

DOCKETED	
Docket Number:	24-SPPE-01
Project Title:	AVAIO Pittsburg Backup Generating Facility
TN #:	267182
Document Title:	DEPARTMENT OF FISH AND WILDLIFE _ Public Agency Comment
Description:	Public Agency Comments for AVAIO on behalf of DEPARTMENT OF FISH AND WILDLIFE
Filer:	Ali Jahani
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	11/12/2025 4:53:51 PM
Docketed Date:	11/12/2025



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



November 10, 2025

Ali Jahani, Senior Environmental Planner
California Energy Commission
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Subject: AVAIO Pittsburg Backup Generating Facility, Initial Study/Mitigated Negative Declaration, SCH No. 2025100607, Contra Costa County

Dear Ali Jahani:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the California Energy Commission for the AVAIO Pittsburg Backup Generating Facility Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA or the Native Plant Protection Act (NPPA), either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86). CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA or NPPA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

Coverage under by the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan (ECCC HCP/NCCP), authorizes the incidental take of the covered species as listed in the ECCC HCP/NCCP. A list of the 28 ECCC HCP/NCCP-covered species can be found in the *East Contra Costa County HCP/NCCP Covered Species List, April 2023* (available here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=65726&inline>).

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the lead agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

Fully Protected Species

Fully protected species, such as white-tailed kite (*Elanus leucurus*) may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

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- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species;
- Live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird).

Lake and Streambed Alteration Agreement

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through horizontal directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the IS/MND and complied with its responsibilities as a responsible agency under CEQA.

PROJECT DESCRIPTION SUMMARY

Proponent: AVAIO Digital Partners I, LLC

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Objective: The objective of the Project is to construct and operate a 347,740-square-foot building that will house computer servers (Pittsburg Data Hub), and an emergency backup generating facility consisting of thirty-seven (37) 3-megawatts (MW) diesel-fired backup generators on the west side of the Pittsburg Data Hub (AVAIO Pittsburg Backup Generating Facility). The Project will include the installation of a Pacific Gas and Electric Company (PG&E) Switching Station and transmission lines, construction of site access and parking, construction of stormwater controls and infrastructure, including bioretention areas, at-grade flow-through planter boxes, and a culvert undercrossing at the proposed extension of a site access road, installation of interconnections to water and sewer pipelines, and installation of fiber connections. Primary Project activities include removal of on-site shrubs and groundcover, removal of forty-two (42) trees, site grading, demolition of existing Golf Course infrastructure that will not be reused, excavation, and construction.

Location: The Project site is located at 2232 Golf Club Road, in the City of Pittsburg, within the County of Contra Costa, State of California. The approximate project centroid is 38.012222°N, -121.909722°W.

Timeframe: Construction is expected to span a total of approximately 18 months. Construction is anticipated to begin in November 2025 and continue through May 2027.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the California Energy Commission in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts to biological resources with implementation of mitigation measures, including those CDFW recommends below, CDFW concludes that a MND is appropriate for the Project.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT 1: Special-Status Bats

Issue: The methods for roost surveys and implementation of protective buffers proposed in Mitigation Measure BIO-11 may not be adequate to detect and protect active bat roosts. Impacts to special-status bats may therefore still be potentially significant.

Specific Impact and Why Impact Would Occur: Implementation of Mitigation Measure BIO-11, which proposes protections only to roosts that are confirmed during pre-construction surveys, may result in the unintended disturbance or mortality of special-status bats that were undetected during pre-construction

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surveys. Implementation of Mitigation Measure BIO-11 may also result in the disturbance or mortality of special-status bat species during sensitive life stages, which may have a detrimental impact upon local populations.

The Project proposes to remove a total of 42 trees to prepare the site for construction. The IS/MND indicates that trees within the Project site may offer roosting opportunities for bats, including pallid bat, western red bat, and hoary bat (section 5.4, page 35). Many species of bat, including western red bat and pallid bat, exhibit frequent roost switching behavior and may not utilize the same roost each day (Andersen & Geluso, 2018; Lewis, 1996; Collins, 2023). Mitigation Measure BIO-11 proposes to conduct surveys for roost occupancy at least two weeks before the start of work, which presents ample opportunity for potential roosts that were unoccupied during surveys to become occupied in the period prior to tree removed. It is also possible that potentially occupied roosts could remain undetected due to challenges inherent to tree roost surveys, including visual constraints posed by tree height and foliage and potential safety concerns that prevent inspection of all habitat features (Collins, 2023). Any such roosts that are undetected during surveys would remain undetected and would not be afforded the roost protections prescribed by Mitigation Measure BIO-11, potentially resulting in disturbance or mortality to special-status bats.

Even low levels of human disturbance during the maternity season can cause mothers to abandon roost sites, which may result in the mortality of young bats (Beck & Rudd, 1960). Similarly, disturbance to hibernating bats or bats that have entered torpor during the winter can result in mortality. Many bat species hibernate or enter torpor to conserve energy at a time when resources are scarce, and repeated arousal during hibernation or torpor can deplete energy reserves and reduce survival (O'Shea et. al., 1977; Boyles & Brack 2009). Though Mitigation Measure BIO-11 includes specific protections for detected maternity roosts, it does not provide specific consideration for hibernating bats. If roosts are removed or disturbed during this period, bats may be forced to expend critical energy on evasion and location of a suitable replacement roost, which may not be readily available nearby.

Evidence of Significance: Project activities that result in the mortality of bats, such as the removal of occupied bat roosts or disturbance that causes the loss of a maternity colony or hibernating colony, may be considered "take" under California Fish and Game Code (Fish & G. Code, § 86). Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Furthermore, pallid bat, western red bat, and hoary bat are all California State Species of Special Concern (SSC), a status which qualifies each as rare, threatened, or endangered species under CEQA (CEQA Guidelines, § 15380).

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To minimize significant impacts: To help reduce project-related impacts to special-status bat species to less-than-significant levels, CDFW recommends that Mitigation Measure BIO-11 is updated with the following potentially feasible mitigation measures in a revised IS/MND:

Recommendation 1: *If any potential roosting habitat is identified during habitat evaluations, the following additional requirements shall apply:*

- *The removal of any trees within riparian zones or those that contain roosting habitat shall be limited to the periods from March 1 through April 15 and September 1 through October 15 to avoid disturbing roosting bats during maternity and hibernation seasons.*
- *The removal of any trees with potential roosting habitat shall occur over the course of two days to ensure that special-status bats have left potential roosting refugia. On the first day, smaller limbs or items from the trees containing suitable roosting habitat shall be brushed back or modified in the late afternoon. This disturbance should cause any potential roosting bats to seek other roosts during their nighttime foraging. The remainder of the tree can then be further limbed or removed as needed on the second day as late in the afternoon as feasible. Tree limbing, modification, removal shall not be performed under any of the following conditions: during any precipitation events, when ambient temperatures are below 4.5 degrees Celsius, when windspeeds exceed 11 miles per hour, and/or any other condition which may lead to bats seeking refuge.*

Recommendation 2: *If tree removal cannot be avoided during sensitive maternity roosting or hibernation periods as described above, before the initiation of construction activities with the potential to disturb roosting bats, a qualified biologist shall conduct bat activity surveys to determine **site** occupancy. A qualified biologist shall have at least two years' experience conducting the survey methodology. Surveys shall be designed to maximize detection of bats, shall take into consideration seasonal and daily periods of bat activity, and shall include:*

- *Daytime visual surveys for bats and evidence of bat presence such as guano or urine staining; and*
- *Evening emergence and acoustic surveys.*

The qualified biologist shall not disturb bats during surveys. If bat presence is confirmed, the species, number of individuals, and roost type (maternity/non-maternity) shall be documented and reported to the California Natural Diversity Database (CNDDDB). Bats shall not be disturbed or relocated during the surveys.

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Recommendation 3: *If special-status bats are confirmed to use the Project site during site occupancy surveys, or if site occupancy surveys are not conducted, all trees containing potential roosting habitat shall be surveyed for **roost** occupancy immediately prior to removal and shall be removed under the direct supervision of a qualified biologist. The qualified biologist shall not disturb bats during surveys. If roosts are discovered by a qualified biologist during roost occupancy surveys or during tree removal, roosts shall be protected by buffers determined by the qualified biologist depending on the species, roost type, and type of disturbance. Maternity roosts shall not be removed unless removal cannot be avoided, and in no case shall a confirmed maternity roost be removed during the breeding/non-volant season (April – August). A qualified biologist shall develop a Bat Habitat Mitigation Plan to compensate for the loss of any roosting habitat used by special-status bat species.*

COMMENT 2: Special-Status Herpetofauna and Other Small Wildlife

Issue: The IS/MND evaluates potential impacts to special-status species resulting from Project operation including noise, lighting, increased human presence, site maintenance, transmission lines, and nitrogen deposition on nitrogen-sensitive habitats; however, the IS/MND does not evaluate potential impacts to wildlife from storm drain and road infrastructure associated with the Project (section 5.4, page 29). Potential impacts associated with Project operations may still be potentially significant.

Specific impact: Depending upon the design of the proposed storm drains, stormwater infrastructure associated with the Project may pose a risk of entrapment to small wildlife species, including California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana draytonii*), and northwestern pond turtle (*Actinemys marmorata*). Semi-aquatic and terrestrial wildlife may inadvertently wander onto Project roadways or into stormwater infrastructure and become trapped, leading to subsequent mortality as a direct result of Project operations.

Why impact would occur: The Project proposes to construct road and stormwater infrastructure adjacent to aquatic features which, according to the IS/MND, may support wildlife including California tiger salamander, California red-legged frog, and northwestern pond turtle (section 5.4, page 7). Curbs, sidewalks, and drainage systems, such as those proposed within the Project site adjacent to the existing drainage, can act as strong barriers for small animals trying to cross the road and exit the roadway (Ratzel, 1993). Individuals migrating to breeding or hibernation sites may be forced to cross roads, follow curbs, and crawl over roadside drains (Smith & Sutherland, 2014). Individuals blocked from leaving the roadway may be at risk of mortality due to traffic or prolonged exposure to predators, or they may need to expend additional resources to find an exit far from the original destination.

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Additionally, should individuals enter storm drain inlets or catch basins when passing over them, smooth walls may prevent their escape and lead to their subsequent mortality.

Evidence impact would be significant: CEQA Guidelines state that an Initial Study must consider all phases of a Project when evaluating its impact on the environment, including operational phases (Cal. Code Regs. Title 14, §15063). If impacts to special-status species resulting from storm drain and roadway infrastructure are not evaluated, such impacts may still be potentially significant.

The IS/MND indicates that the Project site, in its current condition, has the potential to support California tiger salamander, a threatened species under the CESA, and California red-legged frog and northwestern pond turtle, two California State SSC. The listing status of these three species qualifies each as a rare, threatened, or endangered species under CEQA (CEQA Guidelines, § 15380). If installation of road and storm water infrastructure associated with the Project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or substantially reduce the number or restrict the range of an endangered, rare or threatened species, such potential impacts would be considered mandatory findings of significance.

To minimize significant impacts: CDFW recommends the following potentially feasible mitigation measures to reduce potentially significant adverse impacts to wildlife, including California tiger salamander, California red-legged frog, and northwestern pond turtle:

Wildlife-Friendly Roadside Curb Design and Construction. *Curbs adjacent to storm drains shall be offset by a distance sufficient to allow volitional passage for wildlife around the storm drains. Curbs on the edge of any road, sidewalk, or trail within jurisdictional areas of this Agreement shall be slanted at no more than a 45-degree angle; alternatively, slanted sections shall be provided at regular intervals of no more than 100 linear feet.*

Wildlife-Friendly Storm Water Infrastructure Designs and Construction. *Storm water-related infrastructure (e.g., storm drains, storm drain grates, v-ditches, catchment basins, and/or detention basins) shall be designed and constructed in a manner that minimizes and avoids take of wildlife to the maximum extent feasible. Designs shall include the following measures:*

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- *Storm drain grates shall be offset from any adjacent curb by a distance that will allow for volitional passage of wildlife to go around the grate, along the curb.*
- *Openings in storm drain grates shall be no more than 16 mm in width or as narrow as feasible to allow necessary water throughput while preventing wildlife from entering.*
- *Catchment basins and drop inlets shall be fitted with escape ramps or ladders that will allow wildlife to volitionally escape. Ramps and/or ladders shall be placed along a wall of the catchment basin and must span the distance from the lowest point in the basin (sump pit) to the grate covering. Ramps and/or ladders shall be placed at a slope no steeper than 45 degrees. Escape ramps or ladders shall be fashioned from perforated metal sheeting covered with an open structured synthetic matting material that will allow for sufficient traction for wildlife to volitionally escape from the catchment basin if entrained. Alternatively, catchment basins shall be designed to have walls that are slanted outward and the walls shall be covered with open structured synthetic matting material together with an escape ramp or ladder that allows for volitional escape of wildlife.*
- *Vehicle entry/exit points of access to the detention basins shall have crossing structures installed (e.g., grated trenches) to prevent road mortality of wildlife.*
- *Detention basin outfall structures shall have one-way gates installed (e.g., flapper gates) or similar devices that will serve to prevent wildlife from entering the basin via the structure.*

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 CNDDB. The CNDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the

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Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the California Energy Commission in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Torrey Soland, Environmental Scientist, at (707) 266-2878 or Torrey.Soland@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist, (Supervisory) at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Land Use and Climate Innovation, State Clearinghouse, Sacramento

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