



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Ave  
Fresno, California 93710  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 15, 2020

Governor's Office of Planning & Research

**Oct 15 2020**

## STATE CLEARINGHOUSE

Steven Sopp  
Senior Planner  
City of Tulare  
411 East Kern Avenue  
Tulare, California 93274

**Subject: Kensington 3 & 4 Subdivision Project San Joaquin Valley Homes  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH No.: 2020090286**

Dear Mr. Sopp:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Tulare for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

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<sup>1</sup> 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.

*Conserving California's Wildlife Since 1870*

Steven Sopp, Senior Planner  
City of Tulare  
October 15, 2020  
Page 2

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

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** San Joaquin Valley Homes

**Objective:** The objective of the Project is to develop 111 low density residential units; a 15,765 square foot park, and a storm water retention basin. Primary Project activities include development of on-site infrastructure improvements such as new streets, utilities, sidewalks, and light signals. The Project requires rezoning from R-1-7 and C-3 to R-1-4, and a general plan amendment for the Project site from Neighborhood Commercial and Medium Density Residential to Low Density Residential.

**Location:** North portion of the City of Tulare, on the Northwest corner of North Mooney Boulevard and East Cartmill Avenue. The Project site is approximately 24.0 gross acres.

**Timeframe:** January 2021 through November 2022

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist City of Tulare 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.

### **Mitigation Measures BIO-3a and BIO-3b**

These mitigation measures require preconstruction surveys for San Joaquin kit fox (SJKF) and no-disturbance buffers if SJKF dens are detected in the Project area. CDFW recommends the survey methods described in 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) to determine if SJKF may

Steven Sopp, Senior Planner  
City of Tulare  
October 15, 2020  
Page 3

be present on or near the Project site. The MND states that if a SJKF natal/pupping den is occupied that a 500-foot disturbance-free buffer shall be established around the burrow as one of the disturbance free buffers listed in Mitigation Measure BIO-3b. Given the increased risk of take and associated impacts when SJKF pups are present, consultation with CDFW, in addition to the 500-foot buffer is warranted to determine how to implement the Project and avoid take if SJKF pups are detected in or near the Project. If avoidance is not feasible, an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) prior to ground-disturbing activities is necessary to comply with CESA.

### **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.

### **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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: [http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: [http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

### **FILING FEES**


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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.)

Steven Sopp, Senior Planner  
City of Tulare  
October 15, 2020  
Page 4

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist City of Tulare in identifying and mitigating Project impacts on biological resources. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist at (559) 243-4014 extension 243 or [aimee.braddock@wildlife.ca.gov](mailto:aimee.braddock@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

### Attachment

A. MMMRP for CDFW Recommended Mitigation Measures

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Steven Sopp, Senior Planner  
City of Tulare  
October 15, 2020  
Page 5

## **REFERENCES**

USFWS. 2011. Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance, January 2011.