

DEPARTMENT OF WATER RESOURCES

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Governor's Office of Planning & Research

**May 10 2021**

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STATE CLEARINGHOUSE

Mr. Joshua McMurray
Community and Economic Development Director
City of Oakley
3231 Main Street
Oakley, CA 94561
mcmurray@ci.oakley.ca.us

SCH# 2021040251, Notice of Intent to Adopt a Mitigation Negative Declaration and Draft Initial Study/Mitigation Negative Declaration (IS/MND) for the Burroughs Project in Contra Costa County

Dear Mr. McMurray:

The California Department of Water Resources' (DWR) Environmental Compliance and Evaluations Branch (ECEB) staff have reviewed the City of Oakley's (Lead Agency) IS/MND for the proposed Burroughs Project (the Project). ECEB staff have the following comments:

Project Description

The proposed Project would consist of 208 single-family residential lots ranging in size from 3,150 square feet (sf) to 18,130 sf. Additionally, the proposed project would include seven new public roads (A – G Street), widening of East Cypress Road, establishment of a 75-foot stream setback, and a public trail characterized by trees, shrubs, groundcover, and bike racks. In addition, frontage improvements associated with the widening of East Cypress Road would be designed and constructed as part of the City of Oakley Capital Improvement Program (CIP).

The proposed Project is on land directly adjacent to Dutch Slough, an area in which DWR is engaged in a large-scale restoration project that has already gone through CEQA compliance (SCH 2021040251).

Specific CommentsIV. Biological ResourcesSpecial-Status Wildlife

The overall coverage of special-status wildlife appears to be insufficient for CEQA compliance purposes. The IS/MND refers to seven special-status species covered under the East Contra Costa Habitat Conservation Plan (ECCHCP), but only four species are

listed or discussed (IS/MND p. 39). The other three species should be listed and discussed. This section should also include a discussion of all potential special-status species in the area, both those covered by the ECCHCP and those not covered by the ECCHCP. These species include, but are not limited to: California legless lizard, Western pond turtle, and vernal pool invertebrates.

For example, Western pond turtles have been found in the adjacent Dutch Slough, is present in waterways in the vicinity, and have the potential to nest within the project boundaries, yet is not mentioned at all. These discussions should include impact conclusions and, if necessary, what mitigation measures will be used to ensure that the impact will be less than significant.

In addition to Swainson's Hawk and Golden Eagle, the IS/MND should also discuss other nesting birds covered under the Migratory Bird Treaty Act (16 U.S.C. 703–712, MBTA) and California Fish and Game Code sections 3503, 3503.5 and 3513 that are not discussed in the Special-Status Wildlife section (IS/MND p. 40). The list of migratory bird species protected under the MBTA is set forth at 50 C.F.R. § 10.13.

It is unclear exactly what resources were used by the Lead Agency to determine the potential for a species to occur within or adjacent to the project footprint. There is no indication of what databases were searched; please include all relevant information related to the data and surveys used for species determinations within the Biological Resources section, and please ensure that conclusions made are based on data and not assumptions. Several of the justifications made in the special-species wildlife portion of the IS/MND are based on limited surveys done during a drought year, which may not be sufficiently indicative of normal conditions in which species would occur. Using data from a single, drought-stricken year severely limits analysis of potentially suitable aquatic - habitat that would hold water during non-drought conditions, and such non-drought conditions would potentially serve as viable habitat for several species within the proposed Project footprint. Yet, this single year of drought-impacted data was used to discount the potential for said species to use these aquatic habitats. Consequently, additional surveys of the seasonal wetland and upland habitat, including mapping of burrows, should be incorporated to provide a better representation of the habitat and the potential species that may occur in the area during normal conditions.

Western Burrowing Owl

The Western burrowing owl analysis fails to adequately address cumulative impacts. The Lead Agency acknowledges that Western burrowing owls are found in the vicinity, and discusses the available habitat surrounding the proposed Project (IS/MND p. 39). However, much of the adjacent habitat formerly occupied by Western burrowing owls has been modified for uses that are not compatible with Western burrowing owl use. Cumulative loss of this habitat should be addressed in this section, as several of the past occurrences in databases such as the CNDDDB are now likely extirpated as the habitat is

lost. Concurrent projects that are on-going are also reducing the availability of habitat for this species, including residential development to the west and east of the proposed Project site and restoration efforts at Dutch Slough.

Swainson's Hawk

The Swainson's Hawk analysis may lack sufficient survey data to adequately analyze the proposed Project's impacts on the species. The section titled "Swainson's Hawk" discusses conducting pre-construction surveys, but does not include discussion of any other surveys to be completed prior to the removal of potential nesting trees or prior to construction of the proposed Project which will reduce available foraging habitat for Swainson's hawks in the area (IS/MND p. 40). If additional surveys are planned, reference to those should be included in this discussion. Also, applicable mitigation measures to offset impacts to nesting birds and loss of foraging habitat should be discussed.

Special-Status Wildlife Mitigation Measures

The mitigation measures proposed are limited to only addressing the four species discussed in the IS/MND. The mitigation measures should be expanded to include measures for other species that should be discussed in the IS/MND, including but not limited to: nesting birds and raptors, special status bats, vernal pool invertebrates, the California legless lizard, and the Western pond turtle.

The mitigation measures should include a Worker's Environmental Awareness Training that covers all of the species with a potential to occur within and adjacent to the proposed Project's footprint. This training should include efforts comparable to what the proposed Project incorporated in Mitigation Measure IV-11, Paragraph five, for Giant Garter Snakes (IS/MND p. 46), but not limited solely to Giant Garter Snakes.

Please include an additional mitigation measure for Western burrowing owl that states that the proposed Project will comply with the Burrowing owl work group guidelines when conducting surveys available at:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842&inline>.

Other General Comments

There is no discussion in the IS/MND that the proposed Project will take place immediately adjacent to a large habitat restoration project. There is potential for short term impacts to the adjacent Dutch Slough Tidal Marsh Restoration Project due to construction related noise, dust, and potential to displace wildlife onto the neighboring site. Also, the long-term impacts of increased human population size that could lead to both direct and indirect impacts on the wildlife habitat should be evaluated. These

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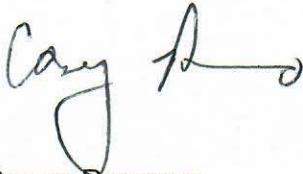
impacts include but are not limited to vandalism, illegal hunting, trash or illegal dumping, traffic, noise, light, and hazardous materials. Please include an evaluation of the project's potential to impact the adjacent habitat project and proposed avoidance and mitigation measures to lessen any affects.

Closing Comments

Please provide DWR with a copy of any project documents when available by e-mail to:

Mary Xiong
Environmental Compliance and Evaluations Branch
Division of Environmental Services
Department of Water Resources
mary.xiong@water.ca.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Casey Pancaro". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Casey Pancaro
Staff Attorney