

# Silver Eagle Road at Western Subdivision Project Initial Study/Mitigated Negative Declaration

## Errata Sheet January 2025

### Introduction

This Errata presents, in ~~strike-through~~ and double-underline format, the revisions to the Silver Eagle Road at Western Subdivision Project Initial Study/Mitigated Negative Declaration (IS/MND). The revisions to the IS/MND reflected in this Errata do not affect the adequacy of the previous environmental analysis contained in the Silver Eagle Road at Western Subdivision Project IS/MND. Because the changes presented below would not result in any new significant impacts or increase in impact significance from what was identified in the IS/MND, recirculation of the Silver Eagle Road at Western Subdivision Project IS/MND is not required.

### Changes to IS/MND

Page 35 of the IS/MND is hereby revised as follows:

The CDFW has ~~designated~~ identified burrowing owl as a ~~Species of Special Concern~~ candidate species for listing under the California Endangered Species Act (CESA), which temporarily affords the species protections, such as prohibitions against “take” without permit authorization while CDFW conducts a review to confirm whether listing is warranted. According to the BRA, the species typically inhabits dry open rolling hills, grasslands, desert floors, and open bare ground with gullies and arroyos. Within such habitats, burrowing owls uses burrows created by fossorial mammals, most notably the California ground squirrel (*Otospermophilus beecheyi*), but may also use urban structures including culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement. Burrowing owl breeding season extends from February 1 to August 31.

Pages 37 and 38 of the IS/MND are hereby revised as follows:

#### Burrowing Owl

*IV-3. If construction activities commence between February 15 and ~~September 4~~ August 31, a pre-construction survey for nesting burrowing owls within the project site and a 500 feet buffer surrounding the site shall be conducted within 15 days of project construction. The pre-construction survey shall be conducted by a qualified biologist consistent with the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation. A written summary of the survey results shall be submitted to the City of Sacramento Community Development Department before any construction permits are issued. If nesting burrowing owls are not found, then further mitigation measures are not necessary.*

If an active burrow (i.e., a burrow occupied by more than one adult burrowing owl, and/or if juvenile owls are observed) is found within 250 feet of a construction area, construction shall cease within 250 feet of the nest burrow until the qualified biologist determines that the young have fledged or that the nesting attempt has failed. the project applicant shall implement the following measures:

- a. Avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (including individuals or family groups foraging on or near the site following fledging); and
- b. Establish a minimum 500-foot non-disturbance buffer zone around nests, unless otherwise approved by the City in consultation with CDFW. The buffer zone shall be flagged or otherwise clearly marked to prevent project-related activities from occurring within the buffer zone. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer shall be increased such that project construction activities occur far enough from the nest that the bird(s) cease displaying such agitated behavior. Construction shall only occur within the 500-foot buffer zone during the breeding season if a qualified biologist monitors the nest and determines that the proposed activities would not disturb nesting behavior; that the birds have not begun egg-laying and incubation; or that the juveniles from the occupied burrows have fledged and moved off-site. Any modifications to the aforementioned buffer shall be approved by the City in consultation with CDFW. The buffer reduction request shall include relevant information and/or propose new measures to justify the buffer reduction.

If any nesting burrowing owls are found during the pre-construction survey, mitigation Mitigation for the permanent loss of burrowing owl foraging habitat (all areas of suitable habitat within 250 feet of an active burrow) shall be preserved at a 1:1 ratio. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. The In addition, the mitigation provided shall be consistent with recommendations in the CDFW Staff Report on Burrowing Owl Mitigation.

IV-4.

If project construction commences during the non-nesting season (September 1 through February 14 January 31), a pre-construction survey for burrows or debris that represent suitable nesting habitat for burrowing owls shall be conducted within areas of proposed ground disturbance, as well as the areas directly adjacent, within 15 days of project construction. If burrowing owls are not found, then further mitigation measures are not necessary. If overwintering owls are located and cannot be avoided, the project applicant may exclude any burrowing

~~owls and collapse any burrows or remove the debris shall establish a minimum 160-foot (50-meter) buffer zone around active burrows. The buffer zone shall be flagged or otherwise clearly marked. CDFW-approved measures, such as visual screens, may be used to further reduce the buffer, provided a qualified biologist confirms that such measures would not cause agitated behavior. Exclusion and burrow collapse shall be conducted in accordance with the CDFW Staff Report on Burrowing Owl Mitigation, which requires a Burrowing Owl Exclusion Plan to be developed and approved by CDFW prior to burrow exclusion and/or closure. A written summary of the survey results shall be submitted to the City of Sacramento Community Development Department before any construction permits are issued.~~

Burrow exclusion shall only be conducted during the non-breeding season for active burrows located within the project site boundaries, and in limited instances within a buffer zone around the project site, as determined by the City in consultation with CDFW after all avoidance and minimization measures have been exhausted. The project applicant shall acquire an Incidental Take Permit (ITP) from CDFW prior to exclusion. Following the ITP, any exclusion and burrow collapse activities shall be conducted in accordance with the CDFW Staff Report on Burrowing Owl Mitigation. The foregoing guidance requires a Burrowing Owl Exclusion Plan to be developed and approved by a qualified biologist in consultation with CDFW for the City's review and approval prior to burrow exclusion and/or closure.

#### Nesting Raptors and Other Migratory Birds

IV-5.

Within three days prior to commencement of project construction activities, a pre-construction nesting bird survey shall be conducted by a qualified biologist within the project site and within a 500-foot radius of the site for migratory birds and a 0.5-mile radius for raptors. If there is a break in construction activity of more than ~~two weeks~~ seven days, then subsequent surveys shall be conducted. In addition, a final pre-construction survey shall be conducted within seven calendar days prior to the start of vegetation clearing or other ground-disturbing activities. A written summary of all survey results shall be submitted to the City of Sacramento Community Development Department before any construction permits are issued.

If nesting raptors and other migratory birds are not found, then further mitigation measures are not necessary. If active raptor nests are found, construction activities shall not occur within 500 feet of the nest (or an alternative distance as determined by a qualified biologist) until the young have fledged, as determined by a qualified biologist. If the raptor species are protected, further consultation with CDFW shall occur prior to the removal of any nests or nesting trees. Even outside of the nesting season, if known raptor nest trees are removed, replacement native trees shall be planted at a ratio of 3:1 at or near the project site. If active songbird nests are found, a 100-foot non-disturbance buffer shall be established or an alternative distance as determined by a qualified biologist. The foregoing disturbance buffers may be increased or

*reduced ~~if a smaller buffer is proposed~~ as determined by the qualified biologist and approved by the City, ~~which~~ and must consider the natural history of the nesting bird species, the proposed activity level adjacent to the nest, habituation to existing or ongoing activity, and nest concealment. A qualified biologist shall visit the nest as needed to determine when the young have fledged the nest and are independent of the site, or the nest can be left undisturbed until the end of the nesting season.*

The above modification is for clarification purposes only and does not change the analysis or conclusions of the IS/MND.

## Silver Eagle Road at Western Subdivision Project Responses to Comments Received on the Initial Study/Mitigated Negative Declaration

The Initial Study/Mitigated Negative Declaration (IS/MND) for the Silver Eagle Road at Western Subdivision Project (proposed project) was circulated for public comment from November 18, 2024, to December 19, 2024. Written comments were received as follows:

Date	Commenter
12/10/2024	Harvey Tran, California Department of Fish and Wildlife (CDFW)
12/17/2024	Peter Minkel, Central Valley Regional Water Quality Control Board (RWQCB)

The written comments are attached. The comments are acknowledged by the City and have been considered as part of the project planning and its implementation. The comments received did not identify any new significant effect, increase in severity of an impact identified in the IS/MND, or any significant new information. Thus, recirculation of the IS/MND is not required.

The responses below include responses to each comment letter submitted regarding the proposed project. Where revisions to the IS/MND text are required in response to a comment, new text is double underlined and deleted text is ~~struck through~~.

**Response to Harvey Tran, California Department of Fish and Wildlife, 12/10/2024:** Thank you for participating in the public review process of the IS/MND. In response to the commenter's suggested correction related to the project's description of the protection status of burrowing owl, page 35 of the IS/MND is hereby revised as follows:

The CDFW has ~~designated~~ identified burrowing owl as a ~~Species of Special Concern candidate species for listing under the California Endangered Species Act (CESA), which temporarily affords the species protections, such as prohibitions against "take" without permit authorization while CDFW conducts a review to confirm whether listing is warranted.~~ According to the BRA, the species typically inhabits dry open rolling hills, grasslands, desert floors, and open bare ground with gullies and arroyos. Within such habitats, burrowing owls uses burrows created by fossorial mammals, most notably the California ground squirrel (*Otospermophilus beecheyi*), but may also use urban structures including culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement. Burrowing owl breeding season extends from February 1 to August 31.

In addition, consistent with the commenter's suggested corrections, three mitigation measures on pages 37 and 38 of the IS/MND are hereby revised as follows:

### Burrowing Owl

IV-3. *If construction activities commence between February 15 and ~~September 4~~ August 31, a pre-construction survey for nesting burrowing owls within the project site and a 500 feet buffer surrounding the site shall be conducted within 15 days of project construction. The pre-construction survey shall be conducted by a qualified biologist consistent with the California Department of Fish and Wildlife (CDFW) 2012 Staff Report on Burrowing Owl Mitigation. A written summary of the survey results shall be submitted to the City of Sacramento Community Development Department before any construction permits are issued. If nesting burrowing owls are not found, then further mitigation measures are not necessary.*

~~If an active burrow (i.e., a burrow occupied by more than one adult burrowing owl, and/or if juvenile owls are observed) is found within 250 feet of a construction area, construction shall cease within 250 feet of the nest burrow until the qualified biologist determines that the young have fledged or that the nesting attempt has failed. the project applicant shall implement the following measures:~~

- a. Avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (including individuals or family groups foraging on or near the site following fledging); and
- b. Establish a minimum 500-foot non-disturbance buffer zone around nests, unless otherwise approved by the City in consultation with CDFW. The buffer zone shall be flagged or otherwise clearly marked to prevent project-related activities from occurring within the buffer zone. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer shall be increased such that project construction activities occur far enough from the nest that the bird(s) cease displaying such agitated behavior. Construction shall only occur within the 500-foot buffer zone during the breeding season if a qualified biologist monitors the nest and determines that the proposed activities would not disturb nesting behavior; that the birds have not begun egg-laying and incubation; or that the juveniles from the occupied burrows have fledged and moved off-site. Any modifications to the aforementioned buffer shall be approved by the City in consultation with CDFW. The buffer reduction request shall include relevant information and/or propose new measures to justify the buffer reduction.

~~If any nesting burrowing owls are found during the pre-construction survey, mitigation~~ Mitigation for the permanent loss of burrowing owl foraging habitat (all areas of suitable habitat within 250 feet of an active burrow) shall be preserved at a 43:1 ratio. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. The In addition, the mitigation provided shall be consistent with recommendations in the CDFW Staff Report on Burrowing Owl Mitigation.

IV-4.

~~If project construction commences during the non-nesting season (September 1 through February 14 January 31), a pre-construction survey for burrows or debris that represent suitable nesting habitat for burrowing owls shall be conducted within areas of proposed ground disturbance, as well as the areas directly adjacent, within 15 days of project construction. If burrowing owls are not found, then further mitigation measures are not necessary. If overwintering owls are located and cannot be avoided, the project applicant may exclude any burrowing owls and collapse any burrows or remove the debris shall establish a minimum 160-foot (50-meter) buffer zone around active burrows. The buffer zone shall be flagged or otherwise clearly marked. CDFW-approved measures, such as visual screens, may be used to further reduce the buffer, provided a qualified biologist confirms that such measures would not cause agitated behavior. Exclusion and burrow collapse shall be conducted in accordance with the CDFW Staff Report on Burrowing Owl Mitigation, which requires a~~

~~Burrowing Owl Exclusion Plan to be developed and approved by CDFW prior to burrow exclusion and/or closure.~~ A written summary of the survey results shall be submitted to the City of Sacramento Community Development Department before any construction permits are issued.

Burrow exclusion shall only be conducted during the non-breeding season for active burrows located within the project site boundaries, and in limited instances within a buffer zone around the project site, as determined by the City in consultation with CDFW after all avoidance and minimization measures have been exhausted. The project applicant shall acquire an Incidental Take Permit (ITP) from CDFW prior to exclusion. Following the ITP, any exclusion and burrow collapse activities shall be conducted in accordance with the CDFW Staff Report on Burrowing Owl Mitigation. The foregoing guidance requires a Burrowing Owl Exclusion Plan to be developed and approved by a qualified biologist in consultation with CDFW for the City's review and approval prior to burrow exclusion and/or closure.

### Nesting Raptors and Other Migratory Birds

IV-5. *Within three days prior to commencement of project construction activities, a pre-construction nesting bird survey shall be conducted by a qualified biologist within the project site and within a 500-foot radius of the site for migratory birds and a 0.5-mile radius for raptors. If there is a break in construction activity of more than ~~two weeks~~ seven days, then subsequent surveys shall be conducted. In addition, a final pre-construction survey shall be conducted within seven calendar days prior to the start of vegetation clearing or other ground-disturbing activities. A written summary of all survey results shall be submitted to the City of Sacramento Community Development Department before any construction permits are issued.*

*If nesting raptors and other migratory birds are not found, then further mitigation measures are not necessary. If active raptor nests are found, construction activities shall not occur within 500 feet of the nest (or an alternative distance as determined by a qualified biologist) until the young have fledged, as determined by a qualified biologist. If the raptor species are protected, further consultation with CDFW shall occur prior to the removal of any nests or nesting trees. Even outside of the nesting season, if known raptor nest trees are removed, replacement native trees shall be planted at a ratio of 3:1 at or near the project site. If active songbird nests are found, a 100-foot non-disturbance buffer shall be established or an alternative distance as determined by a qualified biologist. The foregoing disturbance buffers may be increased or reduced if a smaller buffer is proposed as determined by the qualified biologist and approved by the City, ~~which~~ and must consider the natural history of the nesting bird species, the proposed activity level adjacent to the nest, habituation to existing or ongoing activity, and nest concealment. A qualified biologist shall visit the nest as needed to determine when the young have fledged the nest and are independent of the site, or the nest can be left undisturbed until the end of the nesting season.*

**Response to Peter Minkel, Central Valley Regional Water Quality Control Board, 12/17/2024:** Thank you for participating in the public review process of the IS/MND. The comment is a standard comment letter that provides background information regarding applicable regulations and required permits. The comment does not address the adequacy of the IS/MND,

has been noted for the record, and will be forwarded to the decisionmakers as part of their consideration of the proposed project.



**ATTACHMENT A**  
**COMMENT LETTERS**

---

**From:** [Tran, Harvey@Wildlife](mailto:Tran,Harvey@Wildlife)  
**To:** [Ron Bess](mailto:Ron.Bess)  
**Cc:** [Wood, Dylan@Wildlife](mailto:Wood,Dylan@Wildlife); [Tanya Sheva](mailto:Tanya.Sheva); [Kilgour, Morgan@Wildlife](mailto:Kilgour,Morgan@Wildlife); [Wildlife R2 CEQA](#)  
**Subject:** 2024-0385-0000 Silver Eagle Road at Western Subdivision Project ISMND - CDFW CEQA comments  
**Date:** Tuesday, December 10, 2024 3:38:26 PM

---

Good afternoon Ron:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Draft Initial Study/Mitigated Negative Declaration (MND) from the City of Sacramento, for the Silver Eagle Road at Western Subdivision Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

### **CDFW ROLE**

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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 may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration agreement (LSAA) regulatory authority. (Fish & G. 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 & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

### **PROJECT DESCRIPTION SUMMARY**

This proposed Project is located at three vacant, undeveloped parcels totaling approximately 6.67 acres in the City of Sacramento, California in Sacramento County. The Project site is bounded by Silver Eagle Road to the north, Western Avenue to the west, and Ford Road to the south. The Project would involve the development of 41 single-family residential lots. Other site improvements would include construction of road connections from existing streets, installation of utility lines, landscaping improvements, and off-site improvements to the existing sanitary sewer line in Ford Road. Development of the proposed Project would require the approval of a Tentative Subdivision Map to subdivide the project site and a Site Plan and Design Review of the

proposed subdivision layout and project.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City of Sacramento in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the following items be addressed in the draft CEQA document:

### **Comment 1: Special-Status Wildlife, Burrowing Owl, page 35**

The burrowing owl (BUOW) is listed as a State Species of Special Concern in the MND. On October 10, 2024, the California Fish and Game Commission granted the western burrowing owls candidate species protections under CESA. The candidacy designation temporarily affords the BUOW broad CESA protections (including prohibitions against "take" without permit authorization) throughout the entirety of California over the next 12-18 months while CDFW conducts a species status review to confirm whether (and where) listing is warranted and to recommend management and recovery actions. In the event that the Fish and Game Commission does confirm that listing is warranted for the BUOW in the future when the Project's construction phase is to occur and take of BUOW and its nest is unavoidable, the Project proponent will be required to comply with CESA.

To address this comment, CDFW recommends the relevant MND section be modified to note the recent CESA candidate status of the BUOW. If take of BUOW cannot be avoided, then CDFW recommends the Project proponent obtain an ITP and provide suitable mitigation that fully mitigates the Project impacts.

### **Comment 2: Mitigation Measure IV-3 and IV-4 Burrowing Owl, pages 37-38**

The MND states that if overwintering BUOW are located in the Project area and cannot be avoided, the Project proponent may exclude any BUOW and collapse any burrows or remove the debris in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012), which requires a Burrowing Owl Exclusion Plan to be developed and approved by CDFW prior to burrow exclusion and/or closure. The MND further states that mitigation for permanent loss of burrowing owl foraging habitat shall be preserved at a 1:1 ratio and be consistent with the Staff Report. The Staff Report was written before the BUOW became a state candidate species for listing, so the guidance provided on exclusion, translocation, and mitigation should consider the change to the listing status. Exclusion and translocation activities may result in take of the BUOW and will require the Project proponent to fully comply with CESA (e.g., obtain an ITP from CDFW). CDFW also recommends mitigation for permanent impacts to BUOW habitat to be at least a 3:1 ratio.

To address this comment, CDFW recommends that the MND modify the Mitigation Measures to include language to demonstrate that all feasible avoidance measures will be exhausted before allowing for passive relocation as a last resort after obtaining an ITP from CDFW and compensatory mitigation

for permanent impacts to BUOW habitat will be at least a 3:1 ratio for suitable habitat created to suitable habitat lost. Example recommended language is provided below:

“1. Burrowing Owl Surveys. Project proponent shall conduct a burrowing owl survey over all suitable habitat present within Project area. Burrowing owl surveys shall be conducted by a qualified biologist in accordance with the protocol described in the *Staff Report on Burrowing Owl Mitigation* (CDFW, March 7, 2012). If possible, surveys should be conducted during both the breeding (February 1 – August 31) and non-breeding seasons (September 1 – January 31) immediately preceding the planned start of construction activities to ascertain the seasonal residency status of any owls occupying the site. The presence of burrowing owl or their sign anywhere on the site or within a 500-foot accessible radius around the Project site shall be recorded and mapped. Surveys shall disclose all burrows and occurrence of sign of burrowing owl on the Project site and within the 500-foot buffer. Results of the survey shall be submitted to the City.

2. Burrowing Owl Take Avoidance. During the breeding season (February 1 to August 31), surveys shall document whether BUOW are nesting in or within 500 feet of the Project area. During the non-breeding season (September 1 to January 31), surveys shall document whether BUOW are using habitat in or directly adjacent to any area to be disturbed. Survey results shall only be valid for the season (breeding or non-breeding) during which the survey was conducted. If a lapse in Project-related work of fifteen (15) calendar days or longer occurs, another focused survey and consultation with the City and CDFW shall be required before Project work can be reinitiated. If a BUOW or evidence of presence at or near a burrow entrance is found to occur within 500 feet of the Project site, the following measures shall be implemented:

2.1 If BUOW are found during the non-breeding season (approximately September 1 to January 31), the Project applicant shall establish a minimum 160-foot (50-meter) buffer zone around active burrows. The buffer zone shall be flagged or otherwise clearly marked. Measures such as visual screens may be used to further reduce the buffer with CDFW approval and provided a qualified biologist confirms that such measures do not cause agitated behavior.

2.2 If BUOW are found during the breeding season (approximately February 1 to August 31), the Project applicant shall:

a. Avoid all nest sites that could be disturbed by Project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging).

b. Establish a minimum 500-foot non-disturbance buffer zone around nests, unless otherwise approved by the City in writing, in consultation with CDFW. The buffer zone shall be flagged or otherwise clearly marked. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer will be increased such that activities are far enough from the nest so that the bird(s) no longer display this agitated behavior. Construction shall only occur within the 500-foot buffer zone during the breeding season if a qualified biologist monitors the nest and determines that the activities do not disturb nesting behavior, or the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged and moved off site. Any modifications to this buffer shall be approved by the City, in consultation with CDFW prior to its implementation. The buffer reduction request shall include relevant information and/or propose new measures to justify the buffer reduction. The buffer area must be clearly marked to prevent Project-related activities from occurring within the buffer zone.

3. Passive Exclusion of Burrowing Owls. If after all applicable avoidance and minimization measures are implemented and Project proponent needs to passively exclude BUOW, an ITP shall be obtained for the activity and a BUOW exclusion plan shall be developed by a qualified biologist for the City's review and approval, in consultation with CDFW. This plan, including its proposed mitigation, shall be consistent with the most recent available guidelines (e.g., *2012 Staff Report on Burrowing Owl Mitigation*). Burrow exclusion shall only be conducted during the non-breeding season for burrows located in the Project footprint, and in limited instances within a buffer zone around the Project site, as determined by the City in consultation with CDFW after all avoidance and minimization measures have been exhausted.

4. Mitigation for Permanent Impacts. The Project proponent shall mitigate for permanent impacts to nesting, occupied and satellite burrows and BUOW habitat with (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for BUOW nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area (3:1 ratio), and (b) sufficiently large acreage, and presence of fossorial mammals. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors."

The MND states that a pre-construction nesting bird survey shall be performed within 500 feet of the Project area to locate any nesting raptors and other migratory birds and active nests shall be protected with 100-foot buffers (other migratory birds) and 500-foot buffers (raptors) within three days prior to commencement of project construction activities and if there is a break in construction activity of more than two weeks. A larger survey buffer of 0.5-mile for raptors, conducting subsequent surveys no more than seven (7) calendar days if there is a break in construction activity, and performance-based buffers would be more protective for species that rebuild nests quickly.

To address this comment, CDFW recommends the MND describes how the considerations identified below will be implemented and incorporated into the appropriate MND section(s):

1. CDFW recommends Project proponent add specific avoidance and minimization measures to the Mitigation Measures section. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The MND should include appropriate preconstruction surveys for non-listed migratory birds at a minimum radius of 500 feet (for migratory birds) and 0.5-mile (for raptors) around the Project area that can be accessed by Project proponent. The MND should include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is a nest buffer radius which can be determined by having a qualified biologist monitor the active nests and determine the distance that activities will disturb the nesting birds.
2. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. While some birds may tolerate disturbance within 100 or 500 feet of construction activities, other birds may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. It is the Project proponent's responsibility to confirm that avoid take/nest failure with a sufficient buffer.
3. CDFW recommends a final preconstruction survey be required no more than seven (7) calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed in earlier surveys. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1). If a lapse in Project-related work of seven (7) calendar days or longer occurs, the qualified biologist should complete

another focused survey before Project work can be reinitiated. It is the Project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.

4. CDFW recommends that any removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat. If any nests observed are of raptor species that have a special-status, CDFW recommends further consultation prior to any removal of nests.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov).

### **FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and 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**

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [R2CEQA@wildlife.ca.gov](mailto:R2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the MND for the Silver Eagle Road at Western Subdivision Project to assist the City of Sacramento in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this email or further coordination should be directed to Harvey Tran, Senior

Environmental Scientist (Specialist) at (916) 358-4035 or  
[harvey.tran@wildlife.ca.gov](mailto:harvey.tran@wildlife.ca.gov).

Thank you.

**Harvey Tran**

Senior Environmental Scientist (Specialist)  
California Department of Fish and Wildlife  
Region 2 - North Central Region  
1701 Nimbus Road, Rancho Cordova, CA 95670  
Habitat Conservation Program  
(916) 358-4035  
[harvey.tran@wildlife.ca.gov](mailto:harvey.tran@wildlife.ca.gov)





---

## Central Valley Regional Water Quality Control Board

17 December 2024

Ron Bess  
City of Sacramento  
Community Development Department  
300 Richards Boulevard  
Sacramento, CA 95811  
[rbess@cityofsacramento.org](mailto:rbess@cityofsacramento.org)

### **COMMENTS TO REQUEST FOR REVIEW FOR THE MITIGATED NEGATIVE DECLARATION, SILVER EAGLE ROAD AT WESTERN SUBDIVISION PROJECT, SCH#2024110556, SACRAMENTO COUNTY**

Pursuant to the State Clearinghouse's 18 November 2024 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Mitigated Negative Declaration* for the Silver Eagle Road at Western Subdivision Project, located in Sacramento County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

#### **I. Regulatory Setting**

##### **Basin Plan**

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has

adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/)

### **Antidegradation Considerations**

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

[https://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr\\_2018\\_05.pdf](https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf)

In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## **II. Permitting Requirements**

### **Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the

State Water Resources Control Board website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml)

#### **Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

#### **Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:  
[https://www.waterboards.ca.gov/centralvalley/water\\_issues/water\\_quality\\_certification/](https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/)

#### **Waste Discharge Requirements – Discharges to Waters of the State**

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:  
[https://www.waterboards.ca.gov/centralvalley/water\\_issues/waste\\_to\\_surface\\_water/](https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/)

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources

Control Board website at:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2004/wqo/wqo2004-0004.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf)

### **Dewatering Permit**

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board's Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0003.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf)

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:

[https://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/waivers/r5-2018-0085.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf)

### **Limited Threat General NPDES Permit**

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

[https://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2016-0076-01.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf)

### **NPDES Permit**

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/help/permit/>

Silver Eagle Road at Western  
Subdivision Project  
Sacramento County

- 5 -

17 December 2024

If you have questions regarding these comments, please contact me at (916) 464-4684  
or [Peter.Minkel2@waterboards.ca.gov](mailto:Peter.Minkel2@waterboards.ca.gov).



Peter G. Minkel  
Engineering Geologist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,  
Sacramento