



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 14, 2019

Governor's Office of Planning & Research

MAR 14 2019

STATE CLEARINGHOUSE

Ms. Alexis Morris
City of Antioch
200 H Street
Antioch, CA 94503

Dear Ms. Morris:

Subject: Acorn Business Park Project, Draft Mitigated Negative Declaration,
SCH #2019029069, City of Antioch, Contra Costa County

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Initial Study/Mitigated Negative Declaration (draft IS/MND) for the proposed Acorn Business Park Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the draft IS/MND to inform the City of Antioch (City), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) 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 a California Endangered Species Act (CESA) Incidental take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA 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 (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, 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 potential significant modification to the Project and mitigation measures may be required to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the 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, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency

0000000000

0000000000

Ms. Alexis Morris
City of Antioch
March 14, 2019
Page 2

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 Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification (Notification), pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourse with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document of the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Acorn Business Park Project

Objective: Obtain entitlements to allow for the development of the Acorn Business Park Project. The business park could include a range of uses such as hotel, commercial/retail, office, and self-storage facilities. The applicant is proposing to construct the self-storage facility upon approval of the proposed Project by the City but will seek to market the remainder of the Project for future construction by a separate developer(s).

Location: The Project site is located 0.15 miles west of State Route 160 at the northwest corner of East 18th Street and Drive-In Way in the City of Antioch, Contra Costa County, California, Assessor Parcel Number 051-052-112 and 051-052-113.

Timeframe: unknown

Description: The Project proposes to subdivide a currently undeveloped 19.75-acre site into 12 lots from the existing two parcels and construct a business park divided into 3 subsections. Subsection B, consisting of 5.44 acres, would be developed into a self-storage facility by the applicant. The remaining Subsections A and C, at 3.79 and 10.5 acres respectively, would be marketed for future construction by a separate developer(s).

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations 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.

Comment 1: The draft IS/MND does not mitigate biological impacts to a level of less-than-significant.

Ms. Alexis Morris
City of Antioch
March 14, 2019
Page 3

Comment 1a: Biological Resources Assessment lacks impact analysis to Antioch Dunes-endemic species.

Designated critical habitat for three endangered species endemic to Antioch Dunes, federally-endangered Lange's metalmark butterfly (*Apodemis mormo langei*), state and federally endangered Antioch Dunes evening-primrose (*Oenothera deltoids* ssp. *howellii*), and state and federally endangered Contra Costa wallflower (*Erysimum capitatum*), is located less than half a mile to the northwest of the Project site. The Biological Resource Assessment (BRA) lacks an analysis of potential occurrence on the Project site. Additionally, there are recent (2012) California Natural Diversity Database (CNDDDB) records of these species outside the designated critical habitat and within less than 0.3 miles of the Project site. Exhibit 5 of the BRA illustrates the Natural Resources Conservation Service soils map soil type of the Project site is identical to and within the same alluvia fan as the soil within the designated critical habitat and has complete connectivity and no soil type aberration from what exists within the designated critical habitat. Additional species known to occur within the habitat associated with the Antioch Dunes critical habitat include, but are not limited to, Northern California legless lizard (*Anniella pulchra*), Antioch Dunes buckwheat (*Eriogonum nudum* var. *psychicola*), Antioch Dunes anthicid beetle (*Anthicus antiochensis*), and redheaded sphecid wasp (*Eucerceris rufficeps*), all species not included in the BRA's analysis. CDFW recommends inclusion of the suite of Antioch Dunes special-status species in an updated impact analysis section in a revised draft IS/MND.

If impacts to protected species are identified and cannot be fully avoided, then CDFW recommends the Project obtain take coverage through an ITP issued by CDFW.

Comment 1b: Exclusion of recent detections of special-status plants from CNDDDB indicate a flaw with survey techniques.

The draft IS/MND impacts analysis on special-status plants is faulty in multiple ways. The analysis occurred after a one-day site visit on June 10, 2018, where linear transects, presence/absence surveys, and visual encounters were conducted. Line or 'strip' transect surveys are used for population estimate studies and monitoring plant abundance and are not appropriate for conducting a botanical inventory. Reference sites are not discussed, which is an important shortcoming given the proximity of the Antioch Dunes critical habitat and the identical soil type at the Project site. Justification for conducting the site visit during June compared to the times of year when special-status plants are in bloom and easier to detect was not provided in the draft IS/MND. A vegetation community map was not included with the BRA, and qualifications of field personnel was not discussed. Finally, there is insufficient information to verify whether the one-day site visit and surveys were performed according to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009). The CDFW protocols state the following regarding survey methodology:

"When special-status plants are known to occur in the type(s) of habitat present in the project area, observe reference sites (nearby accessible occurrences of the plants) to determine whether those species are identifiable at the time of the survey and to obtain a visual image of the target species, associated habitat, and associated natural community."

The CDFW protocols state the following regarding negative findings:

“Adverse conditions may prevent investigators from determining the presence of, or accurately identifying, some species in potential habitat of target species. Disease, drought, predation, or herbivory may preclude the presence or identification of target species in any given year. Discuss such conditions in the report. The failure to locate a known special status plant occurrence during one field season does not constitute evidence that this plant occurrence no longer exists at this location, particularly if adverse conditions are present. For example, surveys over a number of years may be necessary if the species is an annual plant having a persistent, long-lived seed bank and is known not to germinate every year”

The lack of discussion or justification in the analysis for the exclusion of special-status plants known to occur within the vicinity of the Project is not consistent with the above statements. CDFW recommends that the special-status plant species impacts analysis in the draft IS/MND be revised to include at least one to two additional years of focused special-status plant surveys conducted according to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009), and using reference sites to verify the blooming period for species that have been known to historically occupy the Project site habitat type and those that have the potential to occur. In addition, CDFW recommends that the following botanical reporting requirements in the CDFW protocols be included in a revised draft IS/MND impacts analysis:

- 1) A vegetation map of the Project areas using Survey of California Vegetation Classification and Mapping Standards;
- 2) Names and qualifications of botanical field surveyor(s);
- 3) Total person-hours spent conducting surveys;
- 4) An updated list of special-status plants and sensitive natural communities that includes the Antioch Dunes suite of species;
- 5) Description of reference site(s) visited and the phenological development of special-status plants at those reference sites;
- 6) Detailed data and maps for all special-status plants and sensitive natural communities detected;
- 7) A discussion of the potential for a false negative botanical field survey;
- 8) A discussion of how climatic conditions may have affected the botanical field survey results;
- 9) A discussion of how the timing of botanical field surveys may affect the comprehensiveness of botanical field surveys;
- 10) Any use of existing botanical field surveys and a discussion of their applicability to the Project;
- 11) The deposition locations of voucher specimens, if collected;
- 12) A list of references used, including persons contacted and herbaria visited;
- 13) A discussion of the significance of special-status plant populations in the Project area considering nearby populations and total range and distribution;
- 14) A discussion of the significance of sensitive natural communities in the Project area considering nearby occurrences and natural community distribution;



- 15) A discussion of Project related direct, indirect, and cumulative impacts to special-status plants and sensitive natural communities;
- 16) A discussion of the degree and immediacy of all threats to special-status plants, and sensitive natural communities, including those from invasive species;
- 17) A discussion of the degree of impact, if any, of the Project on unoccupied, potential habitat for special-status plants;
- 18) Recommended measures to avoid, minimize, or mitigate impacts to special-status plants and sensitive natural communities.

If the draft IS/MND is not revised to include the above items, then the draft IS/MND should operate under the assumption that the entire Project site is occupied by all special-status plant species that both historically occurred on or adjacent to the site and with the potential to occur on-site.

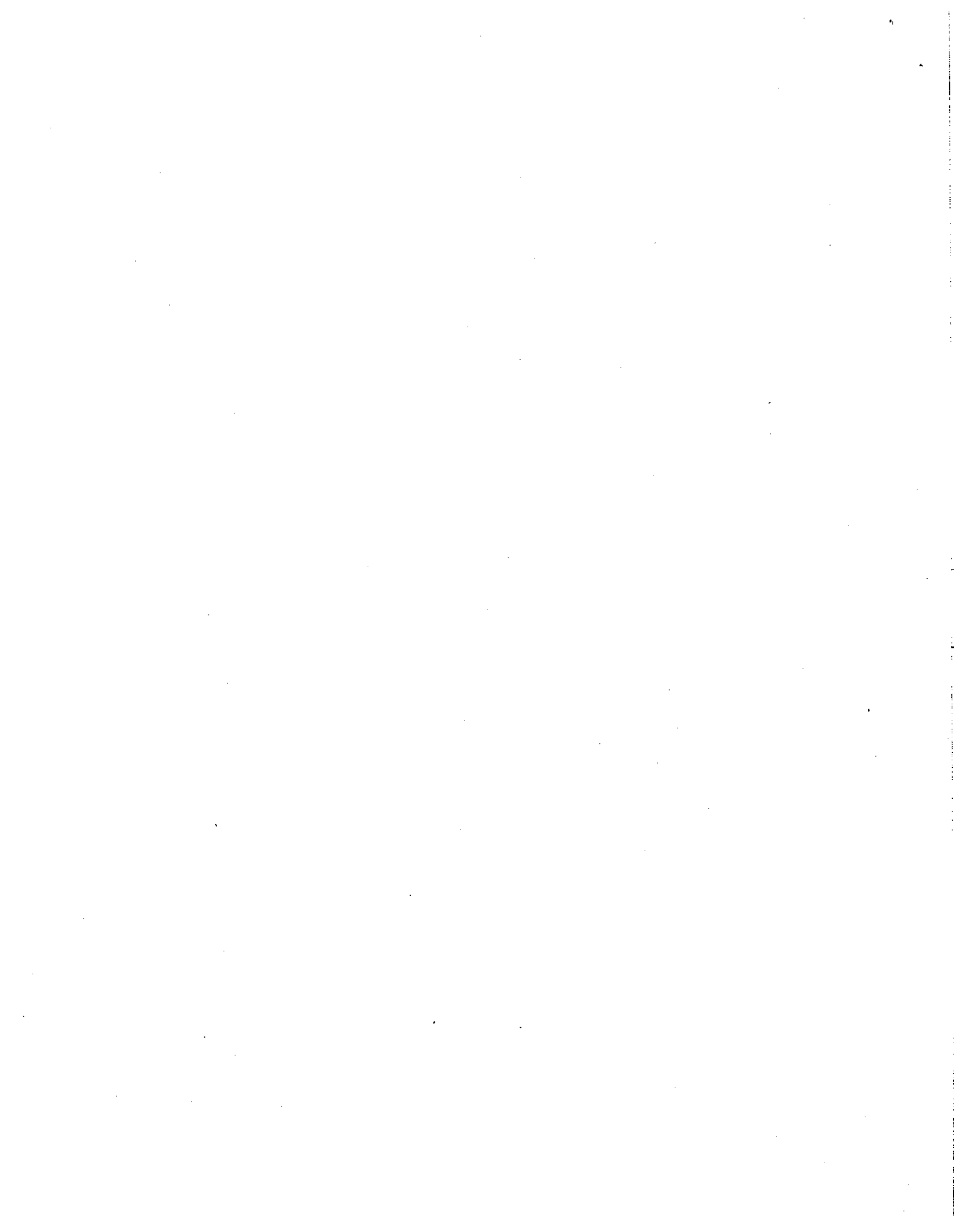
Comment 1c: Draft IS/MND does not mitigate for impacts to burrowing owl and Swainson's hawk habitats to a level of less-than-significant.

The draft IS/MND recognizes that burrowing owl and Swainson's hawks have the potential to occur within the vicinity of the proposed Project. The Project has the potential to adversely impact both species through permanent and temporary losses of nesting and foraging habitat. The Project may also result in additional impacts to burrowing owl through nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates) and breeding and foraging disturbance through Project activities. To ensure these impacts are mitigated to a level of less-than-significant, CDFW recommends the draft IS/MND require compensatory mitigation for loss of habitats through specifying compensatory mitigation for loss of habitats at a minimum of a 1:1 mitigation ratio (conservation to loss) for permanent impacts to Swainson's hawk foraging habitat, a 3:1 ratio for permanent impacts to burrowing owl habitats, and a 1:1 ratio for temporary impacts. Conservation lands should be placed under a conservation easement with CDFW listed as a third-party beneficiary and an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity. Additionally, a long-term management plan should be prepared and implemented by a land manager. The Grantee of the conservation easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

In addition, protocol level surveys and nest buffers for Swainson's hawk nests should be required to avoid Project impacts. To achieve this, the following mitigation measure should be incorporated into the draft IS/MND:

"Pre-Construction Surveys for Swainson's Hawk: If Project Activities are to be conducted between March 1 and July 31, a focused survey for active Swainson's hawk nests shall be conducted by a Qualified Biologist within seven (7) days prior to the beginning of Project Activities. If a lapse in Project Activities of seven (7) days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. The following criteria for shall be met:

- *Surveys shall be conducted in proposed work areas, staging, and storage areas.*



- *Surveys shall be conducted within 0.5-mile of the Project Site.*
- *Nest surveys for Swainson's hawks shall be conducted in a manner consistent with the recommended timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline> located at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>*

If an active nest is identified, a 0.5-mile buffer in non-urban settings or a 0.25-mile buffer in urban settings shall be maintained around the nest until the young fledge. If any active Swainson's hawk nests are found within 0.5 miles of the Project site, CDFW shall immediately be contacted and additional measures may be required for Project activities"

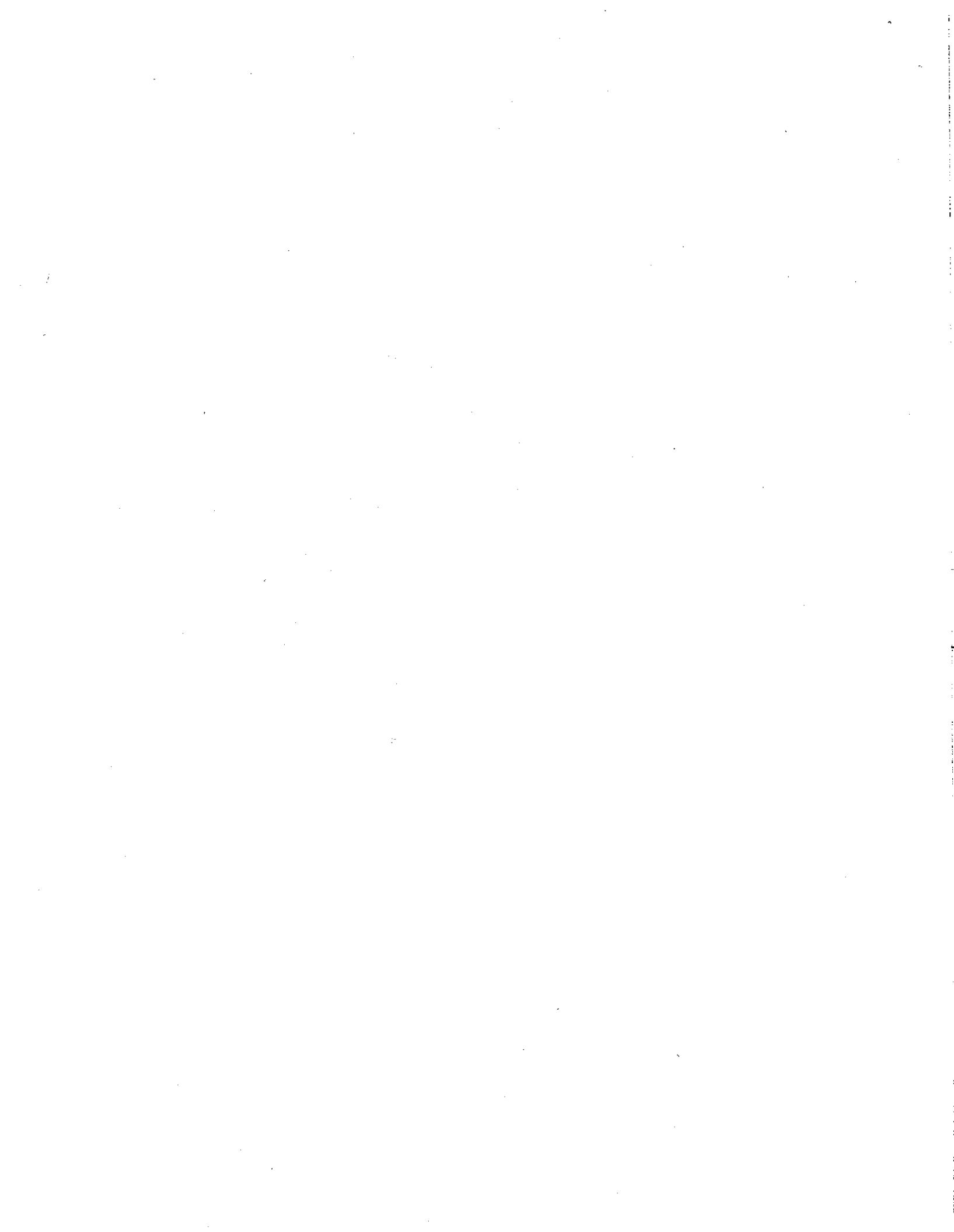
The draft IS/MND does not offer compensatory mitigation for the "future" construction of Subsection A or Subsection C with the rationale that these are proposed to be constructed at a future date with yet-to-be-determined developers. To reduce potentially significant impacts from these phases of the Project, CDFW recommends the draft IS/MND specify that compensatory mitigation for special-status species' habitats shall be required using the above mitigation ratios through land lease or purchase, permitting, or other actionable item by the Lead Agency.

Comment 1d: Mitigation Measure BIO-1 insufficient to mitigate impacts to nesting bird to less-than-significant

The Project may adversely impact nesting birds through direct take by development, and indirect take by resulting in nest abandonment, loss of young and reduced health and vigor of chicks (resulting in reduced survival rates), temporary loss of nesting habitat, and breeding and foraging disturbance through Project activities. To ensure impacts to nesting birds are mitigated to a level of less-than-significant, CDFW recommends that Mitigation Measure BIO-1 be revised to include the addition of the following specific and enforceable mitigation measure in the event nesting birds are detected:

"Nesting Bird Assessment and Avoidance: Prior to the initiation of construction, including ground disturbing activities scheduled to occur between February 1 and September 1, a Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project site. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until species-specific buffers have been established in consultation with CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the Qualified



Biologist. Active nests found inside the limits of species-specific buffer zones or nests within the vicinity of the Project site showing signs of distress from Project activity as determined by the Qualified Biologist shall be monitored daily during the duration of the Project for changes in bird behavior. Buffer areas of active nests within the vicinity of the Project site showing signs of distress or disruptions to nesting behaviors from Project activity, as determined by the Qualified Biologist, shall have their buffers immediately adjusted by the Qualified Biologist until no further interruptions to breeding behavior are detectable.

The Permittee or representatives of the Permittee shall not disturb or destroy the nests or eggs of fully protected species or of other birds as per Fish and Game Code Section 3503."

Comment 2: CDFW recommends additional mitigation measures be included in draft IS/MND.

CDFW also recommends the following avoidance and minimization measures to be included in the draft IS/MND:

"Open Pipes Restriction: All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.

Fence and Sign Post Restriction: Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.

Water Pollution: Permittee and all contractors shall be subject to the water pollution regulations found in Fish and Game Code Sections 5650 and 12015.

Spill Contingency Plan Required: Permittee shall submit for approval an oil/toxic materials spill contingency plan to CDFW prior to commencement of operations. The plan shall identify the location of containment and abatement materials on-site and the notification and cleanup procedures to be followed by Permittee in the event of a spill.

Spill Cleanup: Permittee shall begin the cleanup of all spills immediately. CDFW shall be notified immediately by the Permittee of any spills and shall be consulted regarding cleanup procedures. The Permittee shall have all spill clean-up equipment on-site during construction."

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

Ms. Alexis Morris
City of Antioch
March 14, 2019
Page 8

Project surveys to the CNDDDB following the protocol outlined at <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online, or emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the revisions to mitigation measures, described above, be incorporated as enforceable conditions into the revised draft IS/MND. CDFW appreciates the opportunity to comment on the draft IS/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 Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or Jeanette.Griffin@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

ec: State Clearinghouse

