

Appendix A

Results of USFWS Official Species List and CNDDDB Query

Table 3 – Special Status Species

Scientific Name	Common Name	Status	
		Federal	California
<i>Actinemys marmorata</i>	Western pond turtle	None	None
<i>Agelaius tricolor</i>	Tricolored blackbird	None	None
<i>Ambystoma californiense</i>	California tiger salamander	Threatened	Candidate Endangered
<i>Atriplex cordulata</i>	Heartscale	None	None
<i>Atriplex persistens</i>	Vernal pool smallscale	None	None
<i>Branchinecta conservatio</i>	Conservancy fairy shrimp	Endangered	None
<i>Branchinecta longiantenna</i>	Longhorn fairy shrimp	Endangered	None
<i>Branchinecta lynchi</i>	Vernal pool fairy shrimp	Threatened	None
<i>Branta hutchinsii leucopareia</i>	Cackling (Aleutian Canada) goose	Delisted	None
<i>Buteo swainsoni</i>	Swainson's hawk	None	Threatened
<i>Chamaesyce hooveri</i>	Hoover's spurge	Threatened	None
<i>Circus cyaneus</i>	Northern harrier	None	None
<i>Cismontane Alkali Marsh</i>	Cismontane Alkali Marsh	None	None
<i>Cordylanthus mollis ssp. hispidus</i>	Hispid bird's-beak	None	None
<i>Desmocerus californicus dimorphus</i>	Valley elderberry longhorn beetle	Threatened	None
<i>Dipodomys nitratooides exilis</i>	Fresno kangaroo rat	Endangered	None
<i>Eryngium racemosum</i>	Delta button-celery	None	Endangered
<i>Gambelia sila</i>	Blunt-nosed Leopard lizard	Threatened	None
<i>Hypomesus transpacificus</i>	Delta smelt	Threatened	None
<i>Lepidurus packardii</i>	Vernal pool tadpole shrimp	Endangered	None
<i>Linderiella occidentalis</i>	California linderiella	None	None
<i>Lithobates pipiens</i>	Northern leopard frog	None	None
<i>Mylopharodon conocephalus</i>	Hardhead	None	None
<i>Neostapfia colusana</i>	Colusa grass	Threatened	Endangered
<i>Oncorhynchus mykiss</i>	Central valley steelhead	Threatened	None
<i>Rana draytonii</i>	California red-legged frog	Threatened	None
<i>Sagittaria sanfordii</i>	Sanford's arrowhead	None	None
<i>Spea hammondi</i>	Western spadefoot	None	None
<i>Thamnophis gigas</i>	Giant garter snake	Threatened	Threatened
<i>Trichocoronis wrightii var. wrightii</i>	Wright's trichocoronis	None	None
<i>Valley Sink Scrub</i>	Valley Sink Scrub	None	None
<i>Vulpes macrotis mutica</i>	San Joaquin kit fox	Endangered	Threatened

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Appendix B
Standard Avoidance and Minimization
Measures During Construction Activities in
Giant Garter Snake (*Thamnophis gigas*)
Habitat, as Revised

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H. T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

22 February 2011

Joy Winckel
Fish and Wildlife Biologist,
U.S. Fish and Wildlife Service
Endangered Species Division, San Joaquin Valley Branch
2800 Cottage Way Rm. W-2605
Sacramento, CA 95825

Dear Ms. Winckel:

I am contacting you on behalf of the San Luis Canal Company to obtain concurrence from the Service regarding avoidance and minimization measures (AMMs) proposed for giant garter snake (*Thamnophis gigas*) or to receive guidance from the Service on how proposed AMMs should be modified to obtain Service approval. The Proposed Project is located in western Merced County, approximately 11 miles northeast of Los Banos, and comprises approximately 7.25 miles of canal and approximately 5000 feet of pipe. The Proposed Project is described in detail in the enclosed Draft Environmental Assessment/Initial Study for the Eastside Conveyance project (EA/IS).

Shortly after the preparation of the EA/IS, noted giant garter snake expert, Eric C. Hansen, reviewed the EA/IS and toured the Project alignment. In a letter dated 1 November 2010 (enclosed), Mr. Hansen stated the following: "It is my professional opinion that the risks to giant garter snakes associated with the project are minimal, and that impacts may be reduced to less than significant if the project proceeds as proposed and if appropriate avoidance and minimization measures are implemented."

Based on the Service's *Standard Avoidance and Minimization Measures During Construction in Giant Garter Snake (*Thamnophis gigas*) Habitat* (Standard AMMs) and recommendations made by Mr. Hansen in the November 2010 letter, the AMMs proposed for the Project are presented below. The proposed AMMs deviate from the Standard AMMs in the following 2 ways: 1) For practical reasons, some construction would be allowed outside the active period of giant garter snakes, and 2) by necessity, some construction would occur within 200 feet of giant garter snake habitat. Work proposed for the winter of 2010-2011 will take place mostly within actively cultivated agricultural fields where giant garter snakes are not expected to occur (or to be visible above ground, if they do) and will generally not fall within 200 feet of marginal or suitable aquatic habitat features. Though the Project will impact aquatic features, work on or within 200 feet of these features is proposed only during the 1 May to 1 October active season construction window when AMMs can be applied with maximum benefit. Work proposed for the winter of 2011-2012 will occur within 200 feet of marginal or suitable habitat, but this provides ample time to construct exclusion fence or employ other AMMs, as needed.





AVOIDANCE AND MINIMIZATION MEASURES

- Among the sites possessing marginal or suitable aquatic habitat within 200 feet of proposed ground disturbing activities, four are of interest during the winter (inactive season) of 2011. The first of these sites is located at the head of the Mariposa Bypass at the northern end of the Project. While the Project itself is sited within cultivated fields, excavation would occur within 200 feet of suitable aquatic habitat and undisturbed upland (Appendix A, Photo 1). While it is unlikely that giant garter snakes would move to the disturbed project area during the inactive season, movement onto the project site will be prevented by installing exclusion (36-inch permeable silt) fencing between the project site and potential habitats. Though fencing would include trenching, take of giant garter snakes present below ground will be avoided by placing the fence either along the existing earthen roadway or within the disturbed agricultural field where no burrows are present. Once installed, the fencing will be monitored regularly to ensure its integrity as a barrier. Repairs will be made immediately if the integrity of the barrier is compromised.
- The remaining sites include 1) the agricultural drain north of the airstrip, 2) Salt Slough at TI Road, and 3) the agricultural drain north of Palazzo Road (Appendix A, Photos 3-4, respectively). Because each of these locations possess at least minimal suitability for giant garter snakes, work within channels or terrestrial habitat that is not currently cultivated will be avoided during the inactive season. However, for any work conducted in cultivated uplands within 200 feet of these features, risks of take will be reduced or eliminated by installing exclusion fencing as described above.
- For inactive season work proposed for 2012, the potential for take will be minimized in features like the agricultural drain north of the airstrip by dewatering the feature by September 15, forcing giant garter snakes, should they occur, to move elsewhere in search of aquatic prey. Once features have been dewatered for 15 days, exclusion fencing will be installed to prevent snakes from moving back to the site during the winter when work is proposed. This option is not available for 2011, however, because the majority of snakes are expected to have already gone to ground.
- Confine clearing to the minimal area necessary to facilitate construction activities. Flag and designate avoided giant garter snake habitat within or adjacent to the project area as Environmentally Sensitive Areas. This area will be avoided by all construction personnel.
- Construction personnel will receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s).
- 24-hours prior to construction activities, the project area will be surveyed for giant garter snakes. Survey of the project area will be repeated if a lapse in construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the snake will not be harmed. Report any sightings and any incidental take to the Service immediately by telephone at (916) 414-6600.





- Any dewatered habitat will remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling of the dewatered habitat.
- After completion of construction activities, remove any temporary fill and construction debris and, wherever feasible, restore disturbed areas to pre-project conditions. Restoration work may include such activities as replanting species removed from banks or replanting emergent vegetation in the active channel.
- Follow the conservation measures in Table 1 to minimize the effects of loss and disturbance of habitat on giant garter snakes. Replacement ratios are based on the acreage and on the duration of disturbance.

Table 1. Summary of Giant Garter Snake Conservation Measures

	IMPACTS: DURATION	IMPACTS: ACRES	CONSERVATION MEASURE: COMPENSATION
LEVEL 1	1 season	Less than 20 and temporary	Restoration
LEVEL 2	2 seasons	Less than 20 and temporary	Restoration plus 1:1 replacement
LEVEL 3	More than 2 seasons and temporary	Less than 20 and temporary	3:1 Replacement (or restoration plus 2:1 replacement)
	Permanent loss	Less than 3 acres total giant garter snake habitat AND Less than 1 acre aquatic habitat; OR Less than 218 linear feet bank habitat	3:1 Replacement

- Giant garter snake habitat includes 2.0 acres of surrounding upland habitat for every 1.0 acre of aquatic habitat. The 2.0 acres of upland habitat also may be defined as 218 linear feet of bankside habitat which incorporates adjacent uplands to a width of 200 feet from the edge of each bank. Each acre of created aquatic habitat should be supported by two acres of surrounding upland habitat. Compensation may include creating upland refuges and hibernacula for the giant garter snake that are above the 100-year flood plain.
- A season is defined as the calendar year period between May 1 and October 1, the active period for giant garter snake when mortality is less likely to occur.





H. T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

Please let me know if you require additional information or if I can assist you further in processing this request. You may reach me at (559) 476-3161 or bboroski@harveyecology.com.

Sincerely,

Brian B. Boroski, Ph.D.
Vice President

Enclosures: Draft Environmental Assessment/Initial Study: Eastside Conveyance Project and letter from Eric C. Hansen, Consulting Environmental Biologist, to Chase Hurley, San Luis Canal Company (dated 1 November 2010)





Appendix A. Photographs



1. Head of Mariposa Bypass and start of the new canal: we will do the work in the winter (inactive season) and mitigate with a fence.



2. Drain north of the Airstrip: Channel and Banksides should not be disturbed during the inactive season.



3. Salt Slough at TI road: No construction is planned during the inactive season.



4. Drain north of Palazzo road: No construction is planned during the inactive season.



Appendix C

U.S. Fish And Wildlife Service Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance

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**U.S. FISH AND WILDLIFE SERVICE
STANDARDIZED RECOMMENDATIONS
FOR PROTECTION OF THE ENDANGERED SAN JOAQUIN KIT FOX
PRIOR TO OR DURING GROUND DISTURBANCE**

Prepared by the Sacramento Fish and Wildlife Office
January 2011

INTRODUCTION

The following document includes many of the San Joaquin kit fox (*Vulpes macrotis mutica*) protection measures typically recommended by the U. S. Fish and Wildlife Service (Service), prior to and during ground disturbance activities. **However, incorporating relevant sections of these guidelines into the proposed project is not the only action required under the Endangered Species Act of 1973, as amended (Act) and does not preclude the need for section 7 consultation or a section 10 incidental take permit for the proposed project.** Project applicants should contact the Service in Sacramento to determine the full range of requirements that apply to your project; the address and telephone number are given at the end of this document. Implementation of the measures presented in this document may be necessary to avoid violating the provisions of the Act, including the prohibition against "take" (defined as killing, harming, or harassing a listed species, including actions that damage or destroy its habitat). These protection measures may also be required under the terms of a biological opinion pursuant to section 7 of the Act resulting in incidental take authorization (authorization), or an incidental take permit (permit) pursuant to section 10 of the Act. The specific measures implemented to protect kit fox for any given project shall be determined by the Service based upon the applicant's consultation with the Service.

The purpose of this document is to make information on kit fox protection strategies readily available and to help standardize the methods and definitions currently employed to achieve kit fox protection. The measures outlined in this document are subject to modification or revision at the discretion of the Service.

IS A PERMIT NECESSARY?

Certain acts need a permit from the Service which includes destruction of any known (occupied or unoccupied) or natal/pupping kit fox dens. Determination of the presence or absence of kit foxes and /or their dens should be made during the environmental review process.

All surveys and monitoring described in this document must be conducted by a qualified biologist and these activities do not require a permit. A qualified biologist (biologist) means any person who has completed at least four years of university training in wildlife biology or a related science and/or has demonstrated field experience in the identification and life history of the San Joaquin kit fox. In addition, the biologist(s) must be able to identify coyote, red fox,

gray fox, and kit fox tracks, and to have seen a kit fox in the wild, at a zoo, or as a museum mount. Resumes of biologists should be submitted to the Service for review and approval prior to any survey or monitoring work occurring.

SMALL PROJECTS

Small projects are considered to be those projects with small foot prints, of approximately one acre or less, such as an individual in-fill oil well, communication tower, or bridge repairs. These projects must stand alone and not be part of, or in any way connected to larger projects (i.e., bridge repair or improvement to serve a future urban development). The Service recommends that on these small projects, the biologist survey the proposed project boundary and a 200-foot area outside of the project footprint to identify habitat features and utilize this information as guidance to situate the project to minimize or avoid impacts. If habitat features cannot be completely avoided, then surveys should be conducted and the Service should be contacted for technical assistance to determine the extent of possible take.

Preconstruction/preactivity surveys shall be conducted no less than 14 days and no more than 30 days prior to the beginning of ground disturbance and/or construction activities or any project activity likely to impact the San Joaquin kit fox. Kit foxes change dens four or five times during the summer months, and change natal dens one or two times per month (Morrell 1972). Surveys should identify kit fox habitat features on the project site and evaluate use by kit fox and, if possible, assess the potential impacts to the kit fox by the proposed activity. The status of all dens should be determined and mapped (see Survey Protocol). Written results of preconstruction/preactivity surveys must be received by the Service within five days after survey completion and prior to the start of ground disturbance and/or construction activities.

If a natal/pupping den is discovered within the project area or within 200-feet of the project boundary, the Service shall be immediately notified and under no circumstances should the den be disturbed or destroyed without prior authorization. If the preconstruction/preactivity survey reveals an active natal pupping or new information, the project applicant should contact the Service immediately to obtain the necessary take authorization/permit.

If the take authorization/permit has already been issued, then the biologist may proceed with den destruction within the project boundary, except natal/pupping den which may not be destroyed while occupied. A take authorization/permit is required to destroy these dens even after they are vacated. Protective exclusion zones can be placed around all known and potential dens which occur outside the project footprint (conversely, the project boundary can be demarcated, see den destruction section).

OTHER PROJECTS

It is likely that all other projects occurring within kit fox habitat will require a take authorization/permit from the Service. This determination would be made by the Service during the early evaluation process (see Survey Protocol). These other projects would include, but are not limited to: Linear projects; projects with large footprints such as urban development; and projects which in themselves may be small but have far reaching impacts (i.e., water storage or conveyance facilities that promote urban growth or agriculture, etc.).

The take authorization/permit issued by the Service may incorporate some or all of the protection measures presented in this document. The take authorization/permit may include measures specific to the needs of the project and those requirements supersede any requirements found in this document.

EXCLUSION ZONES

In order to avoid impacts, construction activities must avoid their dens. The configuration of exclusion zones around the kit fox dens should have a radius measured outward from the entrance or cluster of entrances due to the length of dens underground. The following distances are **minimums**, and if they cannot be followed the Service must be contacted. Adult and pup kit foxes are known to sometimes rest and play near the den entrance in the afternoon, but most above-ground activities begin near sunset and continue sporadically throughout the night. Den definitions are attached as Exhibit A.

Potential den**	50 feet
Atypical den**	50 feet
Known den*	100 feet
Natal/pupping den (occupied <u>and</u> unoccupied)	Service must be contacted

***Known den:** To ensure protection, the exclusion zone should be demarcated by fencing that encircles each den at the appropriate distance and does not prevent access to the den by kit foxes. Acceptable fencing includes untreated wood particle-board, silt fencing, orange construction fencing or other fencing as approved by the Service as long as it has openings for kit fox ingress/egress and keeps humans and equipment out. Exclusion zone fencing should be maintained until all construction related or operational disturbances have been terminated. At that time, all fencing shall be removed to avoid attracting subsequent attention to the dens.

****Potential and Atypical dens:** Placement of 4-5 flagged stakes 50 feet from the den entrance(s) will suffice to identify the den location; fencing will not be required, but the exclusion zone must be observed.

Only essential vehicle operation on existing roads and foot traffic should be permitted. Otherwise, all construction, vehicle operation, material storage, or any other type of surface-disturbing activity should be prohibited or greatly restricted within the exclusion zones.

DESTRUCTION OF DENS

Limited destruction of kit fox dens may be allowed, if avoidance is not a reasonable alternative, provided the following procedures are observed. The value to kit foxes of potential, known, and natal/pupping dens differ and therefore, each den type needs a different level of protection.

Destruction of any known or natal/pupping kit fox den requires take authorization/permit from the Service.

Destruction of the den should be accomplished by careful excavation until it is certain that no kit foxes are inside. The den should be fully excavated, filled with dirt and compacted to ensure that kit foxes cannot reenter or use the den during the construction period. If at any point during excavation, a kit fox is discovered inside the den, the excavation activity shall cease immediately and monitoring of the den as described above should be resumed. Destruction of the den may be completed when in the judgment of the biologist, the animal has escaped, without further disturbance, from the partially destroyed den.

Natal/pupping dens: Natal or pupping dens which are occupied will not be destroyed until the pups and adults have vacated and then only after consultation with the Service. Therefore, project activities at some den sites may have to be postponed.

Known Dens: Known dens occurring within the footprint of the activity must be monitored for three days with tracking medium or an infra-red beam camera to determine the current use. If no kit fox activity is observed during this period, the den should be destroyed immediately to preclude subsequent use.

If kit fox activity is observed at the den during this period, the den should be monitored for at least five consecutive days from the time of the observation to allow any resident animal to move to another den during its normal activity. Use of the den can be discouraged during this period by partially plugging its entrances(s) with soil in such a manner that any resident animal can escape easily. Only when the den is determined to be unoccupied may the den be excavated under the direction of the biologist. If the animal is still present after five or more consecutive days of plugging and monitoring, the den may have to be excavated when, in the judgment of a biologist, it is temporarily vacant, for example during the animal's normal foraging activities.

The Service encourages hand excavation, but realizes that soil conditions may necessitate the use of excavating equipment. However, extreme caution must be exercised.

Potential Dens: If a take authorization/permit has been obtained from the Service, den destruction may proceed without monitoring, unless other restrictions were issued with the take authorization/permit. If no take authorization/permit has been issued, then potential dens should be monitored as if they were known dens. If any den was considered to be a potential den, but is later determined during monitoring or destruction to be currently, or previously used by kit fox (e.g., if kit fox sign is found inside), then all construction activities shall cease and the Service shall be notified immediately.

CONSTRUCTION AND ON-GOING OPERATIONAL REQUIREMENTS

Habitat subject to permanent and temporary construction disturbances and other types of ongoing project-related disturbance activities should be minimized by adhering to the following activities. Project designs should limit or cluster permanent project features to the smallest area possible while still permitting achievement of project goals. To minimize temporary disturbances, all project-related vehicle traffic should be restricted to established roads, construction areas, and other designated areas. These areas should also be included in preconstruction surveys and, to the extent possible, should be established in locations disturbed by previous activities to prevent further impacts.

1. Project-related vehicles should observe a daytime speed limit of 20-mph throughout the site in all project areas, except on county roads and State and Federal highways; this is particularly important at night when kit foxes are most active. Night-time construction should be minimized to the extent possible. However if it does occur, then the speed limit should be reduced to 10-mph. Off-road traffic outside of designated project areas should be prohibited.
2. To prevent inadvertent entrapment of kit foxes or other animals during the construction phase of a project, all excavated, steep-walled holes or trenches more than 2-feet deep should be covered at the close of each working day by plywood or similar materials. If the trenches cannot be closed, one or more escape ramps constructed of earthen-fill or wooden planks shall be installed. Before such holes or trenches are filled, they should be thoroughly inspected for trapped animals. If at any time a trapped or injured kit fox is discovered, the Service and the California Department of Fish and Game (CDFG) shall be contacted as noted under measure 13 referenced below.
3. Kit foxes are attracted to den-like structures such as pipes and may enter stored pipes and become trapped or injured. All construction pipes, culverts, or similar structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods should be thoroughly inspected for kit foxes before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a kit fox is discovered inside a pipe, that section of pipe should not be moved until the Service has been consulted. If necessary, and under the direct supervision of the biologist, the pipe

may be moved only once to remove it from the path of construction activity, until the fox has escaped.

4. All food-related trash items such as wrappers, cans, bottles, and food scraps should be disposed of in securely closed containers and removed at least once a week from a construction or project site.
5. No firearms shall be allowed on the project site.
6. No pets, such as dogs or cats, should be permitted on the project site to prevent harassment, mortality of kit foxes, or destruction of dens.
7. Use of rodenticides and herbicides in project areas should be restricted. This is necessary to prevent primary or secondary poisoning of kit foxes and the depletion of prey populations on which they depend. All uses of such compounds should observe label and other restrictions mandated by the U.S. Environmental Protection Agency, California Department of Food and Agriculture, and other State and Federal legislation, as well as additional project-related restrictions deemed necessary by the Service. If rodent control must be conducted, zinc phosphide should be used because of a proven lower risk to kit fox.
8. A representative shall be appointed by the project proponent who will be the contact source for any employee or contractor who might inadvertently kill or injure a kit fox or who finds a dead, injured or entrapped kit fox. The representative will be identified during the employee education program and their name and telephone number shall be provided to the Service.
9. An employee education program should be conducted for any project that has anticipated impacts to kit fox or other endangered species. The program should consist of a brief presentation by persons knowledgeable in kit fox biology and legislative protection to explain endangered species concerns to contractors, their employees, and military and/or agency personnel involved in the project. The program should include the following: A description of the San Joaquin kit fox and its habitat needs; a report of the occurrence of kit fox in the project area; an explanation of the status of the species and its protection under the Endangered Species Act; and a list of measures being taken to reduce impacts to the species during project construction and implementation. A fact sheet conveying this information should be prepared for distribution to the previously referenced people and anyone else who may enter the project site.
10. Upon completion of the project, all areas subject to temporary ground disturbances, including storage and staging areas, temporary roads, pipeline corridors, etc. should be re-contoured if necessary, and revegetated to promote restoration of the area to pre-project conditions. An area subject to "temporary" disturbance means any area that is

disturbed during the project, but after project completion will not be subject to further disturbance and has the potential to be revegetated. Appropriate methods and plant species used to revegetate such areas should be determined on a site-specific basis in consultation with the Service, California Department of Fish and Game (CDFG), and revegetation experts.

11. In the case of trapped animals, escape ramps or structures should be installed immediately to allow the animal(s) to escape, or the Service should be contacted for guidance.
12. Any contractor, employee, or military or agency personnel who are responsible for inadvertently killing or injuring a San Joaquin kit fox shall immediately report the incident to their representative. This representative shall contact the CDFG immediately in the case of a dead, injured or entrapped kit fox. The CDFG contact for immediate assistance is State Dispatch at (916)445-0045. They will contact the local warden or Mr. Paul Hoffman, the wildlife biologist, at (530)934-9309. The Service should be contacted at the numbers below.
13. The Sacramento Fish and Wildlife Office and CDFG shall be notified in writing within three working days of the accidental death or injury to a San Joaquin kit fox during project related activities. Notification must include the date, time, and location of the incident or of the finding of a dead or injured animal and any other pertinent information. The Service contact is the Chief of the Division of Endangered Species, at the addresses and telephone numbers below. The CDFG contact is Mr. Paul Hoffman at 1701 Nimbus Road, Suite A, Rancho Cordova, California 95670, (530) 934-9309.
14. New sightings of kit fox shall be reported to the California Natural Diversity Database (CNDDDB). A copy of the reporting form and a topographic map clearly marked with the location of where the kit fox was observed should also be provided to the Service at the address below.

Any project-related information required by the Service or questions concerning the above conditions or their implementation may be directed in writing to the U.S. Fish and Wildlife Service at:

Endangered Species Division
2800 Cottage Way, Suite W2605
Sacramento, California 95825-1846
(916) 414-6620 or (916) 414-6600

EXHIBIT “A” - DEFINITIONS

"Take" - Section 9 of the Endangered Species Act of 1973, as amended (Act) prohibits the "take" of any federally listed endangered species by any person (an individual, corporation, partnership, trust, association, etc.) subject to the jurisdiction of the United States. As defined in the Act, take means " . . . to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct". Thus, not only is a listed animal protected from activities such as hunting, but also from actions that damage or destroy its habitat.

"Dens" - San Joaquin kit fox dens may be located in areas of low, moderate, or steep topography. Den characteristics are listed below, however, the specific characteristics of individual dens may vary and occupied dens may lack some or all of these features. Therefore, caution must be exercised in determining the status of any den. Typical dens may include the following: (1) one or more entrances that are approximately 5 to 8 inches in diameter; (2) dirt berms adjacent to the entrances; (3) kit fox tracks, scat, or prey remains in the vicinity of the den; (4) matted vegetation adjacent to the den entrances; and (5) manmade features such as culverts, pipes, and canal banks.

"Known den" - Any existing natural den or manmade structure that is used or has been used at any time in the past by a San Joaquin kit fox. Evidence of use may include historical records, past or current radiotelemetry or spotlighting data, kit fox sign such as tracks, scat, and/or prey remains, or other reasonable proof that a given den is being or has been used by a kit fox. The Service discourages use of the terms "active" and "inactive" when referring to any kit fox den because a great percentage of occupied dens show no evidence of use, and because kit foxes change dens often, with the result that the status of a given den may change frequently and abruptly.

"Potential Den" - Any subterranean hole within the species' range that has entrances of appropriate dimensions for which available evidence is insufficient to conclude that it is being used or has been used by a kit fox. Potential dens shall include the following: (1) any suitable subterranean hole; or (2) any den or burrow of another species (e.g., coyote, badger, red fox, or ground squirrel) that otherwise has appropriate characteristics for kit fox use.

"Natal or Pupping Den" - Any den used by kit foxes to whelp and/or rear their pups. Natal/pupping dens may be larger with more numerous entrances than dens occupied exclusively by adults. These dens typically have more kit fox tracks, scat, and prey remains in the vicinity of the den, and may have a broader apron of matted dirt and/or vegetation at one or more entrances. A natal den, defined as a den in which kit fox pups are actually whelped but not necessarily reared, is a more restrictive version of the pupping den. In practice, however, it is difficult to distinguish between the two, therefore, for purposes of this definition either term applies.

"Atypical Den" - Any manmade structure which has been or is being occupied by a San Joaquin kit fox. Atypical dens may include pipes, culverts, and diggings beneath concrete slabs and buildings.

Appendix D

Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley

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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 horned 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
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I. <i>January-March 20 (recommended optional)</i>	<i>All day</i>	<i>1</i>
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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. <i>March 20 to April 5</i>	<i>Sunrise to 1000 1600 to sunset</i>	<i>3</i>
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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. <i>April 5 to April 20</i>	<i>Sunrise to 1200 1630 to Sunset</i>	<i>3</i>
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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. <i>April 21 to June 10</i>	<i>Monitoring known nest sites only Initiating Surveys is not recommended</i>
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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 July 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 MONITORING
<p>HIGH</p> 	<p>Direct physical contact with the nest tree while the birds are on eggs or protecting young. (Helicopters in close proximity)</p> <p>Loss of nest tree after nest building is begun prior to laying eggs.</p> <p>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.</p> <p>Initiating construction activities (machinery and personnel) within 200 yards of the nest after eggs are laid and before young are > 10 days old.</p> <p>Heavy machinery only working within 50 yards of nest.</p> <p>Initiating construction activities within 200 yards of nest before nest building begins or after young > 10 days old.</p> <p>All project activities (personnel and machinery) greater than 200 yards from nest.</p>	<p>Loss of available foraging area.</p> <p>Loss of nest trees.</p> <p>Loss of potential nest trees.</p> <p>Cumulative: Multi-year, multi-site projects with substantial noise/personnel disturbance.</p> <p>Cumulative: Single-season projects with substantial noise/personnel disturbance that is greater than or significantly different from the daily norm.</p> <p>Cumulative: Single-season projects with activities that “blend” well with site’s “normal” activities.</p>	<p>Little human-created noise, little human use: nest is well away from dwellings, equipment yards, human access areas, etc. <i>Do not include general cultivation practices in evaluation.</i></p> <p>Substantial human-created noise and occurrence: nest is near roadways, well-used waterways, active airstrips, areas that have high human use. <i>Do not include general cultivation practices in evaluation.</i></p>	<p>MORE</p> 
<p>LOW</p> 				<p>LESS</p> 

Appendix E

California Department of Fish and Game

Mitigation Guidelines for Swainson's Hawk

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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 development(s) 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 jamaicensis*), 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 (*Zenaidura 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 harriers (*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 {c} 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 1/2 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 1 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 provide 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 greater 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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Appendix F

Burrowing Owl Survey Protocol and Mitigation Guidelines

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BURROWING OWL SURVEY PROTOCOL
AND MITIGATION GUIDELINES

Prepared by:

The California Burrowing Owl Consortium

April 1993

INTRODUCTION

The California Burrowing Owl Consortium developed the following Survey Protocol and Mitigation Guidelines to meet the need for uniform standards when surveying burrowing owl (*Speotyto cunicularia*) populations and evaluating impacts from development projects. The California Burrowing Owl Consortium is a group of biologists in the San Francisco Bay area who are interested in burrowing owl conservation. The following survey protocol and mitigation guidelines were prepared by the Consortium's Mitigation Committee. These procedures offer a decision-making process aimed at preserving burrowing owls in place with adequate habitat.

California's burrowing owl population is clearly in peril and if declines continue unchecked the species may qualify for listing. Because of the intense pressure for development of open, flat grasslands in California, resource managers frequently face conflicts between owls and development projects. Owls can be affected by disturbance and habitat loss, even though there may be no direct impacts to the birds themselves or their burrows. There is often inadequate information about the presence of owls on a project site until ground disturbance is imminent. When this occurs there is usually insufficient time to evaluate impacts to owls and their habitat. The absence of standardized field survey methods impairs adequate and consistent impact assessment during regulatory review processes, which in turn reduces the possibility of effective mitigation.

These guidelines are intended to provide a decision-making process that should be implemented wherever there is potential for an action or project to adversely affect burrowing owls or the resources that support them. The process begins with a four-step survey protocol to document the presence of burrowing owl habitat, and evaluate burrowing owl use of the project site and a surrounding buffer zone. When surveys confirm occupied habitat, the mitigation measures are followed to minimize impacts to burrowing owls, their burrows and foraging habitat on the site. These guidelines emphasize maintaining burrowing owls and their resources in place rather than minimizing impacts through displacement of owls to an alternate site.

Each project and situation is different and these procedures may not be applicable in some circumstances. Finally, these are not strict rules or requirements that must be applied in all situations. They are guidelines to consider when evaluating burrowing owls and their habitat, and they suggest options for burrowing owl conservation when land use decisions are made.

Section 1 describes the four phase Burrowing Owl Survey Protocol. Section 2 contains the Mitigation Guidelines. Section 3 contains a discussion of various laws and regulations that protect burrowing owls and a list of references cited in the text.

We have submitted these documents to the California Department of Fish and Game (CDFG) for review and comment. These are untested procedures and we ask for your comments on improving their usefulness.

SECTION 1 BURROWING OWL SURVEY PROTOCOL

PHASE I: HABITAT ASSESSMENT

The first step in the survey process is to assess the presence of burrowing owl habitat on the project site including a 150-meter (approx. 500 ft.) buffer zone around the project boundary (Thomsen 1971, Martin 1973).

Burrowing Owl Habitat Description

Burrowing owl habitat can be found in annual and perennial grasslands, deserts, and scrublands characterized by low-growing vegetation (Zarn 1974). Suitable owl habitat may also include trees and shrubs if the canopy covers less than 30 percent of the ground surface. Burrows are the essential component of burrowing owl habitat: both natural and artificial burrows provide protection, shelter, and nests for burrowing owls (Henny and Blus 1981). Burrowing owls typically use burrows made by fossorial mammals, such as ground squirrels or badgers, but also may use man-made structures, such as cement culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement.

Occupied Burrowing Owl Habitat

Burrowing owls may use a site for breeding, wintering, foraging, and/or migration stopovers. Occupancy of suitable burrowing owl habitat can be verified at a site by an observation of at least one burrowing owl, or, alternatively, its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance. Burrowing owls exhibit high site fidelity, reusing burrows year after year (Rich 1984, Feeney 1992). A site should be assumed occupied if at least one burrowing owl has been observed occupying a burrow there within the last three years (Rich 1984).

The Phase II burrow survey is required if burrowing owl habitat occurs on the site. If burrowing owl habitat is not present on the project site and buffer zone, the Phase II burrow survey is not necessary. A written report of the habitat assessment should be prepared (Phase IV), stating the reason(s) why the area is not burrowing owl habitat.

PHASE II: BURROW SURVEY

1. A survey for-burrows and owls should be conducted by walking through suitable habitat over the entire project site and in areas within 150 meters (approx 500 ft.) of the project impact zone. This 150-meter buffer zone is included to account for adjacent burrows and foraging habitat outside the project area and impacts from factors such as noise and vibration due to heavy equipment which could impact resources outside the project area.

2. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be no more than 30 meters (approx. 100 ft.), and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. To efficiently survey projects larger than 100 acres, it is recommended that two or more surveyors conduct concurrent surveys. Surveyors should maintain a minimum distance of 50 meters (approx. 160 ft.) from any owls or occupied burrows. It is important to minimize disturbance near occupied burrows during all seasons.
3. If burrows or burrowing owls are recorded on the site, a map should be prepared of the burrow concentration areas. A breeding season survey and census (Phase III) of burrowing owls is the next step required.
4. Prepare a report (Phase IV) of the burrow survey stating whether or not burrows are present.
5. A preconstruction survey may be required by project-specific mitigations no more than 30 days prior to ground disturbing activity.

PHASE III: BURROWING OWL SURVEYS, CENSUS AND MAPPING

If the project site contains burrows that could be used by burrowing owls, then survey efforts should be directed towards determining owl presence on the site. Surveys in the breeding season are required to describe if, when, and how the site is used by burrowing owls. If no owls are observed using the site during the breeding season, a winter survey is required.

Survey Methodology

A complete burrowing owl survey consists of four site visits. During the initial site visit examine burrows for owl sign and map the locations of occupied burrows. Subsequent observations should be conducted from as many fixed points as necessary to provide visual coverage of the site using spotting scopes or binoculars. It is important to minimize disturbance near occupied burrows during all seasons. Site visits must be repeated on four separate days. Conduct these visits from two hours before sunset to one hour after or from one hour before to two hours after sunrise. Surveys should be conducted during weather that is conducive to observing owls outside their burrows. Avoid surveys during heavy rain, high winds (> 20 mph), or dense fog.

Nesting Season Survey. The burrowing owl nesting season begins as early as February 1 and continues through August 31 (Thomsen 1971, Zam 1974). The timing of nesting activities may vary with latitude and climatic conditions. If possible, the nesting season survey should be conducted during the peak of the breeding season, between April 15 and July 15. Count and map all burrowing owl sightings, occupied burrows, and burrows with owl sign. Record numbers of pairs and juveniles, and behavior such as courtship and copulation. Map the approximate territory boundaries and foraging areas if known.

Survey for Winter Residents (non-breeding owls). Winter surveys should be conducted between December 1 and January 31, during the period when wintering owls are most likely to be present. Count and map all owl sightings, occupied burrows, and burrows with owl sign.

Surveys Outside the Winter and Nesting Seasons. Positive results, (i.e., owl sightings)- outside of the above survey periods would be adequate to determine presence of owls on site. However, results of these surveys may be inadequate for mitigation planning because the numbers of owls and their pattern of distribution may change during winter and nesting seasons. Negative results during surveys outside the above periods are not conclusive proof that owls do not use the site.

Preconstruction Survey. A preconstruction survey may be required by project-specific mitigations and should be conducted no more than 30 days prior to ground disturbing activity.

PHASE IV: RESOURCE SUMMARY, WRITTEN REPORT

A report should be prepared for CDFG that gives the results of each Phase of the survey protocol, as outlined below.

Phase I: Habitat Assessment

1. Date and time of visit(s) including weather and visibility conditions; methods of survey.
2. Site description including the following information: location, size, topography, vegetation communities, and animals observed during visit(s).
3. An assessment of habitat suitability for burrowing owls and explanation.
4. A map of the site.

Phase II: Burrow Survey

1. Date and time of visits including weather and visibility conditions; survey methods including transect spacing.
2. A more detailed site description should be made during this phase of the survey protocol including a partial plant list of primary vegetation, location of nearest freshwater (on or within one mile of site), animals observed during transects.
3. Results of survey transects including a map showing the location of concentrations of burrow(s) (natural or artificial) and owl(s), if present.

Phase III: Burrowing Owl Surveys, Census and Mapping

1. Date and time of visits including weather and visibility conditions; survey methods including transect spacing.
2. Report and map the location of all burrowing owls and owl sign. Burrows occupied by owl(s) should be mapped indicating the number of owls at each burrow. Tracks, feathers, pellets, or other items (prey remains, animal scat) at burrows should also be reported.
3. Behavior of owls during the surveys should be carefully recorded (from a distance) and reported. Describe and map areas used by owls during the surveys. Although not required, all behavior is valuable to document including feeding, resting, courtship, alarm, territorial, parental, or juvenile behavior.
4. Both winter and nesting season surveys should be summarized. If possible include information regarding productivity of pairs, seasonal pattern of use, and include a map of the colony showing territorial boundaries and home ranges.
5. The historical presence of burrowing owls on site should be documented, as well as the source of such information (local bird club, Audubon society, other biologists, etc.).

Burrowing: Owl Survey Protocol

April 1993

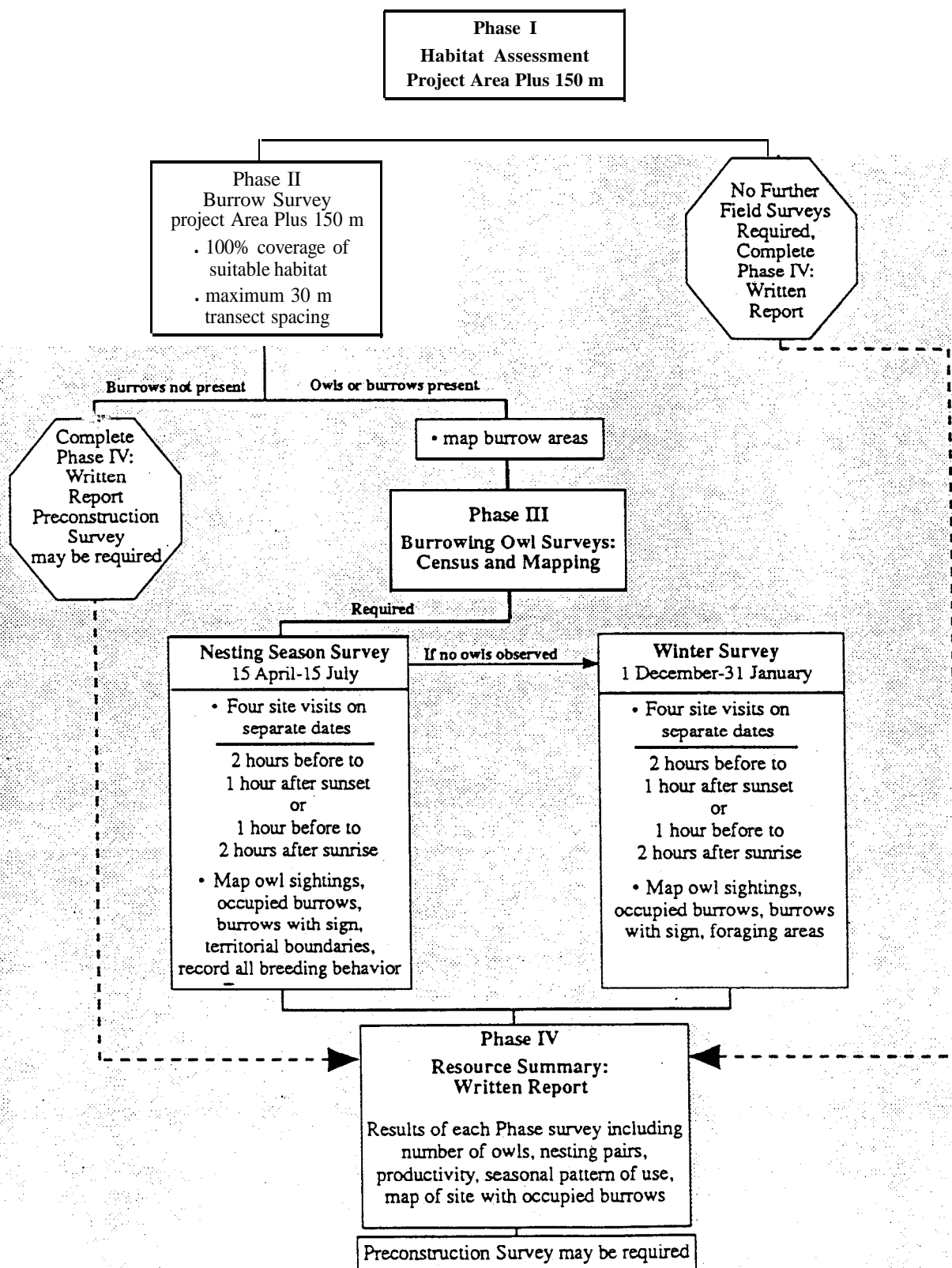


Figure 1.

SECTION 2 BURROWING OWL MITIGATION GUIDELINES

The objective of these mitigation guidelines is to minimize impacts to burrowing owls and the resources that support viable owl populations. These guidelines are intended to provide a decision-making process that should be implemented wherever there is potential for an action or project to adversely affect burrowing owls or their resources. The process begins with a four-step survey protocol (see *Burrowing Owl Survey Protocol*) to document the presence of burrowing owl habitat, and evaluate burrowing owl use of the project site and a surrounding buffer zone. When surveys confirm occupied habitat, the mitigation measures described below are followed to minimize impacts to burrowing owls, their burrows and foraging habitat on the site. These guidelines emphasize maintaining burrowing owls and their resources in place rather than minimizing impacts through displacement of owls to an alternate site.

Mitigation actions should be carried out prior to the burrowing owl breeding season, generally from February 1 through August 31 (Thomsen 1971, Zarn 1974). The timing of nesting activity may vary with latitude and climatic conditions. Project sites and buffer zones with suitable habitat should be resurveyed to ensure no burrowing owls have occupied them in the interim period between the initial surveys and ground disturbing activity. Repeat surveys should be conducted not more than 30 days prior to initial ground disturbing activity.

DEFINITION OF IMPACTS

1. Disturbance or harassment within 50 meters (approx. 160 ft.) of occupied burrows.
2. Destruction of burrows and burrow entrances. Burrows include structures such as culverts, concrete slabs and debris piles that provide shelter to burrowing owls.
3. Degradation of foraging habitat adjacent to occupied burrows.

GENERAL CONSIDERATIONS

1. Occupied burrows should not be disturbed during the nesting season, from February 1 through August 31, unless the Department of Fish and Game verifies that the birds have not begun egg-laying and incubation or that the juveniles from those burrows are foraging independently and capable of independent survival at an earlier date.
2. A minimum of 6.5 acres of foraging habitat, calculated on a 100-m (approx. 300 ft.) foraging radius around the natal burrow, should be maintained per pair (or unpaired resident single bird) contiguous with burrows occupied within the last three years (Rich 1984, Feeney 1992). Ideally, foraging habitat should be retained in a long-term conservation easement.

3. When destruction of occupied burrows is unavoidable, burrows should be enhanced (enlarged or cleared of debris) or created (by installing artificial burrows) in a ratio of 1:1 in adjacent suitable habitat that is contiguous with the foraging habitat of the affected owls.
4. If owls must be moved away from the disturbance area, passive relocation (see below) is preferable to trapping. A time period of at least one week is recommended to allow the owls to move and acclimate to alternate burrows.
5. The mitigation committee recommends monitoring the success of mitigation programs as required in Assembly Bill 3180. A monitoring plan should include mitigation success criteria and an annual report should be submitted to the California Department of Fish and Game.

AVOIDANCE

Avoid Occupied Burrows

No disturbance should occur within 50 m (approx. 160 ft.) of occupied burrows during the non-breeding Season of September 1 through January 31 or within 75 m (approx. 250 ft.) during the breeding Season of February 1 through August 31. Avoidance also requires that a minimum of 6.5 acres of foraging habitat be preserved contiguous with occupied burrow sites for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird (Figure 2).

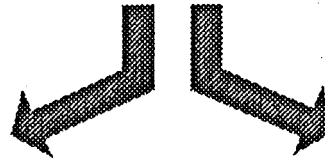
MITIGATION FOR UNAVOIDABLE IMPACTS

On-site Mitigation

On-site passive relocation should be implemented if the above avoidance requirements cannot be met. Passive relocation is defined as encouraging owls to move from occupied burrows to alternate natural or artificial burrows that are beyond 50 m from the impact zone and that are within or contiguous to a minimum of 6.5 acres of foraging habitat for each pair of relocated owls (Figure 3). Relocation of owls should only be implemented during the non-breeding season. On-site habitat should be preserved in a conservation easement and managed to promote burrowing owl use of the site.

Owls should be excluded from burrows in the immediate impact zone and within a 50 m (approx. 160 ft.) buffer zone by installing one-way doors in burrow entrances: One-way doors should be left in place 48 hours to insure owls have left the burrow before excavation. One alternate natural or artificial burrow should be provided for each burrow that will be excavated in the project impact zone. The project area should be monitored daily for one week to confirm owl use of alternate burrows before excavating burrows in the immediate impact zone. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe or burlap bags should be inserted into the tunnels

AVOIDANCE



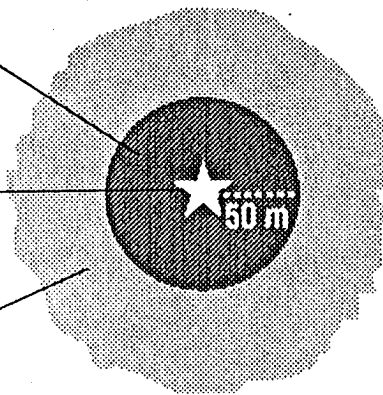
Non-breeding season

1 Sept. - 31 Jan.

No impacts within
50 m of occupied
burrow

Occupied
burrow

Maintain
at least 6.5 acres
foraging habitat



Breeding season

1 Feb. - 31 Aug.

No impacts within
75 m of occupied
burrow

Occupied
burrow

Maintain
at least 6.5 acres
foraging habitat

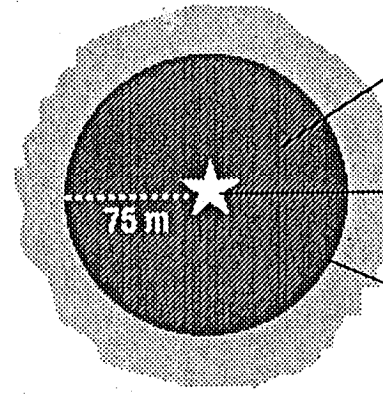


Figure 2. Burrowing owl mitigation guidelines.

ON-SITE MITIGATION IF AVOIDANCE NOT MET

(More than 6.5 acres suitable habitat available)

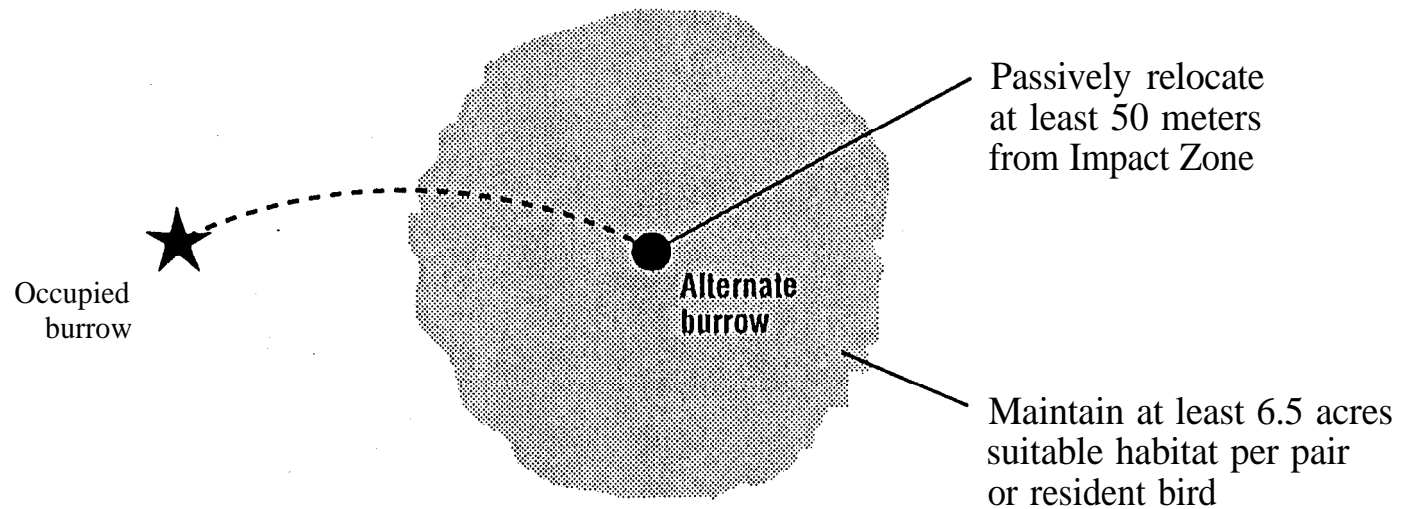


Figure 3. Burrowing owl mitigation guidelines.

during excavation to maintain an escape route for any animals inside the burrow.

Off-site Mitigation

If the project will reduce suitable habitat on-site below the threshold level of 6.5 acres per relocated pair or single bird, the habitat should be replaced off-site. Off-site habitat must be suitable burrowing owl habitat, as defined in the *Burrowing Owl Survey Protocol*, and the site approved by CDFG. Land should be purchased and/or placed in a conservation easement in perpetuity and managed to maintain suitable habitat. Off-site mitigation should use one of the following ratios:

1. Replacement of occupied habitat with occupied habitat: 1.5 times 6.5 (9.75) acres per pair or single bird.
2. Replacement of occupied habitat with habitat contiguous to currently occupied habitat: 2 times 6.5 (13.0) acres per pair or single bird.
3. Replacement of occupied habitat with suitable unoccupied habitat: 3 times 6.5 (19.5) acres per pair or single bird.

SECTION 3 LEGAL STATUS

The burrowing owl is a migratory bird species protected by international treaty 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 50 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). Sections 3503, 3503.5, and 3800 of the California Department of Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs. Implementation of the take provisions requires that project-related disturbance at active nesting territories be reduced or eliminated during critical phases of the nesting cycle (March 1 - August 15, annually). Disturbance that causes nest abandonment and/or loss of reproductive effort (e.g., killing or abandonment of eggs or young) or the loss of habitat upon which the birds depend is considered “taking” and is potentially punishable by fines and/or imprisonment. Such taking would also violate federal law protecting migratory birds (e.g., MBTA).

The burrowing owl is a Species of Special Concern to California because of declines of suitable habitat and both localized and statewide population declines. Guidelines for the Implementation of the California Environmental Quality Act (CEQA) provide that a species be considered as endangered or “rare” regardless of appearance on a formal list for the purposes of the CEQA (Guidelines, Section 15380, subsections b and d). The CEQA requires a mandatory findings of significance if impacts to threatened or endangered species are likely to occur (Sections 21001(c), 21083. Guidelines 15380, 15064, 15065). Avoidance or mitigation must be presented to reduce impacts to less than significant levels.

CEQA AND SUBDIVISION MAP ACT

CEQA Guidelines Section 15065 directs that a mandatory finding of significance is required for projects that have the potential to substantially degrade or reduce the habitat of, or restrict the range of a threatened or endangered species. CEQA requires agencies to implement feasible mitigation measures or feasible alternatives identified in EIR’s for projects which will otherwise cause significant adverse impacts (Sections 21002, 21081, 21083; Guidelines, sections 15002, subd. (a)(3), 15021, subd. (a)(2), 15091, subd. (a)).

To be legally adequate, mitigation measures must be capable of “avoiding the impact altogether by not taking a certain action or parts of an action”; “minimizing impacts by limiting the degree or magnitude of the action and its implementation”; “rectifying the impact by repairing, rehabilitating or restoring the impacted environment”; “or reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.” (Guidelines, Section 15.370).

Section 66474 (e) of the Subdivision Map Act states “a legislative body of a city or county shall deny approval of a tentative map or parcel map for which a tentative map was not required, if

it makes any of the following findings:... (e) that the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat". In recent court cases, the court upheld that Section 66474(e) provides for environmental impact review separate from and independent of the requirements of CEQA (Topanga Assn. for a Scenic Community v. County of Los Angeles, 263 Cal. Rptr. 214 (1989).). The finding in Section 66174 is in addition to the requirements for the preparation of an EIR or Negative Declaration.

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Appendix G

California Department of Fish and Game Staff

Report on Burrowing Owl Mitigation

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M e m o r a n d u m

: "Div. Chiefs - IFD, BDD, NED, & WMD
Reg. Mgrs. - Regions 1, 2, 3, 4, & 5

Date : October 17, 1995

From : Department of Fish and Game

Subject :
Staff Report on Burrowing Owl Mitigation

I am hereby transmitting the Staff Report on Burrowing Owl Mitigation for your use in reviewing projects (California Environmental Quality Act [CEQA] and others) which may affect burrowing owl habitat. The Staff Report has been developed during the last several 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 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 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 raptor species. ESD will coordinate project specific mitigation measure review with WMD.

If you have any questions regarding the report, please contact Mr. Ron Rempel, Supervising Biologist, Environmental Services Division, telephone (916) 654-9980.

COPY Original signed by
C.F. Raysbrook

C. F. Raysbrook
Interim Director

Attachment

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

STAFF REPORT ON BURROWING OWL MITIGATION

Introduction

The Legislature and the Fish and Game Commission have developed the policies, standards and regulatory mandates to protect native species of fish and wildlife. In order to determine how the Department of Fish and Game (Department) could judge the adequacy of mitigation measures designed to offset impacts to burrowing owls (*Speotyto cunicularia*; A.O.U. 1991) 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); and (2) other authorizations the Department gives to project proponents for projects impacting burrowing owls.

This 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 preapproved mitigation measures which have been judged to be consistent with policies, standards and legal mandates of the Legislature, the Fish and Game Commission and the Department's public trust responsibilities. Implementation of mitigation measures consistent with this report are intended to help achieve the conservation of burrowing owls and should compliment multi-species habitat conservation planning efforts currently underway. The *Burrowing Owl Survey Protocol and Mitigation Guidelines* developed by The California Burrowing Owl Consortium (CBOC 1993) were taken into consideration in the preparation of this staff report as were comments from other interested parties.

A range-wide conservation strategy for this species is needed. Any range-wide conservation strategy should establish criteria for avoiding the need to list the species pursuant to either the California or federal Endangered Species Acts through preservation of existing habitat, population expansion into former habitat, recruitment of young into the population, and other specific efforts.

California's burrowing owl population is clearly declining and, if declines continue, the species may qualify for listing. Because of the intense pressure for urban development within suitable burrowing owl nesting and foraging habitat (open, flat and gently rolling grasslands and grass/shrub lands) in California, conflicts between owls and development projects often occur. Owl survival can be adversely affected by disturbance and foraging habitat loss even when impacts to individual birds and nests/burrows are avoided. Adequate information about the presence of owls is often unavailable prior to project approval. Following project approval there is no legal mechanism through which to seek mitigation other than avoidance of occupied burrows or nests. The absence of standardized survey methods often impedes consistent impact assessment.

Burrowing Owl Habitat Description

Burrowing owl habitat can be found in annual and perennial grasslands, deserts, and arid scrublands characterized by low-growing vegetation (Zarn 1974). Suitable owl habitat may also include trees and shrubs if the canopy covers less than 30 percent of the ground surface. Burrows are the essential component of burrowing owl habitat. Both natural and artificial burrows provide protection, shelter, and nests for burrowing owls (Henny and Blus 1981). Burrowing owls typically use burrows made by fossorial mammals, such as ground squirrels or badgers, but also may use man-made structures such as cement culverts; cement, asphalt, or wood debris piles; or openings beneath cement or asphalt pavement.

Occupied Burrowing Owl Habitat

Burrowing owls may use a site for breeding, wintering, foraging, and/or migration stopovers. Occupancy of suitable burrowing owl habitat can be verified at a site by detecting a burrowing owl, its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance. Burrowing owls exhibit high site fidelity, reusing burrows year after year (Rich 1984, Feeney 1992). A site should be assumed occupied if at least one burrowing owl has been observed occupying a burrow there within the last three years (Rich 1984).

CEQA Project Review

The measures included in this report are intended to provide a decision-making process that should be implemented whenever there is potential for an action or project to adversely affect burrowing owls. For projects subject to the California Environmental Quality Act (CEQA), the process begins by conducting surveys to determine if burrowing owls are foraging or nesting on or adjacent to the project site. If surveys confirm that the site is occupied habitat, mitigation measures to minimize impacts to burrowing owls, their burrows and foraging habitat should be incorporated into the CEQA document as enforceable conditions. The measures in this document are intended to conserve the species by protecting and maintaining viable populations of the species throughout their range in California. This may often result in protecting and managing habitat for the species at sites away from rapidly urbanizing/developing areas. Projects and situations vary and mitigation measures should be adapted to fit specific circumstances.

Projects not subject to CEQA review may have to be handled separately since the legal authority the Department has with respect to burrowing owls in this type of situation is often limited. The burrowing owl is protected from "take" (Section 3503.5 of the Fish and Game Code) but unoccupied habitat is likely to be lost for activities not subject to CEQA.

Legal Status

The burrowing owl is a migratory species protected by international treaty 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 50 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). Sections 3505, 3503.5, and 3800 of the California Department of Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs. To avoid violation of the take provisions of these laws generally requires that project-related disturbance at active nesting territories be reduced or eliminated during the nesting cycle (February 1 to August 31). Disturbance that causes nest abandonment and/or loss of reproductive effort (e.g., killing or abandonment of eggs or young) may be considered “take” and is potentially punishable by fines and/or imprisonment.

The burrowing owl is a Species of Special Concern to California because of declines of suitable habitat and both localized and statewide population declines. Guidelines for the Implementation of the California Environmental Quality Act (CEQA) provide that a species be considered as endangered or “rare” regardless of appearance on a formal list for the purposes of the CEQA (Guidelines, Section 15380, subsections b and d). The CEQA requires a mandatory findings of significance if impacts to threatened or endangered species are likely to occur (Sections 21001 (c), 2103; Guidelines 15380, 15064, 15065). To be legally adequate, mitigation measures must be capable of “avoiding the impact altogether by not taking a certain action or parts of an action”; “minimizing impacts by limiting the degree or magnitude of the action and its implementation”; “rectifying the impact by repairing, rehabilitating or restoring the impacted environment”; “or reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action” (Guidelines, Section 15370). Avoidance or mitigation to reduce impacts to less than significant levels must be included in a project or the CEQA lead agency must make and justify findings of overriding considerations.

Impact Assessment

Habitat Assessment

The project site and a 150 meter (approximately 500 ft.) buffer (where possible and appropriate based on habitat) should be surveyed to assess the presence of burrowing owls and their habitat (Thomsen 1971, Martin 1973). If occupied habitat is detected on or adjacent to the site, measures to avoid, minimize, or mitigate the project’s impacts to the species should be incorporated into the project, including burrow preconstruction surveys to ensure avoidance of direct take. It is also recommended that preconstruction surveys be conducted if the species was not detected but is likely to occur on the project site.

Burrowing Owl and Burrow Surveys

Burrowing owl and burrow surveys should be conducted during both the wintering and nesting seasons, unless the species is detected on the first survey. If possible, the winter survey should be conducted between December 1 and January 31 (when wintering owls are most likely to be present) and the nesting season survey should be conducted between April 15 and July 15 (the peak of the breeding season). Surveys conducted from two hours before sunset to one hour after, or from one hour before to two hours after sunrise, are also preferable.

Surveys should be conducted by walking suitable habitat on the entire project site and (where possible) in areas within 150 meters (approx. 500 ft.) of the project impact zone. The 150-meter buffer zone is surveyed to identify burrows and owls outside of the project area which may be impacted by factors -such as noise and vibration (heavy equipment, etc.) during project construction. Pedestrian survey transects should be spaced to allow 100 percent visual coverage of the ground surface. The distance between transect center lines should be no more than 30 meters (approx. 100 ft.) and should be reduced to account for differences in terrain, vegetation density, and ground surface visibility. To effectively survey large projects (100 acres or larger), two or more surveyors should be used to walk adjacent transects. To avoid impacts to owls from surveyors, owls and/or occupied burrows should be avoided by a minimum of 50 meters (approx. 160 ft.) wherever practical. Disturbance to occupied burrows should be avoided during all seasons.

Definition of Impacts

The following should be considered impacts to the species:

- Disturbance within 50 meters (approx. 160 ft.) Which may result in harassment of owls at occupied burrows;
- Destruction of natural and artificial burrows (culverts, concrete slabs and debris piles that provide shelter to burrowing owls); and
- Destruction and/or degradation of foraging habitat adjacent (within 100 m) of an occupied burrow(s).

Written Report

A report for the project should be prepared for the Department and copies should be submitted to the Regional contact and to the Wildlife Management Division Bird and Mammal Conservation Program. The report should include the following information:

- Date and time of visit(s) including name of the qualified biologist conducting surveys, weather and visibility conditions, and survey methodology;
- Description of the site including location, size, topography, vegetation communities, and animals observed during visit(s);
- Assessment of habitat suitability for burrowing owls;
- Map and photographs of the site;
- Results of transect surveys including a map showing the location of all burrow(s) (natural or artificial) and owl(s), including the numbers at each burrow if present and tracks, feathers, pellets, or other items (prey remains, animal scat);
- Behavior of owls during the surveys;
- Summary of both winter and nesting season surveys including any productivity information and a map showing territorial boundaries and home ranges; and
- Any historical information (Natural Diversity Database, Department regional files? Breeding Bird Survey data, American Birds records, Audubon Society, local bird club, other biologists, etc.) regarding the presence of burrowing owls on the site.

Mitigation

The objective of these measures is to avoid and minimize impacts to burrowing owls at a project site and preserve habitat that will support viable owls populations. If burrowing owls are detected using the project area, mitigation measures to minimize and offset the potential impacts should be included as enforceable measures during the CEQA process.

Mitigation actions should be carried out from September 1 to January 31 which is prior to the nesting season (Thomsen 1971, Zam 1974). Since the timing of nesting activity may vary with latitude and climatic conditions, this time frame should be adjusted accordingly. Preconstruction surveys of suitable habitat at the project site(s) and buffer zone(s) should be conducted within the 30 days prior to construction to ensure no additional, burrowing owls have established territories since the initial surveys. If ground disturbing activities are delayed or suspended for more than 30 days after the preconstruction survey, the site should be resurveyed.

Although the mitigation measures may be included as enforceable project conditions in the CEQA process, it may also be desirable to formalize them in a Memorandum of Understanding (MOU) between the Department and the project sponsor. An MOU is needed when lands (fee title or conservation easement) are being transferred to the Department.

Specific Mitigation Measures

1. Occupied burrows should not be disturbed during the nesting season (February 1 through August 31) unless a qualified biologist approved by the Department verifies through non-invasive methods that either: (1) the birds have not begun egg-laying and incubation; or (2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.
2. To offset the loss of foraging and burrow habitat on the project site, a minimum of 6.5 acres of foraging habitat (calculated on a 100 m {approx. 300 ft.} foraging radius around the burrow) per pair or unpaired resident bird, should be acquired and permanently protected. The protected lands should be adjacent to occupied burrowing owl habitat and at a location acceptable to the Department. *Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances.* The CBOC has also developed mitigation guidelines (CBOC 1993) that can be incorporated by CEQA lead agencies and which are consistent with this staff report.
3. When destruction of occupied burrows is unavoidable, existing unsuitable burrows should be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1 on the protected lands site. One example of an artificial burrow design is provided in Attachment A.
4. If owls must be moved away from the disturbance area, passive relocation techniques (as described below) should be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.
5. The project sponsor should provide funding for long-term management and monitoring of the protected lands. The monitoring plan should include success criteria, remedial measures, and an annual report to the Department.

Impact Avoidance

If avoidance is the preferred method of dealing with potential project impacts, then no disturbance should occur within 50 meters (approx. 160 ft.) of occupied burrows during the nonbreeding season of September 1 through January 31 or within 75 meters (approx. 250 ft.) during the breeding season of February 1 through August 31. Avoidance also requires that a minimum of 6.5 acres of foraging habitat be *permanently* preserved contiguous with occupied burrow sites for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird. The configuration of the protected habitat should be approved by the Department.

Passive Relocation - With One-Way Doors

Owls should be excluded from burrows in the immediate impact zone and within a 50 meter (approx. 160 ft.) buffer zone by installing one-way doors in burrow entrances. One-way doors (e.g., modified dryer vents) should be left in place 48 hours to insure owls have left the burrow before excavation. Two natural or artificial burrows should be provided for each burrow in the project area that will be rendered biologically unsuitable. The project area should be *monitored daily for one* week to confirm owl use of burrows before excavating burrows in the immediate impact zone. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe should be inserted into the tunnels during excavation to maintain an escape route for any animals inside the burrow.

Passive Relocation - Without One-Way Doors

Two natural or artificial burrows should be provided for each burrow in the project area that will be rendered biologically unsuitable. The project area should be *monitored daily until the owls have relocated to the new burrows*. The formerly occupied burrows may then be excavated. Whenever possible, burrows should be excavated using hand tools and refilled to prevent reoccupation. Sections of flexible plastic pipe should be inserted into burrows during excavation to maintain an escape route for any animals inside the burrow.

Projects Not Subject to CEQA

The Department is often contacted regarding the presence of burrowing owls on construction sites, parking lots and other areas for which there is no CEQA action or for which the CEQA process has been completed. In these situations, the Department should seek to reach agreement with the project sponsor to implement the specific mitigation measures described above. If they are unwilling to do so, passive relocation without the aid of one-way doors is their only option based upon Fish and Game Code 3503.5.

Literature Cited

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- Feeney, L. 1992. Site fidelity in burrowing owls. Unpublished paper presented to Raptor Research Annual Meeting, November 1992. Seattle, Washington.
- Haug, E. A. and L. W. Oliphant. 1990. Movements, activity patterns, and habitat use of burrowing owls in Saskatchewan. *J. Wildlife Management* 54:27-35.
- Henny, C. J. and L. J. Blus. 1981. Artificial burrows provide new insight into burrowing owl nesting biology. *Raptor Research* 15:82-85.
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- Rich, T. 1984. Monitoring burrowing owl populations: Implications of burrow re-use. *Wildlife Society Bulletin* 12:178-180.
- The California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. Tech. Rep. Burrowing Owl Consortium, Alviso, California.
- Thomsen, L. 1971. Behavior and ecology of burrowing owls on the Oakland Municipal Airport. *Condor* 73:177-192.
- Zarn, M. 1974. Burrowing owl. U. S. Department of Interior, Bureau of Land Management. Technical Note T-N 250. Denver, Colorado. 25 pp.

Reproductive Success of Burrowing Owls Using Artificial Nest Burrows in Southeastern Idaho

by Bruce Olenick

Artificial nest burrows were implanted in southeastern Idaho for burrowing owls in the spring of 1986. These artificial burrows consisted of a 12" x 12" x 8" wood nesting chamber with removable top and a 6 foot corrugated and perforated plastic drainage pipe 6 inches in diameter (Fig. 1). Earlier investigators claimed that artificial burrows must provide a natural dirt floor to allow burrowing owls to modify the nesting tunnel and chamber. Contrary to this, the artificial burrow introduced here does not allow owls to modify the entrance or tunnel. The inability to change the physical dimensions of the burrow tunnel does not seem to reflect the owls' breeding success or deter them from using this burrow design.

In 1936, 22 artificial burrows were inhabited. Thirteen nesting attempts yielded an average clutch size of 8.3 eggs per breeding pair. Eight nests successfully hatched at least 1 nestling. In these nests, 67 of 75 eggs hatched (59.3%) and an estimated 61 nestlings (91.0%) fledged. An analysis of the egg laying and incubation periods showed that incubation commenced well after egg lay-

ing began. Average clutch size at the start of incubation was 5.6 eggs. Most eggs tended to hatch synchronously in all successful nests.

Although the initial cost of constructing this burrow design may be slightly higher than a burrow consisting entirely of wood, the plastic pipe burrow offers the following advantages: (1) it lasts several field seasons without rotting or collapsing; (2) it may prevent or retard predation; (3) construction time is min-

imal; (4) it is easy to transport, especially over long distances; and (5) the flexible tunnel simplifies installation. The use of this artificial nest burrow design was highly successful and may prove to be a great resource technique for future management of this species.

For additional information on constructing this artificial nest burrow, contact Bruce Olenick, Department of Biology, Idaho State University, Pocatello, ID 83209.

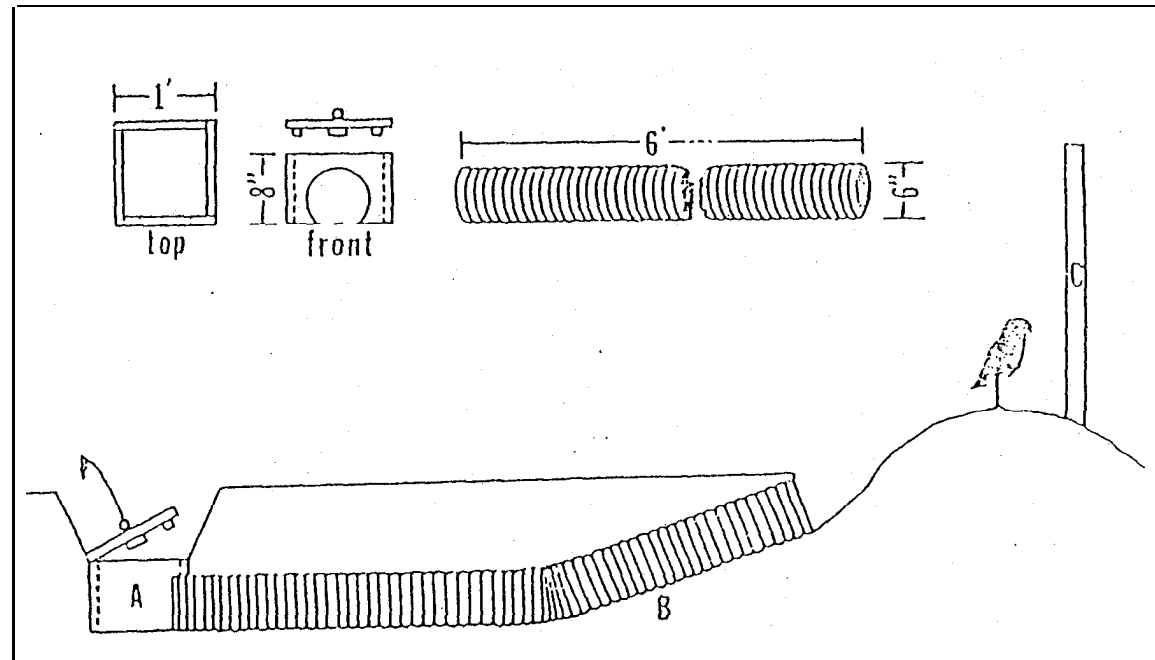


fig. 1 Artificial nest burrow design for burrowing owls Entire unit (including nest chamber) is buried 12" -- 18" below ground for maintaining thermal stability of the nest chamber. A= nest chamber, B = plastic pipe. C = perch.

Appendix H

Reclamation Determination Responses

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Inthavong, Michael T

From: Barnes, Amy J
Sent: Friday, May 20, 2011 10:49 AM
To: Inthavong, Michael T; Healer, Rain L; Siek, Charles R
Cc: Perry, Laureen (Laurie) M; Nickels, Adam M; Overly, Stephen A; Bruce, Brandee E; Williams, Scott A; Goodsell, Joanne E; Fogerty, John A; Dunay, Amy L; Soule, William
Subject: EA-10-21 Eastside Canal Conveyance Project (10-SCAO-236)
Attachments: 10-SCAO-236 Eastside Canal SHPO delivered 04-07-11.pdf; 10-SCAO-236 Eastside Canal SHPO reply 05-17-11.pdf

Tracking #10-SCAO-236

Project: EA-10-21 Eastside Canal Conveyance Project

Location: Merced County; Turner Ranch and Delta Ranch 7.5' USGS topographic quadrangles sec. 30 and an unsurveyed portion of T. 8 S., R. 12 E. and unsurveyed portions of T. 9 S., R. 12 E.; T. 10 S., R. 12 E.; T. 9 S., R. 11 E.; and T. 10 S., R. 11 E. Mount Diablo Meridian, within the Sanjon de Santa Rita Land Grant

The activities associated with Reclamation approving a water transfer from the San Luis Canal Company (SLCC) to the Panoche Water District (PWD) will result in no adverse effects to historic properties. The SLCC proposes to construct a canal linking the Stevinson Water District's Eastside Canal with the SLCC's Delta Canal. The proposed canal will involve constructing a total of approximately seven miles of lined open canal, segments of concrete pipe totaling approximately one mile, and three pump stations.

In an effort to identify historic properties, Summers Engineering, Incorporated, contracted Applied Earthworks, Incorporated, to complete an inventory and evaluation of cultural resources within the APE. In summary, twelve cultural resources were identified within the APE, including four previously recorded historic structures and eight new historic structures. The previously recorded resources include the East Side Canal and three road bridges, all of which had been determined ineligible for inclusion on the National Register of Historic Places (NRHP).

All of the new historic structures are facilities associated with the growth of agriculture following the breakup of the Miller and Lux properties and development of farming in the vicinity of Turner Island. Reclamation drafted a supplemental context statement, eligibility determinations, and findings of effects report to provide additional information in support of the agency's determinations of eligibility and finding of effects. Reclamation found that there was no immediately available information to reach a determination of eligibility on the newly recorded water conveyance facilities and the Wolfsen Farms Airstrip; therefore, Reclamation assumed for the purposes of this undertaking, and this undertaking only, that the Delta Canal, County Road Ditch, Willis Branch Canal, Siphon Canal, Pick Anderson Bypass, Belmont Drain, Salt Slough Ditch, and the Wolfsen Farms Airstrip were eligible under Criterion A for their contribution to the development of agriculture and irrigation in California's Central Valley. The water conveyance features likely contribute to the eligibility of a larger system that was a key factor in agricultural development of this area.

Reclamation consulted with SHPO April 7, 2011 regarding a finding of no adverse effects to historic properties pursuant to 36 CFR Part 800.5(b). SHPO concurred with Reclamations' findings and determination on May 17, 2011.

As the proposed action will not adversely affect historic properties, and SHPO has concurred, Reclamations' responsibilities under Section 106 of the National Historic Preservation Act are fulfilled.

Thank you for the opportunity to review the proposed action. Please place a copy of this concurrence and attached correspondence with the EA administrative record.

Amy J. Barnes
Archaeologist
U.S. Bureau of Reclamation
Mid-Pacific Region, MP-153
2800 Cottage Way
Sacramento, CA 95825
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May 17, 2011

In Reply Refer To: BUR110407A

Michael A. Chotkowski
Regional Environmental Officer
United States Department of the Interior
Bureau of Reclamation, Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

BUREAU OF RECLAMATION OFFICIAL FILE COPY RECEIVED	
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Re: SCAO-1500, ENV-3.00; Eastside Canal Conveyance Project, Merced County, California (Tracking #10-SCAO-236)

Dear Mr. Chotkowski:

Thank you for consulting with me regarding the above noted undertaking. Pursuant to 36 CFR Part 800 (as amended 8-05-04) regulations implementing Section 106 of the National Historic Preservation Act (NHPA), the Bureau of Reclamation (BUR) is the lead Federal agency for this undertaking and is seeking my comments on the effects that the proposed project will have on historic properties. The BUR proposes to approve a water transfer from the San Luis Canal Company to the Panoche Water District, requiring construction of new infrastructure.

The undertaking will involve construction of seven miles of lined open canal, segments of concrete pipe totaling approximately one mile, and three pump stations. The open canal segments will be about five to six feet deep with a top width between 21 and 24 feet. An approximately 12 foot wide road will be developed on both sides of the canal. Segments of concrete pipe will be buried up to approximately nine feet deep in an eight foot wide trench. An existing siphon will be used to cross the San Joaquin River. Pipeline inlet and outlets will likely be constructed of cast-in-place reinforced concrete. The pump stations will involve installing reinforced concrete pump sumps, pumping equipment and steel discharge pipes. An existing county road ditch segment will be relocated between 40 and 80 feet west to make room for the new canal. The Area of Potential Effects (APE) will include an approximately 200 foot wide by eight mile long corridor that extends up to nine feet deep and encompasses all construction activities. You have submitted in addition to your letter received April 7, 2011, the following documents as evidence of your efforts to identify historic properties in the APE:

- *Supplemental Project Description, Context Statement, Eligibility Determinations, and Findings for the Proposed Eastside Canal Conveyance Project* (Amy Barnes, BUR, March 2011)
- *Cultural Resources Survey and Site Evaluation for the Eastside Conveyance Canal Project* (Randy Baloian, Applied EarthWorks, February 2011)

Classification	ENV-3.00
Project	214
Control No.	11041982
Folder I.D.	1147982
Date Input & Initials	5/19/2011 [Signature]

The BUR has performed a records search, consulted Native American Tribes with letters sent out January 3, 2011, and performed a pedestrian survey of the APE. Twelve resources were identified within the APE, four of which have been previously determined and concurred upon as not eligible for the National Register of Historic Places. The remaining eight, seven canals and one airstrip, are assumed eligible for the purposes of this undertaking, as a full evaluation will require inclusion of a larger system as part of the evaluation and is beyond the scope of the current undertaking.

The BUR has determined that there will be no adverse effects to historic properties by this undertaking. Pursuant to 36 CFR 800.5(c)(1), I have no objection to your finding of No Adverse Effects.

Be advised that under certain circumstances, such as unanticipated discovery or a change in project description, especially for contamination mitigation if necessary, the BUR may have additional future responsibilities for this undertaking under 36 CFR Part 800. Thank you for seeking my comments and for considering historic properties in planning your project. If you require further information, please contact Trevor Pratt of my staff at phone 916-445-7017 or email tpratt@parks.ca.gov.

Sincerely,

Susan K Stratton for

Milford Wayne Donaldson, FAIA
State Historic Preservation Officer

Inthavong, Michael T

From: Rivera, Patricia L
Sent: Tuesday, August 10, 2010 8:20 AM
To: Clinton, Patricia L
Subject: RE: ITA form for EA-10-21 Eastside Transfer

Patti,

I reviewed the proposed action to: (1) construct an eight mile conveyance facility and (2) a two-part water transfer from Stevinson Water District (SWD)/East Side Canal and Irrigation Company (ECIC) to San Luis Canal Company (SLCC), then from SLCC to Panoche Water District (PWD). SWD/ECIC would transfer up to 5,000 acre-feet per year to SLCC from March 1, 2011 through December 31, 2020. This water would be delivered through existing canals within SWD and ECIC to the headworks of the proposed conveyance facilities, through which it would ultimately be delivered to the SLCC Delta Canal for beneficial use within SLCC. The proposed facility would be metered at a minimum of two locations to determine the volume of water transferred. The beneficial use of the transferred water would free up an equivalent volume of water from SLCC's Central Valley Project contract for transfer to PWD (adjusted for up to 10% system losses). PWD would take delivery of the transferred water through the Delta Mendota Canal and/or the San Luis Canal.

The proposed action does not have a potential to affect Indian Trust Assets. The nearest ITA is a Public Domain Allotment approximately 51 miles NE of the project location.

Patricia