



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



July 11, 2022

Governor's Office of Planning & Research

**Jul 12 2022**

Brandon Smith  
City of Visalia  
315 E. Acequia Avenue  
Visalia, California 93291

**STATE CLEARINGHOUSE**

**Subject: Carleton Acres Specific Plan (Project)  
Notice of Preparation (NOP)  
State Clearinghouse No. 2021050418**

Dear Brandon Smith:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from the City of Visalia, as Lead 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, 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 the exercise of its own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

### **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

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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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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. 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 will be required.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** West Star Construction

**Objective:** The Project Applicant is proposing a Specific Plan to develop approximately 507-acres of land into a mixed-use development. The Project will feature a variety of uses including single-family residential, multi-family housing, commercial, educational, and parks/trails facilities. The proposal features several different types of housing for a total of up to 3,262 residential units at buildout which is broken down as follows: Low Density Residential – maximum of 1,527 units; Medium Density Residential – maximum of 758 units; and High Density Residential – maximum of 912 units.

**Location:** The proposed Project is located on approximately 507-acres in the northern area of the City of Visalia, California and is generally bound by W. Riggan Avenue to the south, N. Akers Street to the east, N. Shirk Road to the west and Avenue 320 (W. Kibler Avenue) to the north. The site is comprised of two parcels: APN 077- 100-088 and APN 077-100-105. APN 077-100-088 consists of approximately 478 acres and is within an unincorporated area of Tulare County while APN 077-100-105 consists of approximately 29.3 acres and is within the City limits of Visalia.

**Timeframe:** Unspecified

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the City 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 CEQA document.

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The Project area is within the geographic range of several special-status animal species including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State threatened Swainson's hawk (*Buteo swainsoni*), the State species of special concern American badger (*Taxidea taxus*), and burrowing owl (*Athene cunicularia*).

### **San Joaquin Kit Fox (SJKF)**

CNDDDB records show that SJKF have been documented near the project area. The proposed project site is comprised of agricultural field, non-native annual grassland habitat, and patches of ruderal habitat, habitat types suitable to support SJKF. In addition to grasslands, SJKF den in a variety of areas such as rights-of-way, vacant lots, agricultural and fallow or ruderal habitat, dry stream channels, and canal levees, and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to the Project area due to the type and level of ground disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to occupy the Project site and surrounding area.

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 and/or vegetation disturbing activities.

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)**

CNDDDB records indicate that SWHA have been documented to occur approximately 2.2 miles southwest from the Project site (CDFW 2022). The habitat types present at and surrounding the Project site all provide suitable foraging habitat for SWHA, increasing the likelihood of SWHA occurrence within the vicinity. In addition, any trees in the Project vicinity have the potential to provide suitable nesting habitat. SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). If potential nest sites occur in the Project vicinity, approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to

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result in nest abandonment and/or loss of foraging habitat, significantly impacting local nesting SWHA. In addition, conversion of undeveloped land can directly influence distribution and abundance of SWHA, due to the reduction in foraging habitat.

To evaluate potential Project related impacts, CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or the immediate vicinity contain suitable habitat for SWHA. If suitable foraging or nesting habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation (during CEQA analysis). 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. 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 ½ 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. If the ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through acquisition of an ITP is necessary to comply with CESA.

CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. 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 ¾ 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 ½ acre of HM land for each acre of development is advised.

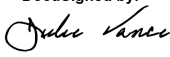
**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the San Joaquin

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kit fox. 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 Project activities.

CDFW appreciates the opportunity to comment on the NOP to assist the City of Visalia in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at [Jaime.Marquez@wildlife.ca.gov](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Valerie Cook  
Acting Regional Manager

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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.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

California Department of Fish and Wildlife (CDFW), 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.

CDFW, 2022. Biogeographic Information and Observation System (BIOS).

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Cypher, B. and N. Frost. 1999. Condition of San Joaquin kit foxes in urban and exurban habitats. *Journal of Wildlife Management* 63: 930-938.

Swainson's Hawk Technical Advisory Committee (SWHA TAC), 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

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[https://www.fws.gov/sacramento/es\\_species/Accounts/Mammals/giant\\_kangaroo\\_rat/documents/980930a.pdf](https://www.fws.gov/sacramento/es_species/Accounts/Mammals/giant_kangaroo_rat/documents/980930a.pdf)

USFWS. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service. January 2011.