proposed pre-construction surveys are insufficient to ensure impacts to California freshwater shrimp are avoided, as surveys may not detect this elusive species.

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Recommended Mitigation Measure:

MM BIO-15: California Freshwater Shrimp Avoidance. No Project activities shall occur when standing or flowing water is present in the stream within 500 feet of the project area, unless otherwise approved in writing by CDFW. No streambanks outside of the Project footprint shall be impacted or disturbed. No sediment from the Project area shall be allowed to enter the stream channel. Flowing water and standing pools of water shall be completely avoided. Silt fencing and any other necessary erosion controls shall be installed between the work area and the stream channel to ensure sediment is prevented from entering the stream, unless otherwise approved in writing by CDFW. The silt fence shall be checked daily by the Qualified Biologist, including during periods of inactivity, and any necessary repairs shall be made immediately.

If sediment or any other materials from the Project area enter the stream channel, Project activities shall immediately stop and the Qualified Biologist shall immediately notify CDFW. If take of California freshwater shrimp cannot be avoided, the Project shall the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

II. 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 in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

Environmental Setting and Mitigation Measures

COMMENT 4: Foothill Yellow-Legged Frog

Issue: The MND does not consider impacts to foothill yellow-legged frog (*Rana boylei*, northwest/north coast clade). The Project site is within the range and suitable habitat for foothill yellow-legged frog and there is a CNDDDB documented occurrence in Redwood Creek, approximately 3.2 miles from the Project site.

Specific impacts and why they may occur and be significant: Foothill yellow-legged frogs have been extirpated from about two-thirds of their historical range since 1970 (U.S. Forest Service (USFS) 2016) and is a California Species of Special Concern (SSC).

The main risk factors for the foothill yellow-legged frog are water development and diversion, climate change, habitat loss (including urbanization and fragmentation), and introduced species (USFS 2016). Project location can negatively affect foothill yellow-legged frog based on proximity to suitable habitats. Many post-metamorphic foothill yellow-legged frogs move among a variety of stream habitats throughout the year, including perennial mainstem reaches to highly ephemeral headwater streams

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(Bourque 2008). This species is also documented in uplands near streams (< 300 m; Twitty et al. 1967, Cook et al. 2012). Projects involving the alteration of the bed and/or banks of any stream or adjacent upland habitats could have potentially significant impacts on the species or its habitat. Therefore, if foothill yellow-legged frogs are present on or adjacent to the Project site, the Project would have potentially significant impacts on the species.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to foothill yellow-legged frog to less-than-significant, CDFW recommends including an impact analysis for foothill yellow-legged frog and including the following mitigation measure:

MM BIO-16: Foothill Yellow-Legged Frog Surveys. Prior to starting Project activities, a Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology. If foothill yellow-legged frogs, their eggs, or any other special-status species are found, CDFW shall be notified immediately and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If the Project has collected data that the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project, then the Project may request CDFW written approval that surveys for foothill yellow-legged frogs are not necessary.

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Mitigation Measures

COMMENT 5: MM BIO-4: Noise and Lighting Restrictions

Issue: MM BIO-4 does not provide specific guidance regarding how lighting will be minimized. Artificial lighting may adversely impact special-status species.

Recommended Mitigation Measure: To reduce impacts from artificial lighting to less-than-significant, CDFW recommends replacing MM BIO-4 with the following language:

MM BIO-4: Noise and Lighting Restrictions: Construction noise shall be limited to daylight hours. All temporary Project lighting associated with construction staging areas, access routes and construction sites in natural lands must not spill into

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natural areas. Temporary Project lighting on the surface of the road will be directed towards the road surface and will not be directed into natural areas outside of the road surface to prevent additional light pollution and disruption of nocturnal wildlife activity. Baffles and shielding devices will be required on all temporary lighting systems within the Project limits. All temporary lighting shall be limited to 2,700 kelvins. A photometer shall be used in and around the construction site to ensure light is not being exposed to natural areas.

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COMMENT 6: MM BIO-7: Construction Monitoring

Issue: MM BIO-7 specifies that a qualified biologist *may* be on-site for daily monitoring if an *aquatic* state or federally listed species is present within or near the Project site, depending on the species. It is unclear whether the Project is required to consult with CDFW and/or USFWS in the event a listed species is encountered. MM BIO-7 also does not account for species designated as SSC.

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Recommended Mitigation Measure: Revise MM BIO-7 to specify that a qualified biologist shall be on-site daily when work occurring within stream or riparian habitat, unless otherwise approved in writing by CDFW. Additionally, if any special-status species are detected, the Project shall consult with CDFW and/or USFWS regarding appropriate steps before proceeding with construction.

III. 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?

Mitigation Measures

COMMENT 7: Riparian Habitat

Issue: The MND mentions the need to obtain an LSA Agreement from CDFW; however, this is not included as a mitigation measure. Additionally, on page 65, the MND includes a list of Best Management Practices (BMPs). This includes a BMP specifying that work within the riparian zone would occur between April 15 to October 31; however, CDFW generally considers the dry season to be June 15 to October 15 in Napa County.

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Additionally, while the MND states no riparian vegetation will be removed, it is unclear whether the area where structures will be removed within the riparian zone will be restored with native plantings. If demolition areas are left barren of vegetation, this could result in erosion and sedimentation within Browns Valley Creek.

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Furthermore, the MND states that the BMPs listed on page 65 are included to help avoid and minimize potential impacts to critical habitat and essential fish habitat to less than significant levels, yet these BMPs are not included as mitigation measures.

Recommended Mitigation Measure: To reduce impacts to riparian habitat to less-than-significant, CDFW recommends including a mitigation measure requiring the Project to submit an LSA Notification to CDFW and comply with the LSA Agreement if issued by CDFW. The LSA Agreement would likely include measures restricting work within the riparian zone from June 15 to October 15, unless otherwise approved in writing by CDFW, and require any areas within the riparian zone left barren of vegetation be restored and planted with native trees, shrubs and grasses. Additionally, permanent impacts, such as from installation of the storm drain outfall structure should be restored at a 3:1 ratio for acreage and linear feet impacted and temporary impacts should be restored on-site, unless otherwise approved in writing by CDFW.

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CONT

CDFW also recommends that all BMPs that are intended to reduce impacts to riparian and stream habitat to less-than-significant be clearly listed as mitigation measures.

IV. Editorial Comments and Suggestions

COMMENT 8: On page 65 of the MND it states, "No trees or other vegetation will be removed in the riparian zone unless it poses a safety hazard as determined by an arborist (for trees)." CDFW recommends revising this sentence for clarity. It is unclear if hazardous vegetation, besides trees, could be removed.

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If CDFW issues an LSA Agreement for the Project, the above recommended mitigation measures will likely be included in the Agreement, as applicable.

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 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>.

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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. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022090306)

REFERENCES

- Bloom, P. H. 1980. The status of the Swainson's hawk in California, 1979. Bureau of Land Management, Sacramento, CA, USA.
- Bourque, R. M. 2008. Spatial ecology of an inland population of the foothill yellow-legged frog (*Rana boylei*) in Tehama County, California. Thesis, Humboldt State University, Arcata, CA, USA.
- CDFW. 2016. Status review: Swainson's hawk (*Buteo swainsoni*) in California. Report to the California Fish and Game Commission, Sacramento, CA, USA.

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Cook, D. G., P. W. White, and E. White. 2012. Natural history notes: *Rana boylei* (foothill yellow-legged frog), upland movement. *Herpetological Review* 43:325–326.

Twitty, V., D. Grant, and O. Anderson. 1967. Amphibian orientation: an unexpected observation. *Science* 155:352–353.

U.S. Forest Service (USFS). 2016. Foothill yellow-legged frog conservation assessment in California. General Technical Report PSW-GTR-248, Pacific Southwest Research Station, U.S. Forest Service, Albany, CA, USA.

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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-4	<p><u>MM BIO-4: Noise and Lighting Restrictions:</u> Construction noise shall be limited to daylight hours. All temporary Project lighting associated with construction staging areas, access routes and construction sites in natural lands must not spill into natural areas. Temporary Project lighting on the surface of the road will be directed towards the road surface and will not be directed into natural areas outside of the road surface to prevent additional light pollution and disruption of nocturnal wildlife activity. Baffles and shielding devices will be required on all temporary lighting systems within the Project limits. All temporary lighting shall be limited to 2700 kelvins. A photometer shall be used in and around the construction site to ensure light is not being exposed to natural areas.</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>
MM BIO-13	<p><u>MM BIO-13 Swainson's Hawk Surveys and Avoidance:</u> If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk (2000) survey protocol, within 0.25 mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction</p>	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.25 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, 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.		
MM BIO-14	<u>MM BIO-14: Tricolored Blackbird Avoidance.</u> If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. If take of tricolored blackbird cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-15	<u>MM BIO-15: California Freshwater Shrimp Avoidance.</u> No project activities shall occur when standing or flowing water is present in the stream within 500 feet of the project area, unless otherwise approved in writing by CDFW. No streambanks outside of the project footprint shall be impacted or disturbed. No sediment from the project area shall be allowed to enter the stream channel. Flowing water and standing pools of water shall be completely avoided. Silt fencing and any other necessary erosion controls shall be installed between the work area and the stream channel to ensure sediment is prevented from entering the stream, unless otherwise approved in writing by CDFW. The silt fence shall be checked daily by the Qualified Biologist, including during periods of inactivity, and any necessary repairs shall be made immediately. If sediment or any other materials from the project area enter the stream channel project activities shall immediately stop and the Qualified Biologist shall immediately notify CDFW. If take of California freshwater shrimp cannot be avoided, the Project shall the Project shall consult with CDFW pursuant to CESA and obtain an ITP.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
MM BIO-16	<u>MM BIO-16: Foothill Yellow-Legged Frog Surveys.</u> Prior to starting Project activities, a Qualified Biologist	Prior to Ground	Project Applicant

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	<p>shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology. If foothill yellow-legged frogs, their eggs, or any other special-status species, are found, CDFW shall be notified immediately and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If the Project has collected data that the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project, then the Project may request CDFW written approval that surveys for foothill yellow-legged frogs are not necessary.</p>	<p>Disturbance and continuing over the course of the Project</p>	
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State Agencies

California Department of Fish and Wildlife (CDFW)

Comments below are reprinted verbatim from the comment letter.

Comment CDFW-1

Issue: The Project may impact nesting Swainson's hawk, which occurs in Napa County. The California Natural Diversity Database (CNDDDB) documents a Swainson's hawk mating pair occurrence less than 4 miles from the Project site.

The proposed nesting bird survey mitigation measure would only survey for raptors present within 1,000 feet of the Project, however nesting Swainson's hawks may be impacted up to 0.25 miles from the Project within urban areas and may not be detected using the proposed nesting bird surveys.

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

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. The estimated historical population of Swainson's hawk was nearly 17,000 pairs; however, in the late 20th century, Bloom (1980) estimated a population of only 375 pairs. The decline was primarily a result of habitat loss from development (CDFW 2016). The most recent survey conducted in 2009 estimated the population at 941 breeding pairs. The species is currently threatened by loss of nesting and foraging habitat (e.g., from agricultural shifts to less crops that provide less suitable habitat), urban development, environmental contaminants (e.g., pesticides), and climate change (CDFW 2016).

Therefore, if an active Swainson's hawk nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: For an accurate environmental setting, to reduce impacts to Swainson's hawk to less-than-significant, and to comply with CESA, CDFW recommends including an evaluation of Swainson's hawk in the impact analysis and adding the following mitigation measure:

Mitigation Measure (MM) BIO-13 Swainson's Hawk Surveys and Avoidance: Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to August 31), prior to beginning work on this Project, Swainson's hawk surveys shall be conducted by a qualified biologist with experience surveying for and detecting the species pursuant to the Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk (2000) survey protocol¹, within 0.25 mile of the Project site each year that Project activities occur. Pursuant to the above survey protocol, surveys shall be completed for at least the two survey periods immediately prior to a Project's initiation. For example, if the project is scheduled to begin on June 20, the qualified biologist shall complete three surveys in Period III and three surveys in Period V. It is recommended that surveys be completed in Periods II, III and V. The Project shall

obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between March 1 and August 31 each year. If the qualified biologist identifies nesting Swainson's hawks, the Project shall implement a 0.25 mile no disturbance buffer zone around the nest, unless otherwise approved in writing by CDFW. Project activities shall be prohibited within the buffer zone between March 1 and August 31, 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.

Response to CDFW-1

The project-specific biological survey evaluated habitat suitability and nearby CNDDDB records for Swainson's hawk during preparation of the biological resources report for the property at 3090 Browns Valley Road (Appendix B of the Draft IS/MND). The closest CNDDDB record to the project site is about 3.5 miles southwest of the site, where a pair of Swainson's hawks was observed displaying, copulating, and defending territory in 2013, but no nest was found. This occurrence was near Carneros Creek in an open area surrounded by agricultural fields, a preferred habitat for this species. Other CNDDDB records of this species in Napa are concentrated to the south in the open area between Highway 12 and the Napa County Airport, often near riparian habitat such as Suscol Creek. Although the project site has a riparian corridor along Browns Valley Creek, surrounding areas are developed or contain oak woodland (in Westwood Hills Park), and lack open areas preferred by this species. This is reflected in the Cornell Lab of Ornithology's eBird records, as Swainson's hawk has not been recorded at "hot spots" within a mile of the project site. As such, qualified Biologists concluded that protocol-level surveys for nesting Swainson's hawks are not warranted in the project area.

In response to comments, Mitigation Measure (MM) BIO-10 has been revised to include protocol surveys for Swainson's hawks if project construction starts during the Swainson's hawk nesting season (generally March 1 to August 31). The text changes to MM BIO-10 are reflected in Section 3, Errata, of this Final IS/MND.

These changes are based on communication with CDFW during the on-site meeting which took place on November 1, 2022, in which it was clarified that surveys do not need to be repeated every year if construction is continuous, and that "project activities" refers only to construction activities (does not include project operation).

Potential project effects on Swainson's hawk are not new avoidable significant effects since the proposed project was previously found to have a less than significant impact on these species (as disclosed in the Draft IS/MND). The revisions to MM BIO-10 merely amplify and clarify the survey protocols from the Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk,¹ and therefore do not affect the impact analyses and the environmental determination of the Draft IS/MND.

Comment CDFW-2

¹ Swainson's Hawk Technical Advisory Committee. 2000. Swainson's Hawk Nesting Surveys in California's Central Valley Swainson's Hawk. Website: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>. Accessed November 30, 2022.

Issue: The project may impact tricolored blackbird, which occurs in Napa County. The Project sites fall within the range and predicted habitat of tricolored blackbird. CNDDDB documents an occurrence within 5 miles of the Project site.

Specific impacts and why they may occur and be significant: If active tricolored blackbird nests are not detected by the proposed surveys or appropriate buffer zones are not established, tricolored blackbird could be disturbed by Project activities resulting in nest abandonment and loss of eggs or reduced health and vigor and loss of young, thereby substantially reducing the number of the species. Tricolored blackbird is CESA listed as a threatened species and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active tricolored blackbird nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

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

MM BIO-14: Tricolored Blackbird Avoidance. If nesting tricolored blackbird or evidence of their presence is found during nesting bird surveys within 500 feet of Project activities, CDFW shall be notified immediately and work shall not occur without written approval from CDFW allowing the Project to proceed. Project activities shall not occur within 500 feet of an active nest unless otherwise approved in writing by CDFW. If take of tricolored blackbird cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

Response to CDFW-2

It is acknowledged that tricolored blackbird occurs in Napa County, and that the project site is within the range of this species. The CNDDDB documented occurrence of tricolored blackbird is about 4.3 miles southeast of the project site at a freshwater marsh along the Napa River. As part of a United States Fish and Wildlife Service (USFWS) protocol site assessment for California red-legged frog, all wetland and riparian habitat within 1 mile of the project site were identified and evaluated. Although designed for California red-legged frog, the biological survey confirmed that there is no suitable freshwater marsh habitat for tricolored blackbird within 1 mile of the project site (Appendix B of the Draft IS/MND). Therefore, nesting tricolored blackbirds are unlikely to occur in the project area, and the proposed project would not impact this species. Similar to Swainson's hawk, there are no eBird "hot spot" observations of tricolored blackbird within 1 mile of the site.

In response to comments, MM BIO-10 is revised to incorporate the CDFW recommended buffer if nesting tricolored blackbirds are found within 500 feet of the project site. The text changes to MM BIO-10 are reflected in Section 3, Errata, of this Final IS/MND.

Potential project effects on tricolored blackbird are not new avoidable significant effects since the proposed project was previously found to have a less than significant impact on these species (as disclosed in the Draft IS/MND). The revisions to MM BIO-10 merely amplify and clarify the avoidance

protocols for nesting tricolored blackbirds if found during nesting bird surveys, and therefore do not affect the impact analyses and the environmental determination of the IS/MND.

Comment CDFW-3

Issue: The proposed pre-construction surveys are insufficient to ensure impacts to California freshwater shrimp are avoided, as surveys may not detect this elusive species.

Recommended Mitigation Measure:

MM BIO-15: California Freshwater Shrimp Avoidance. No Project activities shall occur when standing or flowing water is present in the stream within 500 feet of the project area, unless otherwise approved in writing by CDFW. No streambanks outside of the Project footprint shall be impacted or disturbed. No sediment from the Project area shall be allowed to enter the stream channel. Flowing water and standing pools of water shall be completely avoided. Silt fencing and any other necessary erosion controls shall be installed between the work area and the stream channel to ensure sediment is prevented from entering the stream, unless otherwise approved in writing by CDFW. The silt fence shall be checked daily by the Qualified Biologist, including during periods of inactivity, and any necessary repairs shall be made immediately.

If sediment or any other materials from the Project area enter the stream channel, Project activities shall immediately stop and the Qualified Biologist shall immediately notify CDFW. If take of California freshwater shrimp cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP.

Response to CDFW-3

California freshwater shrimp was evaluated in the biological resources report and the Draft IS/MND, and was found to have a moderate potential to occur in Browns Valley Creek within the project site. It is acknowledged that this species may not be detected during a single preconstruction survey, even if it is present. However, the proposed project is not expected to impact this species because no work is proposed in Browns Valley Creek or below the top of the creek banks, and a silt fence would be installed between the creek and the work area during construction. MM BIO-1 through MM BIO-9 in the Draft IS/MND would also avoid impacts to aquatic species, including California freshwater shrimp. In addition, Best Management Practices (BMPs) would be incorporated into the proposed project to prevent sediment or other pollutants from entering the creek (now part of MM BIO-14, see Response to CDFW-7 below), and a Storm Water Pollution Prevention Plan (SWPPP) would be prepared and implemented during construction, consistent with regulatory requirements.

However, in response to comments, MM BIO-1 is revised to include measures to ensure sediment is prevented from entering the stream. The text changes to MM BIO-1 are reflected in Section 3, Errata, of this Final IS/MND.

The restriction on work within 500 feet of standing or flowing water in Browns Valley Creek was not included in this revised measure. This was based on communication with CDFW personnel during the November 1, 2022 on-site meeting, in which it was understood that standing or flowing water is likely always present in Browns Valley Creek, and agreed that the first sentence of the proposed mitigation measure could be deleted provided that potential impacts to California freshwater shrimp

are avoided. "Or designated construction crew member" was added because a full-time Biological Monitor is not required for the proposed project for work outside of the riparian zone, and a trained crew member could check and maintain the silt fence without assistance from a qualified Biologist.

California freshwater shrimp was evaluated in the biological resources report and the Draft IS/MND, and significant impacts were already avoided by requiring MM BIO-1 through MM BIO-9 and the BMPs incorporated into the proposed project for creek protection. The revisions to MM BIO-1 merely amplify and clarify the avoidance protocols for California freshwater shrimp if found during pre-construction survey, and therefore do not affect the impact analyses and the environmental determination of the Draft IS/MND.

Comment CDFW-4

Issue: The MND does not consider impacts to foothill yellow-legged frog (*Rana boylei*, northwest/north coast clade). The Project site is within the range and suitable habitat for foothill yellow-legged frog and there is a CNDDDB documented occurrence in Redwood Creek, approximately 3.2 miles from the Project site.

Specific impacts and why they may occur and be significant: Foothill yellow-legged frogs have been extirpated from about two-thirds of their historical range since 1970 (U.S. Forest Service (USFS) 2016) and is a California Species of Special Concern (SSC).

The main risk factors for the foothill yellow-legged frog are water development and diversion, climate change, habitat loss (including urbanization and fragmentation), and introduced species (USFS 2016). Project location can negatively affect foothill yellow-legged frog based on proximity to suitable habitats. Many post-metamorphic foothill yellow-legged frogs move among a variety of stream habitats throughout the year, including perennial mainstem reaches to highly ephemeral headwater streams (Bourque 2008). This species is also documented in uplands near streams (< 300 m; Twitty et al. 1967, Cook et al. 2012). Projects involving the alteration of the bed and/or banks of any stream or adjacent upland habitats could have potentially significant impacts on the species or its habitat. Therefore, if foothill yellow-legged frogs are present on or adjacent to the Project site, the Project would have potentially significant impacts on the species.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to foothill yellow-legged frog to less-than-significant, CDFW recommends including an impact analysis for foothill yellow-legged frog and including the following mitigation measure:

MM BIO-16: Foothill Yellow-Legged Frog Surveys. Prior to starting Project activities, a Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology. If foothill yellow-legged frogs, their eggs, or any other special-status species are found, CDFW shall be notified immediately, and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the

survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If the Project has collected data that the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project, then the Project may request CDFW written approval that surveys for foothill yellow-legged frogs are not necessary.

Response to CDFW-4

It is acknowledged that the project site is within the range of foothill yellow-legged frog. The CNDDDB documented occurrence of foothill yellow-legged frog in Redwood Creek is from 1972 and is listed as “possibly extirpated.” As part of a USFWS protocol site assessment for California red-legged frog, a day- and night-time amphibian survey was conducted on the site, and no amphibians were detected. Habitat suitability in Browns Valley Creek within the project site is low due to urbanization and low flow conditions. Therefore, foothill yellow-legged frogs are unlikely to occur in the project area. Even if the species did occur in the creek, the steep and tall banks between the project site and the creek bed likely provide a barrier for frog movement between the creek and the site.

However, in response to comments, MM BIO-1 has been revised to include foothill yellow-legged frogs in the pre-construction survey, notify CDFW if foothill yellow-legged frogs or other aquatic special-status species are found, and install a wildlife exclusion fence if requested by the CDFW. The text changes to MM BIO-1 are reflected in Section 3, Errata, of this Final IS/MND.

Potential project effects on foothill yellow-legged frog are not new avoidable significant effects since the proposed project was previously found to have a less than significant impact on these species (as disclosed in the Draft IS/MND). The revisions to MM BIO-1 merely amplify and clarify the avoidance protocols for foothill yellow-legged frog if found during pre-construction survey, and therefore do not affect the impact analyses and the environmental determination of the IS/MND.

Comment CDFW-5

Issue: MM BIO-4 does not provide specific guidance regarding how lighting will be minimized. Artificial lighting may adversely impact special-status species.

Recommended Mitigation Measure: To reduce impacts from artificial lighting to less-than-significant, CDFW recommends replacing MM BIO-4 with the following language:

MM BIO-4: Noise and Lighting Restrictions: Construction noise shall be limited to daylight hours. All temporary Project lighting associated with construction staging areas, access routes and construction sites in natural lands must not spill into natural areas. Temporary Project lighting on the surface of the road will be directed towards the road surface and will not be directed into natural areas outside of the road surface to prevent additional light pollution and disruption of nocturnal wildlife activity. Baffles and shielding devices will be required on all temporary lighting systems within the Project limits. All temporary lighting shall be limited to 2,700 kelvins. A photometer shall be used in and around the construction site to ensure light is not being exposed to natural areas.

Response to CDFW-5

The applicant confirmed that project construction would be limited to daylight hours and would not include temporary lighting. MM BIO-4 has been revised to clarify that construction shall be limited to

daylight hours to further reduce nighttime noise impacts to wildlife. This revision does not affect the impact analyses and the environmental determination of the Draft IS/MND. The text changes to MM BIO-4 are reflected in Section 3, Errata, of this Final IS/MND.

Comment CDFW-6

Issue: MM BIO-7 specifies that a qualified biologist may be on-site for daily monitoring if an aquatic state or federally listed species is present within or near the Project site, depending on the species. It is unclear whether the Project is required to consult with CDFW and/or USFWS in the event a listed species is encountered. MM BIO-7 also does not account for species designated as SSC.

Recommended Mitigation Measure: Revise MM BIO-7 to specify that a qualified biologist shall be on-site daily when work occurring within stream or riparian habitat, unless otherwise approved in writing by CDFW. Additionally, if any special-status species are detected, the Project shall consult with CDFW and/or USFWS regarding appropriate steps before proceeding with construction.

Response to CDFW-6

As recommended by the CDFW, MM BIO-7 has been modified to specify consultation with the CDFW and/or USFWS if a listed species is found on the site. This revision does not affect the impact analyses and the environmental determination of the Draft IS/MND. The text changes to MM BIO-7 are reflected in Section 3, Errata, of this Final IS/MND.

MM BIO-9 is more relevant to biological monitoring for work in riparian habitat than MM BIO-7. As such, MM BIO-9 has been modified to specify that a Biological Monitor be present for all work in riparian habitat, per CDFW's recommendation. This revision does not affect the impact analyses and the environmental determination of the Draft IS/MND. The text changes to MM BIO-7 are reflected in Section 3, Errata, of this Final IS/MND.

Comment CDFW-7

Issue: The MND mentions the need to obtain an LSA Agreement from CDFW; however, this is not included as a mitigation measure. Additionally, on page 65, the MND includes a list of Best Management Practices (BMPs). This includes a BMP specifying that work within the riparian zone would occur between April 15 to October 31; however, CDFW generally considers the dry season to be June 15 to October 15 in Napa County.

Additionally, while the MND states no riparian vegetation will be removed, it is unclear whether the area where structures will be removed within the riparian zone will be restored with native plantings. If demolition areas are left barren of vegetation, this could result in erosion and sedimentation within Browns Valley Creek.

Furthermore, the MND states that the BMPs listed on page 65 are included to help avoid and minimize potential impacts to critical habitat and essential fish habitat to less than significant levels, yet these BMPs are not included as mitigation measures.

Recommended Mitigation Measure: To reduce impacts to riparian habitat to less-than-significant, CDFW recommends including a mitigation measure requiring the Project to submit an LSA Notification to CDFW and comply with the LSA Agreement if issued by CDFW. The LSA Agreement

would likely include measures restricting work within the riparian zone from June 15 to October 15, unless otherwise approved in writing by CDFW, and require any areas within the riparian zone left barren of vegetation be restored and planted with native trees, shrubs and grasses. Additionally, permanent impacts, such as from installation of the storm drain outfall structure should be restored at a 3:1 ratio for acreage and linear feet impacted and temporary impacts should be restored on-site, unless otherwise approved in writing by CDFW.

CDFW also recommends that all BMPs that are intended to reduce impacts to riparian and stream habitat to less-than-significant be clearly listed as mitigation measures.

Response to CDFW-7

An LSA Notification is in preparation and will be submitted to the CDFW. It was not included as a mitigation measure in the Draft IS/MND because it is a regulatory requirement, and regulatory requirements are not normally considered as mitigation since they are required by law and were considered as part of the regulatory setting for the proposed project. However, the CDFW indicated that there have been issues in the past with project applicants not submitting required LSA Notifications to the CDFW. As such notification of lake or streambed alteration requirements have been added as MM BIO-13 to specify that an LSA Notification shall be submitted to CDFW.

The applicant shall comply with the work period restrictions and revegetation requirements as specified by the CDFW through a Streambed Alteration Agreement or Operation of Law. During the on-site meeting, CDFW agreed that demolition of the structures in the riparian zone and revegetation of the disturbed areas would be sufficient to offset the rock energy dissipator; the removal of structures exceeds a 3:1 ratio for impact offsets.

CDFW has also requested that the BMPs related to preparation of the SWPPP be incorporated in the proposed project and be listed as mitigation measures. As such, MM BIO-14 clarifies that the BMPs required by the SWPPP would be incorporated into the proposed project (Page 65 of the Draft IS/MND) and required as part of the Mitigation Monitoring and Reporting Program (MMRP). The new MM BIO-14 is shown in Section 3, Errata, of this Final IS/MND. As discussed in the Draft IS/MND, a SWPPP is required by Clean Water Act Section 402 and therefore incorporation of the new MM BIO-14 amplifies the requirements of applicable regulations and would not affect the impact analyses and the environmental determination of the Draft IS/MND.

Comment CDFW-8

On page 65 of the MND it states, “No trees or other vegetation will be removed in the riparian zone unless it poses a safety hazard as determined by an arborist (for trees).” CDFW recommends revising this sentence for clarity. It is unclear if hazardous vegetation, besides trees, could be removed.

Response to CDFW-8

As recommended by CDFW, the sentence has been revised to state: “No tree shall be removed in the riparian zone unless it poses a safety hazard as determined by an arborist. The proposed location of the rock energy dissipator generally lacks understory vegetation, therefore removal of riparian vegetation would be minimal.” This text change is reflected in Section 3, Errata, of this Final IS/MND. This revision merely provides clarification and does not affect the impact analyses and the environmental determination of the Draft IS/MND.

In conclusion, the recommended edits to the Draft IS/MND address requests for clarification and do not represent any new significant impacts or a “substantial revision” to the Draft IS/MND that would trigger recirculation of the document pursuant to CEQA Guidelines Section 15073.5. Revisions enhance existing mitigation and make no changes to the project description or the discussion of environmental setting. CEQA Guidelines Section 15073.5(c) specifies that recirculation is not required when:

- (1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.
- (2) New project revisions are added in response to written or verbal comments on the project’s effects identified in the proposed negative declaration which are not new avoidable significant effects.

No new avoidable significant effects were identified in CDFW’s letter or are addressed by recommended new or revised mitigation measures. Potential project effects on Swainson’s hawk, tricolored blackbird, and foothill yellow-legged frog are not new avoidable significant effects since the proposed project was previously found to have a less than significant impact on these species (during preparation of the biological resources report and Draft IS/MND). California freshwater shrimp was evaluated in the biological resources report and the Draft IS/MND, and significant impacts were already avoided by MM BIO-1 through MM BIO-9 and the BMPs incorporated into the proposed project for creek protection. Existing MM BIO-1 and MM BIO-10 have been updated with additional requirements that provide equal or more effective measures pursuant to Section 15074.1 in order to respond to CDFW’s comments. MM BIO-13 reflects a regulatory requirement to avoid a significant impact but was added as a mitigation measure in response to a request from the CDFW. MM BIO-14 also incorporates a regulatory requirement (SWPPP is required by Clean Water Act Section 402) that was previously included in the Draft IS/MND as BMPs incorporated into the proposed project. All other recommended edits are minor changes to existing mitigation measures in response to recommendations by the CDFW or are wording changes for clarification.