



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 7th, 2021

Governor's Office of Planning & Research

July 07 2021

STATE CLEARINGHOUSE

Maria Lara
City Manager
City of McFarland
401 West Kern Avenue
McFarland, California 93250

**Subject: City of McFarland 2040 General Plan (PROJECT)
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No.: 2021040288**

Dear Ms. Lara:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from City of McFarland for the 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.

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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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: City of McFarland

Objective: The objective of the Project is to update the City's 1998 General Plan. Primary Project activities include new housing and jobs with anticipated population growth through the year 2040. The plan includes 13 elements: Land use, circulation, housing, conservation, open space, noise, safety, environmental justice, air quality, economic development, public facilities and service, community design, health, and sustainable agriculture.

Location: McFarland, California; city wide; total of 11,760 acres

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

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

There are many special-status resources present in and adjacent to the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special-status species including, but not limited to: State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened tricolored blackbird (*Agelaius tricolor*), the State threatened Swainson's Hawk (*Buteo swainsoni*), the State species of special concern burrowing owl (*Athene cunicularia*), western spadefoot (*Spea hammondi*), American badger (*Taxidea taxus*). All of these species have been documented in the Project vicinity (CDFW 2021). In order to adequately assess any potential impacts to biological resources at individual Projects sites, focused biological surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) may be necessary in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area.

The DEIR indicates there are potentially significant impacts to San Joaquin kit fox, Swainson's hawk, tricolored blackbird, and burrowing owl unless mitigation measures are taken but the measures listed are general and non-specific and/or may be inadequate to reduce impacts to

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less than significant. Mitigation Measure BIO-1 requires “Comply with all State and Federal requirements for the protection of endangered and special status Species” and Mitigation Measure BIO-2 requires “Protect and mitigate impacts on listed and special status species in accordance with CEQA and/or NEPA regulations.” However, neither measure describes how potential impacts will be identified and/or mitigated. CDFW cannot conclude that these measures alone will reduce potential impacts to less than significant.

CDFW recommends that a qualified biologist conduct a habitat assessment, well in advance of Project implementation at individual sites, to determine if individual project areas or their immediate vicinity contain habitat suitable to support special-status plant or animal species, including, but not limited to, those mentioned above. If suitable habitat is present, CDFW recommends assessing presence/absence of special-status species by conducting surveys following recommended protocols or protocol-equivalent surveys. Recommended protocols vary by species and 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>). If State-listed species are detected at a Project site, consultation with CDFW is warranted to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) prior to initiating any ground-disturbing activities,.

Of greatest concern to CDFW are San Joaquin kit fox, Swainson’s hawk, and tricolored blackbirds. CDFW recommends the specific mitigation measures below to address potential impacts to these two species.

San Joaquin Kit Fox (SJKF)

Recommended Mitigation Measure 1: SJKF Surveys

If a qualified biologist determines that there is suitable SJKF habitat at or adjacent to an individual Project site, CDFW recommends assessing presence/absence of SJKF by conducting surveys following the 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.

Recommended Mitigation Measure 2: SJKF Take Authorization

As stated above, 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 subdivision (b).

Swainson’s Hawk (SWHA)

Recommended Mitigation Measure 3: SWHA Surveys

If a qualified biologist determines that an individual Project site has suitable SWHA foraging habitat on-site or suitable SWHA nest trees are within 0.5 mile of the site, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following

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the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to Project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Recommended Mitigation Measure 4: SWHA No-disturbance Buffer

If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5 mile be delineated around active nests 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.

Recommended Mitigation Measure 5: SWHA Take Authorization

CDFW advises that in the event an active SWHA nest is detected and a 0.5 mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 6: Loss of SWHA Foraging Habitat

CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based on CDFW's Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG, 1994), which recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites and the amount of habitat compensation is dependent on nest proximity. In addition to fee title acquisition or conservation easement recorded on property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat.

CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of $\frac{3}{4}$ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of $\frac{1}{2}$ acre of HM land for each acre of development is advised.

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Recommended Mitigation Measure 7: SWHA Nest Trees

CDFW recommends that the removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project site or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

Tricolored Blackbird (TRBL)

Recommended Mitigation Measure 8: TRBL Surveys.

If suitable habitat occurs on or immediately adjacent to an individual Project site or its vicinity, CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for TRBL, within a minimum 500-foot buffer from the Project site, no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 9: TRBL Avoidance

If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days prior to Project initiation.

Recommended Mitigation Measure 10: TRBL Take Authorization

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081 subdivision (b), prior to 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

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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

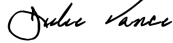
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist City of McFarland 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.

Sincerely,

DocuSigned by:

FA83F09FE98945A
Julie A. Vance
Regional Manager

Attachments

- A. MMRP for CDFW Recommended Mitigation Measures

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

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REFERENCES

- CDFG, 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.
- CDFW. 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- CDFW. 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 1, 2021.
- Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.
- USFWS. 2011. Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance, January 2011.

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

PROJECT: City of McFarland 2040 General Plan

SCH No.: 2021040288

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Surveys	
Mitigation Measure 2: SJKF Take Authorization	
Mitigation Measure 3: SWHA Surveys	
Mitigation Measure 5: SWHA Take Authorization	
Mitigation Measure 6: Loss of SWHA Foraging Habitat	
Mitigation Measure 7: SWHA Nest Trees	
Mitigation Measure 8: TRBL Surveys	
Mitigation Measure 10: TRBL Take Authorization	
<i>During Construction</i>	
Mitigation Measure 4: SWHA No-disturbance Buffer	
Mitigation Measure 9: TRBL Avoidance	