



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 20, 2019

Governor's Office of Planning & Research

SEP 20 2019

Steve McClain
1300 Baker Street
Bakersfield, California 93305
mccclains@bcsd.com

STATE CLEARINGHOUSE

**Subject: Bakersfield City School District New School No. 4 (Project),
MITIGATED NEGATIVE DECLARATION
State Clearinghouse No. 2019089073**

Dear Mr. McClain:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Bakersfield City School District for the above-referenced Project pursuant to 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, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through 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.

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.

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 proposed, for example, construction associated with the Project may be subject to CDFW's lake and streambed alteration 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.*), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Bakersfield City School District (District)

Objective: The District is proposing to acquire and construct a new school, currently identified as New School No. 4. The school will encompass approximately 95,400 square feet to be constructed in two phases. School capacity is planned for approximately 785 students. The school will be constructed on approximately 24 acres of portions of Parcels 10 and 11 of Parcel Map 11013 (approximately 50.06 acres overall). The project will include improvements along public street rights-of-way and utility easements as well as the construction of infrastructure in accordance with the standards, specifications and policies of the City of Bakersfield for new development.

Location: The project is generally located at the southwest corner of Masterson Street and Paladino Drive in the incorporated City of Bakersfield in Kern County, Assessor's Parcel Numbers 531-012-02 and -03.

Timeframe: School construction is planned to begin in 2021 and be completed by 2023.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District 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.

I. Environmental Setting and Related Impact

Currently, the MND indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the MND. However, as currently drafted, it is unclear whether the mitigation measures described will be enforceable or sufficient in reducing impacts to a level that is less than significant. In particular, CDFW is concerned regarding adequacy of mitigation measures for special-status animal species including, but not limited to, the State Threatened and federally Endangered San Joaquin kit fox (*Vulpes macrotis mutica*).

CDFW is also concerned regarding adequacy of mitigation measures for the State Species of Special Concern California burrowing owl (*Athene cunicularia*; BUOW) and nesting birds. CDFW recommends that pre-construction surveys be conducted in closer proximity to ground-disturbing activities, specifically within 10 days for nesting birds and within 14 days for BUOW. In addition, CDFW recommends that the MND include appropriate nesting bird buffers.

COMMENT 1: San Joaquin kit fox (SJKF)

Issue: The Biological Evaluation included with the MND states that SJKF tracks and scat were observed throughout the Project site. CDFW acknowledges that Mitigation Measures BIO-8 through BIO-10 include a SJKF pre-construction survey, protective measures to be implemented during Project construction, and agency notification in the event of SJKF injury or death. However, as written, the MND does not include a provision for seeking take authorization should SJKF be found within the Project site.

Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts resulting from ground-and vegetation-disturbing activities associated with construction of the Project include den collapse, inadvertent entrapment or entanglement, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al. 2013). Very little suitable habitat remains in Kern County (Cypher et al. 2013). Therefore, ground-disturbing activities within the Project area have the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Because suitable habitat for SJKF is present within the Project area, and because SJKF sign was detected during the reconnaissance-level field survey, CDFW

recommends editing the MND to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 1: SJKF Surveys

CDFW recommends assessing presence/absence of SJKF by conducting surveys following the United States Fish and Wildlife Service (USFWS) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011). Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14 days and no more than 30 days prior to beginning of ground disturbing activities. In addition, CDFW advises that these surveys extend out to 200-feet from the Project area boundaries. If a natal or pupping den is discovered within the Project area or within 200 feet of the Project area, CDFW recommends immediate notification to USFWS and CDFW and that all work stops until consultation with USFWS and CDFW is completed and, if necessary, take is authorized.

Recommended Mitigation Measure 2: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081(b).

Recommended Mitigation Measure 3: Soccer Nets and Similar Structures

Soccer nets, batting cage nets, and similar structures have been a regularly observed source of injury and mortality for SJKF (B. Cypher, PhD; personal communication, December 3, 2018). SJKF become entangled in the nets and if not freed quickly may suffocate or suffer permanent injury due to blood loss to limbs. CDFW recommends that authorization of the project include a mitigation measure that requires that all soccer nets, etc., be removed or raised at least 3 feet off the ground when not in active use. Alternatively, nets can use a smaller mesh (maximum size 2 inches) for the lower 3 feet to prevent a head or limb from becoming entangled in the net.

Recommended Mitigation Measure 4: SJKF Response Plan

SJKF dens are frequently observed underneath portable classrooms or similar structures at schools in the greater Bakersfield area. CDFW recommends that the Project develop a SJKF Response Plan that will describe appropriate steps if SJKF are observed on site after the school is constructed to minimize impacts to SJKF, minimize disruption to school operation and avoid take of SJKF. If take cannot be avoided, an ITP is necessary to comply with CESA. CDFW recommends the SJKF Response Plan, at a minimum, include CDFW and USFWS contact information,

standard avoidance buffers, when take authorization is warranted, and management guidelines such as raising soccer nets or alternative access routes. CDFW is available to the District for consultation to discuss any proposed SJKF Response Plan and its contents.

II. Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

Nesting birds: CDFW encourages Project implementation occur outside of bird nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project's applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To prevent Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist

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advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

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

FILING FEES

The Project, as proposed, has the potential to impact fish and/or wildlife, and assessment of filing fees may be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Bakersfield City School District in identifying and mitigating subsequent project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jennifer Giannetta, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 216, or by electronic mail at Jennifer.Giannetta@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

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REFERENCES

Cypher, B.L., S.E. Phillips, and P.A. Kelly, 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology & Conservation* 16(7): 25-31.
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