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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 22, 2021

Governor's Office of Planning & Research

Feb 24 2021

STATE CLEARINGHOUSE

Mr. Frank Girardi
San Joaquin County
Community Development Department
1810 E. Hazelton Avenue
Stockton, CA 95205
FGirardi@sjgov.org

Subject: PA-2000221 (SA), Negative Declaration, SCH No. 2021010234, Community of Mountain House, San Joaquin County

Dear Mr. Girardi:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Negative Declaration (ND) from San Joaquin County Community Development Department for PA-2000221 (SA) (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 and Game Code, §§ 711.7, subd. (a) and 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. To the

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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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 and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Trimark Communities, LLC

Objective: A Site Approval application for construction of a 304-unit multi-family residential apartment complex with a 5,600-square-foot multi-recreational building within the Mountain House Community. Surrounding land uses include a Lammersville Unified School District building to the north, residential development to the south, the Mountain House Community Services District Administration building to the East, and vacant farmland to the west.

Location: The Project site is located 900 feet west of Mountain House Parkway on the north side of Arnaudo Boulevard in Mountain House, San Joaquin County. The site encompasses 15.2 acres. APN Number 254-030-01.

Timeframe: Unknown

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Joaquin County Community Development Department 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.

Special-status species documented to occur, or with the potential to occur, on or near the Project area include, but are not limited to, those listed in the table below.

Common Name	Scientific Name	Status	Rare Plant Rank
Caper-fruited tropidocarpum	<i>Tropidocarpum capparideum</i>		1B.1
Swainson’s hawk	<i>Buteo swainsoni</i>	ST	
Burrowing owl	<i>Athene cunicularia</i>	SSC	
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC	
San Joaquin kit fox	<i>Vulpes macrotis</i>	FE, ST	

FE = federally listed as endangered under ESA; ST = state listed as threatened under CESA; SSC = state species of special concern.

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CNPS Plant Ranks: 1B = Rare, Threatened, or Endangered in California and Elsewhere;
CNPS Threat Ranks: 0.1 = Seriously threatened in California (over 80% of occurrences threatened/high degree and immediacy of threat)

General Comments

Comment 1: Disclose Project impacts and avoidance, minimization, and mitigation measures

In the ND, the Section IV Biological Resources Impact Discussion for items a-f, it is stated that the proposed multi-family apartment project will have no impact on Biological Resources. The ND does not include a Project description or discuss Project impacts on plants or wildlife. CDFW does not concur that the Project will have no impacts on biological resources because the ND does not address impacts, quantify impacts, or identify biological resources that could be impacted by the Project. Without a Project description with an impact discussion, it is not possible to know if Project impacts are less-than-significant and if an ND is appropriate for the Project. Also, the pre-construction survey conditions of the San Joaquin Multi Species Conservation and Open Space Plan (SJMSCP) are unknown; therefore, it is not known if an ND is adequate to prevent environmental impacts to a less-than-significant level. Because participation in the SJMSCP is voluntary, the ND must include: 1) An evaluation and discussion of potential direct and indirect impacts of the Project to biological resources including fish, wildlife, and their habitats, 2) feasible avoidance, minimization, and mitigation measures to reduce those impacts to a less-than-significant level, and 3) specific and sufficient compensatory for all impacts that cannot be fully avoided, including on-site habitat loss in the event the SJMSCP will not provide coverage of the Project in whole or part as a means to mitigate impacts to a less-than-significant level.

If the impacts analysis indicates there will be direct or indirect take of California Endangered Species Act (CESA)-listed species, and if the Project cannot fully avoid take of CESA-listed species, and the SJMSCP does not offer take coverage, then CDFW recommends the ND include language defining the Project's obligation to obtain take coverage through an Incidental Take Permit (ITP) issued by CDFW.

Comment 2: IS/ND does not mitigate biological impacts to a less-than-significant level

Alternate mitigation needs to be specified in case the San Joaquin Council of Governments (SJCOG) does not approve the Project and/or the applicant chooses not to participate. The ND states:

"All development approvals in Mountain House are required to comply with pre-construction survey conditions of approval for discretionary projects and are subject to

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the San Joaquin Multi Species Habitat Conservation and Open Space Plan to reduce any impacts to sensitive species to less than significant.”

This mitigation measure does not mitigate potential impacts to a less-than-significant level regarding CEQA, as the ND does not propose or identify specific and sufficient mitigation in the event the SJCOG does not approve coverage or the applicant chooses to not participate. The statement also does not negate the need for a biological impact analysis, which includes, but is not limited to, potential impacts to nesting birds, Swainson’s hawk (*Buteo swainsoni*, SWHA), burrowing owl (*Athene cunicularia*, BUOW), San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF), and other special-status species. The Project has the potential to impact special-status species that utilize the Project area through direct take due to Project construction, indirect take due to Project operation, and temporary and permanent losses of agricultural land that can serve as marginal habitat.

To ensure that Project impacts to special-status species are mitigated to a less-than-significant level, and in the event SJCOG does not offer full coverage, CDFW recommends the ND be revised to require compensatory mitigation for impacts to their habitat. Compensatory mitigation should be in the form of permanently conserved lands at the following ratios: 3:1 ratio (conserved land to impacted habitat) for permanent impacts; 5:1 for construction of new roadways, and 1:1 for temporary impacts (i.e., impact to baseline recovery in under one year). Conservation lands should be placed under a conservation easement with CDFW listed as a third-party beneficiary and an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity. Additionally, a long-term management plan should be prepared and implemented by a land manager. The Grantee of the conservation easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

Comment 3: Project phasing

The ND does not include a description of timeframe during which construction will occur. Project activities may have additional significant biological impacts due to Project phasing over time. Phasing and the additional impacts from phasing are not discussed, analyzed, or mitigated for in the ND. Projects that include multiple phases with different sections or parcels built out at different time periods or phasing that includes whole-site grading with separate sections or parcels developed at later dates have impacts over a period longer than one year. This delay in full build out of a Project allows wildlife to utilize resources that develop post-grading on vacant sections or parcels. These resources include, but are not limited to; ruderal grassland and brush that provide nesting habitat for passerine birds and burrowing owls; infrastructure installed but not utilized that provide burrowing habitat for ground squirrels and burrowing owls; additional indirect impacts to nesting and foraging raptors with roost and nest trees

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adjacent to the Project site and access routes; and pooling of rainwater on parcels that provide temporary habitat for amphibians. CDFW is unable to analyze these impacts without inclusion of a description of the Project's timing and implementation in relation to site preparation, infrastructure installation, and complete buildout.

CDFW recommends revising and recirculating the ND with a description of the Project's phasing and estimated timeframes from start of construction to complete buildout. If the Project's timeframe from start of construction to complete build out includes breaks in construction longer than 15 days or periods of inactivity that could allow establishment of habitat elements such as burrows and vegetation, then impacts to wildlife utilizing vacant sections or parcels of the Project not built out must be included in the impacts analysis to ensure the Project mitigates impacts to a less-than-significant level. When and if such a delay occurs, and to ensure the Project is mitigating to less-than-significant, CDFW recommends revising the ND to include a mitigation measure that meets the following criteria: 1) a qualified biologist shall conduct a habitat assessment survey to determine what potential wildlife and habitat elements are present that may be utilizing the vacant sections and/or parcels prior to Project-related activities taking place when there is a break in these activities greater than 15-days; 2) if unbuilt or fallow sections and/or parcels are being utilized, avoidance and minimization measures (including the measures discussed in this letter) shall be used to prevent impacts and take, and if impacts and take are not fully avoidable, additional compensatory mitigation shall be discussed and agreed upon with CDFW's approval prior to the re-initiation of construction activities.

Biological Comments

Comment 4: Revisions needed to identify and mitigate impacts to burrowing owls to a less-than-significant level

The ND does not mitigate potential impacts to burrowing owls (*Athene cunicularia*) to less-than-significant because the ND lacks an evaluation of impacts to burrowing owls and does not include mitigation measures requiring 1) pre-construction surveys conducted according to CDFW'S *Staff Report on Burrowing Owl Mitigation* (2012) and 2) avoidance measures determined by CDFW if and when burrowing owls are discovered at the Project site. The ND does not define avoidance measures in the event burrowing owls are discovered or reduce impacts from permanent loss of burrowing owl nesting or foraging habitats to a less-than-significant level as it does not offset those impacts with a compensatory mitigation requirement. Burrowing owls are designated as a California SSC, a designation used to describe at-risk taxa within the state that warrant proactive conservation to ensure the populations' persistence. As an SSC, the Project's potential impacts are compounded with ongoing impacts to the populations within the San Joaquin Valley through the loss of arid scrub and upland habitats. In addition, the urbanization and conversion of row-crop agriculture to orchard and

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vineyard agriculture has also contributed to the species' decline. Therefore, loss of burrowing owl habitat can be considered a significant impact that warrants mitigation to less-than-significant through the ND.

CDFW recommends the ND be revised and recirculated to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to burrowing owls and their habitats. If impacts are identified, CDFW recommends the ND be revised to include adherence to the mitigation strategies defined in the CDFW *Staff Report on Burrowing Owl Mitigation* (2012) in addition to adherence to the survey protocol or require participation in the SJMSCP. If the ND does not include a measure that requires participation in the SJMSCP, CDFW recommends the ND be updated to include a measure requiring compensatory mitigation for impacts to burrowing owl foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts.

Comment 5: Burrowing owl surveys and avoidance measures should be incorporated in the ND

If the SJMSCP does not cover the Project, then CDFW recommends the following specific and enforceable measures for burrowing owls be incorporated into a revised and recirculated ND to avoid impacts:

“Pre-construction Surveys for Burrowing Owl. To avoid impacts to burrowing owls, a qualified biologist shall conduct a habitat assessment to determine if burrowing owl habitat is present and if occupancy surveys are required. The following criteria for surveys shall be met:

- *Surveys shall be conducted during the breeding season from February 1 to August 31.*
- *A minimum of three (3) surveys shall be conducted and each survey shall occur at least three (3) weeks apart during the peak of breeding season (between April 15 and July 15), during the nesting period, and during the late nestling period.*
- *Each survey shall be conducted during crepuscular hours.*

If surveys confirm occupied burrowing owl habitat in or adjoining the Project area, the qualified biologist shall complete an impact assessment for burrowing owl. The impact assessment shall evaluate all factors that could affect burrowing owls on the Project site and include mitigation measures, if appropriate. Examples include, but are not limited to, avoidance of occupied burrows during the nesting period of February 1 to August 31, avoidance of occupied burrows during non-breeding season, pre-construction surveys, site surveillance, use of buffer zones or visual screens, and burrow exclusion.

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If habitat loss or degradation occur on the Project site, the impacts to burrowing owl shall be mitigated to a less-than-significant level. A mitigation monitoring and reporting plan shall be developed and submitted to CDFW for approval prior to Project implementation.

All habitat assessment, pre-construction survey protocols, impact assessment, reporting requirements, and mitigation guidance can be found in the Staff Report on Burrowing Owl Mitigation dated March 7, 2012. For more information, see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>.”

Comment 6: Revisions needed to mitigate impacts to Swainson’s hawks to a less-than-significant level

The ND does not mitigate potential impacts to Swainson’s hawk (*Buteo swainsoni*) to a less-than-significant level because the ND lacks an evaluation of impacts to Swainson’s hawks and does not include mitigation measures requiring 1) pre-construction surveys conducted according to CDFW’S *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley* (2000) and 2) avoidance measures determined by CDFW if and when Swainson’s hawks are discovered at or within a half-mile of the Project site. The ND does not define avoidance measures in the event Swainson’s hawks are discovered or reduce impacts from permanent loss of foraging habitats or indirect impacts to nesting hawks from increased construction activity to a less-than-significant level as it does not offset those impacts with a compensatory mitigation requirement. Swainson’s hawks are designated as a State of California Threatened Species and impacts to the species and its habitat is prohibited without meeting certain conditions. The loss and conversion of native grasslands and agricultural lands to urbanization and orchard and vineyard agriculture is the primary threat to Swainson’s hawk populations throughout California, and about 80 percent of the Central Valley population of Swainson’s hawks is located with the Sacramento, San Joaquin, and Yolo counties region. The Project’s potential impacts to this historically denser population is a significant impact that warrants mitigation to less-than-significant through the ND.

CDFW recommends the ND be revised and recirculated to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to Swainson’s hawks and their habitats according to CDFW’s *Staff Report Regarding Mitigation for Impacts to Swainson’s Hawks (Buteo swainsoni) in the Central Valley of California* (1994). If impacts are identified, CDFW recommends the ND be revised to include adherence to the mitigation strategies defined in the *Staff Report* in addition to adherence to *CDFW’s Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley* (2000) survey protocol or require participation in the SJMSCP. If the ND does not include a measure that requires participation in the SJMSCP, CDFW recommends the ND be updated to include a measure requiring compensatory mitigation for impacts to Swainson’s hawk nesting and

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foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts, as well as language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

In the event SJMSCP does not cover the Project or the Proponent elects to not participate in the SJMSCP, CDFW recommends the following specific and enforceable measures for Swainson's hawk be incorporated into a revised and recirculated ND to minimize and avoid impacts:

"Pre-construction Surveys and Nest Buffers for Swainson's Hawk. CDFW recommends conducting project activities outside of the Swainson's hawk breeding season (March 20 to September 15). If Project activities are to be conducted during the breeding season, surveys for Swainson's hawks and their nests shall be conducted by the Designated Biologist(s) prior to the beginning of Project-related activities at each Project site. Surveys shall be conducted in a manner consistent with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Surveys shall cover a minimum of two survey periods with the minimum number of surveys prior to project initiation as follows:

- *January to March 20 - survey all day for raptor nests a minimum of one survey.*
- *March 20 to April 5 – survey from either sunrise to 1000 or 1600 to sunset with a minimum of three surveys.*
- *April 5 to April 20 – survey from either sunrise to 1200 or 1630 to sunset with a minimum of 3 surveys.*

An alternative methodology may be approved by CDFW specific to each Project location.

If a lapse in Project-related work of 7 days or longer occurs at Project site, then a focused all-day survey shall be performed, and the results shall be sent to CDFW prior to resuming work. Surveys shall be conducted in proposed work areas, staging and storage areas, and access routes. If any active Swainson's hawk nests are found within ½-mile of a Project site, an avoidance buffer of ¼-mile in urban areas or a ½-mile buffer in non-urban areas shall be implemented from March 20 to September 15 unless otherwise approved in writing by CDFW."

Comment 7: Revisions needed to mitigate impacts to San Joaquin kit fox to a less-than-significant level

The ND does not mitigate potential impacts to San Joaquin kit fox (*Vulpes macrotis mutica*) to less-than-significant because the ND lacks an evaluation of impacts to San Joaquin kit fox and does not include either a mitigation measure that requires full

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avoidance of take of San Joaquin kit fox or their habitat. The ND does not define avoidance measures in the event San Joaquin kit fox are discovered or reduce impacts from permanent loss of open space and movement corridors and foraging habitats or indirect impacts to foraging and denning impacts from increased construction activity to a less-than-significant level as it does not offset those impacts with compensatory mitigation requirements. San Joaquin kit fox are designated as a State of California Endangered Species. The loss of valley and foothill grasslands due to conversion to agriculture and urbanization is the primary threat to San Joaquin kit fox populations throughout California. The U.S. Fish and Wildlife Service's *Recovery Plan for Upland Species of the San Joaquin Valley, California* (1998) states connectivity between the sub-populations of the kit fox are essential for recovery of the species. The Project's potential impacts to connectivity and permanent loss of habitat requires an impacts evaluation in a revised and recirculated ND. Given the severe population declines of the species and magnitude of historic habitat loss, any impacts identified can be considered as significant and even more so when evaluated in a cumulative manner.

CDFW recommends the ND be revised and recirculated to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to San Joaquin kit fox and their habitats. If the impacts analysis indicates there will be direct or indirect take and the Project cannot fully avoid impacts to and take of San Joaquin kit fox, CDFW recommends the ND be revised to include a measure requiring participation in the SJMSCP, or in the event SJMSCP does not cover the Project or the Proponent elects to not participate in the Plan, then CDFW recommends the ND include language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

Comment 8: Biological Resources does not define floristic survey protocol

Section IV of the ND does not include defined survey protocols for floristic surveys or require a qualified botanist to conduct the surveys.

CDFW recommends Section IV. Biological Resources be revised to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018), including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols.

Comment 9: Revisions needed to mitigate impacts to special-status plants to less-than-significant level

Caper-fruited tropidocarpum (*Tropidocarpum capparideum*) is a special-status plant with the potential to occur on the Project site, but the ND does not define avoidance measures in the event they or other special-status plants are discovered or reduce

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impacts to a less-than-significant level by identifying compensatory mitigation in the event impacts to special-status plants cannot be fully avoided.

CDFW recommends Section IV, Biological Resources be revised to include a statement of how impacts to special-status plants will be avoided in the event they are discovered in the Project area. If significant impacts to special-status plants are not fully avoidable, CDFW recommends the ND be revised to require compensatory mitigation for impacts to special-status plant species at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts. CDFW also recommends inclusion of language defining the Project's obligation to obtain CESA-listed plant take coverage through an Incidental Take Permit (ITP) issued by CDFW when take of caper-fruited troidocarpum (*Troidocarpum capparideum*) cannot be fully avoided.

Comment 10: CDFW recommends additional mitigation measures for Project construction be included in the ND

CDFW also recommends the following avoidance and minimization measures to be included in the ND:

“Open Pipes Restriction. All pipes, culverts, or similar structures that are stored at the construction site (either vertically or horizontally) for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation by a Qualified Biologist.

Fence and Sign-Post Restriction. Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall be designed to be wildlife friendly (e.g., smooth top and bottom wires, 6-inches above grade) and have the top three post holes covered or filled with screws or bolts to prevent snaring.

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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the ND to assist San Joaquin County Development Department in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or Andrea.Boertien@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

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