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June 18, 2019

Darryl Boyd
San Benito County
Resource Management Agency
2301 Technology Parkway
Hollister, California 95023
dboyd@cosb.us

Subject: Lima Property Specific Plan (Project), NOTICE OF PREPARATION (NOP) SCH# 2019050008

Dear Mr. Boyd:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation for the Project from San Benito County Resource Management Agency for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of our 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 our 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

[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.

need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, Project activities may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the 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 & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, eggs and nests include, §§ 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and U.S. Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

PROJECT DESCRIPTION SUMMARY

Proponent: Richland Communities, Inc.

Objective: The Specific Plan sets forth a comprehensive set of plans, development standards, design guidelines, and implementation programs that have been designed to produce a project that is consistent with the goals and objectives of San Benito County's 2035 General Plan. The Specific Plan will be the operating document for the development of a multi-generational mixed-use community with a wide range of housing types, mixed-use commercial, an 8-acre school site to accommodate grades K-8, an interconnected 21-acre system of parks, 99-acres of natural open space, and a multi-purpose trail system. The Plan Area includes a total of seven neighborhoods with low- to medium-density residential development along the perimeter of the Specific Plan Area (Project Area) and a medium-high density neighborhood, a school site, and a shared park at the center of the community. Proposed residential product types include single-family homes, attached townhomes, live-work units, and multi-family units. Specific Plan buildout will include up to 1,280 residential units, 33,000 square feet of

commercial development, and a school. An additional 65 residential units, for a total of 1,345 residential units, would be developed if the Southside Elementary School District makes the decision not to acquire the 8-acre school site.

Because the Specific Plan Area is outside of the Hollister Urban Area, three wastewater treatment options are being considered for the Specific Plan Area: (1) connecting to the City of Hollister system, (2) constructing a stand-alone treatment plant, and (3) constructing a system to serve the Plan Area and the adjacent Tres Pinos wastewater treatment system. Groundwater is expected to be the primary source of water supply for the Project.

Location: The Specific Plan Area is approximately 347 acres within unincorporated San Benito County, approximately 1.6 miles south of the City of Hollister and outside of the Hollister Urban Area; at the intersection of Portugese and State Route 25; Assessor's Parcel Number 025-200-064. The site is currently undeveloped and used as grazing rangeland.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Benito County Resource Management Agency 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 aerial imagery and species occurrence records the Project site is known to and/or has high potential to support numerous special-status species, including CESA-listed species (CDFW 2019, CNPS 2019). Therefore, the Project has the potential to significantly impact these species. Specifically, CDFW is concerned about potential of the Project to significantly impact the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State candidate endangered tricolored blackbird (*Agelaius tricolor*); the State Species of Special Concern and federally threatened California red-legged frog (*Rana draytonii*); the State Species of Special Concern American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), and western spadefoot (*Spea hammondii*); and numerous special-status California Rare Plant Ranked (CRPR) plant species including, but not limited to, the CRPR 1B.2 San Joaquin spearscale (*Extriplex joaquinana*) and western Heermann's buckwheat (*Eriogonum heermannii* var. *occidentale*). In addition, an ephemeral stream is present within the Specific Plan Area's northeast corner. Activities within the stream may be subject to CDFW's regulatory authority.

CDFW recommends that focused, protocol-level surveys for these species be conducted to evaluate impacts of the Project on these species. CDFW further recommends that the results of these surveys inform preparation of the Project's CEQA document. If results of these surveys indicate significant environmental impacts will occur as a result of Project implementation and cannot be mitigated to less than significant levels, a Mitigated Negative Declaration (MND) would not be appropriate. Further, when an MND is prepared, mitigation measures must be specific and clearly defined and cannot be deferred to a future time. The specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation, when an Environmental Impact Report (EIR) is prepared. Regardless of whether an MND or EIR is prepared, the CEQA document must provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1: California tiger salamander (CTS)

Issue: CTS are known to occur both within and in the vicinity of the Project Area (CDFW 2019). Review of aerial imagery indicates the presence of several seasonally flooded wetland features, both within the Project Area and its vicinity, which have the potential to support breeding CTS. In addition, the Project Area is comprised of annual grassland which may support small mammal burrows, a requisite upland habitat feature for CTS.

Specific impact: Without appropriate avoidance and minimization measures for CTS, potential significant impacts associated with the Project's construction include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: Up to 75% of historic CTS habitat has been lost to development (Shaffer et al. 2013). Loss, degradation, and fragmentation of habitat are among the primary threats to CTS (CDFW 2015a, USFWS 2017a). The Project Area is within the range of CTS, contains potentially suitable aquatic habitat features, and is bordered by suitable upland habitat. As a result, there is potential for CTS to occupy or colonize the Project Area and for the Project to significantly impact the local CTS population.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)
To evaluate potential impacts to CTS associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 1: CTS Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of project implementation, to determine if the Project Area or its vicinity contains suitable habitat for CTS.

Recommended Mitigation Measure 2: Focused CTS Surveys

If the Project Area does contain suitable habitat for CTS, CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS prior to ground-disturbing activities using the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (2003). CDFW advises that the survey include a 100-foot buffer around the Project Area in all areas of wetland and upland habitat that could support CTS.

Recommended Mitigation Measure 3: CTS Avoidance

CDFW advises avoidance for CTS include a minimum 50-foot no disturbance buffer delineated around all small mammal burrows and a minimum 250-foot no disturbance buffer around occupied breeding pools within and/or adjacent to the Project construction footprint. CDFW also recommends avoiding any impacts that could alter the hydrology or result in sedimentation of breeding pools. If avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

Recommended Mitigation Measure 4: CTS Take Authorization

If through surveys it is determined that CTS are occupying the Project Area and take cannot be avoided, take authorization may be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code § 2081(b). Alternatively, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project Area and obtain an ITP from CDFW.

COMMENT 2: San Joaquin Kit Fox (SJKF)

Issue: SJKF have been documented to occur both within and in the vicinity of the Project Area (CDFW 2019). Review of aerial imagery indicates that the Project Area is comprised of and adjacent to annual grassland, a habitat type suitable to support SJKF. SJKF den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. Presence/absence in any one year is not necessarily a reliable indicator for SJKF potential to occur on a site. In addition, SJKF may be attracted to the Project Area due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to colonize the Project Area or to occupy adjacent grassland.

Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts associated with the Project's construction include den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: San Joaquin kit foxes are endemic to California and were historically distributed throughout the San Joaquin Valley, adjacent foothills, and valleys in the coastal mountains of central California (CDFG 1995). Their populations have declined considerably as a result of habitat loss (Zeiner et al. 1990). Today, very little highly suitable habitat remains in San Benito County (Cypher et al. 2013). Therefore, ground-disturbing activities associated with the Project have the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)
To evaluate potential impacts to SJKF associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 4: SJKF Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its immediate vicinity contains suitable habitat for SJKF.

Recommended Mitigation Measure 5: SJKF Surveys

If suitable habitat is present, CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys in all areas of

potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground disturbing activities.

Recommended Mitigation Measure 6: SJKF Avoidance

CDFW recommends implementing no-disturbance buffers, as described in the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) around den sites.

Recommended Mitigation Measure 7: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an ITP prior to ground-disturbing activities, pursuant to Fish and Game Code § 2081(b).

COMMENT 3: Tricolored Blackbird (TRBB)

Issue: TRBB have been documented to occur in the vicinity of the Specific Plan Area (CDFW 2019). TRBB select breeding sites that consist of open water; flooded, thorny or spiny vegetation; and suitable foraging space (Beedy 2008). Review of aerial imagery indicates that the Project Area is comprised of annual grassland that contains several ponded water features, which may be suitable to supporting nesting substrate for TRBB. As a result, the Project has the potential to impact TRBB.

Specific impact: Without appropriate avoidance and minimization measures for TRBB, potential significant impacts associated with Project development include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: As mentioned above, aerial imagery indicates that the Project Area has the potential to support suitable nesting substrate for TRBB and is comprised of suitable foraging habitat for the species, increasing the likelihood of occurrence. TRBB aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Increasingly, TRBB are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies (Kelsey 2008). In 2017, approximately 11,000 TRBB were distributed among only seven colonies in San Benito County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBB populations (Meese et al. 2014).

Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential impacts to TRBB associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including

the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 8: TRBB Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment of the Project Area in advance of Project implementation, to determine if the Project Area or its vicinity contains suitable habitat for TRBB.

Recommended Mitigation Measure 9: TRBB Surveys

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, and suitable TRBB habitat is detected during habitat assessments, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBB no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBB nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 10: TRBB Avoidance

If an active TRBB nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015b). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBB colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days of Project initiation.

Recommended Mitigation Measure 11: TRBB Take Authorization

In the event that a TRBB nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.

COMMENT 4: California Red-Legged Frog (CRLF)

Issue: CRLF have been documented to occur in the vicinity of the Project Area (CDFW 2019). CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in

ephemeral waters (Thomson et al. 2016). Review of aerial imagery indicates the presence of several ephemerally ponded wetland features within the Project Area that may be suitable to support CRLF. As a result, the Project has the potential to impact CRLF.

Specific impact: Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities could include entrapment, direct mortality effects, and indirect negative effects by altering habitat availability and quality.

Evidence impact is potentially significant: CRLF populations throughout the state have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017b). All these impacts have the potential to result from the Project. Therefore, project activities have the potential to significantly impact CRLF.

Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential impacts to CRLF associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 12: CRLF Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if Project Area or its immediate vicinity contain suitable habitat for CRLF.

Recommended Mitigation Measure 13: CRLF Surveys

If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF within 48 hours prior to commencing work (two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *"Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog"* (USFWS 2005) to determine if CRLF are within or adjacent to the Project Area.

Recommended Mitigation Measure 14: CRLF Avoidance

If any CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends that construction cease and that CDFW be contacted to discuss a relocation plan for CRLF with relocation conducted by a qualified biologist, holding a Scientific Collecting Permit for the species. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for CRLF.

COMMENT 5: American Badger

Issue: American badger have been documented to occur in the vicinity of the Specific Plan Area (CDFW 2019). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project Area is comprised of annual grassland with loamy soils (UC Davis 2018), suitable for occupation by American badger. Therefore, the Project has the potential to impact American badger.

Specific impact: Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include natal den abandonment, which may result in reduced health or vigor of young, or direct mortality.

Evidence impact is potentially significant: Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project will involve construction of 1,345 residential units within a 347-acre site. As a result, ground-disturbing activities have the potential to significantly impact local populations of American badger.

Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential impacts to American badger associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 15: American Badger Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its immediate vicinity contain suitable habitat for American badger.

Recommended Mitigation Measure 16: American Badger Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 17: American Badger Avoidance

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

COMMENT 5: Burrowing Owl (BUOW)

Issue: BUOW have been documented to occur in the vicinity of the Project Area (CDFW 2019). Review of aerial imagery reveals that suitable habitat for BUOW is present both within and in the vicinity of the Project Area. BUOW inhabit open grassland containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Habitat both within and bordering the Project Area, supports grassland habitat. Therefore, there is potential for BUOW to occupy or colonize the Project site.

Specific impact: Potentially significant direct impacts associated with Project construction include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). Therefore, ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)
To evaluate potential impacts to burrowing owl associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 18: BUOW Surveys

CDFW recommends reassessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993) and CDFW's *Staff Report on Burrowing Owl Mitigation*" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable. In addition, CDFW advises that surveys include a 500-foot buffer around the Project Area.

Recommended Mitigation Measure 19: BUOW Avoidance

Should a BUOW be detected, CDFW recommends no-disturbance buffers, as outlined in the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Recommended Mitigation Measure 20: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the

potentially significant impact of evicting BUOW. Because BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

COMMENT 6: Western spadefoot

Issue: Western spadefoot are known to occur both within and in the vicinity of the Project Area (CDFW 2019). Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Review of aerial imagery indicates that the Project Area is surrounded by and has the potential to support these requisite habitat elements.

Specific impact: Without appropriate avoidance and minimization measures for western spadefoot, potentially significant impacts associated with ground disturbance include impacts to breeding pools and burrow abandonment which may result in reduced health or vigor of eggs and/or young and direct mortality of individuals.

Evidence impact is potentially significant: Habitat loss and fragmentation resulting from development is the primary threat to western spadefoot (Thomson et al. 2016). The Project Area is within the range of western spadefoot and has suitable habitat (i.e. seasonal wetlands, grasslands interspersed with burrows). As a result, ground-disturbing activities associated with development of the Project Area have the potential to significantly impact local populations of this species.

Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential impacts to western spadefoot associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 21: Western Spadefoot Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its immediate vicinity contains suitable habitat for western spadefoot.

Recommended Mitigation Measure 22: Western Spadefoot Surveys

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused pre-construction surveys for western spadefoot and their requisite habitat

features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 23: Western Spadefoot Avoidance

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows and breeding ponds. If CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends that construction cease and that CDFW be contacted to discuss a relocation plan for CRLF with relocation conducted by a qualified biologist, holding a Scientific Collecting Permit for the species.

COMMENT 7: Special-Status Plant Species

Issue: San Joaquin spearscale and western Heermann's buckwheat are known to occur on and in the vicinity Project Area (CDFW 2019). These species are threatened by hydrological alterations, development, and non-native plants and many occurrences have been extirpated (CNPS 2019). Therefore, grading and development associated with the Project has the potential to impact the species mentioned above.

Specific impact: Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: The species listed above are narrowly distributed endemic species considered moderately threatened in California. These species are threatened with habitat loss and fragmentation resulting from development, vehicle and foot traffic, and non-native plant species (CNPS 2019). The Project has potential to result in these impacts and therefore, has the potential to significantly impact populations of the species mentioned above.

Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

Recommended Mitigation Measure 24: Focused Surveys

CDFW recommends that the Project Area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Recommended Mitigation Measure 25: Special-Status Plant Avoidance

CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 26: Special-Status Plant Take Authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through issuance of an ITP by CDFW is necessary to comply with Fish and Game Code.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 8: Lake and Streambed Alteration

Issue: The Project Area's northeast corner includes an ephemeral blue-line stream. This feature may be subject to CDFW's lake and streambed alteration regulatory authority, pursuant Fish & Game Code § 1600 et seq.

Specific impact: Work within stream channels has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality.

Evidence impact is potentially significant:

Lake and Streambed Alteration

Activities within streams are subject to CDFW's lake and streambed alteration regulatory authority. Construction activities within stream features have the potential to impact downstream waters. Although the stream feature within the Project Area may be only intermittently wetted, recent studies have shown that biodiversity and habitat values of dryland streams are considerably higher than in the adjacent uplands, transporting and delivering water, and providing linear habitat connectivity and refuge, and concentrating seeds, organic matter and sediment.

Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of stream systems such as these can have significant physical, biological, and chemical impacts that can extend into the adjacent uplands adversely effecting not only the fish and wildlife species dependent on the stream itself, but also the flora and fauna dependent on the adjacent upland habitat for feeding, reproduction, and shelter.

Water Diversion

Water diversions can impact flow regimes. Prolonged low flows can cause streams to become degraded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic species including fish that utilize floodplains for nursery grounds. Prolonged low flows can also increase mortality for species that rely on specific flow regimes, such as endangered salmonids (Moyle 2002). Amphibians can also be sensitive to decreased flows. Kupferberg et al. (2012) reported that low flows were strongly correlated with early life stage mortality and decreased adult densities of California red-legged frogs, a species of special concern in California, and one with potential to occur in the Project Area.

Recommended Potentially Feasible Mitigation Measure(s)

Recommended Mitigation Measure 27: Stream and Wetland Mapping, and Lake and Streambed Alteration

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams (including any floodplain) and wetlands within and adjacent to the Project Area. Please note that, while there is overlap, State and Federal definitions of wetlands as well as what activities require Notification pursuant to Fish and Game Code § 1602 differ. Therefore, it is advised that the wetland delineation identify both State and Federal wetlands in the Project Area as well as what activities may require

Notification to comply with Fish and Game Code. Fish and Game Code § 2785 (g) defines wetlands; further, § 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from the U.S. Army Corps of Engineers and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with any Project site evaluations.

Recommended Mitigation Measure 28: Notification of Lake or Streambed Alteration

Fish & Game Code §1600 et seq. 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 (including the removal of riparian vegetation): (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. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. For additional information on Notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

II. Editorial Comments and/or Suggestions

Nesting Birds: CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the project's applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral

changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CTS and CRLF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS, in order to comply with FESA, is advised well in advance of any ground disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 (CNDDB). The CNNDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project will impact fish and/or wildlife, an assessment of 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 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 Project to assist San Benito County Resource Management Agency in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (https://www.wildlife.ca.gov/Conservation/Survey-Protocols). Questions regarding this letter or further coordination should be directed to Renée Robison, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 274, or by electronic email at Renee.Robison@wildlife.ca.gov.

Sincerely,

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Regional Manager

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