



A Tradition of Stewardship
A Commitment to Service

To:	Planning Commission	From:	Sean Trippi
Date:	January 16, 2019	Re:	Innova Gateway Speculative Building P18-00117-UP, Use Permit, Mitigated Negative Declaration (MND), and MMRP

Statutory Background

In accordance with Section 15073 of the California Environmental Quality Act (CEQA) Guidelines, Napa County submitted the initial proposed IS/MND to the State Clearinghouse for a 30-day review period beginning on December 14, 2018. In addition, Napa County circulated a Notice of Intent to adopt the initial proposed IS/MND to interested agencies and individuals. During the public review period, the County received a comment letter, dated January 11, 2019, from the California Department of Fish and Wildlife (CDFW), attached, recommending revisions to the project's mitigation measures concerning Swainson's hawk and Burrowing Owl.

Pursuant to Section 15073.5 of the CEQA Guidelines recirculation of the MND is not required unless a new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or the lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

This memorandum further supports the environmental analysis and conclusions reached in the Mitigated Negative Declaration, and supports the finding that the proposed project does not raise any new issues and does not exceed the level of impacts identified in the previously prepared Mitigated Negative Declaration.

Applicable Reports in Circulation

This memo supplements the Innova Gateway Speculative Building Mitigated Negative Declaration and referenced reports. A copy of said documents are available for review at the offices of the Napa County Planning, Building & Environmental Services Department, 1195 Third Street, Suite 210, Napa, Calif.

Minor Technical Changes or Additions to the Innova Gateway Speculative Building Mitigated Negative Declaration (MND)

Biological Resources

A biological assessment of the subject property, dated October 2, 2018, was prepared by Barnett Environmental. A site survey was conducted on September 18, 2018. The analysis assessed the potential presence of special status species, habitats, wetlands or other jurisdictional waters, and other biological resources within the project site as well as potential project impacts, if any, to biological resources. The report recommended mitigation measures as needed. The report included a review of USFWS and CDFW lists of special status animals and plants, the California Natural Diversity Database (CNDDDB) occurrence records for the local quads and the California Native Plant Society's (CNPS) inventory of Rare and Endangered Vascular Plants of California and other sources to define a list of special status species that could potentially occur on the project site or in the region. The results of the report are referenced in the IS/MND.

As noted in the report, there are no known occurrences of any special status wildlife species on the project site. However, the project biologist recommended a pre-construction survey for special status bird species, including but not limited to Swainson's hawk, Tricolored black and other raptors, which would include Burrowing owls. Further, the report indicated that Burrowing owl has low potential to occur at the project site, given that no rodent or owl burrows were observed on-site. The letter from CDFW agrees with the conclusion that there is low potential for Burrowing owl to occur on-site.

Although Mitigation Measure BIO-1 (MM BIO-1) would reduce potential impacts to any special-status bird species, including raptors and migratory birds protected under the Migratory Bird Treaty Act, to a level of less than significant, CDFW recommends that MM BIO-1 includes a reference to the *Staff Report on Burrowing Owl Mitigation*, prepared by CDFW, dated March 7, 2012, to determine if the project could impact Burrowing owl if present at the time of construction. The recommended revision to MM BIO-1 is based on an observance of a Burrowing Owl in 2006, approximately 950-feet northwest of the project site, north of Sheehy creek, adjacent to the east side of Devlin Road. There have been no documented observances since.

The MND also discusses the Project's potential impacts to Swainson's hawk (SWHA) and proposes Mitigation Measure BIO-1 to reduce potentially significant impacts to SWHA to a level of less-than-significant. As noted in the letter, CDFW agrees with having a qualified-biologist conduct surveys according to the survey protocol outlined in the *Swainson's Hawk Technical Advisory Committee's (TAC) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, but proposes additional language to avoid an unauthorized "take" of SWHA. CDFW also recommends specific replacement ratios of forging habitat if active nests are found during the pre-construction surveys.

MM BIO-1 has been revised, below, to address CDFW's concerns regarding Burrowing owl and SWHA. New text is underlined, deleted text is struck through. The Mitigation Monitoring and Reporting Program (MMRP) has also been revised to reflect the changes to the mitigation measures.

BIO-1(a): If construction would commence anytime during the nesting/breeding season of the Swainson's hawk or Tricolored blackbird, other raptors, or other bird species listed in the Migratory

Bird Treaty Act (typically February 1 through September 30), a preconstruction survey of the project vicinity for nesting birds shall be conducted. This survey shall be conducted by a qualified biologist (experienced with the nesting behavior of bird species of the region) within 14 days prior to the commencement of construction activities that would occur during the nesting/breeding season. The intent of the survey will be to determine if active nests are present within or adjacent to the construction zone within approximately 250 feet (300 feet for raptors). The survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. The survey shall commence early in the Swainson's hawk nesting season (late March to early April) and surveys will be conducted within a minimum 0.25-mile radius of the Project area. The surveys shall be timed such that the last survey is concluded no more than two weeks prior to initiation of construction. If ground disturbance activities are delayed following a survey, then an additional pre-construction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If active nests are found in areas that could be directly or indirectly affected by the project, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. ~~If any active Swainson's hawk nests are found during the survey, CDFW recommends a disturbance buffer of at least a 0.25 mile to avoid a "take" or adverse impacts to Swainson's hawk.~~ If surveys determine that Swainson's hawks (SWHA) are nesting within 0.25 miles of the project site, the project shall avoid construction activities during the SWHA nesting season (typically March 1 to September 15), or until a qualified biologist has determined that the SWHA young have fledged and are foraging on their own. If construction activities cannot avoid the abovementioned SWHA nesting season, and if surveys determine that SWHA are nesting within 0.25 miles of the Project site, the Project proponent shall obtain a CESA ITP from CDFW prior to the start of construction. No trees or vegetation shall be removed from the project site during the breeding period. The size of the buffer zones and types of construction activities restricted within them should be determined through consultation with the CDFW depending on the species, taking into account factors such as the following:

- Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;
- Distance and amount of vegetation or other screening between the construction site and the nest; and
- Sensitivity of individual nesting species and behaviors of the nesting birds.

The buffer zone around an active nest should be established in the field with orange construction fencing or another appropriate barrier and construction personnel should be instructed on the sensitivity of nest areas. The qualified biologist should serve as a construction monitor during those periods when construction activities would occur near active nest areas of special status bird species to ensure that no impacts on these nests occur. If active nests are found, CDFW recommends the following to mitigate the potential loss of foraging habitat based on the following ratios:

- For projects within one-mile of an active nest tree, provide one-acre of land for each acre of development authorized (1:1 ratio).

- For projects within five miles of an active nest tree but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

Mitigation lands associated with the Project should be of equal or greater value to the habitat that is lost and protected in perpetuity under a conservation easement. Funding for mitigation lands should be ensured for long-term management of SWHA habitat. [Revised consistent with State CEQA Guidelines Section 15073.5 (c)(4).]

Method of Mitigation Monitoring: The permittee shall have a nesting bird survey completed prior to any construction activities scheduled to occur on the site from February 1 through September 30. The survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any special-status or other protected nesting birds are found to occur on-site construction activities will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting Swainson's hawk which may include preservation of potential foraging habitat as noted above.

BIO-1(b): Prior to the commencement of construction activities, a qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct pre-construction surveys of the permanent and temporary impact areas to confirm the presence or absence of burrows occupied by breeding or wintering burrowing owls. The surveys shall be conducted no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

If burrowing owls are detected, no ground-disturbing activities, such as vegetation clearance or grading, shall be permitted within a buffer of no fewer than 260 feet from an occupied burrow during the breeding season (February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW. [Revised consistent with State CEQA Guidelines Section 15073.5 (c)(4).]

Method of Mitigation Monitoring: The permittee shall have a burrowing owl survey completed no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey shall be conducted in accordance with the methods outlined in the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any Burrowing owls are found, construction activities will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts.

Use Permit - Revised Conditions of Approval

Based on recommendations from the CDFW in their letter dated January 11, 2019, staff recommends revisions to the conditions of approval below. Condition of approval 7.4 has been revised to reflect the proposed revisions to mitigation measure BIO-1. Condition of approval 7.5 has been revised to incorporate additional recommendations from CDFW addressing potential unintentional trapping or ensnaring of wildlife during construction activities.

7.4 CONSTRUCTION MITIGATION MEASURES

BIO-1(a): If construction would commence anytime during the nesting/breeding season of the Swainson's hawk or Tricolored blackbird, other raptors, or other bird species listed in the Migratory Bird Treaty Act (typically February 1 through September 30), a preconstruction survey of the project vicinity for nesting birds shall be conducted. This survey shall be conducted by a qualified biologist (experienced with the nesting behavior of bird species of the region) within 14 days prior to the commencement of construction activities that would occur during the nesting/breeding season. The intent of the survey will be to determine if active nests are present within or adjacent to the construction zone within approximately 250 feet (300 feet for raptors). The survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. The survey shall commence early in the Swainson's hawk nesting season (late March to early April) and surveys will be conducted within a minimum 0.25-mile radius of the Project area. The surveys shall be timed such that the last survey is concluded no more than two weeks prior to initiation of construction. If ground disturbance activities are delayed following a survey, then an additional pre-construction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If active nests are found in areas that could be directly or indirectly affected by the project, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. ~~If any active Swainson's hawk nests are found during the survey, CDFW recommends a disturbance buffer of at least a 0.25 mile to avoid a "take" or adverse impacts to Swainson's hawk.~~ If surveys determine that Swainson's hawks (SWHA) are nesting within 0.25 miles of the project site, the project shall avoid construction activities during the SWHA nesting season (typically March 1 to September 15), or until a qualified biologist has determined that the SWHA young have fledged and are foraging on their own. If construction activities cannot avoid the abovementioned SWHA nesting season, and if surveys determine that SWHA are nesting within 0.25 miles of the Project site, the Project proponent shall obtain a CESA ITP from CDFW prior to the start of construction. No trees or vegetation shall be removed from the project site during the breeding period. The size of the buffer zones and types of construction activities restricted within them should be determined through consultation with the CDFW depending on the species, taking into account factors such as the following:

- Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity;
- Distance and amount of vegetation or other screening between the construction site and the nest; and
- Sensitivity of individual nesting species and behaviors of the nesting birds.

The buffer zone around an active nest should be established in the field with orange construction fencing or another appropriate barrier and construction personnel should be instructed on the sensitivity of nest areas. The qualified biologist should serve as a construction monitor during those periods when construction activities would occur near active nest areas of special status bird species to ensure that no impacts on these nests occur. If active nests are found, CDFW recommends the following to mitigate the potential loss of foraging habitat based on the following ratios:

- For projects within one-mile of an active nest tree, provide one-acre of land for each acre of development authorized (1:1 ratio).
- For projects within five miles of an active nest tree but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

Mitigation lands associated with the Project should be of equal or greater value to the habitat that is lost and protected in perpetuity under a conservation easement. Funding for mitigation lands should be ensured for long-term management of SWHA habitat. [Revised consistent with State CEQA Guidelines Section 15073.5 (c)(4).]

Method of Mitigation Monitoring: The permittee shall have a nesting bird survey completed prior to any construction activities scheduled to occur on the site from February 1 through September 30. The survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any special-status or other protected nesting birds are found to occur on-site construction activities will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting Swainson 's hawk which may include preservation of potential foraging habitat as noted above.

BIO-1(b): Prior to the commencement of construction activities, a qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct pre-construction surveys of the permanent and temporary impact areas to confirm the presence or absence of burrows occupied by breeding or wintering burrowing owls. The surveys shall be conducted no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 CDFW Staff Report on Burrowing Owl Mitigation.

If burrowing owls are detected, no ground-disturbing activities, such as vegetation clearance or grading, shall be permitted within a buffer of no fewer than 260 feet from an occupied burrow during the breeding season (February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW. [Revised consistent with State CEQA Guidelines Section 15073.5 (c)(4).]

Method of Mitigation Monitoring: The permittee shall have a burrowing owl survey completed no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey shall be conducted in accordance with the methods outlined in the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any Burrowing owls are found, construction activities will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts.

7.5 OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL

- a. Pre-construction meeting: No more than two weeks, or as otherwise specified by project mitigation measures. Prior to the commencement of any vegetation removal, earth-disturbing activities, or other development activities associated with this project, the owner/permittee shall schedule an on-site pre-construction meeting that shall include the project planner, owner or owner's agent, plan preparer, contractor(s), and any other parties deemed necessary by Planning Division staff, such as but is not limited to: County Planning and Conservation Division staff and the project biologist. The purpose of this meeting will be to review the development requirements of #P18-00117-UP including but not limited to: implementation and compliance with project specific conditions of approval and mitigation measures, inspection of stream setback staking/fencing, timing of development activities and pre-construction surveys, and the details of the approved plan. All required protective buffers, including buffer fencing/delineation, shall be installed prior to the pre-construction meeting for inspection by Planning Division staff. Development activities associated with #P18-00117-UP shall not commence until the owner/permittee has received written clearance from the Planning Division indicating that all pre-construction conditions have been satisfied.
- b. Open Trenches: Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the end of work each day with a hard, non-heat conductive material (i.e. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that can allow large (i.e. deer) and small (i.e. snakes) wildlife from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the end of work each day, Qualified Biologist(s) or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord.

- c. Open Pipes Restriction: All pipes, culverts, or similar structures that are stored vertically or horizontally on-site for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to installation at the Project site by a Qualified Biologist or Biological Monitor.

- d. Fence and Sign Post Restriction: Any fencing posts or signs installed temporarily or permanently throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey. The Qualified Biologist or Biological Monitor shall be responsible for ensuring compliance with this measure throughout the course of the Project and shall inspect each post.

SUMMARY AND FINDINGS

The following findings are provided in accordance with CEQA §15073.5 (c) concerning the decision not to recirculate the Mitigated Negative Declaration pursuant to §15073.5(a)

Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

The conclusions and recommendations contained herein are professional opinions derived in accordance with current standards of professional practice. They are based on a review of the Napa County Environmental Resource Maps, the other sources of information listed in the file, and the comments received, conversations with knowledgeable individuals; the preparer's personal knowledge of the area; and, where necessary, a visit to the site. For further information, please see the Innova Gateway Speculative Building Mitigated Negative Declaration dated December 13, 2018.

Innova Gateway Speculative Industrial Building (#P18-00117-UP)
Devlin Road, Napa, CA 94558, APN's #057-200-002 & 003

MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Monitoring Responsibility	Monitoring/Reporting Action and Schedule	Monitoring Compliance Complete (Name / Date)
Biological Resources (IV)			
<p>BIO-1(a): If construction would commence anytime during the nesting/breeding season of the Swainson's hawk or Tricolored blackbird, other raptors, or other bird species listed in the Migratory Bird Treaty Act (typically February 1 through September 30), a preconstruction survey of the project vicinity for nesting birds shall be conducted. This survey shall be conducted by a qualified biologist (experienced with the nesting behavior of bird species of the region) within 14 days prior to the commencement of construction activities that would occur during the nesting/breeding season. The intent of the survey will be to determine if active nests are present within or adjacent to the construction zone within approximately 250 feet (300 feet for raptors). The survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i>. The survey shall commence early in the Swainson's hawk nesting season (late March to early April) and surveys will be conducted within a minimum 0.25-mile radius of the Project area. The surveys shall be timed such that the last survey is concluded no more than two weeks prior to initiation of construction. If ground disturbance activities are delayed following a survey, then an additional pre-construction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If active nests are found in areas that could be directly or indirectly affected by the project, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. If any active Swainson's hawk nests are found during the survey, CDFW recommends a disturbance buffer of at least a 0.25 mile to avoid a "take" or adverse impacts to Swainson's hawk. <u>If surveys determine that Swainson's hawks (SWHA) are nesting within 0.25 miles of the project site, the project shall avoid construction activities during the SWHA nesting season (typically March 1 to September 15), or until a qualified biologist has determined that the SWHA young have fledged and are foraging on their own. If construction activities cannot avoid the abovementioned SWHA nesting season, and if surveys determine that SWHA are nesting within 0.25 miles of the Project site, the Project proponent shall obtain a</u></p>	<p>Planning Division</p>	<p>The permittee shall have a nesting bird survey completed prior to any construction activities scheduled to occur on the site from February 1 through September 30. The survey shall also be conducted in accordance with the protocol of the Swainson's Hawk Technical Advisory Committee's (TAC) <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i>. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any special-status or other protected nesting birds are found to occur on-site construction activities will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts to nesting Swainson 's hawk which may include preservation of potential foraging habitat <u>as noted above</u>.</p>	

Mitigation Measure	Monitoring Responsibility	Monitoring/Reporting Action and Schedule	Monitoring Compliance Complete (Name / Date)
<p><u>CESA ITP from CDFW prior to the start of construction.</u> No trees or vegetation shall be removed from the project site during the breeding period. The size of the buffer zones and types of construction activities restricted within them should be determined through consultation with the CDFW depending on the species, taking into account factors such as the following:</p> <ul style="list-style-type: none"> • Noise and human disturbance levels at the construction site at the time of the survey and the noise and disturbance expected during the construction activity; • Distance and amount of vegetation or other screening between the construction site and the nest; and • Sensitivity of individual nesting species and behaviors of the nesting birds. <p>The buffer zone around an active nest should be established in the field with orange construction fencing or another appropriate barrier and construction personnel should be instructed on the sensitivity of nest areas. The qualified biologist should serve as a construction monitor during those periods when construction activities would occur near active nest areas of special status bird species to ensure that no impacts on these nests occur. <u>If active nests are found, CDFW recommends the following to mitigate the potential loss of foraging habitat based on the following ratios:</u></p> <ul style="list-style-type: none"> • <u>For projects within one-mile of an active nest tree, provide one-acre of land for each acre of development authorized (1:1 ratio).</u> • <u>For projects within five miles of an active nest tree but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).</u> • <u>For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).</u> <p><u>Mitigation lands associated with the Project should be of equal or greater value to the habitat that is lost and protected in perpetuity under a conservation easement. Funding for mitigation lands should be ensured for long-term management of SWHA habitat. [Revised consistent with State CEQA Guidelines Section 15073.5 (c)(4).]</u></p>			

Mitigation Measure	Monitoring Responsibility	Monitoring/Reporting Action and Schedule	Monitoring Compliance Complete (Name / Date)
<p><u>BIO-1(b): Prior to the commencement of construction activities, a qualified wildlife biologist (i.e., a wildlife biologist with previous burrowing owl survey experience) shall conduct pre-construction surveys of the permanent and temporary impact areas to confirm the presence or absence of burrows occupied by breeding or wintering burrowing owls. The surveys shall be conducted no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey methodology shall be consistent with the methods outlined in the 2012 CDFW Staff Report on Burrowing Owl Mitigation.</u></p> <p><u>If burrowing owls are detected, no ground-disturbing activities, such as vegetation clearance or grading, shall be permitted within a buffer of no fewer than 260 feet from an occupied burrow during the breeding season (February 1 to August 31), unless otherwise authorized by CDFW. During the non-breeding (winter) season (September 1 to January 31), ground-disturbing work can proceed as long as the work occurs no closer than 165 feet from the burrow. Depending on the level of disturbance, a smaller buffer may be established in consultation with CDFW. [Revised consistent with State CEQA Guidelines Section 15073.5 (c)(4).]</u></p>		<p><u>The permittee shall have a burrowing owl survey completed no fewer than 14 days prior to ground-disturbing activities (i.e., vegetation clearance, grading, tilling). The survey shall be conducted in accordance with the methods outlined in the 2012 CDFW Staff Report on Burrowing Owl Mitigation. The survey results shall be provided to the Napa County Planning, Building and Environmental Services. In the event any Burrowing owls are found, construction activities will be scheduled to avoid nesting and breeding periods and consultation will be sought with CDFW to develop appropriate measures to reduce potential impacts.</u></p>	



State of California – The Natural Resources Agency
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 11, 2019

Mr. Sean Trippi
Napa County - Planning, Building, and Environmental Services
1195 Third Street, Suite 210
Napa, CA 94559

Dear Mr. Trippi:

Subject: Innova Gateway Speculative Building (P-18-00117), Draft Mitigated Negative Declaration, SCH #2018122027, Napa County

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Innova Gateway Speculative Building (Project). CDFW is submitting comments on the draft MND to inform Napa County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA) and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to foothill yellow-legged frogs or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Additionally, fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Conserving California's Wildlife Since 1870

Project Description and Environmental Setting

The Project site is located on an approximately 4.36-acre site on the east side of Gateway Road East and on the west side of State Route 29, Napa County. The following Assessor's Parcel Numbers are associated with the Project: APNs: 057-200-002 and 003. Immediately north of the Project site lies Sheehy Creek. The Project site is also near the Napa County Airport.

The proposed Project is the construction of a new speculative building, approximately 68,677 square feet. On-site parking for up to 73 vehicles, associated landscaping, and signage are also included with the proposal.

Comments and Concerns

Burrowing owl (Athene cunicularia)

The Biological Resources section of the MND does not discuss the Project's potential impacts to burrowing owl (BUOW). BUOW has been observed within 0.25 miles of the Project site as recent as 2006. Furthermore, table 1, page 20 of the *Wetland & Biological Resources Assessment (BA)*, prepared by Innova, dated October 2, 2018 states that BUOW has low potential to occur at the Project site, and that no rodent or owl burrows were observed on-site. While CDFW agrees that there is low potential for BUOW to occur on-site, rodent burrows that could support BUOW could be present near the Project site. Because the BA only covers the Project site, the Project cannot rule out the possibility that rodent burrows that could support BUOW are present near the Project site (e.g. within 260 linear feet). CDFW recommends that the MND incorporate a mitigation measure for BUOW that references the *Staff Report on Burrowing Owl Mitigation*, prepared by CDFW, dated March 7, 2012, to determine if the Project could impact BUOW off-site. If the Project could impact BUOW off-site then the MND should incorporate adequate avoidance, minimization, and mitigation measures to reduce potential impacts to BUOW to a level of less-than-significant. The abovementioned staff report burrowing owl mitigation can be found here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

Swainson's hawk (Buteo swainsonii)

The MND discusses the Project's potential impacts to Swainson's hawk (SWHA) and proposes Mitigation Measure BIO-1 to reduce potentially significant impacts to SWHA to a level of less-than-significant. CDFW agrees with having a qualified biologist conduct surveys according to the survey protocol outlined in the *Swainson's Hawk Technical Advisory Committee's (TAC) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, but proposes the following additional language to Mitigation Measure BIO-1:

If surveys determine that Swainson's hawks (SWHA) are nesting within 0.25 miles of the Project site, the Project shall avoid construction activities during the SWHA nesting season (typically March 1 to September 15), or until a qualified biologist has determined that the SWHA young have fledged and are foraging on their own. If construction activities cannot avoid the abovementioned SWHA nesting season, and if surveys determine that SWHA are nesting within 0.25 miles of the Project site, the Project proponent shall obtain a CESA ITP from CDFW prior to the start of construction.

Because of the presence of suitable nesting habitat within the Sheehy Creek corridor, which is within 0.25 miles of the Project site, CDFW believes that the above language is necessary to avoid unauthorized "take" of SWHA.

The Project site is marginally suitable foraging habitat for SWHA and the MND does not propose any mitigation for permanent impacts to foraging habitat. Additionally, the increase in development on lands in south Napa near the Napa County Airport and Devlin Road have removed and will continue to remove suitable foraging habitat for the species. CDFW recommends mitigation for loss of SWHA foraging habitat based on the following ratios:

- For projects within one-mile of an active nest tree, provide one-acre of land for each acre of development authorized (1:1 ratio).
- For projects within five miles of an active nest tree but greater than one-mile from the nest tree, provide 0.75 acres of land for each acre of development authorized (0.75:1 ratio).
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, provide 0.5 acres of land for each acre of development authorized (0.5:1 ratio).

Mitigation lands associated with the Project should be of equal or greater value to the habitat that is lost and protected in perpetuity under a conservation easement. Funding for mitigation lands should be ensured for long-term management of SWHA habitat.

Additional Recommended Mitigation Measures

CDFW also recommends that the following avoidance and minimization measures are included in the biological resources section of the draft EIR:

"Open Trenches: Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the end of work each day with a hard, non-heat conductive material (i.e. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that can allow large (i.e. deer) and small (i.e. snakes) wildlife from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the end of work each day, Qualified Biologist(s) or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord.

Open Pipes Restriction: All pipes, culverts, or similar structures that are stored vertically or horizontally on-site for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to installation at the Project site by a Qualified Biologist or Biological Monitor.

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

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Qualified Biologist or Biological Monitor shall be responsible for ensuring compliance with this measure throughout the course of the Project and shall inspect each post."

Environmental Data

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse