



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 02, 2020

Governor’s Office of Planning & Research

**Dec 02 2020**

Hector Guerra  
Chief Environmental Planner  
Tulare County Resource Management Agency  
5961 South Mooney Blvd  
Visalia, California 93277

**STATE CLEARINGHOUSE**

**Subject: Three Rivers-Hampton Inn & Suites Ineffable Hospitality, Inc.  
Notice of Preparation (NOP)  
SCH No.: 2020110016**

Dear Mr. Guerra:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an NOP from Tulare County Resource Management Agency for the Project pursuant 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 statue 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.

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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, 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:** Ineffable Hospitality, Inc.; Sukhjinder and Kulvinder Sanghera

**Objective:** The objective of the Project is to develop a three-story hotel and associated site improvements. Primary Project activities include:

- A hotel with 105 guest rooms, manager's office, storage room, breakfast area, fitness center, outdoor swimming pool, and laundry rooms.
- 108 parking stalls
- Septic tank with filter and dripline system
- New domestic well
- Storm drainage

**Location:** ±4.57-acre Project Area is located adjacent to the community of Three Rivers east of State Highway 198 (Sierra Drive), approximately 1,000 feet north of the Old Three Rivers Road intersection, and immediately south of the Comfort Inn and Suites. APN No.: 068-080-010

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Tulare County Resource Management Agency 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.

The NOP describes the surrounding area of the Project as commercial, scattered residential, and undeveloped / vacant land. Project area is described as annual grassland, oak woodland, and ruderal/roadside; the site is approximately 400-feet from the Kaweah River. These resources may need to be evaluated and addressed prior to

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any approvals that would allow ground-disturbing activities or land use changes. The NOP indicates there are potentially significant impacts unless mitigation measures are taken but the measures listed are general and non-specific and/or may be inadequate to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: the State endangered foothill yellow-legged frog (*Rana boylei*), the Federal and State endangered, and California Rare Plant Ranked (CRPR) 1B.2 Kaweah brodiaea (*Brodiaea insignis*); the Federally threatened, State endangered, and CRPR 1B.2 Springville clarkia (*Clarkia springvillensis*), and the State species of special concern burrowing owl (*Athene cunicularia*). In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, especially in the areas not in irrigated agriculture, and to identify any Project-related impacts under CESA and other species of concern.

#### **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?**

#### **COMMENT 1: Foothill Yellow-Legged Frog (FYLF)**

**Issue:** FYLF are primarily stream dwelling and require shallow, flowing water in streams and rivers with at least some cobble-sized substrate, and have been documented to utilize upland habitat as far as 40 meters from a stream (Borque 2008, Thomson et al. 2016). Based on historical records, FYLF is known to have been present in the Kaweah River near the vicinity of the Project site (CDFW 2020). The Project development envelope is approximately 400 feet from the Kaweah River, where it is possible that FYLF could occupy the upland area of the site. Therefore, CDFW advises that avoidance and minimization measures are necessary to reduce impacts to FYLF to a level that is less than significant.

**Specific impact:** Without appropriate avoidance and minimization measures for FYLF potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

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**Evidence impact would be significant:** FYLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated; historically, FYLF occurred in mountain streams from the San Gabriel River in Los Angeles County to southern Oregon west of the Sierra-Cascade crest (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to FYLF (Thomson et al. 2016). Project activities have the potential to significantly impact FYLF.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to FYLF, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 1: FYLF Surveys**

CDFW recommends that a qualified wildlife biologist conduct protocol-level surveys for FYLF in areas where potential habitat exists. CDFW advises that visual encounter surveys follow the methodology described in the CDFW “Considerations for Conserving the Foothill Yellow-Legged Frog” (CDFW 2018b) to determine if FYLF are within or adjacent to the Project area. Please note that dip-netting would constitute take as defined by Fish and Game Code section 86, so it is recommended this survey technique be avoided. In addition, CDFW advises surveyors adhere to Appendix E “The Declining Amphibian Task Force Fieldwork Code of Practice,” of the CDFW “Considerations for Conserving the Foothill Yellow-Legged Frog” (CDFW 2018b).

**Recommended Mitigation Measure 2: FYLF Avoidance**

If any FYLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF are most likely to be moving through upland areas (October 15 and May 1). When ground-disturbing activities must take place between October 15 and May 1, CDFW recommends a qualified biologist monitor construction activity daily for FYLF.

**Recommended Mitigation Measure 3: FYLF Take Authorization**

If through surveys it is determined that FYLF are occupying or have the potential to occupy the Project site and take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an Incidental Take Permit (ITP) by CDFW, pursuant to Fish and Game Code section 2081(b).

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## **COMMENT 2: Special-Status Plants**

**Issue:** Several special-status plants are known to occur near the Project area, including Kaweah brodiaea (*Brodiaea insignis*), Springville clarkia (*Clarkia springvillensis*), and other special-status plant species (CDFW 2020). Review of aerial imagery indicates that some of the Project site is bordered and includes valley and foothill grassland habitat which is known to support these species (CNPS 2020).

**Specific impact:** Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

**Evidence impact would be significant:** The listed plant species above are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species (CNPS 2020), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's EIR.

#### **Recommended Mitigation Measure 4: Special-Status Plant Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of project implementation, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species.

#### **Recommended Mitigation Measure 5: Special-Status Plant Focused Surveys**

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

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### **Recommended Mitigation Measure 6: Special-Status Plant Avoidance**

CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

### **Recommended Mitigation Measure 7: Special-Status Plant Take Authorization**

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. However, if take cannot be avoided, take authorization would need to occur through issuance of an ITP pursuant to Fish and Game Code section 2081(b), and to comply with Fish and Game Code section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b).

### **COMMENT 3: Burrowing Owl (BUOW)**

**Issue:** The Project location is within known BUOW range and the species occurs throughout the County of Tulare; BUOW may occur near and/or on the Project site (CDFW 2020). BUOW inhabit open grassland or adjacent canal banks, rights-of-ways (ROWs), vacant lots, etc., containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. The NOP indicates that there are California ground squirrel burrows present on the Project site, those have the potential to be used by BUOW.

**Specific impact:** Potentially significant direct impacts associated with subsequent activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

**Evidence impact is potentially significant:** BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project site is bordered by some of the only remaining undeveloped land in the vicinity, which is otherwise intensively managed for agriculture. Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

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### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site, incorporating the following mitigation measures into the EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

### **Recommended Mitigation Measure 8: BUOW Surveys**

CDFW recommends that a qualified biologist assess if suitable BUOW habitat features are present within or adjacent to the Project site (e.g., burrows). If suitable habitat features are present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

### **Recommended Mitigation Measure 9: BUOW Avoidance**

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

### **Recommended Mitigation Measure 10: BUOW Passive Relocation and Mitigation**

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and

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only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

## 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, the Springville clarkia (*Clarkia springvillensis*). 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: <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](mailto: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, 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.)

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## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist Tulare County Resource Management Agency 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 and Reporting Program (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

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

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## REFERENCES

Borque, R. 2008. Spatial ecology of an inland population of the foothill yellow-legged frog (*Rana boylei*) in Tehama County, California. Arcata, CA: Humboldt State University. 93 p. M. S. thesis.

California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.

California Native Plant Society, Rare Plant Program (CNPS). 2020. Inventory of Rare and Endangered Plants of California (online edition, v8-03 0.38). Website <http://www.rareplants.cnps.org>. Accessed November 02, 2020.

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California Department of Fish and Wildlife (CDFW), 2018a. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.

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CDFW. 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed November 19, 2020.

Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

**Attachment 1****CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)****PROJECT: Three Rivers-Hampton Inn & Suites Ineffable Hospitality, Inc.****SCH No.: 2020110016**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: FYLF Surveys	
Mitigation Measure 3: FYLF Take Authorization	
Mitigation Measure 4: Special-Status Plant Habitat Assessment	
Mitigation Measure 5: Special-Status Plant Focused Surveys	
Mitigation Measure 7: Special-Status Plant Take Authorization	
Mitigation Measure 8: BUOW Surveys	
Mitigation Measure 10: BUOW Passive Relocation and Mitigation	
<i>During Construction</i>	
Mitigation Measure 2: FYLF Avoidance	
Mitigation Measure 6: Special-Status Plant Avoidance	
Mitigation Measure 9: BUOW Avoidance	