Appendix D
Biological Resources

D-1 Regionally Occurring Special-Status Species Table

TABLE D1-1
REGIONALLY OCCURRING SPECIAL-STATUS SPECIES

Special-Status Species	Regulatory Status (Federal/State/ Local/CNPS)	Habitat Requirements	Identification/Survey Period	Potential for Occurrence
Plants				
Adobe navarretia *Navarretia nigelliformis* ssp. *nigelliformis*	--/--/--/4	Annual herb found on clay and sometimes serpentinite within vernally mesic valley and foothill grassland and sometimes vernal pools from 100 to 1,000 meters.	Blooming period: April – June	**No**. The BSMP area occurs outside of the known extant elevation range for this species.
Baker's navarretia *Navarretia leucocephala* ssp. bakeri	--/--/1B	Annual herb found in mesic areas of cismontane woodland, lower montane coniferous forest, meadows and seeps, valley and foothill grassland, and vernal pools from 5 to 1,740 meters.	Blooming period: April – July	**Yes**. The non-native annual grassland and oak woodland provide habitat for this species.
Colusa layia *Layia septentrionalis*	--/--/1B	Annual herb found on sandy, serpentinite substrate in chaparral, cismontane woodland, and valley and foothill grassland from 100 to 1,095 meters.	Blooming period: April – May	**No**. The BSMP area occurs outside of the known extant elevation range for this species.
Dwarf downingia *Downingia pusilla*	--/--/2B	Annual herb found occasionally in mesic areas within valley and foothill grassland and vernal pools from 1 to 445 meters.	Blooms March-May.	**Yes**. The non-native annual grassland provides habitat for this species.
Ferris' milk-vetch *Astragalus tener* var. *ferrisiae*	--/--/1B	Annual herb found in meadows and seeps, which are occasionally vernally mesic, and valley and foothill grassland, which are occasionally on subalkaline flats, from 2 to 75 meters.	Blooming period: April – May	**Yes**. The non-native annual grassland provides habitat for this species.
Hartweg's golden sunburst *Pseudobahia bahiifolia*	FE/CE/1B	Annual herb found on clay, often acidic substrate in cismontane woodland and valley and foothill grassland from 15 to 150 meters.	Blooming period: March - April	**Yes**. The non-native annual grassland and oak woodland provide habitat for this species.
Legenere *Legenere limosa*	--/CT/1B	Annual herb found in vernal pools from 1 to 880 meters.	Blooming period: April-June	**No**. The BSMP area does not provide habitat for this species.
Parry's rough tarplant *Centromadia parryi* ssp. *rudis*	--/--/--/4	Annual herb found on alkaline, vernally mesic, seeps, and sometimes roadsides within vernal pools and valley and foothill grassland from 0 to 100 meters.	Blooming period: May – October	**No**. The BSMP area does not contain soil types required for this species.
Recurved larkspur *Delphinium recurvatum*	--/--/1B	Perennial herb found on alkaline sites within chenopod scrub, cismontane woodland, and valley and foothill grassland from 3 to 790 meters.	Blooming period: March – June	**No**. The BSMP area does not contain soil types required for this species.
Sanford's arrowhead *Sagittar sanfordii*	--; --; --; 1B	Perennial rhizomatous herb found in marshes and swamps in assorted shallow freshwater areas from 0 to 650 meters.	Blooms May-October	**No**. The BSMP area does not provide habitat for this species.

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Plants (cont.)				
Veiny monardella *Monardella venosa*	--/--/1B	Annual herb found on heavy clay within cismontane woodland and valley and foothill grassland from 60 to 410 meters.	Blooming period: May – July	**No**. The BSMP area occurs outside of the known elevation range for this species.
Woolly rose-mallow *Hibiscus lasiocarpos* var. *occidentalis*	--/--/1B	Perennial rhizomatous herb found often in riprap on sides of levees and in freshwater marshes and swamps from 0 to 120 meters.	Blooming period: June – September	**No**. The BSMP area does not provide habitat for this species.
Wright's trichocoronis *Trichocoronis wrightii* var. *wrightii*	--/--/2B	Annual herb found on alkaline substrate in meadows and seeps, marshes and swamps, riparian forest, and vernal pools from 5 to 435 meters.	Blooming period: May - September	**No**. The BSMP area does not provide habitat for this species.
Wildlife				
Invertebrates				
Conservancy fairy shrimp *Branchinecta conservatio*	FE/--/--	Vernal pools and wetlands within valley and foothill grassland.	Wet season: November to April (adults) Dry season: May to October (cysts)	**No**. The BSMP area does not provide habitat for this species.
Valley elderberry longhorn beetle *Desmocerus californicus dimorphus*	FT/-- /--	Host plant is elderberry (*Sambucus* sp.) shrubs usually associated with riparian areas.	Adults emerge in spring until June. Exit holes visible year–round.	**Yes**. While no elderberry shrubs were observed, the survey was only reconnaissance in nature. The BSMP project site may provide habitat for this species.
Vernal pool fairy shrimp *Branchinecta lynchi*	FT/--/--	Found commonly in a small swale earth slump or basalt-flow depression basin with grassy or muddy bottom in unplowed grassland from 10 to 290 meters in the Central Valley and up to 1,159 meters in the South Coast Mountains Region.	Wet season: December to May (adults) Dry season: June to November (cysts)	**No**. The BSMP area does not provide habitat for this species.
Vernal pool tadpole shrimp *Lepidurus packardi*	FE/--/--	Vernal pools, swales, and ephemeral freshwater habitat.	Wet season: November to April (adults) Dry season: May to October (cysts)	**No**. The BSMP area does not provide habitat for this species.

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Wildlife (cont.)				
Amphibians/Reptiles				
California red-legged frog *Rana aurora draytonii*	FT/--/--	Typically found in or within 300 feet of aquatic habitat. Breed in quiet, slow moving streams, ponds, or marsh communities with emergent vegetation or dense riparian vegetation. May disperse up to two miles between suitable aquatic habitat.	Aquatic surveys of breeding sites between January and September. Optimally after April 15.	**No**. The BSMP area does not provide habitat for this species.
Giant garter snake *Thamnophis gigas*	FT/CT/--	Found in agricultural wetlands and other wetlands such as irrigation and drainage canals, low gradient streams, marshes, ponds, sloughs, small lakes, and their associated uplands. Upland habitat should have burrows or other soil crevices suitable for snakes to reside during their dormancy period (November – mid March). This species is known from Sacramento, Sutter, Butte, Colusa, and Glenn counties.	Active outside of dormancy period November – mid March	**No**. The BSMP area does not provide habitat for this species.
Western pond turtle *Emys marmorata*	--/CSC/--	Found in agricultural wetlands and other wetlands such as irrigation and drainage canals, low gradient streams, marshes, ponds, sloughs, small lakes, and their associated uplands.	Active outside of dormancy period November – February	**No**. The BSMP area does not provide habitat for this species.
Fish				
Delta smelt *Hypomesus transpacificus*	FT/CE/--	Found in shallow fresh or brackish water tributary to the Delta ecosystem/spawns in freshwater sloughs and channel edge waters.	Spawn December – July. Present year – round in the Delta.	**No**. The BSMP area does not provide habitat for this species.
Central Valley steelhead *Oncorhynchus mykiss*	FT/--/--	Inhabits rivers and streams tributary to the Sacramento-San Joaquin Rivers and Delta ecosystems.	Spawn in winter and spring.	**No**. The BSMP area does not provide habitat for this species.
Central Valley Chinook salmon – spring run *Oncorhynchu tshawytscha*	FT/--/--	Inhabits rivers and streams tributary to the Sacramento-San Joaquin Rivers.	Spawn in spring.	**No**. The BSMP area does not provide habitat for this species.
Birds				
Bank swallow *Riparia riparia*	--/CT/--	Nests in riverbanks and forages over riparian areas and adjacent uplands.	April – July	**No**. The BSMP area does not provide nesting habitat for this species.

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Wildlife (cont.)				
Birds (cont.)				
Burrowing owl *Athene cunicularia*	--/CSC/-- (burrowing sites and some wintering sites)	Nests in burrows in the ground, often in old ground squirrel burrows or badger, within open dry grassland and desert habitat. The burrows are found in dry, level, open terrain, including prairie, plains, desert, and grassland with low height vegetation for foraging and available perches, such as fences, utility poles, posts, or raised rodent mounds. Found year-round. Breeding season extends from March to August.	Year round/Breeding season surveys between March and August.	**Yes**. The non-native annual grassland and agricultural land provide nesting and wintering habitat for this species.
California black rail *Laterallus jamaicensis coturniculus*	--/CT/--	Saltwater, brackish, and freshwater marshes. This species is known from Alameda, Butte, Contra Costa, Imperial, Los Angeles, Marin, Napa, Nevada, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, and Yuba counties, in California.	Year round	**No**. The BSMP area does not provide nesting habitat for this species.
Greater sandhill crane *Grus canadensis tabida*	--/CT, CFP/--	Breed and forage in open prairies, grasslands, and wetlands. Migrates and resides as a non-breeding species within the Central Valley.	Winter	**No**. The BSMP area occurs outside of the extant breeding season for this species.
Least Bell's vireo *Iereo bellii pusillus*	FE/CE/--	Found in riparian, shrubland/chaparral and dense hardwood woodland communities, often found in dense brush, mesquite, willow-cottonwood forest, streamside thickets and scrub oak in arid regions but often near water. Often nests in shrubs or low trees.	March – September (November)	**No**. The BSMP area does not provide nesting habitat for this species.
Mountain plover *Charadrius montanus*	--/CSC/--	Found in chenopod scrub and valley and foothill grassland. Nests in short-grass prairie sites that have been historically or recently disturbed. Known from Colusa, Fresno, Imperial, Inyo, Kern, Los Angeles, Merced, Riverside, San Benito, San Bernardino, San Luis Obispo, Solano, Stanislaus, Tulare, and Yolo counties.	Wintering: November – February	**No.** The BSMP occurs outside of the known geographic range for this species.
Northern harrier *Circus cyaneus*	--/CSC/--	Forages in meadows, grasslands, and open rangelands; nests on the ground in shrubby vegetation, often near marshes. Nesting extends from March to September.	March – September	**Yes**. The non-native annual grassland provides potential nesting and foraging habitat for this species.

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Wildlife (cont.)				
Birds (cont.)				
Song sparrow *Melospiza melodia*	--/CSC	Nests on the ground and in marshes. Inhabits grassland, chaparral, orchard, woodland, wetland, riparian, ands scrub-shrub.	March – September	**Yes**. The non-native annual grassland, oak woodland, and orchard provide potential nesting and foraging habitat for this species.
Swainson's hawk *Buteo swainsoni*	--/CT/--	Nest peripherally to Valley riparian systems and within lone trees or groves of trees in agricultural fields. Valley oak, Fremont cottonwood, walnut, and large willow trees, ranging in height from 41 to 82 feet, are the most commonly used nest trees in the Central Valley. This species is known from Alameda, Butte, Colusa, Contra Costa, Fresno, Glenn, Inyo, Kern, Kings, Lassen, Los Angeles, Madera, Merced, Modoc, Mono, Napa, Placer, Plumas, Sacramento, San Bernardino, San Joaquin, San Luis Obispo, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tulare, Yolo, and Yuba counties.	March – October	**Yes**. The agricultural land is comprised of orchards, which does not provide suitable foraging habitat. The non-native annual grassland provides foraging habitat for this species. The mature trees within the non-native annual grassland, oak woodland, and developed areas provide nesting habitat for this species.
Tricolored blackbird *Agelaius tricolor*	--/CSC/-- Candidate (nesting colony)	Nests in dense blackberry, cattail, tules, bulrushes, sedges, willow, or wild rose within freshwater marshes. Nests in large colonies (up to thousands of individuals).	Year round	**No**. The BSMP area does not provide nesting habitat for this species.
Western yellow-billed cuckoo *Coccyzus americanus occidentalis*	FT/CE/--	Found in riparian forest (willow-cottonwood dominated).	Breeding: summer	**No**. The BSMP area does not provide nesting habitat for this species.
White-tailed kite *Elanus leucurus*	--/CFP/-- (nesting)	Nests in isolated trees or woodland areas with suitable open foraging habitat.	February 15 – August 31	**Yes**. The trees within the non-native annual grassland, oak woodland, and developed areas provide nesting and foraging habitat for this species.
Mammals				
Marysville California kangaroo rat *Dipodomys californicus eximius*	--/CSC/--	Found in chaparral and valley and foothill grassland. Found on the slopes of Marysville Buttes.	Year round	**No**. The BSMP area occurs outside of the known extant geographic range for this species.
Pallid bat *Antrozous pallidus*	--/CSC/--	Most abundant in oak woodland, savannah, and riparian habitats. Roosts in crevices and hollows in trees, rocks, cliffs, bridges, and buildings.	Year round	**Yes**. The trees within the non-native annual grassland, oak woodland, and developed areas and the buildings within the developed areas provide roosting habitat for this species.

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Federally-Listed Species: FE = federal endangered FT = federal threatened FC = candidate PT = proposed threatened FPD = proposed for delisting FD = delisted		**California State Ranked Species:** CE = California state endangered CT = California state threatened CR = California state rare CSC = California species of special concern CCT = California state threatened candidate CFP = California fully-protected CSA = California special animals	**CNPS* Rank Categories:** 1A = plants presumed extinct in California 1B = plants rare, threatened, or endangered in California and elsewhere 2 = plants rare, threatened, or endangered in California, but common elsewhere 3 = plants about which we need more information 4 = plants of limited distribution	

D-2 Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle (*Desmocerus californicus dimorphus*)

Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle

(*Desmocerus californicus dimorphus*)

May 2017

Service Contact

The Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle (*Desmocerus californicus dimorphus*) (Framework) was prepared by the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office. If you have questions regarding the Framework, please call (916) 414-6600. To download a copy of the Framework please visit:
https://www.fws.gov/sacramento/documents/VELB_Framework.pdf

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1.0 Introduction

The U.S. Fish and Wildlife Service (Service) is issuing this Framework to assist Federal agencies and non-federal parties in evaluating the potential effects of their projects on the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (VELB), listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). This framework can be consulted during the development of any project that may affect VELB or its habitat. It is intended to help project applicants assess potential effects to the VELB and develop measures to avoid, minimize, and compensate for adverse effects to the species or its habitat. It may also help determine whether those projects will require incidental take authorization through a section 7 consultation or a section 10(a)(1)(B) permit. Proposed projects that will have large landscape level impacts, are likely to provide a net conservation benefit, or will involve riparian restoration may need a different or more detailed analysis than what is provided here. Applicants and agencies proposing these, or similar types of projects, should discuss the project with the Service early in the planning process. The Framework may still provide guidance for an effects analysis, but these projects may exercise more flexibility when implementing conservation measures and compensation.

The primary goal of this document is to articulate a conceptual ecological model for the species. This framework represents the Sacramento Fish and Wildlife Office's current analytical approach for evaluating and assessing adverse effects to the VELB. It will be updated as new information becomes available. As always, the Service welcomes dialog and discussion with our partners in assessing impacts for particular projects and encourages project proponents to consult with the Service early in project development whenever possible.

The VELB is protected under the Act wherever it is found. Visual surveys for the VELB, which includes looking for adults and/or exit holes, are currently the only approved method of surveying for the species and are not entirely reliable for determining presence or absence (see below). Visual surveys, habitat assessments, and mitigation site monitoring do not require a section 10(a)(1)(A) recovery permit. Inquiries about other survey methods, recovery permits, and research should be directed to the Listing and Recovery Division at (916) 414-6600.

1.1 Previous Federal Actions

The VELB was listed as a threatened species under the Act on August 8, 1980 (Federal Register 45: 52803-52807). Concurrent with the final listing rule, two areas in Sacramento County were designated as critical habitat for the VELB (Appendix A). The first area, referred to as the "Sacramento Zone", is enclosed by California State Route 160 to the north, the Western Pacific railroad tracks to the west/southwest, and by Commerce Circle to the east. The second area, referred to as the "American River Parkway Zone", is actually two separate areas along the south bank of the American River in Rancho Cordova. A recovery plan for VELB was completed on June 28, 1984; however, due to a lack of information regarding VELB life history, distribution, and habitat requirements, the recovery plan

only described interim actions and not precise recommendations (Service 1984). For more information about VELB, its designated critical habitat, and the VELB recovery plan, please visit: https://ecos.fws.gov/ecp0/profile/speciesProfile?sId=7850.

On September 10, 2010, the Service was petitioned to delist the VELB and on August 19, 2011, the Service responded with a 90-day finding that determined the petition contained substantial information indicating that delisting VELB may be warranted (Federal Register 76: 51929-51931). On October 2, 2012, the Service published a proposed rule to delist VELB and to remove the species' critical habitat designation (Federal Register 77: 60238-60276). However, after receiving additional information regarding VELB, the Service did not delist the species and published the September 17, 2014, Withdrawal of the Proposed Rule to Remove the Valley Elderberry Longhorn Beetle From the Federal List of Endangered and Threatened Wildlife (Federal Register 79: 55874-55917) (Withdrawal Rule). The August 8, 1980, final listing rule and the Withdrawal Rule both described habitat loss as the primary threat to the species.

2.0 Life History

The VELB is a small (0.5 - 0.8 in.) wood-boring beetle in the *Cerambycid* family. It is sexually dimorphic and the females are indistinguishable from the more widespread California elderberry longhorn beetle (*Desmocerus californicus californicus*). Elderberry shrubs (*Sambucus* spp.) are the obligate larval host plants for the VELB (Collinge et al. 2001, Holyoak 2010) and their larvae go through several developmental stages (instars) within the elderberry shrub (Greenberg 2009). Eggs are laid individually on leaves or at the junctions of the leaf stalk and main stem (Barr 1991). Upon hatching, the larvae bore into the elderberry stem (Halstead and Oldham 1990) and create feeding galleries in the pith (Burke 1921, Barr 1991). Prior to pupation, the larvae creates an exit hole, plugs the hole with wood shavings, and returns to the gallery where it pupates (Halstead and Oldham 1990). Approximately 1 month later, the adult beetle emerges from the stem through the previously created exit hole (Burke 1921). Adult emergence, mating, and egg-laying, occurs in the spring and summer (March to July), typically coinciding with the elderberry flowering period (Burke 1921, Halstead and Oldham 1990). Under laboratory conditions, adult males typically live 4 to 5 days, while females can live up to 3 weeks (Arnold 1984). The only identifiable exterior evidence of elderberry use by VELB is the exit hole created by the larvae.

3.0 Range and Habitat Description

The VELB is protected wherever found. The current presumed range extends throughout the Central Valley (https://ecos.fws.gov/ecp0/profile/speciesProfile?sId=7850). The range extends from approximately Shasta County in the north to Fresno County in the south including the valley floor and lower foothills. The majority of VELB have been documented below 152 meters (500 feet) in elevation. Areas above 152 meters (500 feet) with suitable habitat and known VELB occurrences in that drainage may contain VELB populations in certain circumstances. The Service can assist in determining the likelihood of occupancy above 500 feet.

3.1 Habitat

Historically, the Central Valley had large (3.2-8.0 km wide), undisturbed expanses of riparian vegetation associated with the watersheds that drained the west side of the Sierra Nevada Mountains and the east side of the Coast Mountain Range. These watershed systems were highly dynamic and their floodplains supported a wide corridor of riparian vegetation (Katibah 1984) in a diverse mosaic of structures and species assemblages from early successional to mature gallery forest (Gilbart 2009).

During the last 150 years California's Central Valley riparian forests have experienced extensive vegetation loss due to expansive agricultural and urban development (Katibah 1984), and in many places, have dwindled to discontinuous, narrow corridors. Natural areas bordering the rivers, which once supported vast tracts of riparian vegetation, became prime agricultural land (Thompson 1961). As agriculture and urbanization expanded in the Central Valley, needs for increased water supply and flood protection spurred water development and reclamation projects. Artificial levees, river channelization, dam building, water diversion, and heavy groundwater pumping have further reduced riparian vegetation to small, isolated fragments (Katibah 1984). In many places, flood control levees have been installed adjacent to and parallel with the river, effectively sectioning the riparian forest habitat into discrete communities on either side of the levee. In recent decades, riparian areas in the Central Valley have continued to decline as a result of ongoing agricultural conversion, urban development, stream channelization and channel hardening.

Elderberry shrubs are common in the Central Valley where they grow naturally in a variety of riparian and non-riparian vegetative communities (Vaghti and Greco 2007). Most elderberry presence within the Central Valley is determined by broad scale hydrologic regimes such as the relative elevation of floodplain and floodplain width, and secondarily by sediment texture and topography (Fremier and Talley 2009). Elderberry shrubs are most common on higher and older riparian terraces, where the roots of the plant are able to reach the water table and where the plants are not inundated for long periods (Talley 2005; Vaghti et al. 2009). Elderberry shrubs can be found on historic floodplain terraces above the river, on levees (both on the river and land sides), and along canals, ditches, and areas where subsurface flow provides water to elderberry roots. Elderberry shrubs typically occur in most vegetation communities that occupy historic and current floodplains and terraces, to the top of channel walls in deeply incised rivers (i.e., the Tuolumne and Stanislaus Rivers), and to the top of and on the land-side of levees where woody plants create savannas or patchy woodlands. Elderberry can be a canopy or subcanopy species depending on the hydrology, vegetation composition, or disturbance at a particular site and it can occur as individual shrubs, clumps, clusters, and groves. In non-riparian settings, elderberries occur either singly or in groups in valley oak and blue oak woodland and annual grasslands. It is not known whether elderberries in this setting are also associated with a shallow water table or other shallow water sources. In natural areas, elderberry shrubs have also been shown to grow best with little canopy cover from associated vegetation (Talley 2005).

The historic distribution of the VELB closely matched the distribution of the elderberry host plant, which was patchily found throughout the Central Valley riparian forests and occasionally adjacent uplands (non-riparian). The Service recognizes habitat for VELB as including both riparian and non-riparian areas where elderberry shrubs are present. Riparian habitat includes all areas that are either influenced by surface or subsurface water flows along streams, rivers, and canals (including the landside of levees) and areas that have the vegetation communities similar to those defined below.

Riparian vegetation communities within the California Central Valley can be described as valley-foothill forest habitat, which includes many different forest associations. Non-riparian habitat includes valley oak and blue oak woodland and annual grassland. The following habitat descriptions have been adapted from Mayer and Laudenslayer (1988) (https://www.wildlife.ca.gov/Data/CWHR/Wildlife-Habitats).

Within California, valley-foothill riparian habitats occur in the Central Valley and the lower foothills of the Cascade, Sierra Nevada, and Coast mountain ranges. Riparian habitats show a wide range of both species and structural diversity. The valley-foothill riparian habitat is found in association with riverine, grassland, oak woodland, and agricultural habitats. Canopy height is about 30 meters in a mature riparian forest, with a canopy cover of 20 to 80 percent. Most trees are winter deciduous. There is a subcanopy tree layer and an understory shrub layer. Wild grapes (*Vitis californica*) frequently provide up to 50 percent of the ground cover and festoon trees to heights of 20-30 meters. Herbaceous vegetation constitutes about one percent of the cover, except in open areas where tall forbs and shade-tolerant grasses occur. Many non-native invasive species can also be found, and are sometimes common, in riparian habitat. Oak woodland, oak savanna, and elderberry savanna can occur as both riparian and non-riparian communities.

Dominant riparian canopy layer species include cottonwood (*Populus* sp.), California sycamore (*Platanus racemosa*), willow (*Salix* spp.) black walnut (*Juglans* spp.) and valley oak (*Quercus lobata*). Subcanopy trees include boxelder (*Acer negundo*) and Oregon ash (*Fraxinus latifolia*), and typical understory shrub layer plants include wild grape, wild rose (*Rosa* sp.), blackberry (*Rubus* sp.), poison oak (*Toxicodendron diversilobum*), and buttonbush (*Cephalanthus occidentalis*), and willows. The herbaceous layer consists of sedges (*Carex* sp.), rushes, grasses, miner's lettuce (*Claytonia* sp.), mugwort (*Artemisia* sp.), poison-hemlock (*Conium maculatum*), and hoary nettle (*Urtica dioica*). Many non-native woody species occur with elderberry including tree-of-heaven (*Ailanthus altissima*) and black locust (*Robinia pseudoacacia*)

Elderberry shrubs can be a common understory plant in both non-riparian valley oak and blue oak woodland habitats. Valley oak woodland is generally found at lower elevations than blue oak woodlands, but the two habitat types transition into each other in the lower foothill regions. Annual grasses and forbs dominate the herbaceous layer in both woodland habitat types (Mayer and Laudenslayer 1998) and both intergrade with annual grassland. Valley oak woodland can occur from savanna-like conditions to denser forest-like conditions, with tree density tending to increase along

natural drainages. Valley oak woodlands are almost exclusively dominated by valley oak, but may also contain sycamore, black walnut, blue oak (*Quercus douglasii*), interior live oak (*Quercus wislizeni*), and boxelder. Understory shrubs may include species such as, wild grape, toyon (*Heteromeles arbutifolia*), and California coffeeberry (*Frangula californica*). Blue oak woodlands can also occur from savanna-like conditions to denser forest-like conditions with a nearly closed canopy. Blue oak woodland is comprised of 85 to 100 percent blue oak trees, but may contain interior live oak and valley oak.

Common shrub associates include poison-oak, California coffeeberry, buckbrush (*Ceanothus cuneatus*), California buckeye (*Aesculus californica*), and manzanita (*Arctostaphylos* sp.). Within both of these habitats, elderberry may be found in the understory as well as in small clumps within the upland savanna. Elderberry shrubs are also often found away from riparian areas where ditches, irrigation, groundwater, or other features allow the plant to receive enough moisture and as ornamental plantings in regularly maintained landscaped areas.

3.1.1 Use of Riparian Habitat

Research suggests that the VELB occurs throughout the Central Valley in metapopulations (Collinge et al. 2001). Metapopulations are defined as a system of discrete subpopulations that may exchange individuals through dispersal or migration (Breininger et al. 2012, Nagelkerke et al. 2002). The VELB metapopulation occurs throughout contiguous intact riparian habitat as subpopulations that shift spatially and temporally within drainages, resulting in a patchwork of occupied and unoccupied habitat. Removal of suitable habitat (whether occupied or unoccupied) can increase the distance between occupied and unoccupied patches. Because its physical dispersal capability is limited, this fragmentation decreases the likelihood of successful colonization of unoccupied habitat (Collinge et al. 2001). As a consequence, the subpopulations are more vulnerable to stochastic events that may reduce or eliminate the subpopulation. The loss of multiple subpopulations can have an adverse impact on the long-term persistence and health of the metapopulation. Therefore, maintaining contiguous areas of suitable habitat is critical for maintaining the VELB.

At the local level, it appears that much of the variation in VELB occupancy of elderberry shrubs results from variables such as elderberry condition, water availability, elderberry density, and the health of the riparian habitat (Talley et al. 2007). This research indicates that healthy riparian systems supporting dense elderberry clumps are the primary habitat of VELB (Barr 1991, Collinge et al. 2001, Talley et al. 2006, Talley et al. 2007). Elderberry shrubs typically have a clumped distribution across the landscape (Figure 1) although they can occur singly. Upon emergence, VELB typically stay within the local clump (Talley et al 2007). Talley et al. (2007) found that much of the time, distances between stems with exit holes averaged 25-50 meters (65-165 feet) apart. At larger scales, average distances between these occupied clumps ranged from 200 meters (656 feet) up to 800 meters (2,625 feet) (Figure 1).

Because the elderberry is the sole host plant of the VELB, any activities that adversely impact the elderberry shrub may also adversely impact the VELB. Adverse impacts to elderberry shrubs can occur

either at a habitat scale or at an individual shrub scale. Activities that reduce the suitability of an area for elderberry plants or elderberry recruitment and increase fragmentation may have adverse impacts to mating, foraging, and dispersal of VELB. The patchy nature of VELB habitat and habitat use makes the species particularly susceptible to adverse impacts from habitat fragmentation.

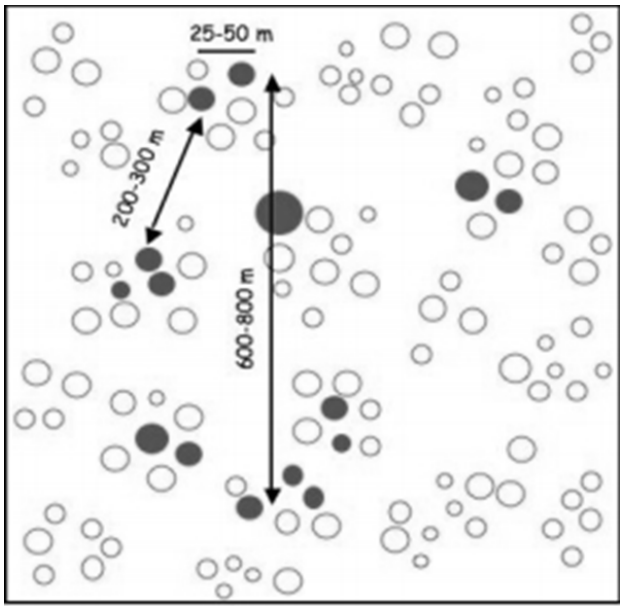

Figure 1. Schematic diagram of the spatial population structure of the valley elderberry longhorn beetle. Open circles represent unoccupied elderberry shrubs, closed circles are occupied by the valley elderberry longhorn beetle. Aggregation sizes and distances used are those found on the American River Parkway, where occupied clumps are approximately 25-50 meters apart, distances between aggregations of occupied clumps are approximately 200-300 meters, and the extent of the cluster of aggregations is 600-800 meters (Talley et al. 2006).

Determining whether an individual plant or clump is occupied by VELB can be challenging. Often the only external evidence that a VELB is present is the small exit hole made by the larva as it leaves the stem. Traditional exit hole surveys can help identify the past use of a particular shrub by VELB, but not its current occupancy. This difficulty makes assessing the likelihood of presence of individual VELB difficult. However, Talley et al. (2007) found that 73% of shrubs with old exit holes also had new exit holes, indicating that presence of an exit hole in the shrub increases the likelihood that that shrub or nearby shrubs are occupied. Therefore, impacts to individual shrubs with exit holes are reasonably likely to result in impacts to individual VELB, but the likelihood of adverse effects may not always be ascertained simply by the presence of exit holes (or the lack of). A more thorough analysis of nearby occurrences, surrounding habitat, and elderberry density is needed to fully address adverse impacts. In general, because of the difficulty in detecting VELB, the patchy nature of its distribution, and the importance of unoccupied habitat to maintain connectivity between VELB metapopulations, any

impacts to riparian habitat with elderberry shrubs present are likely to result in adverse effects to VELB.

3.1.2 Use of Non-Riparian Habitat

Much of the existing research has focused on the VELB's use of riparian habitat. In non-riparian habitats, a patchwork of individual shrubs provides opportunity for VELB occupancy, but it is unknown if the movement and distribution patterns remain consistent with the patterns found in riparian areas. In non-riparian areas, adverse effects to of VELB are likely to occur as a result of impacts to any elderberry shrub with exit holes, and adverse effects may result from disturbance to elderberry shrubs reasonably close to riparian areas or known VELB populations.

4.0 Occupancy Determination in Non-Riparian Habitat and Appropriate Surveys

The decision tree shown in Figure 2 is used by the Sacramento Fish and Wildlife Office to assess the effect of any proposed project on the VELB. It is recommended that proposed project sites within the range of the VELB be surveyed by a qualified biologist for the presence of elderberry shrubs. If elderberry shrubs are found on or within 50 meters (165 feet) of the project site, we recommend that the habitat be assessed to determine if the project area is in riparian or non-riparian habitat. Depending on the size, duration and/or type of proposed project, the larger area surrounding the project site may also be surveyed for the presence and number of elderberry shrubs.

If the project site is non-riparian and contains elderberry shrubs, we use exit hole surveys to evaluate the site for potential occupancy. Exit hole surveys are not essential in riparian areas, but may be conducted in order to assess the level and significance of adverse effects. The presence of exit holes in a shrub increases the likelihood that the shrub is occupied by VELB; however, a lack of exit holes does not preclude occupancy by the VELB. In the absence of exit holes we recommend that a biologist evaluate the project area using the following criteria (also shown in Figure 2):

1. Is there a riparian area, elderberry shrubs, or known VELB records within 800 meters (2,526 feet) of the proposed project?

   Isolated, non-riparian elderberry clumps are less likely to be occupied or become colonized by VELB and those beyond 800 meters (2,526 feet) from the nearest elderberry clump become increasingly less likely to be occupied. Therefore, a qualified biologist can assess the distance of the elderberry shrub from the nearest riparian area, elderberry shrub, and known occupied elderberry location.

2. Was the site continuous with a historical riparian corridor?

   Fragmentation of riparian corridors in the Central Valley has resulted in the isolation of elderberry shrubs or clusters that may provide important linkages between or within riparian corridors. A qualified biologist can evaluate the project location in the context of the historical riparian system. Isolated elderberry clumps that were part of a historic riparian vegetative community may still support VELB.

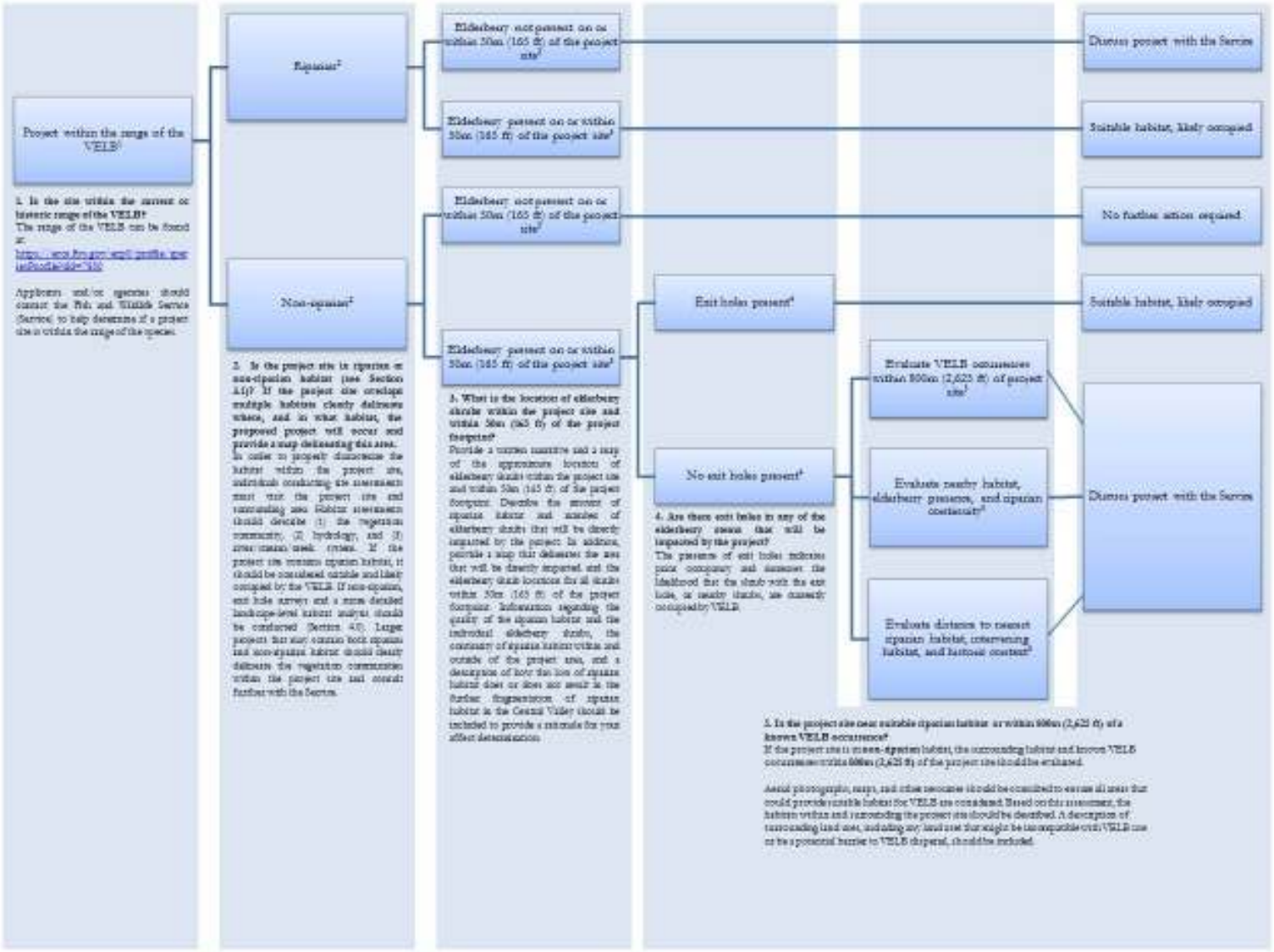

Figure 2. Decision tree to determine the likelihood of a particular elderberry shrub being occupied by valley elderberry longhorn beetle.

5.0 Conservation Measures

We encourage the development of proposed project designs that avoid riparian habitat and/or elderberry shrubs whenever possible. If elderberry shrubs occur on or within 50 meters (165 feet) of the project area, adverse effects to VELB may occur as a result of project implementation. If the project may affect VELB or its habitat, appropriate avoidance and minimization measures are recommended.

5.1 Avoidance and Minimization Measures

The following measures are recommended for incorporation into a proposed project to avoid and minimize effects to VELB and/or its habitat. Not all measures may be appropriate for every project, and agencies/applicants should coordinate with the Service to determine which measures may be needed. The text in this section and Section 5.2 is intended to provide language that may be used by agencies/applicants to describe avoidance and minimization measures for their proposed project.

Fencing. All areas to be avoided during construction activities will be fenced and/or flagged as close to construction limits as feasible.

Avoidance area. Activities that may damage or kill an elderberry shrub (e.g., trenching, paving, etc.) may need an avoidance area of at least 6 meters (20 feet) from the drip-line, depending on the type of activity.

Worker education. A qualified biologist will provide training for all contractors, work crews, and any onsite personnel on the status of the VELB, its host plant and habitat, the need to avoid damaging the elderberry shrubs, and the possible penalties for non-compliance.

Construction monitoring. A qualified biologist will monitor the work area at project-appropriate intervals to assure that all avoidance and minimization measures are implemented. The amount and duration of monitoring will depend on the project specifics and should be discussed with the Service biologist.

Timing. As much as feasible, all activities that could occur within 50 meters (165 feet) of an elderberry shrub, will be conducted outside of the flight season of the VELB (March - July).

Trimming (See 5.3). Trimming may remove or destroy VELB eggs and/or larvae and may reduce the health and vigor of the elderberry shrub. In order to avoid and minimize adverse effects to VELB when trimming, trimming will occur between November and February and will avoid the removal of any branches or stems that are ≥ 1 inch in diameter. Measures to address regular and/or large scale maintenance (trimming) should be established in consultation with the Service.

Chemical Usage. Herbicides will not be used within the drip-line of the shrub. Insecticides will not be used within 30 meters (98 feet) of an elderberry shrub. All chemicals will be applied using a backpack sprayer or similar direct application method.

Mowing. Mechanical weed removal within the drip-line of the shrub will be limited to the season when adults are not active (August - February) and will avoid damaging the elderberry.

Erosion Control and Re-vegetation. Erosion control will be implemented and the affected area will be re-vegetated with appropriate native plants.

5.2 Transplanting

In order to protect VELB larvae to the greatest extent possible, we recommend that all elderberry shrubs with stems greater than 1 inch in diameter be transplanted under the following conditions:

1. If the elderberry shrub cannot be avoided.
2. If indirect effects will result in the death of stems or the entire shrub.

Removal of entire elderberry plants without disturbance to the surrounding habitat is uncommon, but may occur on certain projects. The removal may either include the roots or just the removal of the aboveground portion of the plant. We encourage project applicants to attempt to remove the entire root ball and transplant the shrub, if possible. In order to minimize the fragmentation of VELB habitat, the Service encourages applicants to relocate elderberry shrubs as close as possible to their original location. Elderberry shrubs may be relocated adjacent to the project footprint if: 1) the planting location is suitable for elderberry growth and reproduction; and 2) the project proponent is able to protect the shrub and ensure that the shrub becomes reestablished. If these criteria cannot be met, the shrub may be transplanted to an appropriate Service-approved mitigation site. Any elderberry shrub that is unlikely to survive transplanting because of poor condition or location, or a shrub that would be extremely difficult to move because of access problems, may not be appropriate for transplanting. The following transplanting guidelines may be used by agencies/applicants in developing their VELB conservation measures:

Monitor. A qualified biologist will be on-site for the duration of transplanting activities to assure compliance with avoidance and minimization measures and other conservation measures.

Exit Holes. Exit-hole surveys will be completed immediately before transplanting. The number of exit holes found, GPS location of the plant to be relocated, and the GPS location of where the plant is transplanted will be reported to the Service and to the California Natural Diversity Database (CNDDB).

Timing. Elderberry shrubs will be transplanted when the shrubs are dormant (November through the first two weeks in February) and after they have lost their leaves. Transplanting during the non-growing season will reduce shock to the shrub and increase transplantation success.

Transplanting Procedure. Transplanting will follow the most current version of the ANSI A300 (Part 6) guidelines for transplanting (http://www.tcia.org/).

Trimming Procedure. Trimming will occur between November and February and should minimize the removal of branches or stems that exceed 1 inch in diameter.

5.3 Impacts to Individual Shrubs

In certain instances, impacts to elderberry shrubs, but not the surrounding habitat may occur. This could take the form of trimming or complete removal of the plant. Trimming elderberry shrubs may result in injury or death of eggs, larva, or adults depending on the timing and extent of the trimming. Since the larva feed on the elderberry pith while they are developing, any trimming that could affect the health of the plant and cause the loss of stems may kill any larva in those stems. No adverse impacts to the VELB will occur if trimming does not remove stems/branches that are ≥1 inch in diameter and is conducted between November and February. Trimming that occurs outside of this window or removes branches ≥ 1 inch in diameter may result in adverse effects to VELB. In order to assess the risk of take from trimming activities, we recommend the following be evaluated:

1. Conduct an exit hole survey on the plant
2. Evaluate the surrounding habitat (riparian vs. non-riparian).
3. Evaluate the potential suitability of the plant to provide VELB habitat.
    a. Riparian plants are much more likely to be occupied or colonized by VELB.
    b. Plants in non-riparian locations should be evaluated using the criteria in Figure 2.

6.0 Compensatory Mitigation

For all unavoidable adverse impacts to VELB or its habitat, we recommend that lead agencies and project applicants coordinate with the Service to determine the appropriate type and amount of compensatory mitigation. For plants in riparian areas, compensation may be appropriate for any impacts to VELB habitat. In non-riparian areas, compensation is typically appropriate for occupied shrubs (Figure 2). Appropriate compensatory mitigation can include purchasing credits at a Service-approved conservation bank, providing on-site mitigation, or establishing and/or protecting habitat for VELB.

It is recommended that the permanent loss of VELB habitat be replaced with habitat that is commensurate with the type (riparian or non-riparian) and amount of habitat lost. Suitable riparian habitat may be replaced, at a minimum of 3:1 for all acres that will be permanently impacted by the project (Table 1). Suitable non-riparian habitat may be replaced, at a minimum of 1:1 for all acres that will be permanently impacted by the project (Table 1). We typically recommend that any shrub that will be adversely impacted by the project be transplanted to a Service-approved location.

We encourage agencies and/or applicants to propose appropriate compensation for all individual shrubs that will be impacted by the project. Strong compensation proposals consider the location of the plant (riparian or non-riparian) and the potential for the plant to be occupied by VELB (exit

holes present, likely occupied). Projects that only directly affect individual shrubs may consider replacing habitat based on the amount of effects that occur, the location of the shrub (riparian or non-riparian), and the presence of exit holes (non-riparian only) (Table 2). Impacts to individual shrubs in riparian areas may be replaced by the purchase of 2 credits at a Service-approved bank for each shrub that will be trimmed regardless of the presence of exit holes. If the shrub will be completely removed by the activity, the entire shrub may be transplanted to a Service-approved location in addition to the credit purchase. We recommend impacts to individual shrubs in non-riparian areas be replaced through a purchase of 1 credit at a Service-approved bank for each shrub that will be trimmed if exit holes have been found in any shrub on or within 50 meters (165 feet) of the project area. If the shrub will be completely removed by the activity, we suggest that the entire shrub be transplanted to a Service-approved location in addition to a credit purchase.

Table 1. Potential Valley Elderberry Longhorn Beetle Habitat-Level Compensation Examples

Habitat	**Compensation Ratio** [1]	**Total Acres of Disturbance**	**Acres of Credits**	**Total Credit Purchase** [2]
Riparian	3:1	1.2 acres	3.6 acres	87.8
Non-riparian	1:1	0.5 acre	0.5 acre	12.1

[1] acre(s) of credits: acre(s) of disturbance

[2] One credit (unit) = 1,800 sq. ft.

Table 2. Valley Elderberry Longhorn Beetle Shrub-Level Impact Compensation

Habitat	**Compensation Ratio**[1]	**If the entire shrub will be removed**
Riparian	2:1	Transplant the shrub + 2:1 compensation
Non-riparian (exit holes present)	1:1	Transplant the shrub + 1:1 compensation

[1] number of credits: number of shrubs trimmed

[2] One credit (unit) = 1,800 sq. ft. or 0.041 acre

The compensation scenarios in Table 1 are examples of the amount of habitat (riparian or non-riparian) that may be appropriate to compensate for a project's adverse impacts. Additional examples can be found in Appendix B. The amount of compensation deemed appropriate to offset effects to VELB will take into consideration the effects of the project and desired conservation outcome. The compensation examples in this Framework are for illustrative purposes only. Alternative methods for determining compensation should be coordinated with the Service. Currently, compensation at Service-approved VELB banks is partitioned into 1,800 sq. ft. basins.

Under this scheme, a single credit equals 1,800 sq. ft. or 0.041 acres. In order to calculate the total compensation credits needed for impacts to VELB, the total amount of disturbance in square feet should be calculated, the appropriate ratio applied, and the total number divided by 1,800.

We recommend that any project that occurs in suitable habitat (riparian or non-riparian) compensate for that loss in proportion to the total amount of habitat that will be disturbed as a result of project implementation. The acreage of habitat lost can be assessed based on all permanent surface disturbance including access routes and staging areas.

6.1 Compensatory Mitigation Proposals

If the lead agency or applicant is not purchasing credits at a Service-approved bank, they may compensate for habitat loss through on- or off-site mitigation. The Service has issued interim standards for the long-term management and protection of mitigation sites (https://www.fws.gov/endangered/improving_esa/). Those proposing on-site compensation, off-site habitat creation/enhancement, or those proposing to create a Service-approved conservation bank should work closely with the Service during the planning and development process. It is recommended that all plans adhere to the following criteria that are specific to VELB:

Site Selection and Development. Proposals using a strategic approach to ecosystem protection and restoration that will promote VELB metapopulation dynamics are preferred. Criteria for a suitable mitigation site may include abiotic factors such as soils, water availability, and prior land use as well as the proximity of the site to existing riparian habitat and known VELB records. Appropriate site selection is critical for achieving conservation success. A site that has incompatible soils or hydrology may not be able to meet the success criteria. Proposals that protect or enhance existing riparian habitat are preferred and the proposal should detail what, if any, measures will be needed to restore the site to ensure that it is suitable for elderberry survival.

Planting Plan. We recommend all proposals be designed to meet the desired distribution and density for elderberry shrubs and native associates that will be planted at the mitigation site in accordance with 1-3 below. The planting plan should be specific to the site and factors that will influence the success of the elderberry and native associate plantings. The plan should seek to establish a diverse natural riparian community with a complex vegetation structure. Native associates should include a mix of woody trees, shrubs, and other natives appropriate for the site. Stock of either seedlings or cuttings should be obtained from local sources. The number of elderberry and native associate plantings should be based on the desired distribution and density outcome proposed in the planting plan. The Service encourages planting plans that promote spatial and structural diversity within the mitigation site. We recommend planting plans be designed to meet the following goals:

1. Maximize the number of stems between 2 (0.8 inches) and 12 centimeters (4.7 inches). Talley et al. (2007) found stems within this size range had the largest proportion of VELB exit holes.
2. Minimize competition for sunlight and water. Native associates, particularly trees, can influence the long-term success of the mitigation site. Native associates should be planted at a ratio of 1 native associate for every 3 elderberry plants to avoid competition for sunlight and water with the elderberry plantings.
3. Achieve an average elderberry stem density of 240 stems/acre. This was the average stem density Vaghti et al. (2009) found for elderberry shrubs along the major river systems within the VELB range. The Service and lead agency or applicant should assess this goal after 5 years.

Buffer. A buffer area may be needed between the mitigation site and adjacent lands, depending on adjacent land-use. An appropriate buffer distance can be developed in coordination with the Service when proposing compensation. Although the buffer would be considered part of the mitigation site, the acreage of the buffer may not be considered compensation.

Success Standards. We recommend that the site management plan and/or planting plan specify timelines for achievement of the success standards for the site, as stated below. These timelines should reflect the impacts that the site is intended to compensate for, the specific abiotic factors at the site that could influence establishment, or any credit release criteria that need to be met. Standards for VELB mitigation banks can be found in Appendix C. These standards were developed specifically for mitigation banks, but can be broadly applied to all compensatory mitigation for VELB. Some of the timelines described in the standards may not be applicable in all situations, but agencies and applicants should work with the Service to develop success standards that best meet the goals of their individual compensatory mitigation proposal. We suggest that all compensatory mitigation meet the following:

1. A minimum of 60% of the initial elderberry and native associate plantings must survive over the first 5 years after the site is established. As much as feasible, shrubs should be well distributed throughout the site; however, in some instances underlying geologic or hydrologic issues might preclude elderberry establishment over some portion of the site. If significant die back occurs within the first 3 years, replanting may be used to meet the 60% survival criteria. However, replanting efforts should be concentrated to areas containing surviving elderberry plants. In some instances overplanting may be used to offset the selection of a less suitable site.
2. After 5 years, the site must show signs of recruitment. A successful site should have evidence of new growth on existing plantings as well as natural recruitment of elderberry. New growth is characterized as stems < 3 cm (1.2 inches) in diameter. If

no signs of recruitment are observed, the agency or applicant should discuss possible remedies with the Service.

Monitoring. Specific monitoring protocols and reporting timelines for the mitigation site should be developed in coordination with the Service. The population of VELB, the general condition of the mitigation site, and the condition of the elderberry and associated native plantings in the mitigation site should be monitored at appropriate intervals. In any survey year, a minimum of two site visits between February 14 and June 30 of each year must be conducted by a Service-approved biologist. Surveys must include:

1. A search for VELB exit holes in elderberry stems, noting the precise locations and estimated ages of the exit holes. The location of shrubs with exit holes should be mapped with a GPS. Because adult VELB are rarely encountered, targeted surveys for adults are not required. However, surveyors should record all adult VELB seen. Record photographs should be taken for all observations of adult VELB and their location mapped with a GPS. All exit hole or adult VELB observations should be reported to CNDDB.
2. An evaluation of the success standards outlined above.
3. An evaluation of the adequacy of the site protection (fencing, signage, etc.) and weed control efforts in the mitigation site. Dense weeds and grasses such as Bermuda grass (*Cynodon dactylon*) are known to depress elderberry recruitment and their presence should be controlled to the greatest extent practicable.
4. An assessment of any real or potential threats to VELB and its host plant, such as erosion, fire, excessive grazing, off-road vehicle use, vandalism, and excessive weed growth.
5. A minimum of 10 permanent photographic monitoring locations should be established to document conditions present at the mitigation site. Photographs should be included in each report.

Reports. A reporting timeline should also be developed during the development of monitoring protocols for the mitigation site. Reports submitted to the Service should present and analyze the data collected from the monitoring surveys. Copies of original field notes, raw data, photographs, and a vicinity map of the site (including any adult VELB sightings and/or exit hole observations) of the mitigation site must be included with the report. Copies of the report (including any applicable Service file number) must be submitted within 6 months of the survey to the Service (Field Supervisor) at the following address:

U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825.

7.0 Other Activities

The Framework may not be applicable for restoration, floodway maintenance, and other large scale habitat modification activities. These activities and the potential effects to VELB and its habitat should be considered on a project-by-project basis and discussed with the Service. We recommend that project proponents consider the effects to the species on a landscape level and ultimately seek to protect, preserve, and restore the continuity of VELB habitat. These and similar activities that may adversely impact the VELB and its habitat at landscape scales should consider avoidance, minimization, and compensation strategies that are appropriate for the specific project. Compensation may not be appropriate for those projects that impact only individual elderberry shrubs or result in a net benefit to VELB. Some possible conservation measures to consider for these large scale projects include:

1. Transplanting all affected elderberries to a similar on-site location.
2. Maintaining patches of appropriate habitat in areas where large-scale removal of elderberry shrubs will occur.
3. Scale trimming, removal, and other activities that allow VELB to persist within the area.

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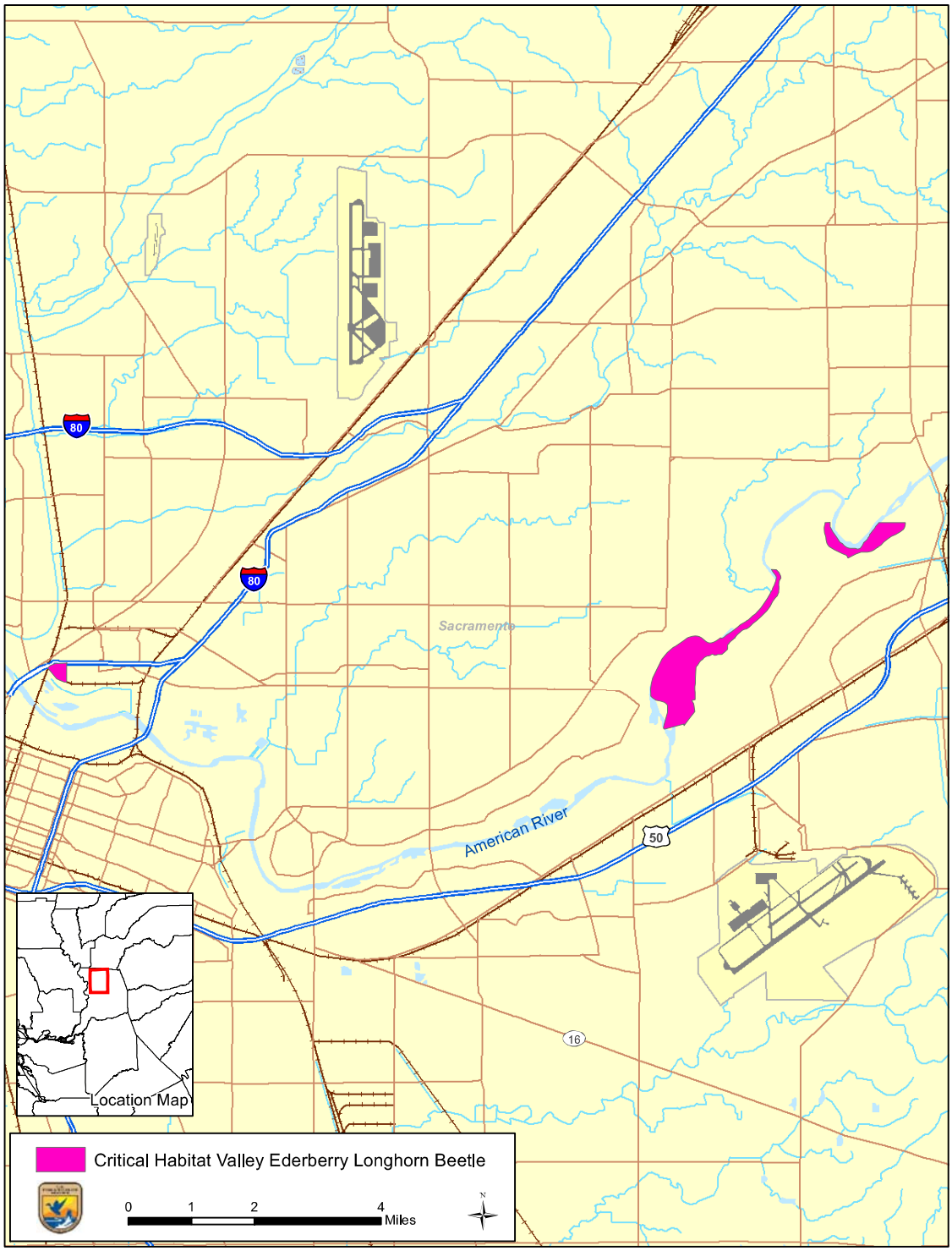
Appendix A. Valley Elderberry Longhorn Beetle Critical Habitat



Appendix B. Compensation Examples

#1. An applicant is proposing to repair a bridge over Putah Creek. The project will require excavation within the channel and a re-contour of approaches to the new bridge. Pre-construction surveys noted that 3 elderberry shrubs in riparian habitat were within the project area, 2 of these shrubs will be directly impacted by the excavation work. The third shrub will be avoided using the appropriate avoidance and minimization measures. During the project, 0.5 acre of riparian habitat will need to be removed. The applicant has proposed to transplant the 2 directly affected elderberry shrubs to a Service-approved conservation bank and purchase 1.5 acres of credits at the conservation bank.

Conclusion: The project contains 3 elderberry shrubs on or within 50m of the project area. The project will result in the fragmentation of riparian habitat through the loss of 0.5 acres of riparian habitat. The compensation of 3:1 is appropriate for this project because it will be removing riparian habitat. The transplanting of the shrubs is appropriate because they would be directly impacted by the project.

#2. A new bike path will be constructed through an oak woodland/elderberry savanna. Pre-construction surveys identified one elderberry shrub within 0.10 acre of oak woodland/elderberry savanna that will be adversely affected by the proposed action. Exit holes were found on the elderberry shrub. The applicant also identified a conservation area that is suitable for oak woodland/elderberry savanna. Associated natives adjacent to the conservation area are blue oak (Q. douglasii), interior live oak, sycamore, poison oak, and wild grape. The applicant and the Service have agreed that transplanting the elderberry shrub into the conservation area and planting the conservation area with non-riparian habitat at a 1:1 ratio is appropriate to off-set the impacts to the VELB from the construction of this project.

Conclusion: The project contains 1 elderberry shrub on or within 50m of the project area. The project will result in the loss of 0.10 acre of non-riparian, elderberry savanna habitat. The proposed compensation of planting the identified conservation area at a 1:1 ratio using the species listed above is appropriate for the project since it will be removing non-riparian habitat. The transplanting of the one shrub into the conservation area is appropriate because it will be directly impacted by the project and the presence of exit holes suggests it was recently occupied by VELB.

The total area required for the conservation plantings are a minimum of 1,800 sq. ft. for one to five elderberry seedlings and up to 5 associated natives. A total of 0.10 acre (1 x 0.10 = 0.10 acre = 4,356 square feet) will be required for the plantings. The conservation area will be seeded and planted with native grasses and forbs, and closely monitored and maintained throughout the monitoring period (see Section 5).

#3. Construction of a cell tower will require the removal of two isolated elderberry shrubs and the temporary loss of a minimal amount of grassland habitat. The project location is 3 miles east of the Feather River. The project site is not near a water course or any other shrubs within 800m. The shrubs were surveyed and do not exhibit exit holes.

> Conclusion: The project area contains two non-riparian shrubs on or within 50m of the project area. Since both shrubs lack exit holes, other factors need to be considered to determine the likeliness of occupancy. A review of occurrence data reveals there are no known VELB occurrences within 800m of the project site and historical imagery shows the project site has never been a part of, or connected to, riparian habitat. Based on the specifics of this scenario, the two elderberry shrubs within the project area are not likely to be occupied..

Appendix C. VELB Mitigation Bank Standards

The following was prepared by Sacramento Fish and Wildlife Office conservation banking staff as part of an effort to standardize and make transparent the process for establishing Valley Elderberry Longhorn Beetle (VELB) conservation banks. The credit release schedule and performance standards are intended to be practical, while promoting the success of the plantings. This document is not a comprehensive review of VELB literature, and is subject to revision.

Credit Release Schedule

The credit release schedule and performance standards are designed to ensure that the VELB conservation bank plantings will be self-sustaining after the irrigation is turned-off (before the start of year 5), so the credit release schedule is longer than it would be without irrigation, and credits will not be released prior to the year indicated. Credits will be released per the following schedule, slightly modified from the May 2008 Statewide Banking Template:

Table 1. Credit release schedule.

Credit Release	Action	Credits to be Released
1	Bank Establishment	15%
2	Service Acceptance of As-builts*	25%
3	Meet Year 2 Performance Standards, and endowment funded 15%	15%
4	Meet Year 3 Performance Standards, and endowment funded 40%	15%
5	Meet Year 5 Performance Standards, and endowment funded 70%	15%
6	Meet Year 7 Performance Standards, and endowment funded 100%	15%

*Review to be accomplished within 60 days of receipt of complete as-built drawings.
Note: endowment can be funded on an accelerated schedule, if the bank sponsor so desires.

Performance Standards

Performance standards apply to the credit releases upon the third release. If the elderberry population is too large for direct census, then sampling methods may be used, and they must be thoroughly described in the proposed bank's development and management plans, and will be subject to Service approval. Sample size must be adequate to assess the health of the population, as determined by a qualified plant ecologist[1]. Qualifications should be submitted with proposal.

Performance standards are based on survival without re-planting, and on baseline conditions of health and vigor of the elderberry plantings. If performance standards are not met, then the bank sponsor will meet with the Service to determine a course of action.

Table 2. Performance Standards.

Credit Release #	Monitoring Year	Performance Standards
3	Year 2	• 60% survival of original planted elderberries without re-planting[2], and all survivors categorized as "normal"[3] to "exceptionally vigorous"[3] • 60% survival of associates without re-planting[2] • Irrigation ok
4	Year 3	• Maintain 60% survival of original planted elderberries without re-planting[2], and all survivors categorized as "normal"[3] to "exceptionally vigorous"[3] • Maintain 60% survival of associates without re-planting[2] • Irrigation ok
5	Year 5	• Maintain 60% survival of original planted elderberries without re-planting[2] • Maintain 60% survival of associates without re-planting[2] • No more than 10% decline in overall health of *Sambucus* from baseline conditions[4] • No irrigation[5] • Fertilizer application prohibited
6	Year 7	• Maintain 60% survival of original planted elderberries without re-planting[2] • Maintain 60% survival of associates without re-planting[2] • No more than 10% decline in overall health of *Sambucus* from baseline conditions[4] • No irrigation[5] • Fertilizer application prohibited

[1]Qualified plant ecologist is defined as a person who:

a) holds a bachelor's degree or higher in botany, plant ecology or related plant science, or demonstrates experience equivalent to such education, and

b) shows demonstrated expertise in ecological sampling/experimental design beyond obtaining an academic degree, and

c) has 2+ years experience in collecting and analyzing botanical field data beyond obtaining an academic degree

[2]If re-planting, then time-clock begins again, with no additional credit releases until performance standards for the monitoring year in which the re-planting occurred has been met. Re-planting must be approved by the Service in advance.

[3]See Vigor and Vitality, below.

[4]Years 2, 3 and 4 are used to establish the baseline condition. See Baseline Conditions, below.

[5]If irrigation continues beyond the end of monitoring year 4, credit release #'s 5 and 6 will be delayed beyond the years indicated in Table 2.

Vigor and Vitality

Observations made by a qualified plant ecologist during the late spring/early summer will be used to determine the vigor and vitality of surviving shrubs for the year 2 and 3 performance standards, and photographs should clearly document this. The following scale will be used (from Mueller-Dombois and Ellenberg, 1974):

- Very feeble, never flowering/fruiting
- Feeble
- Normal
- Exceptionally vigorous

Baseline Conditions

Observations made by a qualified plant ecologist during late spring/early summer will be used to determine the baseline conditions of the planted elderberries. Sampling is allowable where the population of planted elderberries is extensive, and must be thoroughly described in the bank's development and management plans. The following measurements will be used to determine baseline conditions (Elzinga, et. al., 1998):

- Height
- # of inflorescences per shrub
- # of stems per shrub
- # of stems over 1" diameter per shrub
- Volume of plant (height x cover)

These measurements will be averaged for surviving shrubs over years 2, 3 and 4. Condition of the planted elderberries in years 5 and 7 will be compared to the baseline. Photographs should clearly document the baseline condition.

Monitoring Reports

Monitoring reports will be required during the establishment period for years 2-7, and should clearly document the progress of the plantings. All surveys must be thoroughly described, and copies of any field notes or data sheets from the current year included. Photographic documentation of elderberry and associate condition during the field surveys is required, and should clearly show the condition of all shrubs sampled. If sampling, describe sampling design. Each report should be comprehensive, and include data summaries and other pertinent information from previous monitoring years.

Requirements for long-term monitoring and reporting, including due dates, should be discussed in the bank's development and management plans.

References for Appendix C

Elzinga, Caryl L., D. W. Salzer, and J. W. Willoughby. 1998. Measuring and Monitoring Plant Populations. BLM Technical Reference 1730-1.

Gilbart, Meghan. 2009. The health of blue elderberry (*Sambucus mexicana*) and colonization by the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) in restored riparian habitat. Master's Thesis, California State University, Chico.

Mueller-Dombois, Dieter and H. Ellenberg. 1974. Aims and methods of vegetation ecology. John Wiley and Sons, Inc.

D-3 Staff Report on Burrowing Owl Mitigation

Staff Report on Burrowing Owl Mitigation

State of California

Natural Resources Agency

Department of Fish and Game

March 7, 2012[1]

[1] This document replaces the Department of Fish and Game 1995 Staff Report On Burrowing Owl Mitigation.

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INTRODUCTION AND PURPOSE

Maintaining California's rich biological diversity is dependent on the conservation of species and their habitats. The California Department of Fish and Game (Department) has designated certain species as "species of special concern" when their population viability and survival is adversely affected by risk factors such as precipitous declines or other vulnerability factors (Shuford and Gardali 2008). Preliminary analyses of regional patterns for breeding populations of burrowing owls (*Athene cunicularia*) have detected declines both locally in their central and southern coastal breeding areas, and statewide where the species has experienced modest breeding range retraction (Gervais et al. 2008). In California, threat factors affecting burrowing owl populations include habitat loss, degradation and modification, and eradication of ground squirrels resulting in a loss of suitable burrows required by burrowing owls for nesting, protection from predators, and shelter (See Appendix A).

The Department recognized the need for a comprehensive conservation and mitigation strategy for burrowing owls, and in 1995 directed staff to prepare a report describing mitigation and survey recommendations. This report, "1995 Staff Report on Burrowing Owl Mitigation," (Staff Report) (CDFG 1995), contained Department-recommended burrowing owl and burrow survey techniques and mitigation measures intended to offset the loss of habitat and slow or reverse further decline of this species. Notwithstanding these measures, over the past 15+ years, burrowing owls have continued to decline in portions of their range (DeSante et al. 2007, Wilkerson and Siegel, 2010). The Department has determined that reversing declining population and range trends for burrowing owls will require implementation of more effective conservation actions, and evaluating the efficacy of the Department's existing recommended avoidance, minimization and mitigation approaches for burrowing owls.

The Department has identified three main actions that together will facilitate a more viable, coordinated, and concerted approach to conservation and mitigation for burrowing owls in California. These include:

1. Incorporating burrowing owl comprehensive conservation strategies into landscape-based planning efforts such as Natural Community Conservation Plans (NCCPs) and multi-species Habitat Conservation Plans (HCPs) that specifically address burrowing owls.
2. Developing and implementing a statewide conservation strategy (Burkett and Johnson, 2007) and local or regional conservation strategies for burrowing owls, including the development and implementation of a statewide burrowing owl survey and monitoring plan.
3. Developing more rigorous burrowing owl survey methods, working to improve the adequacy of impacts assessments; developing clear and effective avoidance and minimization measures; and developing mitigation measures to ensure impacts to the species are effectively addressed at the project, local, and/or regional level (the focus of this document).

This Report sets forth the Department's recommendations for implementing the third approach identified above by revising the 1995 Staff Report, drawing from the most relevant and current knowledge and expertise, and incorporating the best scientific information

available pertaining to the species. It is designed to provide a compilation of the best available science for Department staff, biologists, planners, land managers, California Environmental Quality Act (CEQA) lead agencies, and the public to consider when assessing impacts of projects or other activities on burrowing owls.

This revised Staff Report takes into account the California Burrowing Owl Consortium's Survey Protocol and Mitigation Guidelines (CBOC 1993, 1997) and supersedes the survey, avoidance, minimization and mitigation recommendations in the 1995 Staff Report. Based on experiences gained from implementing the 1995 Staff Report, the Department believes revising that report is warranted. This document also includes general conservation goals and principles for developing mitigation measures for burrowing owls.

DEPARTMENT ROLE AND LEGAL AUTHORITIES

The mission of the Department is to manage California's diverse fish, wildlife and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitats necessary to maintain biologically sustainable populations of those species (Fish and Game Code (FGC) §1802). The Department, as trustee agency pursuant to CEQA (See CEQA Guidelines, §15386), has jurisdiction by law over natural resources, including fish and wildlife, affected by a project, as that term is defined in Section 21065 of the Public Resources Code. The Department exercises this authority by reviewing and commenting on environmental documents and making recommendations to avoid, minimize, and mitigate potential negative impacts to those resources held in trust for the people of California.

Field surveys designed to detect the presence of a particular species, habitat element, or natural community are one of the tools that can assist biologists in determining whether a species or habitat may be significantly impacted by land use changes or disturbance. The Department reviews field survey data as well as site-specific and regional information to evaluate whether a project's impacts may be significant. This document compiles the best available science for conducting habitat assessments and surveys, and includes considerations for developing measures to avoid impacts or mitigate unavoidable impacts.

CEQA

CEQA requires public agencies in California to analyze and disclose potential environmental impacts associated with a project that the agency will carry out, fund, or approve. Any potentially significant impact must be mitigated to the extent feasible. Project-specific CEQA mitigation is important for burrowing owls because most populations exist on privately owned parcels that, when proposed for development or other types of modification, may be subject to the environmental review requirements of CEQA.

Take

Take of individual burrowing owls and their nests is defined by FGC section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in FGC Section 86 as "hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill."

Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions between the United States and Canada, Japan, Mexico, and Russia for the protection of migratory birds, including the burrowing owl (50 C.F.R. § 10). The MBTA protects migratory bird nests from possession, sale, purchase, barter, transport, import and export, and collection. The other prohibitions of the MBTA - capture, pursue, hunt, and kill - are inapplicable to nests. The regulatory definition of take, as defined in Title 50 C.F.R. part 10.12, means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to hunt, shoot, wound, kill, trap, capture, or collect. Only the verb "collect" applies to nests. It is illegal to collect, possess, and by any means transfer possession of any migratory bird nest. The MBTA prohibits the destruction of a nest when it contains birds or eggs, and no possession shall occur during the destruction (see Fish and Wildlife Service, Migratory Bird Permit Memorandum, April 15, 2003). Certain exceptions to this prohibition are included in 50 C.F.R. section 21. Pursuant to Fish & Game Code section 3513, the Department enforces the Migratory Bird Treaty Act consistent with rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act.

Regional Conservation Plans

Regional multiple species conservation plans offer long-term assurances for conservation of covered species at a landscape scale, in exchange for biologically appropriate levels of incidental take and/or habitat loss as defined in the approved plan. California's NCCP Act (FGC §2800 et seq.) governs such plans at the state level, and was designed to conserve species, natural communities, ecosystems, and ecological processes across a jurisdiction or a collection of jurisdictions. Complementary federal HCPs are governed by the Endangered Species Act (7 U.S.C. § 136, 16 U.S.C.§ 1531 et seq.) (ESA). Regional conservation plans (and certain other landscape-level conservation and management plans), may provide conservation for unlisted as well as listed species. Because the geographic scope of NCCPs and HCPs may span many hundreds of thousands of acres, these planning tools have the potential to play a significant role in conservation of burrowing owls, and grasslands and other habitats.

Fish and Game Commission Policies

There are a number of Fish and Game Commission policies (see FGC §2008) that can be applied to burrowing owl conservation. These include policies on: Raptors, Cooperation, Endangered and Threatened Species, Land Use Planning, Management and Utilization of Fish and Wildlife on Federal Lands, Management and Utilization of Fish and Wildlife on Private Lands, and Research.

GUIDING PRINCIPLES FOR CONSERVATION

Unless otherwise provided in a statewide, local, or regional conservation strategy, surveying and evaluating impacts to burrowing owls, as well as developing and implementing avoidance, minimization, and mitigation and conservation measures incorporate the following principles. These principles are a summary of Department staff expert opinion and were used to guide the preparation of this document.

1. Use the Precautionary Principle (Noss et al.1997), by which the alternative of increased conservation is deliberately chosen in order to buffer against incomplete knowledge of burrowing owl ecology and uncertainty about the consequences to burrowing owls of potential impacts, including those that are cumulative.
2. Employ basic conservation biology tenets and population-level approaches when determining what constitutes appropriate avoidance, minimization, and mitigation for impacts. Include mitigation effectiveness monitoring and reporting, and use an adaptive management loop to modify measures based on results.
3. Protect and conserve owls in wild, semi-natural, and agricultural habitats (conserve is defined at FGC §1802).
4. Protect and conserve natural nest burrows (or burrow surrogates) previously used by burrowing owls and sufficient foraging habitat and protect auxiliary "satellite" burrows that contribute to burrowing owl survivorship and natural behavior of owls.

CONSERVATION GOALS FOR THE BURROWING OWL IN CALIFORNIA

It is Department staff expert opinion that the following goals guide and contribute to the short and long-term conservation of burrowing owls in California:

1. Maintain size and distribution of extant burrowing owl populations (allowing for natural population fluctuations).
2. Increase geographic distribution of burrowing owls into formerly occupied historical range where burrowing owl habitat still exists, or where it can be created or enhanced, and where the reason for its local disappearance is no longer of concern.
3. Increase size of existing populations where possible and appropriate (for example, considering basic ecological principles such as carrying capacity, predator-prey relationships, and inter-specific relationships with other species at risk).
4. Protect and restore self-sustaining ecosystems or natural communities which can support burrowing owls at a landscape scale, and which will require minimal long-term management.
5. Minimize or prevent unnatural causes of burrowing owl population declines (e.g., nest burrow destruction, chemical control of rodent hosts and prey).
6. Augment/restore natural dynamics of burrowing owl populations including movement and genetic exchange among populations, such that the species does not require future listing and protection under the California Endangered Species Act (CESA) and/or the federal Endangered Species Act (ESA).
7. Engage stakeholders, including ranchers; farmers; military; tribes; local, state, and federal agencies; non-governmental organizations; and scientific research and education communities involved in burrowing owl protection and habitat management.

ACTIVITIES WITH THE POTENTIAL TO TAKE OR IMPACT BURROWING OWLS

The following activities are examples of activities that have the potential to take burrowing owls, their nests or eggs, or destroy or degrade burrowing owl habitat: grading, disking, cultivation, earthmoving, burrow blockage, heavy equipment compacting and crushing burrow tunnels, levee maintenance, flooding, burning and mowing (if burrows are impacted), and operating wind turbine collisions (collectively hereafter referred to as "projects" or "activities"

whether carried out pursuant to CEQA or not). In addition, the following activities may have impacts to burrowing owl populations: eradication of host burrowers; changes in vegetation management (i.e. grazing); use of pesticides and rodenticides; destruction, conversion or degradation of nesting, foraging, over-wintering or other habitats; destruction of natural burrows and burrow surrogates; and disturbance which may result in harassment of owls at occupied burrows.

PROJECT IMPACT EVALUATIONS

The following three progressive steps are effective in evaluating whether projects will result in impacts to burrowing owls. The information gained from these steps will inform any subsequent avoidance, minimization and mitigation measures. The steps for project impact evaluations are: 1) habitat assessment, 2) surveys, and 3) impact assessment. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with FGC sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project. These three site evaluation steps are discussed in detail below.

Biologist Qualifications

The current scientific literature indicates that only individuals meeting the following minimum qualifications should perform burrowing owl habitat assessments, surveys, and impact assessments:

1. Familiarity with the species and its local ecology;
2. Experience conducting habitat assessments and non-breeding and breeding season surveys, or experience with these surveys conducted under the direction of an experienced surveyor;
3. Familiarity with the appropriate state and federal statutes related to burrowing owls, scientific research, and conservation;
4. Experience with analyzing impacts of development on burrowing owls and their habitat.

Habitat Assessment Data Collection and Reporting

A habitat assessment is the first step in the evaluation process and will assist investigators in determining whether or not occupancy surveys are needed. Refer to Appendix B for a definition of burrowing owl habitat. Compile the detailed information described in Appendix C when conducting project scoping, conducting a habitat assessment site visit and preparing a habitat assessment report.

Surveys

Burrowing owl surveys are the second step of the evaluation process and the best available scientific literature recommends that they be conducted whenever burrowing owl habitat or sign (see Appendix B) is encountered on or adjacent to (within 150 meters) a project site

(Thomsen 1971, Martin 1973). Occupancy of burrowing owl habitat is confirmed at a site when at least one burrowing owl, or its sign at or near a burrow entrance, is observed within the last three years (Rich 1984). Burrowing owls are more detectable during the breeding season with detection probabilities being highest during the nestling stage (Conway et al. 2008). In California, the burrowing owl breeding season extends from 1 February to 31 August (Haug et al. 1993, Thompsen 1971) with some variances by geographic location and climatic conditions. Several researchers suggest three or more survey visits during daylight hours (Haug and Diduik 1993, CBOC 1997, Conway and Simon 2003) and recommend each visit occur at least three weeks apart during the peak of the breeding season, commonly accepted in California as between 15 April and 15 July (CBOC 1997). Conway and Simon (2003) and Conway et al. (2008) recommended conducting surveys during the day when most burrowing owls in a local area are in the laying and incubation period (so as not to miss early breeding attempts), during the nesting period, and in the late nestling period when most owls are spending time above ground.

Non-breeding season (1 September to 31 January) surveys may provide information on burrowing owl occupancy, but do not substitute for breeding season surveys because results are typically inconclusive. Burrowing owls are more difficult to detect during the non-breeding season and their seasonal residency status is difficult to ascertain. Burrowing owls detected during non-breeding season surveys may be year-round residents, young from the previous breeding season, pre-breeding territorial adults, winter residents, dispersing juveniles, migrants, transients or new colonizers. In addition, the numbers of owls and their pattern of distribution may differ during winter and breeding seasons. However, on rare occasions, non-breeding season surveys may be warranted (i.e., if the site is believed to be a wintering site only based on negative breeding season results). Refer to Appendix D for information on breeding season and non-breeding season survey methodologies.

Survey Reports

Adequate information about burrowing owls present in and adjacent to an area that will be disturbed by a project or activity will enable the Department, reviewing agencies and the public to effectively assess potential impacts and will guide the development of avoidance, minimization, and mitigation measures. The survey report includes but is not limited to a description of the proposed project or proposed activity, including the proposed project start and end dates, as well as a description of disturbances or other activities occurring on-site or nearby. Refer to Appendix D for details included in a survey report.

Impact Assessment

The third step in the evaluation process is the impact assessment. When surveys confirm occupied burrowing owl habitat in or adjoining the project area, there are a number of ways to assess a project's potential significant impacts to burrowing owls and their habitat. Richardson and Miller (1997) recommended monitoring raptor behavior prior to developing management recommendations and buffers to determine the extent to which individuals have been sensitized to human disturbance. Monitoring results will also provide detail necessary for developing site-specific measures. Postovit and Postovit (1987) recommended an analytical approach to mitigation planning: define the problem (impact), set goals (to guide mitigation development), evaluate and select mitigation methods, and monitor the results.

Define the problem. The impact assessment evaluates all factors that could affect burrowing owls. Postovit and Postovit (1987) recommend evaluating the following in assessing impacts to raptors and planning mitigation: type and extent of disturbance, duration and timing of disturbance, visibility of disturbance, sensitivity and ability to habituate, and influence of environmental factors. They suggest identifying and addressing all potential direct and indirect impacts to burrowing owls, regardless of whether or not the impacts will occur during the breeding season. Several examples are given for each impact category below; however, examples are not intended to be used exclusively.

Type and extent of the disturbance. The impact assessment describes the nature (source) and extent (scale) of potential project impacts on occupied, satellite and unoccupied burrows including acreage to be lost (temporary or permanent), fragmentation/edge being created, increased distance to other nesting and foraging habitat, and habitat degradation. Discuss any project activities that impact either breeding and/or non-breeding habitat which could affect owl home range size and spatial configuration, negatively affect onsite and offsite burrowing owl presence, increase energetic costs, lower reproductive success, increase vulnerability to predation, and/or decrease the chance of procuring a mate.

Duration and timing of the impact. The impact assessment describes the amount of time the burrowing owl habitat will be unavailable to burrowing owls (temporary or permanent) on the site and the effect of that loss on essential behaviors or life history requirements of burrowing owls, the overlap of project activities with breeding and/or non-breeding seasons (timing of nesting and/or non-breeding activities may vary with latitude and climatic conditions, which should be considered with the timeline of the project or activity), and any variance of the project activities in intensity, scale and proximity relative to burrowing owl occurrences.

Visibility and sensitivity. Some individual burrowing owls or pairs are more sensitive than others to specific stimuli and may habituate to ongoing visual or audible disturbance. Site-specific monitoring may provide clues to the burrowing owl's sensitivities. This type of assessment addresses the sensitivity of burrowing owls within their nesting area to humans on foot, and vehicular traffic. Other variables are whether the site is primarily in a rural versus urban setting, and whether any prior disturbance (e.g., human development or recreation) is known at the site.

Environmental factors. The impact assessment discusses any environmental factors that could be influenced or changed by the proposed activities including nest site availability, predators, prey availability, burrowing mammal presence and abundance, and threats from other extrinsic factors such as human disturbance, urban interface, feral animals, invasive species, disease or pesticides.

Significance of impacts. The impact assessment evaluates the potential loss of nesting burrows, satellite burrows, foraging habitat, dispersal and migration habitat, wintering habitat, and habitat linkages, including habitat supporting prey and host burrowers and other essential habitat attributes. This assessment determines if impacts to the species will result in significant impacts to the species locally, regionally and range-wide per CEQA Guidelines §15382 and Appendix G. The significance of the impact to habitat depends on the extent of habitat disturbed and length of time the habitat is unavailable (for example: minor – several days, medium – several weeks to months, high - breeding season affecting juvenile survival,

or over winter affecting adult survival).

Cumulative effects. The cumulative effects assessment evaluates two consequences: 1) the project's proportional share of reasonably foreseeable impacts on burrowing owls and habitat caused by the project or in combination with other projects and local influences having impacts on burrowing owls and habitat, and 2) the effects on the regional owl population resulting from the project's impacts to burrowing owls and habitat.

Mitigation goals. Establishing goals will assist in planning mitigation and selecting measures that function at a desired level. Goals also provide a standard by which to measure mitigation success. Unless specifically provided for through other FGC Sections or through specific regulations, take, possession or destruction of individual burrowing owls, their nests and eggs is prohibited under FGC sections 3503, 3503.5 and 3513. Therefore, a required goal for all project activities is to avoid take of burrowing owls. Under CEQA, goals would consist of measures that would avoid, minimize and mitigate impacts to a less than significant level. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. As set forth in more detail in Appendix A, the current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal, presence of burrows, burrow surrogates, presence of fossorial mammal dens, well drained soils, and abundant and available prey within close proximity to the burrow.

MITIGATION METHODS

The current scientific literature indicates that any site-specific avoidance or mitigation measures developed should incorporate the best practices presented below or other practices confirmed by experts and the Department. The Department is available to assist in the development of site-specific avoidance and mitigation measures.

Avoiding. A primary goal is to design and implement projects to seasonally and spatially avoid negative impacts and disturbances that could result in take of burrowing owls, nests, or eggs. Other avoidance measures may include but not be limited to:

- Avoid disturbing occupied burrows during the nesting period, from 1 February through 31 August.
- Avoid impacting burrows occupied during the non-breeding season by migratory or non-migratory resident burrowing owls.
- Avoid direct destruction of burrows through chaining (dragging a heavy chain over an area to remove shrubs), disking, cultivation, and urban, industrial, or agricultural development.
- Develop and implement a worker awareness program to increase the on-site worker's recognition of and commitment to burrowing owl protection.
- Place visible markers near burrows to ensure that farm equipment and other machinery does not collapse burrows.
- Do not fumigate, use treated bait or other means of poisoning nuisance animals in areas where burrowing owls are known or suspected to occur (e.g., sites observed with nesting

owls, designated use areas).
- Restrict the use of treated grain to poison mammals to the months of January and February.

Take avoidance (pre-construction) surveys. Take avoidance surveys are intended to detect the presence of burrowing owls on a project site at a fixed period in time and inform necessary take avoidance actions. Take avoidance surveys may detect changes in owl presence such as colonizing owls that have recently moved onto the site, migrating owls, resident burrowing owls changing burrow use, or young of the year that are still present and have not dispersed. Refer to Appendix D for take avoidance survey methodology.

Site surveillance. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, the current scientific literature indicates a need for ongoing surveillance at the project site during project activities is recommended. The surveillance frequency/effort should be sufficient to detect burrowing owls if they return. Subsequent to their new occupancy or return to the site, take avoidance measures should assure with a high degree of certainty that take of owls will not occur.

Minimizing. If burrowing owls and their habitat can be protected in place on or adjacent to a project site, the use of buffer zones, visual screens or other measures while project activities are occurring can minimize disturbance impacts. Conduct site-specific monitoring to inform development of buffers (see Visibility and sensitivity above). The following general guidelines for implementing buffers should be adjusted to address site-specific conditions using the impact assessment approach described above. The CEQA lead agency and/or project proponent is encouraged to consult with the Department and other burrowing owl experts for assistance in developing site-specific buffer zones and visual screens.

Buffers. Holroyd et al. (2001) identified a need to standardize management and disturbance mitigation guidelines. For instance, guidelines for mitigating impacts by petroleum industries on burrowing owls and other prairie species (Scobie and Faminow, 2000) may be used as a template for future mitigation guidelines (Holroyd et al. 2001). Scobie and Faminow (2000) developed guidelines for activities around occupied burrowing owl nests recommending buffers around low, medium, and high disturbance activities, respectively (see below).

Recommended restricted activity dates and setback distances by level of disturbance for burrowing owls (Scobie and Faminow 2000).

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)

Based on existing vegetation, human development, and land uses in an area, resource managers may decide to allow human development or resource extraction closer to these area/sites than recommended above. However, if it is decided to allow activities closer than

the setback distances recommended, a broad-scale, long-term, scientifically-rigorous monitoring program ensures that burrowing owls are not detrimentally affected by alternative approaches.

Other minimization measures include eliminating actions that reduce burrowing owl forage and burrowing surrogates (e.g. ground squirrel), or introduce/facilitate burrowing owl predators. Actions that could influence these factors include reducing livestock grazing rates and/or changing the timing or duration of grazing or vegetation management that could result in less suitable habitat.

Burrow exclusion and closure. Burrow exclusion is a technique of installing one-way doors in burrow openings during the non-breeding season to temporarily exclude burrowing owls, or permanently exclude burrowing owls and close burrows after verifying burrows are empty by site monitoring and scoping. Exclusion in and of itself is not a take avoidance, minimization or mitigation method. Eviction of burrowing owls is a potentially significant impact under CEQA.

The long-term demographic consequences of these techniques have not been thoroughly evaluated, and the fate of evicted or excluded burrowing owls has not been systematically studied. Because burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Temporary or permanent closure of burrows may result in significant loss of burrows and habitat for reproduction and other life history requirements. Depending on the proximity and availability of alternate habitat, loss of access to burrows will likely result in varying levels of increased stress on burrowing owls and could depress reproduction, increase predation, increase energetic costs, and introduce risks posed by having to find and compete for available burrows. Therefore, exclusion and burrow closure are not recommended where they can be avoided. The current scientific literature indicates consideration of all possible avoidance and minimization measures before temporary or permanent exclusion and closure of burrows is implemented, in order to avoid take.

The results of a study by Trulio (1995) in California showed that burrowing owls passively displaced from their burrows were quickly attracted to adjacent artificial burrows at five of six passive relocation sites. The successful sites were all within 75 meters (m) of the destroyed burrow, a distance generally within a pair's territory. This researcher discouraged using passive relocation to artificial burrows as a mitigation measure for lost burrows without protection of adjacent foraging habitat. The study results indicated artificial burrows were used by evicted burrowing owls when they were approximately 50-100 m from the natural burrow (Thomsen 1971, Haug and Oliphant 1990). Locating artificial or natural burrows more than 100 m from the eviction burrow may greatly reduce the chances that new burrows will be used. Ideally, exclusion and burrow closure is employed only where there are adjacent natural burrows and non-impacted, sufficient habitat for burrowing owls to occupy with permanent protection mechanisms in place. Any new burrowing owl colonizing the project site after the CEQA document has been adopted may constitute changed circumstances that should be addressed in a re-circulated CEQA document.

The current scientific literature indicates that burrow exclusion should only be conducted by qualified biologists (meeting the Biologist's Qualifications above) during the non-breeding

season, before breeding behavior is exhibited and after the burrow is confirmed empty by site surveillance and/or scoping. The literature also indicates that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until:

- A Burrowing Owl Exclusion Plan (see Appendix E) is developed and approved by the applicable local DFG office;
- Permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Mitigating Impacts sections below. Temporary exclusion is mitigated in accordance with the item #1 under Mitigating Impacts below.
- Site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided. Conduct daily monitoring for one week to confirm young of the year have fledged if the exclusion will occur immediately after the end of the breeding season.
- Excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site (if able to confirm by band re-sight).

Translocation (Active relocation offsite >100 meters). At this time, there is little published information regarding the efficacy of translocating burrowing owls, and additional research is needed to determine subsequent survival and breeding success (Klute et al. 2003, Holroyd et al. 2001). Study results for translocation in Florida implied that hatching success may be decreased for populations of burrowing owls that undergo translocation (Nixon 2006). At this time, the Department is unable to authorize the capture and relocation of burrowing owls except within the context of scientific research (FGC §1002) or a NCCP conservation strategy.

Mitigating impacts. Habitat loss and degradation from rapid urbanization of farmland in the core areas of the Central and Imperial valleys is the greatest of many threats to burrowing owls in California (Shuford and Gardali, 2008). At a minimum, if burrowing owls have been documented to occupy burrows (see Definitions, Appendix B) at the project site in recent years, the current scientific literature supports the conclusion that the site should be considered occupied and mitigation should be required by the CEQA lead agency to address project-specific significant and cumulative impacts. Other site-specific and regionally significant and cumulative impacts may warrant mitigation. The current scientific literature indicates the following to be best practices. If these best practices cannot be implemented, the lead agency or lead investigator may consult with the Department to develop effective mitigation alternatives. The Department is also available to assist in the identification of suitable mitigation lands.

1. Where habitat will be temporarily disturbed, restore the disturbed area to pre-project condition including decompacting soil and revegetating. Permanent habitat protection may be warranted if there is the potential that the temporary impacts may render a nesting site (nesting burrow and satellite burrows) unsustainable or unavailable depending on the time frame, resulting in reduced survival or abandonment. For the latter potential impact, see the permanent impact measures below.
2. Mitigate for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced based on the information provided in Appendix A. Note: A

minimum habitat replacement recommendation is not provided here as it has been shown to serve as a default, replacing any site-specific analysis and discounting the wide variation in natal area, home range, foraging area, and other factors influencing burrowing owls and burrowing owl population persistence in a particular area.

3. Mitigate for permanent impacts to nesting, occupied and satellite burrows and burrowing owl habitat with (a) permanent conservation of similar vegetation communities (grassland, scrublands, desert, urban, and agriculture) to provide for burrowing owl nesting, foraging, wintering, and dispersal (i.e., during breeding and non-breeding seasons) comparable to or better than that of the impact area, 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. If the mitigation lands are located adjacent to the impacted burrow site, ensure the nearest neighbor artificial or natural burrow clusters are at least within 210 meters (Fisher et al. 2007).
4. Permanently protect mitigation land through a conservation easement deeded to a non-profit conservation organization or public agency with a conservation mission, for the purpose of conserving burrowing owl habitat and prohibiting activities incompatible with burrowing owl use. If the project is located within the service area of a Department-approved burrowing owl conservation bank, the project proponent may purchase available burrowing owl conservation bank credits.
5. Develop and implement a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls (see Management Plan and Artificial Burrow sections below, if applicable).
6. Fund the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.
7. Habitat should not be altered or destroyed, and burrowing owls should not be excluded from burrows, until mitigation lands have been legally secured, are managed for the benefit of burrowing owls according to Department-approved management, monitoring and reporting plans, and the endowment or other long-term funding mechanism is in place or security is provided until these measures are completed.
8. Mitigation lands should be on, adjacent or proximate to the impact site where possible and where habitat is sufficient to support burrowing owls present.
9. Where there is insufficient habitat on, adjacent to, or near project sites where burrowing owls will be excluded, acquire mitigation lands with burrowing owl habitat away from the project site. The selection of mitigation lands should then focus on consolidating and enlarging conservation areas located outside of urban and planned growth areas, within foraging distance of other conserved lands. If mitigation lands are not available adjacent to other conserved lands, increase the mitigation land acreage requirement to ensure a selected site is of sufficient size. Offsite mitigation may not adequately offset the biological and habitat values impacted on a one to one basis. Consult with the Department when determining offsite mitigation acreages.
10. Evaluate and select suitable mitigation lands based on a comparison of the habitat attributes of the impacted and conserved lands, including but not limited to: type and structure of habitat being impacted or conserved; density of burrowing owls in impacted and conserved habitat; and significance of impacted or conserved habitat to the species range-wide. Mitigate for the highest quality burrowing owl habitat impacted first and foremost when identifying mitigation lands, even if a mitigation site is located outside of

a lead agency's jurisdictional boundary, particularly if the lead agency is a city or special district.

11. Select mitigation lands taking into account the potential human and wildlife conflicts or incompatibility, including but not limited to, human foot and vehicle traffic, and predation by cats, loose dogs and urban-adapted wildlife, and incompatible species management (i.e., snowy plover).
12. Where a burrowing owl population appears to be highly adapted to heavily altered habitats such as golf courses, airports, athletic fields, and business complexes, permanently protecting the land, augmenting the site with artificial burrows, and enhancing and maintaining those areas may enhance sustainability of the burrowing owl population onsite. Maintenance includes keeping lands grazed or mowed with weed-eaters or push mowers, free from trees and shrubs, and preventing excessive human and human-related disturbance (e.g., walking, jogging, off-road activity, dog-walking) and loose and feral pets (chasing and, presumably, preying upon owls) that make the environment uninhabitable for burrowing owls (Wesemann and Rowe 1985, Millsap and Bear 2000, Lincer and Bloom 2007). Items 4, 5 and 6 also still apply to this mitigation approach.
13. If there are no other feasible mitigation options available and a lead agency is willing to establish and oversee a Burrowing Owl Mitigation and Conservation Fund that funds on a competitive basis acquisition and permanent habitat conservation, the project proponent may participate in the lead agency's program.

Artificial burrows. Artificial burrows have been used to replace natural burrows either temporarily or long-term and their long-term success is unclear. Artificial burrows may be an effective addition to in-perpetuity habitat mitigation if they are augmenting natural burrows, the burrows are regularly maintained (i.e., no less than annual, with biennial maintenance recommended), and surrounding habitat patches are carefully maintained. There may be some circumstances, for example at airports, where squirrels will not be allowed to persist and create a dynamic burrow system, where artificial burrows may provide some support to an owl population.

Many variables may contribute to the successful use of artificial burrows by burrowing owls, including pre-existence of burrowing owls in the area, availability of food, predators, surrounding vegetation and proximity, number of natural burrows in proximity, type of materials used to build the burrow, size of the burrow and entrance, direction in which the burrow entrance is facing, slope of the entrance, number of burrow entrances per burrow, depth of the burrow, type and height of perches, and annual maintenance needs (Belthoff and King 2002, Smith et al. 2005, Barclay et al. 2011). Refer to Barclay (2008) and (2011) and to Johnson et al. 2010 (unpublished report) for guidance on installing artificial burrows including recommendations for placement, installation and maintenance.

Any long-term reliance on artificial burrows as natural burrow replacements must include semi-annual to annual cleaning and maintenance and/or replacement (Barclay et al. 2011, Smith and Conway 2005, Alexander et al. 2005) as an ongoing management practice. Alexander et al. (2005), in a study of the use of artificial burrows found that all of 20 artificial burrows needed some annual cleaning and maintenance. Burrows were either excavated by predators, blocked by soil or vegetation, or experienced substrate erosion forming a space beneath the tubing that prevented nestlings from re-entering the burrow.

Mitigation lands management plan. Develop a Mitigation Lands Management Plan for projects that require off-site or on-site mitigation habitat protection to ensure compliance with and effectiveness of identified management actions for the mitigation lands. A suggested outline and related vegetation management goals and monitoring success criteria can be found in Appendix E.

Mitigation Monitoring and Reporting

Verify the compliance with required mitigation measures, the accuracy of predictions, and ensure the effectiveness of all mitigation measures for burrowing owls by conducting follow-up monitoring, and implementing midcourse corrections, if necessary, to protect burrowing owls. Refer to CEQA Guidelines Section 15097 and the CEQA Guidelines for additional guidance on mitigation, monitoring and reporting. Monitoring is qualitatively different from site surveillance; monitoring normally has a specific purpose and its outputs and outcomes will usually allow a comparison with some baseline condition of the site before the mitigation (including avoidance and minimization) was undertaken. Ideally, monitoring should be based on the Before-After Control-Impact (BACI) principle (McDonald et al. 2000) that requires knowledge of the pre-mitigation state to provide a reference point for the state and change in state after the project and mitigation have been implemented.

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Appendix A. Burrowing Owl Natural History and Threats

Diet

Burrowing owl diet includes arthropods, small rodents, birds, amphibians, reptiles, and carrion (Haug et al. 1993).

Breeding

In California, the breeding season for the burrowing owl typically occurs between 1 February and 31 August although breeding in December has been documented (Thompson 1971, Gervais et al. 2008); breeding behavior includes nest site selection by the male, pair formation, copulation, egg laying, hatching, fledging, and post-fledging care of young by the parents. The peak of the breeding season occurs between 15 April and 15 July and is the period when most burrowing owls have active nests (eggs or young). The incubation period lasts 29 days (Coulombe 1971) and young fledge after 44 days (Haug et al. 1993). Note that the timing of nesting activities may vary with latitude and climatic conditions. Burrowing owls may change burrows several times during the breeding season, starting when nestlings are about three weeks old (Haug et al. 1993).

Dispersal

The following discussion is an excerpt from Gervais et al (2008):

> "The burrowing owl is often considered a sedentary species (e.g., Thomsen 1971). A large proportion of adults show strong fidelity to their nest site from year to year, especially where resident, as in Florida (74% for females, 83% for males; Millsap and Bear 1997). In California, nest-site fidelity rates were 32%–50% in a large grassland and 57% in an agricultural environment (Ronan 2002, Catlin 2004, Catlin et al. 2005). Differences in these rates among sites may reflect differences in nest predation rates (Catlin 2004, Catlin et al. 2005). Despite the high nest fidelity rates, dispersal distances may be considerable for both juveniles (natal dispersal) and adults (postbreeding dispersal), but this also varied with location (Catlin 2004, Rosier et al. 2006). Distances of 53 km to roughly 150 km have been observed in California for adult and natal dispersal, respectively (D. K. Rosenberg and J. A. Gervais, unpublished data), despite the difficulty in detecting movements beyond the immediate study area (Koenig et al. 1996)."

Habitat

The burrowing owl is a small, long-legged, ground-dwelling bird species, well-adapted to open, relatively flat expanses. In California, preferred habitat is generally typified by short, sparse vegetation with few shrubs, level to gentle topography and well-drained soils (Haug et al. 1993). Grassland, shrub steppe, and desert are naturally occurring habitat types used by the species. In addition, burrowing owls may occur in some agricultural areas, ruderal grassy fields, vacant lots and pastures if the vegetation structure is suitable and there are useable burrows and foraging habitat in proximity (Gervais et al 2008). Unique amongst North

American raptors, the burrowing owl requires underground burrows or other cavities for nesting during the breeding season and for roosting and cover, year round. Burrows used by the owls are usually dug by other species termed host burrowers. In California, California ground squirrel (*Spermophilus beecheyi*) and round-tailed ground squirrel (*Citellus tereticaudus*) burrows are frequently used by burrowing owls but they may use dens or holes dug by other fossorial species including badger (*Taxidea taxus*), coyote (*Canis latrans*), and fox (e.g., San Joaquin kit fox, *Vulpes macrotis mutica*; Ronan 2002). In some instances, owls have been known to excavate their own burrows (Thompson 1971, Barclay 2007). Natural rock cavities, debris piles, culverts, and pipes also are used for nesting and roosting (Rosenberg et al. 1998). Burrowing owls have been documented using artificial burrows for nesting and cover (Smith and Belthoff, 2003).

Foraging habitat. Foraging habitat is essential to burrowing owls. The following discussion is an excerpt from Gervais et al. (2008):

> "Useful as a rough guide to evaluating project impacts and appropriate mitigation for burrowing owls, adult male burrowing owls home ranges have been documented (calculated by minimum convex polygon) to comprise anywhere from 280 acres in intensively irrigated agroecosystems in Imperial Valley (Rosenberg and Haley 2004) to 450 acres in mixed agricultural lands at Lemoore Naval Air Station, CA (Gervais et al. 2003), to 600 acres in pasture in Saskatchewan, Canada (Haug and Oliphant 1990). But owl home ranges may be much larger, perhaps by an order of magnitude, in non-irrigated grasslands such as at Carrizo Plain, California (Gervais et al. 2008), based on telemetry studies and distribution of nests. Foraging occurs primarily within 600 m of their nests (within approximately 300 acres, based on a circle with a 600 m radius) during the breeding season."

Importance of burrows and adjacent habitat. Burrows and the associated surrounding habitat are essential ecological requisites for burrowing owls throughout the year and especially during the breeding season. During the non-breeding season, burrowing owls remain closely associated with burrows, as they continue to use them as refuge from predators, shelter from weather and roost sites. Resident populations will remain near the previous season's nest burrow at least some of the time (Coulombe 1971, Thomsen 1971, Botelho 1996, LaFever et al. 2008).

In a study by Lutz and Plumpton (1999) adult males and females nested in formerly used sites at similar rates (75% and 63%, respectively) (Lutz and Plumpton 1999). Burrow fidelity has been reported in some areas; however, more frequently, burrowing owls reuse traditional nesting areas without necessarily using the same burrow (Haug et al. 1993, Dechant et al. 1999). Burrow and nest sites are re-used at a higher rate if the burrowing owl has reproduced successfully during the previous year (Haug et al. 1993) and if the number of burrows isn't limiting nesting opportunity.

Burrowing owls may use "satellite" or non-nesting burrows, moving young at 10-14 days, presumably to reduce risk of predation (Desmond and Savidge 1998) and possibly to avoid nest parasites (Dechant et al. 1999). Successful nests in Nebraska had more active satellite burrows within 75 m of the nest burrow than unsuccessful nests (Desmond and Savidge

1999). Several studies have documented the number of satellite burrows used by young and adult burrowing owls during the breeding season as between one and 11 burrows with an average use of approximately five burrows (Thompsen 1984, Haug 1985, Haug and Oliphant 1990). Supporting the notion of selecting for nest sites near potential satellite burrows, Ronan (2002) found burrowing owl families would move away from a nest site if their satellite burrows were experimentally removed through blocking their entrance.

Habitat adjacent to burrows has been documented to be important to burrowing owls. Gervais et al. (2003) found that home range sizes of male burrowing owls during the nesting season were highly variable within but not between years. Their results also suggested that owls concentrate foraging efforts within 600 meters of the nest burrow, as was observed in Canada (Haug and Oliphant 1990) and southern California (Rosenberg and Haley 2004). James et al. (1997), reported habitat modification factors causing local burrowing owl declines included habitat fragmentation and loss of connectivity.

In conclusion, the best available science indicates that essential habitat for the burrowing owl in California must include suitable year-round habitat, primarily for breeding, foraging, wintering and dispersal habitat consisting of short or sparse vegetation (at least at some time of year), presence of burrows, burrow surrogates or presence of fossorial mammal dens, well-drained soils, and abundant and available prey within close proximity to the burrow.

Threats to Burrowing Owls in California

Habitat loss. Habitat loss, degradation, and fragmentation are the greatest threats to burrowing owls in California. According to DeSante et al. (2007), "the vast majority of burrowing owls [now] occur in the wide, flat lowland valleys and basins of the Imperial Valley and Great Central Valley [where] for the most part,...the highest rates of residential and commercial development in California are occurring." Habitat loss from the State's long history of urbanization in coastal counties has already resulted in either extirpation or drastic reduction of burrowing owl populations there (Gervais et al. 2008). Further, loss of agricultural and other open lands (such as grazed landscapes) also negatively affect owl populations. Because of their need for open habitat with low vegetation, burrowing owls are unlikely to persist in agricultural lands dominated by vineyards and orchards (Gervais et al. 2008).

Control of burrowing rodents. According to Klute et al. (2003), the elimination of burrowing rodents through control programs is a primary factor in the recent and historical decline of burrowing owl populations nationwide. In California, ground squirrel burrows are most often used by burrowing owls for nesting and cover; thus, ground squirrel control programs may affect owl numbers in local areas by eliminating a necessary resource.

Direct mortality. Burrowing owls suffer direct losses from a number of sources. Vehicle collisions are a significant source of mortality especially in the urban interface and where owls nest alongside roads (Haug et al. 1993, Gervais et al. 2008). Road and ditch maintenance, modification of water conveyance structures (Imperial Valley) and discing to control weeds in fallow fields may destroy burrows (Rosenberg and Haley 2004, Catlin and Rosenberg 2006) which may trap or crush owls. Wind turbines at Altamont Pass Wind Resource Area are known to cause direct burrowing owl mortality (Thelander et al. 2003). Exposure to

pesticides may pose a threat to the species but is poorly understood (Klute et al. 2003, Gervais et al. 2008).

Appendix B. Definitions

Some key terms that appear in this document are defined below.

Adjacent habitat means burrowing owl habitat that abuts the area where habitat and burrows will be impacted and rendered non-suitable for occupancy.

Breeding (nesting) season begins as early as 1 February and continues through 31 August (Thomsen 1971, Zarn 1974). The timing of breeding activities may vary with latitude and climatic conditions. The breeding season includes pairing, egg-laying and incubation, and nestling and fledging stages.

Burrow exclusion is a technique of installing one-way doors in burrow openings during the non-breeding season to temporarily exclude burrowing owls or permanently exclude burrowing owls and excavate and close burrows after confirming burrows are empty.

Burrowing owl habitat generally includes, but is not limited to, short or sparse vegetation (at least at some time of year), presence of burrows, burrow surrogates or presence of fossorial mammal dens, well-drained soils, and abundant and available prey.

Burrow surrogates include culverts, piles of concrete rubble, piles of soil, burrows created along soft banks of ditches and canals, pipes, and similar structures.

Civil twilight - Morning civil twilight begins when the geometric center of the sun is 6 degrees below the horizon (civil dawn) and ends at sunrise. Evening civil twilight begins at sunset and ends when the geometric center of the sun reaches 6 degrees below the horizon (civil dusk). During this period there is enough light from the sun that artificial sources of light may not be needed to carry on outdoor activities. This concept is sometimes enshrined in laws, for example, when drivers of automobiles must turn on their headlights (called lighting-up time in the UK); when pilots may exercise the rights to fly aircraft. Civil twilight can also be described as the limit at which twilight illumination is sufficient, under clear weather conditions, for terrestrial objects to be clearly distinguished; at the beginning of morning civil twilight, or end of evening civil twilight, the horizon is clearly defined and the brightest stars are visible under clear atmospheric conditions.

Conservation for burrowing owls may include but may not be limited to protecting remaining breeding pairs or providing for population expansion, protecting and enhancing breeding and essential habitat, and amending or augmenting land use plans to stabilize populations and other specific actions to avoid the need to list the species pursuant to California or federal Endangered Species Acts.

Contiguous means connected together so as to form an uninterrupted expanse in space.

Essential habitat includes nesting, foraging, wintering, and dispersal habitat.

Foraging habitat is habitat within the estimated home range of an occupied burrow, supports suitable prey base, and allows for effective hunting.

Host burrowers include ground squirrels, badgers, foxes, coyotes, gophers etc.

Locally significant species is a species that is not rare from a statewide perspective but is rare or uncommon in a local context such as within a county or region (CEQA §15125 (c)) or is so designated in local or regional plans, policies, or ordinances (CEQA Guidelines, Appendix G). Examples include a species at the outer limits of its known range or occurring in a unique habitat type.

Non-breeding season is the period of time when nesting activity is not occurring, generally September 1 through January 31, but may vary with latitude and climatic conditions.

Occupied site or occupancy means a site that is assumed occupied if at least one burrowing owl has been observed occupying a burrow within the last three years (Rich 1984). Occupancy of suitable burrowing owl habitat may also be indicated by owl sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site.

Other impacting activities may include but may not be limited to agricultural practices, vegetation management and fire control, pest management, conversion of habitat from rangeland or natural lands to more intensive agricultural uses that could result in “take”. These impacting activities may not meet the definition of a project under CEQA.

Passive relocation is a technique of installing one-way doors in burrow openings to temporarily or permanently evict burrowing owls and prevent burrow re-occupation.

Peak of the breeding season is between 15 April and 15 July.

Sign includes its tracks, molted feathers, cast pellets (defined as 1-2” long brown to black regurgitated pellets consisting of non-digestible portions of the owls’ diet, such as fur, bones, claws, beetle elytra, or feathers), prey remains, egg shell fragments, owl white wash, nest burrow decoration materials (e.g., paper, foil, plastic items, livestock or other animal manure, etc.), possible owl perches, or other items.

Appendix C. Habitat Assessment and Reporting Details

Habitat Assessment Data Collection and Reporting

Current scientific literature indicates that it would be most effective to gather the data in the manner described below when conducting project scoping, conducting a habitat assessment site visit and preparing a habitat assessment report:

1. Conduct at least one visit covering the entire potential project/activity area including areas that will be directly or indirectly impacted by the project. Survey adjoining areas within 150 m (Thomsen 1971, Martin 1973), or more where direct or indirect effects could potentially extend offsite. If lawful access cannot be achieved to adjacent areas, surveys can be performed with a spotting scope or other methods.
2. Prior to the site visit, compile relevant biological information for the site and surrounding area to provide a local and regional context.
3. Check all available sources for burrowing owl occurrence information regionally prior to a field inspection. The CNDDB and BIOS (see References cited) may be consulted for known occurrences of burrowing owls. Other sources of information include, but are not limited to, the Proceedings of the California Burrowing Owl Symposium (Barclay et al. 2007), county bird atlas projects, Breeding Bird Survey records, eBIRD (http://ebird.org), Gervais et al. (2008), local reports or experts, museum records, and other site-specific relevant information.
4. Identify vegetation and habitat types potentially supporting burrowing owls in the project area and vicinity.
5. Record and report on the following information:
    a. A full description of the proposed project, including but not limited to, expected work periods, daily work schedules, equipment used, activities performed (such as drilling, construction, excavation, etc.) and whether the expected activities will vary in location or intensity over the project's timeline;
    b. A regional setting map, showing the general project location relative to major roads and other recognizable features;
    c. A detailed map (preferably a USGS topo 7.5' quad base map) of the site and proposed project, including the footprint of proposed land and/or vegetation-altering activities, base map source, identifying topography, landscape features, a north arrow, bar scale, and legend;
    d. A written description of the biological setting, including location (Section, Township, Range, baseline and meridian), acreage, topography, soils, geographic and hydrologic characteristics, land use and management history on and adjoining the site (i.e., whether it is urban, semi-urban or rural; whether there is any evidence of past or current livestock grazing, mowing, disking, or other vegetation management activities);
    e. An analysis of any relevant, historical information concerning burrowing owl use or occupancy (breeding, foraging, over-wintering) on site or in the assessment area;
    f. Vegetation type and structure (using Sawyer et al. 2009), vegetation height, habitat types and features in the surrounding area plus a reasonably sized (as supported with logical justification) assessment area; (Note: use caution in discounting habitat based on grass height as it can be a temporary condition variable by season and conditions (such as current grazing regime) or may be distributed as a mosaic).

g. The presence of burrowing owl individuals or pairs or sign (see Appendix B);
h. The presence of suitable burrows and/or burrow surrogates (>11 cm in diameter (height and width) and >150 cm in depth) (Johnson et al. 2010), regardless of a lack of any burrowing owl sign and/or burrow surrogates; and burrowing owls and/or their sign that have recently or historically (within the last 3 years) been identified on or adjacent to the site.

Appendix D. Breeding and Non-breeding Season Surveys and Reports

Current scientific literature indicates that it is most effective to conduct breeding and non-breeding season surveys and report in the manner that follows:

Breeding Season Surveys

Number of visits and timing. Conduct 4 survey visits: 1) at least one site visit between 15 February and 15 April, and 2) a minimum of three survey visits, at least three weeks apart, between 15 April and 15 July, with at least one visit after 15 June. Note: many burrowing owl migrants are still present in southwestern California during mid-March, therefore, exercise caution in assuming breeding occupancy early in the breeding season.

Survey method. Rosenberg et al. (2007) confirmed walking line transects were most effective in smaller habitat patches. Conduct surveys in all portions of the project site that were identified in the Habitat Assessment and fit the description of habitat in Appendix A. Conduct surveys by walking straight-line transects spaced 7 m to 20 m apart, adjusting for vegetation height and density (Rosenberg et al. 2007). At the start of each transect and, at least, every 100 m, scan the entire visible project area for burrowing owls using binoculars. During walking surveys, record all potential burrows used by burrowing owls as determined by the presence of one or more burrowing owls, pellets, prey remains, whitewash, or decoration. Some burrowing owls may be detected by their calls, so observers should also listen for burrowing owls while conducting the survey.

Care should be taken to minimize disturbance near occupied burrows during all seasons and not to "flush" burrowing owls especially if predators are present to reduce any potential for needless energy expenditure or burrowing owl mortality. Burrowing owls may flush if approached by pedestrians within 50 m (Conway et al. 2003). If raptors or other predators are present that may suppress burrowing owl activity, return at another time or later date for a follow-up survey.

Check all burrowing owls detected for bands and/or color bands and report band combinations to the Bird Banding Laboratory (BBL). Some site-specific variations to survey methods discussed below may be developed in coordination with species experts and Department staff.

Weather conditions. Poor weather may affect the surveyor's ability to detect burrowing owls, therefore, avoid conducting surveys when wind speed is >20 km/hr, and there is precipitation or dense fog. Surveys have greater detection probability if conducted when ambient temperatures are >20º C, <12 km/hr winds, and cloud cover is <75% (Conway et al. 2008).

Time of day. Daily timing of surveys varies according to the literature, latitude, and survey method. However, surveys between morning civil twilight and 10:00 AM and two hours before sunset until evening civil twilight provide the highest detection probabilities (Barclay pers. comm. 2012, Conway et al. 2008).

Alternate methods. If the project site is large enough to warrant an alternate method, consult current literature for generally accepted survey methods and consult with the Department on the proposed survey approach.

Additional breeding season site visits. Additional breeding season site visits may be necessary, especially if non-breeding season exclusion methods are contemplated. Detailed information, such as approximate home ranges of each individual or of family units, as well as foraging areas as related to the proposed project, will be important to document for evaluating impacts, planning avoidance measure implementation and for mitigation measure performance monitoring.

Adverse conditions may prevent investigators from determining presence or occupancy. Disease, predation, drought, high rainfall or site disturbance may preclude presence of burrowing owls in any given year. Any such conditions should be identified and discussed in the survey report. Visits to the site in more than one year may increase the likelihood of detection. Also, visits to adjacent known occupied habitat may help determine appropriate survey timing.

Given the high site fidelity shown by burrowing owls (see Appendix A, Importance of burrows), conducting surveys over several years may be necessary when project activities are ongoing, occur annually, or start and stop seasonally. (See Negative surveys).

Non-breeding Season Surveys

If conducting non-breeding season surveys, follow the methods described above for breeding season surveys, but conduct at least four (4) visits, spread evenly, throughout the non-breeding season. Burrowing owl experts and local Department staff are available to assist with interpreting results.

Negative Surveys

Adverse conditions may prevent investigators from documenting presence or occupancy. Disease, predation, drought, high rainfall or site disturbance may preclude presence of burrowing owl in any given year. Discuss such conditions in the Survey Report. Visits to the site in more than one year increase the likelihood of detection and failure to locate burrowing owls during one field season does not constitute evidence that the site is no longer occupied, particularly if adverse conditions influenced the survey results. Visits to other nearby known occupied sites can affirm whether the survey timing is appropriate.

Take Avoidance Surveys

Field experience from 1995 to present supports the conclusion that it would be effective to complete an initial take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the Detection Surveys section above. Implementation of avoidance and minimization measures would be triggered by positive owl presence on the site where project activities will occur. The development of avoidance and minimization approaches would be informed by monitoring the burrowing owls.

Burrowing owls may re-colonize a site after only a few days. Time lapses between project activities trigger subsequent take avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.

Survey Reports

Report on the survey methods used and results including the information described in the Summary Report and include the reports within the CEQA documentation:

1. Date, start and end time of surveys including weather conditions (ambient temperature, wind speed, percent cloud cover, precipitation and visibility);
2. Name(s) of surveyor(s) and qualifications;
3. A discussion of how the timing of the survey affected the comprehensiveness and detection probability;
4. A description of survey methods used including transect spacing, point count dispersal and duration, and any calls used;
5. A description and justification of the area surveyed relative to the project area;
6. A description that includes: number of owls or nesting pairs at each location (by nestlings, juveniles, adults, and those of an unknown age), number of burrows being used by owls, and burrowing owl sign at burrows. Include a description of individual markers, such as bands (numbers and colors), transmitters, or unique natural identifying features. If any owls are banded, request documentation from the BBL and bander to report on the details regarding the known history of the banded burrowing owl(s) (age, sex, origins, whether it was previously relocated) and provide with the report if available;
7. A description of the behavior of burrowing owls during the surveys, including feeding, resting, courtship, alarm, territorial defense, and those indicative of parents or juveniles;
8. A list of possible burrowing owl predators present and documentation of any evidence of predation of owls;
9. A detailed map (1:24,000 or closer to show details) showing locations of all burrowing owls, potential burrows, occupied burrows, areas of concentrated burrows, and burrowing owl sign. Locations documented by use of global positioning system (GPS) coordinates must include the datum in which they were collected. The map should include a title, north arrow, bar scale and legend;
10. Signed field forms, photos, etc., as appendices to the field survey report;
11. Recent color photographs of the proposed project or activity site; and
12. Original CNDDB Field Survey Forms should be sent directly to the Department's CNDDB office, and copies should be included in the environmental document as an appendix. (http://www.dfg.ca.gov/bdb/html/cnddb.html).

Appendix E. Example Components for Burrowing Owl Artificial Burrow and Exclusion Plans

Whereas the Department does not recommend exclusion and burrow closure, current scientific literature and experience from 1995 to present, indicate that the following example components for burrowing owl artificial burrow and exclusion plans, combined with consultation with the Department to further develop these plans, would be effective.

Artificial Burrow Location

If a burrow is confirmed occupied on-site, artificial burrow locations should be appropriately located and their use should be documented taking into consideration:

1. A brief description of the project and project site pre-construction;
2. The mitigation measures that will be implemented;
3. Potential conflicting site uses or encumbrances;
4. A comparison of the occupied burrow site(s) and the artificial burrow site(s) (e.g., vegetation, habitat types, fossorial species use in the area, and other features);
5. Artificial burrow(s) proximity to the project activities, roads and drainages;
6. Artificial burrow(s) proximity to other burrows and entrance exposure;
7. Photographs of the site of the occupied burrow(s) and the artificial burrows;
8. Map of the project area that identifies the burrow(s) to be excluded as well as the proposed sites for the artificial burrows;
9. A brief description of the artificial burrow design;
10. Description of the monitoring that will take place during and after project implementation including information that will be provided in a monitoring report.
11. A description of the frequency and type of burrow maintenance.

Exclusion Plan

An Exclusion Plan addresses the following including but not limited to:

1. Confirm by site surveillance that the burrow(s) is empty of burrowing owls and other species preceding burrow scoping;
2. Type of scope and appropriate timing of scoping to avoid impacts;
3. Occupancy factors to look for and what will guide determination of vacancy and excavation timing (one-way doors should be left in place 48 hours to ensure burrowing owls have left the burrow before excavation, visited twice daily and monitored for evidence that owls are inside and can't escape i.e., look for sign immediately inside the door).
4. How the burrow(s) will be excavated. Excavation using hand tools with refilling to prevent reoccupation is preferable whenever possible (may include using piping to stabilize the burrow to prevent collapsing until the entire burrow has been excavated and it can be determined that no owls reside inside the burrow);
5. Removal of other potential owl burrow surrogates or refugia on site;
6. Photographing the excavation and closure of the burrow to demonstrate success and sufficiency;

7. Monitoring of the site to evaluate success and, if needed, to implement remedial measures to prevent subsequent owl use to avoid take;
8. How the impacted site will continually be made inhospitable to burrowing owls and fossorial mammals (e.g., by allowing vegetation to grow tall, heavy disking, or immediate and continuous grading) until development is complete.

Appendix F. Mitigation Management Plan and Vegetation Management Goals

Mitigation Management Plan

A mitigation site management plan will help ensure the appropriate implementation and maintenance for the mitigation site and persistence of the burrowing owls on the site. For an example to review, refer to Rosenberg et al. (2009). The current scientific literature and field experience from 1995 to present indicate that an effective management plan includes the following:

1. Mitigation objectives;
2. Site selection factors (including a comparison of the attributes of the impacted and conserved lands) and baseline assessment;
3. Enhancement of the conserved lands (enhancement of reproductive capacity, enhancement of breeding areas and dispersal opportunities, and removal or control of population stressors);
4. Site protection method and prohibited uses;
5. Site manager roles and responsibilities;
6. Habitat management goals and objectives:
    a. Vegetation management goals,
        i. Vegetation management tools:
            1. Grazing
            2. Mowing
            3. Burning
            4. Other
    b. Management of ground squirrels and other fossorial mammals,
    c. Semi-annual and annual artificial burrow cleaning and maintenance,
    d. Non-natives control – weeds and wildlife,
    e. Trash removal;
7. Financial assurances:
    a. Property analysis record or other financial analysis to determine long-term management funding,
    b. Funding schedule;
8. Performance standards and success criteria;
9. Monitoring, surveys and adaptive management;
10. Maps;
11. Annual reports.

Vegetation Management Goals

- Manage vegetation height and density (especially in immediate proximity to burrows). Suitable vegetation structure varies across sites and vegetation types, but should generally be at the average effective vegetation height of 4.7 cm (Green and Anthony 1989) and <13 cm average effective vegetation height (MacCracken et al. 1985*a)*.
- Employ experimental prescribed fires (controlled, at a small scale) to manage vegetation structure;

- Vegetation reduction or ground disturbance timing, extent, and configuration should avoid take. While local ordinances may require fire prevention through vegetation management, activities like disking, mowing, and grading during the breeding season can result in take of burrowing owls and collapse of burrows, causing nest destruction. Consult the take avoidance surveys section above for pre-management avoidance survey recommendations;
- Promote natural prey distribution and abundance, especially in proximity to occupied burrows; and
- Promote self-sustaining populations of host burrowers by limiting or prohibiting lethal rodent control measures and by ensuring food availability for host burrowers through vegetation management.

Refer to Rosenberg et al. (2009) for a good discussion of managing grasslands for burrowing owls.

Mitigation Site Success Criteria

In order to evaluate the success of mitigation and management strategies for burrowing owls, monitoring is required that is specific to the burrowing owl management plan. Given limited resources, Barclay et al. (2011) suggests managers focus on accurately estimating annual adult owl populations rather than devoting time to estimating reproduction, which shows high annual variation and is difficult to accurately estimate. Therefore, the key objective will be to determine accurately the number of adult burrowing owls and pairs, and if the numbers are maintained. A frequency of 5-10 years for surveys to estimate population size may suffice if there are no changes in the management of the nesting and foraging habitat of the owls.

Effective monitoring and evaluation of off-site and on-site mitigation management success for burrowing owls includes (Barclay, pers. comm.):

- Site tenacity;
- Number of adult owls present and reproducing;
- Colonization by burrowing owls from elsewhere (by band re-sight);
- Evidence and causes of mortality;
- Changes in distribution; and
- Trends in stressors.

D-4 Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley

RECOMMENDED TIMING AND METHODOLOGY FOR SWAINSON'S HAWK NESTING SURVEYS IN CALIFORNIA'S CENTRAL VALLEY

Swainson's Hawk Technical Advisory Committee

May 31, 2000

This set of survey recommendations was developed by the Swainson's Hawk Technical Advisory Committee (TAC) to maximize the potential for locating nesting Swainson's hawks, and thus reducing the potential for nest failures as a result of project activities/disturbances. The combination of appropriate surveys, risk analysis, and monitoring has been determined to be very effective in reducing the potential for project-induced nest failures. As with most species, when the surveyor is in the right place at the right time, Swainson's hawks may be easy to observe; but some nest sites may be very difficult to locate, and even the most experienced surveyors have missed nests, nesting pairs, mis-identified a hawk in a nest, or believed incorrectly that a nest had failed. There is no substitute for specific Swainson's hawk survey experience and acquiring the correct search image.

METHODOLOGY

Surveys should be conducted in a manner that maximizes the potential to observe the adult Swainson's hawks, as well as the nest/chicks second. To meet the California Department of Fish and Game's (CDFG) recommendations for mitigation and protection of Swainson's hawks, surveys should be conducted for a ½ mile radius around all project activities, and if active nesting is identified within the ½ mile radius, consultation is required. In general, the TAC recommends this approach as well.

Minimum Equipment

Minimum survey equipment includes a high-quality pair of binoculars and a high quality spotting scope. Surveying even the smallest project area will take hours, and poor optics often result in eye-strain and difficulty distinguishing details in vegetation and subject birds. Other equipment includes good maps, GPS units, flagging, and notebooks.

Walking vs Driving

Driving (car or boat) or "windshield surveys" are usually preferred to walking if an adequate roadway is available through or around the project site. While driving, the observer can typically approach much closer to a hawk without causing it to fly. Although it might appear that a flying bird is more visible, they often fly away from the observer using trees as screens; and it is difficult to determine from where a flying bird came. Walking surveys are useful in locating a nest after a nest territory is identified, or when driving is not an option.

Angle and Distance to the Tree

Surveying subject trees from multiple angles will greatly increase the observer's chance of detecting a nest or hawk, especially after trees are fully leafed and when surveying multiple trees

in close proximity. When surveying from an access road, survey in both directions. Maintaining a distance of 50 meters to 200 meters from subject trees is optimal for observing perched and flying hawks without greatly reducing the chance of detecting a nest/young: Once a nesting territory is identified, a closer inspection may be required to locate the nest.

Speed
Travel at a speed that allows for a thorough inspection of a potential nest site. Survey speeds should not exceed 5 miles per hour to the greatest extent possible. If the surveyor must travel faster than 5 miles per hour, stop frequently to scan subject trees.

Visual and Aural Ques
Surveys will be focused on both observations and vocalizations. Observations of nests, perched adults, displaying adults, and chicks during the nesting season are all indicators of nesting Swainson's hawks. In addition, vocalizations are extremely helpful in locating nesting territories. Vocal communication between. hawks is frequent during territorial displays; during courtship and mating; through the nesting period as mates notify each other that food is available or that a threat exists; and as older chicks and fledglings beg for food.

Distractions
Minimize distractions while surveying. Although two pairs of eyes may be better than one pair at times, conversation may limit focus. Radios should be off, not only are they distracting, they may cover a hawk's call.

Notes and Species Observed
Take thorough field notes. Detailed notes and maps of the location of observed Swainson's hawk nests are essential for filling gaps in the Natural Diversity Data Base; please report all observed nest sites. Also document the occurrence of nesting great homed owls, red-tailed hawks, red-shouldered hawks and other potentially competitive species. These species will infrequently nest within 100 yards of each other, so the presence of one species will not necessarily exclude another.

TIMING

To meet **the minimum level** of protection for the species, surveys should be completed for **at least** the two survey periods immediately prior to a project's initiation. For example, if a project is scheduled to begin on June 20, you should complete 3 surveys in Period III and 3 surveys in Period V. However, it is always recommended that surveys be completed in Periods II, III and V. **Surveys should not be conducted in Period IV.**

The survey periods are defined by the timing of migration, courtship, and nesting in a "typical" year for the majority of Swainson's hawks from San Joaquin County to Northern Yolo County. Dates should be adjusted in consideration of early and late nesting seasons, and geographic differences (northern nesters tend to nest slightly later, etc). If you are not sure, contact a TAC member or CDFG biologist.

Survey dates **Justification and search image**	**Survey time**	**Number of Surveys**
I. *January-March 20 (recommended optional)*	*All day*	*1*

Prior to Swainson's hawks returning, it may be helpful to survey the project site to determine potential nest locations. Most nests are easily observed from relatively long distances, giving the surveyor the opportunity to identify potential nest sites, as well as becoming familiar with the project area. It also gives the surveyor the opportunity to locate and map competing species nest sites such as great homed owls from February on, and red-tailed hawks from March on. After March 1, surveyors are likely to observe Swainson's hawks staging in traditional nest territories.

II. *March 20 to April 5*	*Sunrise to 1000* *1600 to sunset*	*3*

Most Central Valley Swainson's hawks return by April 1, and immediately begin occupying their traditional nest territories. For those few that do not return by April 1, there are often hawks ("floaters") that act as place-holders in traditional nest sites; they are birds that do not have mates, but temporarily attach themselves to traditional territories and/or one of the site's "owners." Floaters are usually displaced by the territories' owner(s) if the owner returns.

Most trees are leafless and are relatively transparent; it is easy to observe old nests, staging birds, and competing species. The hawks are usually in their territories during the survey hours, but typically soaring and foraging in the mid-day hours. Swainson's hawks may often be observed involved in territorial and courtship displays, and circling the nest territory. Potential nest sites identified by the observation of staging Swainson's hawks will usually be active territories during that season, although the pair may not successfully nest/reproduce that year.

III. *April 5 to April 20*	*Sunrise to 1200* *1630 to Sunset*	***3***

Although trees are much less transparent at this time, 'activity at the nest site increases significantly. Both males and females are actively nest building, visiting their selected site frequently. Territorial and courtship displays are increased, as is copulation. The birds tend to vocalize often, and nest locations are most easily identified. This period may require a great deal of "sit and watch" surveying.

IV. *April 21 to June 10*	*Monitoring known nest sites only* ***Initiating Surveys is not recommended***	

Nests are extremely difficult to locate this time of year, and even the most experienced surveyor will miss them, especially if the previous surveys have not been done. During this phase of nesting, the female Swainson's hawk is in brood position, very low in the nest, laying eggs, incubating, or protecting the newly hatched and vulnerable chicks; her head may or may not be visible. Nests are often well-hidden, built into heavily vegetated sections of trees or in clumps of mistletoe, making them all but invisible. Trees are usually not viewable from all angles, which may make nest observation impossible.

Following the male to the nest may be the only method to locate it, and the male will spend hours away from the nest foraging, soaring, and will generally avoid drawing attention to the nest site. Even if the observer is fortunate enough to see a male returning with food for the female, if the female determines it is not safe she will not call the male in, and he will not approach the nest; this may happen if the observer, or others, are too close to the nest or if other threats, such as rival hawks, are apparent to the female or male.

V. ***June 10 to JuIy 30 (post-fledging)*** ***Sunrise to 1200*** ***3***
1600 to sunset

Young are active and visible, and relatively safe without parental protection. Both adults make numerous trips to the nest and are often soaring above, or perched near or on the nest tree. The location and construction of the nest may still limit visibility of the nest, young, ‘and adults.

DETERMINING A PROJECT'S POTENTIAL
FOR IMPACTING SWAINSON'S HAWKS

LEVEL OF RISK	REPRODUCTIVE SUCCESS (Individuals)	LONGTERM SURVIVABILITY (Population)	NORMAL SITE CHARACTERISTICS (Daily Average)	NEST MONI-TORING
HIGH	Direct physical contact with the nest tree while the birds are on eggs or protecting young. (Helicopters in close proximity)	Loss of available foraging area.	Little human-created noise, little human use: nest is well away from dwellings, equipment yards, human access areas, etc. *Do not include general cultivation practices in evaluation.*	**MORE**
		Loss of nest trees.		
	Loss of nest tree after nest building is begun prior to laying eggs.	Loss of potential nest trees.		
	Personnel within 50 yards of nest tree (out of vehicles) for extended periods while birds are on eggs or protecting young that are < 10 days old.	Cumulative: Multi-year, multi-site projects with substantial noise/personnel disturbance.		
	Initiating construction activities (machinery and personnel) within 200 yards of the nest after eggs are laid and before young are > 10 days old.	Cumulative: Single-season projects with substantial noise/personnel disturbance that is greater than or significantly different from the daily norm.		
	Heavy machinery only working within 50 yards of nest.		Substantial human-created noise and occurrence: nest is near roadways, well-used waterways, active airstrips, areas that have high human use. *Do not include general cultivation practices in evaluation.*	
	Initiating construction activities within 200 yards of nest before nest building begins or after young > 10 days old.	Cumulative: Single-season projects with activities that "blend" well with site's "normal' activities.		
LOW	All project activities (personnel and machinery) greater than 200 yards from nest.			**LESS**

D-5 Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California

Nongame Bird and Mammal Section Report # 94.18

State of California

Memorandum

To : Div. Chiefs - IFD, BDD, NHD, WMD
Reg. Mgrs. - Regions 1, 2, 3, 4

Date : November 8, 1994

From : Department of Fish and Game

Subject : Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California

I am hereby transmitting the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California for your use in reviewing projects (California Environmental Quality Act [CEQA] and others) and in developing 2081 Management Authorizations and 2090 Biological Opinions which may affect Swainson's hawk habitat in the Central Valley. The staff report has been developed during the last 18 months by the Environmental Services Division (ESD) in cooperation with the Wildlife Management Division (WMD) and Regions 1, 2, and 4. It has been sent out for public review on several occasions and redrafted as appropriate.

Either the mitigation measures in the staff report may be used or project specific measures may be developed. Alternative project specific mitigation measures proposed by the Department Divisions/Regions or by project sponsors will also be considered. However, such mitigation measures must be submitted to ESD for review. The review process will focus on the consistency of the proposed measure with Department, Fish and Game Commission, and legislative policy and with laws regarding raptors and listed species. ESD will coordinate project specific mitigation measure review with WMD.

If you have any questions regarding the report, please contact Mr. Ron Rempel, Program Supervisor, Habitat Conservation Planning and Endangered Species Permitting, Environmental Services Division at (916) 654-9980.

COPY Original signed by
A. Petrovich, Jr.
For
Boyd Gibbons
Direction

Enclosure

cc: Mr. Ron Rempel
Department of Fish and Game
Sacramento

file; d, exfile, esd, chron
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Staff Report regarding Mitigation
for Impacts to Swainson's Hawks (*Buteo swainsoni*)
in the Central Valley of California

INTRODUCTION

The Legislature and the Fish and Game Commission have developed the policies, standards and regulatory mandates which, if implemented, are intended to help stabilize and reverse dramatic population declines of threatened and endangered species. In order to determine how the Department of Fish and Game (Department) could judge the adequacy of mitigation measures designed to offset impacts to Swainson's hawks in the Central Valley, Staff (WMD, ESD and Regions) has prepared this report. To ensure compliance with legislative and Commission policy, mitigation requirements which are consistent with this report should be incorporated into: (1) Department comments to Lead Agencies and project sponsors pursuant to the California Environmental Quality Act (CEQA); (2) Fish and Game Code Section 2081 Management Authorizations (Management Authorizations); and (3) Fish and Game Code Section 2090 Consultations with State CEQA Lead Agencies.

The report is designed to provide the Department (including regional offices and divisions), CEQA Lead Agencies and project proponents the context in which the Environmental Services Division (ESD) will review proposed project specific mitigation measures. This report also includes "model" mitigation measures which have been judged to be consistent with policies, standards and legal mandates of the Legislature and Fish and Game Commission. Alternative mitigation measures, tailored to specific projects, may be developed if consistent with this report. Implementation of mitigation measures consistent with this report are intended to help achieve the conservation goals for the Swainson's hawk and should complement multi-species habitat conservation planning efforts currently underway.

The Department is preparing a recovery plan for the species and it is anticipated that this report will be revised to incorporate recovery plan goals. It is anticipated that the recovery plan will be completed by the end of 1995. The Swainson's hawk recovery plan will establish criteria for species recovery through preservation of existing habitat, population expansion into former habitat, recruitment of young into the population, and other specific recovery efforts.

During project review the Department should consider whether a proposed project will adversely affect suitable foraging habitat within a ten (10) mile radius of an active (used during one or more of the last 5 years) Swainson's hawk nest(s). Suitable Swainson's hawk foraging habitat will be those habitats and crops identified in Bechard (1983), Bloom (1980), and Estep (1989). The following vegetation types/agricultural crops are considered small mammal and insect foraging habitat for Swainson's hawks:

- alfalfa
- fallow fields
- beet, tomato, and other low-growing row or field crops
- dry-land and irrigated pasture

- rice land (when not flooded)
- cereal grain crops (including corn after harvest)

The ten mile radius standard is the flight distance between active (and successful) nest sites and suitable foraging habitats, as documented in telemetry studies (Estep 1989, Babcock 1993). Based on the ten mile radius, new development projects which adversely modify nesting and/or foraging habitat should mitigate the project's impacts to the species. The ten mile foraging radius recognizes a need to strike a balance between the biological needs of reproducing pairs (including eggs and nestlings) and the economic benefit of developments) consistent with Fish and Game Code Section 2053.

Since over 95% of Swainson's hawk nests occur on private land, the Department's mitigation program should include incentives that preserve agricultural lands used for the production of crops, which are compatible with Swainson's hawk foraging needs, while providing an opportunity for urban development and other changes in land use adjacent to existing urban areas.

LEGAL STATUS

Federal

The Swainson's hawk is a migratory bird species protected under the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703-711). The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in Section 50 of the Code of Federal Regulations (C.F.R.) Part 10, including feathers or other parts, nests, eggs or products, except as allowed by implementing regulations (50 C.F.R. 21).

State

The Swainson's hawk has been listed as a threatened species by the California Fish and Game Commission pursuant to the California Endangered Species Act (CESA), see Title 14, California Code of Regulations, Section 670.5(b)(5)(A).

LEGISLATIVE AND COMMISSION POLICIES, LEGAL MANDATES AND STANDARDS

The FGC policy for threatened species is, in part, to: "Protect and preserve all native species ... and their habitats...." This policy also directs the Department to work with all interested persons to protect and preserve sensitive resources and their habitats. Consistent with this policy and direction, the Department is enjoined to implement measures that assure protection for the Swainson's hawk.

The California State Legislature, when enacting the provisions of CESA, made the following findings and declarations in Fish and Game Code Section 2051:

> a) "Certain species of fish, wildlife, and plants have been rendered extinct as a consequence of man's activities, untempered by adequate concern and conservation";
>
> b) "Other species of fish, wildlife, and plants are in danger of, or threatened with, extinction because their habitats are threatened with destruction, adverse modification, or severe curtailment because of overexploitation, disease, predation, or other factors (emphasis added)";and
>
> c) "These species of fish, wildlife, and plants are of ecological, educational, historical, recreational, esthetic, economic, and scientific value to the people of this state, and the conservation, protection, and enhancement of these species and their habitat is of statewide concern" (emphasis added).

The Legislature also proclaimed that it "is the policy of the state to conserve, protect, restore, and enhance any endangered or threatened species and its habitat and that it is the intent of the Legislature, consistent with conserving the species, to acquire lands for habitat for these species" (emphasis added).

Section 2053 of the Fish and Game Code states, in part, "it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species and or its habitat which would prevent jeopardy" (emphasis added).

Section 2054 states "The Legislature further finds and declares that, in the event specific economic, social, and or other conditions make infeasible such alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided" (emphasis added).

Loss or alteration of foraging habitat or nest site disturbance which results in:

(1) nest abandonment; (2) loss of young; (3) reduced health and vigor of eggs and/or nestlings (resulting in reduced survival rates), may ultimately result in the take (killing) of nestling or fledgling Swainson's hawks incidental to otherwise lawful activities. The taking of Swainson's hawks in this manner can be, a violation of Section 2080 of the Fish and Game Code. This interpretation of take has been judicially affirmed by the landmark appellate court decision pertaining to CESA (DFG v. ACID, 8 CA App.4, 41554). The essence of the decision emphasized that the intent and purpose of CESA applies to all activities that take or kill endangered or threatened species, even when the taking is incidental to otherwise legal activities. To avoid potential violations of Fish and Game Code Section 2080, the Department recommends and encourages project sponsors to obtain 2081 Management Authorizations for their projects.

Although this report has been prepared to assist the Department in working with the development community, the prohibition against take (Fish and Game Code Section 2080) applies to all persons, including those engaged in agricultural activities and routine maintenance of facilities. In addition, sections 3503, 3503.5, and 3800 of the Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs.

To avoid potential violation of Fish and Game Code Section 2080 (i.e. killing of a listed species), project-related disturbance at active Swainson's hawk nesting sites should be reduced or eliminated during critical phases of the nesting cycle (March 1 - September 15 annually). Delineation of specific activities which could cause nest abandonment (take) of Swainson's hawk during the nesting period should be done on a case-by-case basis.

CEQA requires a mandatory findings of significance if a project's impacts to threatened or endangered species are likely to occur (Sections 21001 (c), 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports findings of Overriding Consideration. The CEQA Lead Agency's Findings of Overriding Consideration does not eliminate the project sponsor's obligation to comply with Fish and Game Code Section 2080.

NATURAL HISTORY

The Swainson's hawk (Buteo swainsoni) is a large, broad winged buteo which frequents open country. They are about the same size as a red-tailed hawk (Buteo jatnaicensis), but trimmer, weighing approximately 800-1100 grams (1.75 - 2 lbs). They have about a 125 cm. (4+foot) wingspan. The basic body plumage may be highly variable and is characterized by several color morphs - light, dark, and rufous. In dark phase birds, the entire body of the bird may be sooty black. Adult birds generally have dark backs. The ventral or underneath sections may be light with a characteristic dark, wide "bib" from the lower throat down to the upper breast, light colored wing linings and pointed wing tips. The tail is gray ventrally with a subterminal dusky band, and narrow, less conspicuous barring proximally. The sexes are similar in appearance; females however, are slightly larger and heavier than males, as is the case in most sexually dimorphic raptors. There are no recognized subspecies (Palmer 1988).

The Swainson's hawk is a long distance migrator. The nesting grounds occur in northwestern Canada, the western U.S., and Mexico and most populations migrate to wintering grounds in the open pampas and agricultural areas of South America (Argentina, Uruguay, southern Brazil). The species is included among the group of birds known as "neotropical migrants". Some individuals or small groups (20-30 birds) may winter in the U.S., including California (Delta Islands). This round trip journey may exceed 14,000 miles. The birds return to the nesting grounds and establish nesting territories in early March.

Swainson's hawks are monogamous and remain so until the loss of a mate (Palmer 1988). Nest construction and courtship continues through April. The clutch (commonly 3-4 eggs) is generally laid in early April to early May, but may occur later. Incubation lasts 34-35 days, with both parents participating in the brooding of eggs and young. The young fledge (leave the nest) approximately 42-44 days after hatching and remain with their parents until they depart in the fall. Large groups (up to 100+ birds) may congregate in holding areas in the fall and may exhibit a delayed migration depending upon forage availability. The specific purpose of these congregation areas is as yet unknown, but is likely related to: increasing energy reserves for migration; the timing of migration; aggregation into larger migratory groups (including assisting the young in learning migration routes); and providing a pairing and courtship opportunity for unattached adults.

Foraging Requirements

Swainson's hawk nests in the Central Valley of California are generally found in scattered trees or along riparian systems adjacent to agricultural fields or pastures. These open fields and pastures are the primary foraging areas. Major prey items for Central Valley birds include: California voles (*Microtus californicus*), valley pocket gophers (*Thomomys bottae*), deer mice (*Peromyscus maniculatus*), California ground squirrels (*Spermophilus beecheyi*), mourning doves (*Zenaida macroura*), ring-necked pheasants (*Phasianus colchicus*), meadowlarks (*Sturnella neglecta*), other passerines, grasshoppers (*Conocephalinae sp*.), crickets (*Gryllidae sp*.), and beetles (Estep 1989). Swainson's hawks generally search for prey by soaring in open country and agricultural fields similar to northern hariers (*Circus cyaneus*) and ferruginous hawks (*Buteo regalis*). Often several hawks may be seen foraging together following tractors or other farm equipment capturing prey escaping from farming operations. During the breeding season, Swainson's hawks eat mainly vertebrates (small rodents and reptiles), whereas during migration vast numbers of insects are consumed (Palmer 1988).

Department funded research has documented the importance of suitable foraging habitats (e.g., annual grasslands, pasture lands, alfalfa and other hay crops, and combinations of hay, grain and row crops) within an energetically efficient flight distance from active Swainson's hawk nests (Estep pers. comm.). Recent telemetry studies to determine foraging requirements have shown that birds may use in excess of 15,000 acres of habitat or range up to 18.0 miles from the nest in search of prey (Estep 1989, Babcock 1993). The prey base (availability and abundance) for the species is highly variable from year to year, with major prey population (small mammals and insects) fluctuations occurring based on rainfall patterns, natural cycles and agricultural cropping and harvesting patterns. Based on these variables, significant acreages of potential foraging habitat (primarily agricultural lands) should be preserved per nesting pair (or aggregation of

nesting pairs) to avoid jeopardizing existing populations. Preserved foraging areas should be adequate to allow additional Swainson's hawk nesting pairs to successfully breed and use the foraging habitat during good prey production years.

Suitable foraging habitat is necessary to provide an adequate energy source for breeding adults, including support of nestlings and fledglings. Adults must achieve an energy balance between the needs of themselves and the demands of nestlings and fledglings, or the health and survival of both may be jeopardized. If prey resources are not sufficient, or if adults must hunt long distances from the nest site, the energetics of the foraging effort may result in reduced nestling vigor with an increased likelihood of disease and/or starvation. In more extreme cases, the breeding pair, in an effort to assure their own existence, may even abandon the nest and young (Woodbridge 1985).

Prey abundance and availability is determined by land and farming patterns including crop types, agricultural practices and harvesting regimes. Estep (1989) found that 73.4% of observed prey captures were in fields being harvested, disced, mowed, or irrigated. Preferred foraging habitats for Swainson's hawks include:

- alfalfa;
- fallow fields;
- beet, tomato, and other low-growing row or field crops;
- dry-land and irrigated pasture;
- rice land (during the non-flooded period); and
- cereal grain crops (including corn after harvest).

Unsuitable foraging habitat types include crops where prey species (even if present) are not available due to vegetation characteristics (e.g. vineyards, mature orchards, and cotton fields, dense vegetation).

Nesting Requirements

Although the Swainson's hawk's current nesting habitat is fragmented and unevenly distributed, Swainson's hawks nest throughout most of the Central Valley floor. More than 85% of the known nests in the Central Valley are within riparian systems in Sacramento, Sutter, Yolo, and San Joaquin counties. Much of the potential nesting habitat remaining in this area is in riparian forests, although isolated and roadside trees are also used. Nest sites are generally adjacent to or within easy flying distance to alfalfa or hay fields or other habitats or agricultural crops which provide an abundant and available prey source. Department research has shown that valley oaks (Quercus lobata), Fremont's cottonwood (Populus fremontii), willows (Salix spp.), sycamores (Platanus spp.), and walnuts (juglans spp.) are the preferred nest trees for Swainson's hawks (Bloom 1980, Schlorff and Bloom 1983, Estep 1989).

Fall and Winter Migration Habitats

During their annual fall and winter migration periods, Swainson's hawks may congregate in large groups (up to 100+ birds). Some of these sites may be used during delayed migration periods lasting up to three months. Such sites have been identified in Yolo, Tulare, Kern and San Joaquin counties and protection is needed for these critical foraging areas which support birds during their long migration.

Historical and Current Population Status

The Swainson's hawk was historically regarded as one of the most common and numerous raptor species in the state, so much so that they were often not given special mention in field notes. The breeding population has declined by an estimated 91% in California since the turn of the century (Bloom 1980). The historical Swainson's hawk population estimates are based on current densities and extrapolated based on the historical amount of available habitat. The historical population estimate is 4,284-17,136 pairs (Bloom 1980). In 1979, approximately 375 (± 50) breeding pairs of Swainson's hawks were estimated in California, and 280 (75%) of those pairs were estimated to be in the Central Valley (Bloom 1980). In 1988, 241 active breeding pairs were found in the Central Valley, with an additional 78 active pairs known in northeastern California. The 1989 population estimate was 430 pairs for the Central Valley and 550 pairs statewide (Estep, 1989). This difference in population estimates is probably a result of increased survey effort rather than an actual population increase.

Reasons for decline

The dramatic Swainson's hawk population decline has been attributed to loss of native nesting and foraging habitat, and more recently to the loss of suitable nesting trees and the conversion of agricultural lands. Agricultural lands have been converted to urban land uses and incompatible crops. In addition, pesticides, shooting, disturbance at the nest site, and impacts on wintering areas may have contributed to their decline. Although losses on the wintering areas in South America may occur, they are not considered significant since breeding populations outside of California are stable. The loss of nesting habitat within riparian areas has been accelerated by flood control practices and bank stabilization programs. Smith (1977) estimated that in 1850

over 770,000 acres of riparian habitat were present in the Sacramento Valley. By the mid-1980s, Warner and Hendrix (1984) estimated that there was only 120,000 acres of riparian habitat remaining in the Central Valley (Sacramento and San Joaquin Valleys combined). Based on Warner and Hendrix's estimates approximately 93% of the San Joaquin Valley and 73% of the Sacramento Valley riparian habitat has been eliminated since 1850.

MANAGEMENT STRATEGIES

Management and mitigation strategies for the Central Valley population of the Swainson's hawk should ensure that:

- suitable nesting habitat continues to be available (this can be accomplished by protecting existing nesting habitat from destruction or disturbance and by increasing the number of suitable nest trees); and

- foraging habitat is available during the period of the year when Swainson's hawks are present in the Central Valley (this should be accomplished by maintaining or creating adequate and suitable foraging habitat in areas of existing and potential nest sites and along migratory routes within the state).

A key to the ultimate success in meeting the Legislature's goal of maintaining habitat sufficient to preserve this species is the implementation of these management strategies in cooperation with project sponsors and local, state and federal agencies.

DEPARTMENT'S ROLES AND RESPONSIBILITIES IN PROJECT CONSULTATION AND ADMINISTRATION OF CEQA AND THE FISH AND GAME CODE

The Department, through its administration of the Fish and Game Code and its trust responsibilities, should continue its efforts to minimize further habitat destruction and should seek mitigation to offset unavoidable losses by (1) including the mitigation measures in this document in CEQA comment letters and/or as management conditions in Department issued Management Authorizations or (2) by developing project specific mitigation measures (consistent with the Commission's and the Legislature's mandates) and including them in CEQA comment letters and/or as management conditions in Fish and Game Code Section 2081 Management Authorizations issued by the Department and/or in Fish and Game Code Section 2090 Biological Opinions.

The Department should submit comments to CEQA Lead Agencies on all projects which adversely affect Swainson's hawks. CEQA requires a mandatory findings of significance if a project's impacts to threatened or endangered species are likely to occur (Sections 21001 fc), 21083. Guidelines 15380, 15064, 15065). Impacts must be: (1) avoided; or (2) appropriate mitigation must be provided to reduce impacts to less than significant levels; or (3) the lead agency must make and support findings of overriding consideration. If the CEQA Lead Agency makes a Finding of Overriding Consideration, it does not eliminate the project sponsor's obligation to comply with the take prohibitions of Fish and Game Code Section 2080. Activities

which result in (1) nest abandonment; (2) starvation of young; and/or (3) reduced health and vigor of eggs and nestlings may result in the take (killing) of Swainson's hawks incidental to otherwise lawful activities (urban development, recreational activities, agricultural practices, levee maintenance and similar activities. The taking of Swainson's hawk in this manner may be a violation of Section 2080 of the Fish and Game Code. To avoid potential violations of Fish and Game Code Section 2080, the Department should recommend and encourage project sponsors to obtain 2081 Management Authorizations.

In aggregate, the mitigation measures incorporated into CEQA comment letters and/or 2081 Management Authorizations for a project should be consistent with Section 2053 and 2054 of the Fish and Game Code. Section 2053 states, in part, "it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of'any endangered or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species and or its habitat which would prevent jeopardy" - Section 2054 states: "The Legislature further finds and declares that, in the event specific economic, social, and or other conditions make infeasible such alternatives, individual projects may be approved if appropriate mitigation and enhancement measures are provided."

State lead agencies are required to consult with the Department pursuant to Fish and Game Code Section 2090 to ensure that any action authorized, funded, or carried out by that state agency will not jeopardize the continued existence of any threatened or endangered species. Comment letters to State Lead Agencies should also include a reminder that the State Lead Agency has the responsibility to consult with the Department pursuant to Fish and Game Code Section 2090 and obtain a written findings (Biological Opinion). Mitigation measures included in Biological Opinions issued to State Lead Agencies must be consistent with Fish and Game Code Sections 2051-2054 and 2091-2092.

NEST SITE AND HABITAT LOCATION INFORMATION SOURCES

The Department's Natural Diversity Data Base (NDDB) is a continually updated, computerized inventory of location information on the State's rarest plants, animals, and natural communities. Department personnel should encourage project proponents and CEQA Lead Agencies, either directly or through CEQA comment letters, to purchase NDDB products for information on the locations of Swainson's hawk nesting areas as well as other sensitive species. The Department's Nongame Bird and Mammal Program also maintains information on Swainson's hawk nesting areas and may be contacted for additional information on the species.

Project applicants and CEQA Lead Agencies may also need to conduct site specific surveys (conducted by qualified biologists at the appropriate time of the year using approved protocols) to determine the status (location of nest sites, foraging areas, etc.) of listed species as part of the CEQA and 2081 Management Authorization process. Since these studies may require multiple years to complete, the Department shall identify any needed studies at the earliest possible time in the project review process. To facilitate project review and reduce the potential for costly

project delays, the Department should make it a standard practice to advise developers or others planning projects that may impact one or more Swainson's hawk nesting or foraging areas to initiate communication with the Department as early as possible .

MANAGEMENT CONDITIONS

Staff believes the following mitigation measures (nos. 1-4) are adequate to meet the Commission's and Legislature's policy regarding listed species and are considered as preapproved for incorporation into any Management Authorizations for the Swainson's hawk issued by the Department. The incorporation of measures 1-4 into a CEQA document should reduce a project's impact to a Swainson's hawk(s) to less than significant levels. Since these measures are Staff recommendations, a project sponsor or CEQA Lead agency may choose to negotiate project specific mitigation measures which differ. In such cases, the negotiated Management Conditions must be consistent with Commission and Legislative policy and be submitted to the ESD for review and approval prior to reaching agreement with the project sponsor or CEQA Lead Agency.

Staff recommended Management Conditions are:

1. No intensive new disturbances (e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities) or other project related activities which may cause nest abandonment or forced fledging, should be initiated within 1/4 mile (buffer zone) of an active nest between March 1 - September 15 or until August 15 if a Management Authorization or Biological Opinion is obtained for the project. The buffer zone should be increased to ½ mile in nesting areas away from urban development (i.e. in areas where disturbance [e.g. heavy equipment operation associated with construction, use of cranes or draglines, new rock crushing activities] is not a normal occurrence during the nesting season). Nest trees should not be removed unless there is no feasible way of avoiding it. If a nest tree must be removed, a Management Authorization (including conditions to off-set the loss of the nest tree) must be obtained with the tree removal period specified in the Management Authorization, generally between October 1- February 1. If construction or other project related activities which may cause nest abandonment or forced fledging are necessary within the buffer zone, monitoring of the nest site (funded by the project sponsor) by a qualified biologist (to determine if the nest is abandoned) should be required . If it is abandoned and if the nestlings are still alive, the project sponsor shall fund the recovery and hacking (controlled release of captive reared young) of the nestling(s). Routine disturbances such as agricultural activities, commuter traffic, and routine facility maintenance activities within 1/4 mile of an active nest should not be prohibited.

2. Hacking as a substitute for avoidance of impacts during the nesting period may be used in unusual circumstances after review and approval of a hacking plan by ESD and WMD. Proponents who propose using hacking will be required to fund the full costs of the effort, including any telemetry work specified by the

Department.

3. To mitigate for the loss of foraging habitat (as specified in this document), the Management Authorization holder/project sponsor shall provide Habitat Management (HM) lands to the Department based on the following ratios:

(a) Projects within I mile of an active nest tree shall provide:

- one acre of HM land (at least 10% of the HM land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the HM lands protected by a conservation easement [acceptable to the Department] on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk) for each acre of development authorized (1:1 ratio); or

- One-half acre of HM land (all of the HM land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the Department) which allows for the active management of the habitat for prey production on-the HM lands) for each acre of development authorized (0.5:1 ratio).

(b) Projects within 5 miles of an active nest tree but greater than 1 mile from the nest tree shall plovide 0.75 acres of HM land for each acre of urban development authorized (0-75:1 ratio). All HM lands protected under this requirement may be protected through fee title acquisition or conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk.

(c) Projects within 10 miles of an active nest tree but gleater than 5 miles from an active nest tree shall provide 0.5 acres of HM land for each acre of urban development authorized (0.5:1 ratio). All HM lands- protected under this requirement may be protected through fee title acquisition or a conservation easement (acceptable to the Department) on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk.

4. Management Authorization holders/project sponsors shall provide for the long-term management of the HM lands by funding a management endowment (the interest on which shall be used for managing the HM lands) at the rate of $400 per HM land acre (adjusted annually for inflation and varying interest rates).

Some project sponsors may desire to provide funds to the Department for HM land protection. This option is acceptable to the extent the proposal is consistent with Department policy regarding acceptance of funds for land acquisition. All HM lands should be located in areas which are consistent with a multi-species habitat conservation focus. Management

Authorization holders/project sponsors who are willing to establish a significant mitigation bank (> 900 acres) should be given special consideration such as 1.1 acres of mitigation credit for each acre preserved.

PROJECT SPECIFIC MITIGATION MEASURES

Although this report includes recommended Management Measures, the Department should encourage project proponents to propose alternative mitigation strategies that provide equal or greater protection of the species and which also expedite project environmental review or issuance of a CESA Management Authorization. The Department and sponsor may choose to conduct cooperative, multi-year field studies to assess the site's habitat value and determine its use by nesting and foraging Swainson's hawk. Study plans should include clearly defined criteria for judging the project's impacts on Swainson's hawks and the methodologies (days of monitoring, foraging effort/efficiency, etc.) that will be used.

The study plans should be submitted to the Wildlife Management Division and ESD for review. Mitigation measures developed as a result of the study.must be reviewed by ESD (for consistency with the policies of the Legislature and Fish and Game Commission) and approved by the Director.

EXCEPTIONS

Cities, counties and project sponsors should be encouraged to focus development on open lands within already urbanized areas. Since small disjunct parcels of habitat seldom provide foraging habitat needed to sustain the reproductive effort of a Swainson's hawk pair, Staff does not recommend requiring mitigation pursuant to CEQA nor a Management Authorization by the Department for infill (within an already urbanized area) projects in areas which have less than 5 acres of foraging habitat and are surrounded by existing urban development, unless the project area is within 1/4 mile of an active nest tree.

REVIEW

Staff should revise this report at least annually to determine if the proposed mitigation strategies should be retained, modified or if additional mitigation strategies should be included as a result of new scientific information.

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