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

February 15, 2023

Thomas Gaffery, Community and Economic Development Director
City of Fowler Planning and Community Development Department
128 South 5th Street
Fowler, California 93625
(559) 834-3113
tgaffery@ci.fowler.ca.us

Subject: City of Fowler 2040 General Plan Project (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2021110053

Dear Thomas Gaffery:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Fowler for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1] A Notice of Preparation (NOP) comment letter was written for this Project by CDFW in December 2021. Per a December 2022 memorandum from the City of Fowler, Figure 2-4 (Land Use Diagram) in the previous NOP document was incorrect in the information that was submitted to the State Clearinghouse (SCH), and a revised Figure 2-4 is included for reference.

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 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

[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.

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 may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Fowler

Objective: The 2040 General Plan (GP) would encompass the entire City of Fowler and the GP planning area, which is approximately 5,690 acres. The 2040 GP presents a framework of goals and policies that respond to issues of relevance to the community, strive to meet its imagined future, and maintain a high quality of life for its residents in the face of ever-changing environmental, economic, and social circumstances.

Location: Fowler is a part of Fresno County and is positioned 11 miles southeast of downtown Fresno. The Project area is located west of the Sierra Nevada Mountains, and Fresno County lies within the San Joaquin Valley. Fowler is part of the San Joaquin Valley Air Basin. There are several cities that are near Fowler in addition to Fresno. This includes Selma 5 miles to the southeast, Kingsburg 10 miles to the southeast, Reedley 13 miles to the southeast, Parlier 8 miles to the southeast, Sanger 8 miles to the northeast, and Kerman 22 miles to the northwest. Highway 99 bisects the City of Fowler into eastern and western portions. The City of Fowler shares a sphere of influence with the City of Selma to the southeast.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Fowler 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 prepared for this Project.

There are several special-status species that have been documented in the Project vicinity and may be present at individual Project sites in 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 special-status species that are present or could potentially be present within Project limits and/or adjacent areas include but are not limited to: the State and federally threatened (ST/FT) California tiger salamander (*Ambystoma californiense*); the State threatened Swainson's hawk (*Buteo swainsoni*); and the State species of special concern burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus)*, western mastiff bat (*Eumops perotis californicus*), and coast horned lizard (*Phrynosoma blainvillii*).

Per 2023 Google aerial photography, the City of Fowler is bordered primarily by agriculture. Project mapping for Urban Growth Management Tiers shows that the planned expansion would include: Tier 1 to the west, which would add 697 acres, Tier 2 to the northeast would add 744 acres, and Tier 3 to the south would add an additional 287 acres.

In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species may be present at specific Project sites. 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 the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: California Tiger Salamander (CTS)

Issue: Review of aerial imagery (Google 2023) indicates that the Project area is bordered by and contains some patches of annual grassland. CTS may use these

areas as upland refugia if small mammals and/or burrows are present, or they may disperse across them while moving to or from potential breeding sites.

Specific Impacts: The potential for ground- and vegetation-disturbing activities associated with the approval of the forthcoming EIR document could potentially result in the collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to potential breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, increased habitat fragmentation and edge effects, and direct mortality of individuals.

Evidence impact would be significant: Up to 75% of historic CTS habitat has been lost to urban and agricultural development (Searcy et al. 2013). Loss, degradation, and fragmentation of habitat are the primary threats to CTS in both the Central and San Joaquin valleys. Contaminants and vehicle strikes are also sources of mortality for the species (CDFW 2015, USFWS 2017a). The Project area is within the range of CTS and has suitable habitat (i.e., upland habitat). CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and have been documented to occur near the Project area (CDFW 2023).

Recommended Mitigation Measure 1: Focused CTS Protocol-level Surveys
CDFW recommends that a qualified biologist conduct a habitat assessment and protocol-level surveys for CTS as part of the biological technical studies conducted in support of the CEQA document for subsequent projects approved under this General Plan update. Surveys should be conducted in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Recommended Mitigation Measure 2: CTS Avoidance
If CTS protocol-level surveys as described above are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site.

Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland/pond breeding no-disturbance buffers are intended to

minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW an Incidental Take Permit (ITP) in accordance with Fish and Game Code section 2081 subdivision (b).

Recommended Mitigation Measure 3: CTS Take Authorization
If through surveys, or other observations, it is determined that CTS are occupying or have the potential to occupy an individual Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b). As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

COMMENT 2: Swainson's Hawk (SWHA)

Issue: CNDDB (2023) information shows that Swainson's hawks utilize the agricultural fields surrounding the City of Fowler. SWHA have the potential to nest in areas with large, mature trees which are present both in the City of Fowler and in the surrounding area per Google aerials and Google Streetview (2023). SWHA foraging habitat exists within the Project area in the form of dryland pastures, grassy ruderal lots, alfalfa, and some irrigated crops due to a higher accessibility and relative abundance of prey. CDFW recommends that a qualified biologist conduct a habitat assessment and protocol-level surveys for SWHA as part of the biological technical studies conducted in support of any project approved under this General Plan update.

Specific impacts: SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed may involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat, and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: Approval of the upcoming EIR may lead to subsequent ground-disturbing activities that involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment and loss of foraging habitat, significantly impacting local nesting SWHA.

Recommended Mitigation Measure 4: SWHA Surveys
SWHA are known to travel for miles to forage. Therefore, CDFW recommends surveys be conducted as part of the biological technical studies conducted for most projects that

would result under this General Plan by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). Regardless of the initial survey effort, CDFW recommends that the survey be conducted by a qualified wildlife biologist again within the survey season immediately prior to project implementation. In addition, CDFW recommends that a qualified biologist determine if SWHA foraging habitat occurs on any individual Project site and/or if suitable nesting habitat is present within 0.5-mile of the site. If suitable SWHA nesting habitat is present within 0.5-mile of an individual Project-site, CDFW recommends consultation with CDFW to determine if SWHA nest surveys are warranted.

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 suitable nesting habitat is within 0.5-mile of an individual Project site, SHWA nest surveys were warranted, and ground-disturbing activities will 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 to ensure that SHWA have not begun nesting immediately before Project activities begin.

Recommended Mitigation Measure 5: No-disturbance Buffer
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. If a 0.5-mile no disturbance buffer from an active nest is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take.

Recommended Mitigation Measure 6: SWHA Take Authorization
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 7: Loss of SWHA Foraging Habitat
If SWHA foraging habitat occurs on any individual Project site and will be impacted by the proposed project, CDFW recommends compensating 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 0.75 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 0.5 acre of HM land for each acre of development is advised.

Recommended Mitigation Measure 8: 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 area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

COMMENT 3: Burrowing Owl (BUOW)

Issue: BUOW may occur within and/or adjacent to the Project area. BUOW typically inhabit open grassland containing small mammal burrows, but are also known to occupy canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. BUOW may also attempt to use "man-made burrows" such as the pipes or culverts. Patches of annual or ruderal grassland within and adjacent to the City of Fowler as well as the surrounding agricultural fields may support suitable habitat for BUOW. In addition, the Fowler area contains numerous canals including but not limited to: the dirt-lined Kirby Canal, Kirby Ditch, Norris Canal, and Wristen Canal. The ditches throughout the Project area could also provide BUOW with suitable burrow habitat present along the banks.

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 areas that could potentially provide nesting habitat, the remainder of the area 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.

Recommended Mitigation Measure 9: BUOW Surveys
CDFW recommends assessing presence/absence of BUOW at each Project site and its immediate vicinity 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 10: 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 11: 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 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.

COMMENT 4: Special-Status Bat Species

Issue: Pallid bats and western mastiff bats have been documented to occur in the vicinity of the Project area (CDFW 2023). In addition, habitat features that have the potential to support species, including open areas, semi-arid conditions, suitable food sources, and water nearby, are present within/adjacent to the Project area.

Specific impact: Without appropriate avoidance and minimization measures for special-status bat species, potential significant impacts resulting from ground- and

vegetation-disturbing activities associated with Project construction include habitat loss, inadvertent entrapment, roost abandonment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact is potentially significant: Pallid bat and other bats are known to roost under bridges (Lewis 1994). Project activities on or around bridges have the potential to affect habitat upon which special-status bat species depend on for successful breeding, and the potential to impact individuals and local populations.

Recommended Mitigation Measure 12: Habitat Assessment
CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of any project approved under this General Plan to determine if an individual Project site or its immediate vicinity contains suitable habitat for special-status bat species.

Recommended Mitigation Measure 13: Focused Surveys
If suitable habitat is present, CDFW recommends assessing presence/absence of special-status bats by conducting protocol-level surveys during the appropriate seasonal period of bat activity.

Recommended Mitigation Measure 14: Consultation
Detection of special-status bat species warrants consultation with CDFW prior to any activity that may disturb bats. CDFW recommends submitting a Bat Eviction Plan to CDFW for written approval prior to project implementation, and that the Eviction Plan include details for excluding bats from the roost site, and a monitoring plan to ensure that all bats have exited the roost prior to the start of activity and will be unable to re-enter the roost until activity is completed. CDFW also recommends that Project or bat eviction activities be timed to avoid lactation and young-rearing.

COMMENT 5: Coast Horned Lizard (CHL)

Issue: Coast horned lizards have been known to occur in the vicinity of the Project area (CDFW 2023). Coast horned lizards occur in a wide variety of habitat types but require loose, fine soils for burrowing, open areas for thermoregulation, and shrub cover for refugia (Thomson et al. 2016). Review of aerial imagery and soil characteristics indicates that portions of the Project area could provide these requisite habitat features (CDFW 2023). CDFW recommends that a qualified biologist conduct a habitat assessment and surveys for CHL as part of the biological technical studies conducted in support of the CEQA document for Project's approved under this General Plan.

Specific impact: Without appropriate avoidance and minimization measures for coast horned lizards, potentially significant impacts associated with ground disturbance include burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

Evidence impact is potentially significant: Habitat loss and fragmentation resulting from development is the primary threat to coast horned lizard (Thomson et al. 2016). The Project area is within the range of coast horned lizard and portions of it are comprised of and bordered by suitable habitat as mentioned previously. As a result, ground-disturbing activities associated with development of the Project area have the potential to significantly impact local populations of this species.

Recommended Mitigation Measure 15: Habitat Assessment
CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if the Project area or its immediate vicinity contain suitable habitat for coast horned lizard.

Recommended Mitigation Measure 16: Focused Surveys
If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for coast horned lizard and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Recommended Mitigation Measure 17: Avoidance
Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows.

COMMENT 6: Light Impact Analysis

Recommended Mitigation Measure 18: Light Output Analysis
Due to the addition of three new tiers for this Project that total 1,725 acres on the west, northeast, and south sides of the City of Fowler, the lead agency should submit information as part of the final EIR that note current light levels present during Pre-Project conditions and the predicted Project light levels that will be created upon completion of all Project's envisioned under this General Plan. If an increase in light output from current levels to the projected future levels is evident, additional avoidance, minimization or mitigation should be developed in coordination with the natural resource agencies to offset indirect impacts to State listed species such as California tiger salamander. For Projects approved under this General Plan that introduce new light sources or change the lumens or color of existing light sources, those project should include a light output and analysis. Within 60 days of Project completion the lead agency should conduct a ground survey that compares projected future light levels with actual light levels achieved upon completion of the Project. If an increase from the projected levels is discovered, additional avoidance, minimization or mitigation measures, and further coordination with the natural resource agencies may be warranted.

Recommended Mitigation Measure 19: Light Output Limits
All LED's or bulbs installed as a result of any Project shall be rated to emit or produce light at or under 2700 kelvin that results in the output of a warm white color spectrum.

II. Editorial Comments and/or Suggestions

Lake and Streambed Alteration: The Project contains features that may result in Project activities at individual Project sites being subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CTS. Take under 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.

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document. Depending on the results of that assessment, CDFW further recommends that the CEQA document for this Project include that a qualified wildlife biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the

Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place 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 on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA documents be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 (CNDDB). The CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist the City of Fowler in identifying and mitigating the Project's 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). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment

ec: Patricia Cole (patricia_cole@fws.gov)
United States Fish and Wildlife Service

Linda Connolly
California Department of Fish and Wildlife

LITERATURE CITED

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

California Department of Fish and Game (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.

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Attachment 1

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

PROJECT: Draft Environmental Impact Report (EIR) 2021-0492–City of Fowler General Plan Update Project

SCH No.: 2021110053

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Mitigation Measure 1: Focused CTS Protocol-level Surveys	
Mitigation Measure 2: CTS Avoidance	
Mitigation Measure 4: SWHA Surveys	
Mitigation Measure 5: SWHA No-Disturbance Buffer	
Mitigation Measure 7: Loss of SWHA Foraging Habitat	
Mitigation Measure 9: BUOW Surveys	
Mitigation Measure 11: BUOW Passive Relocation and Mitigation	
Mitigation Measure 12: Special-Status Bat Species Habitat Assessment	
Mitigation Measure 13: Focused Special-Status Bat Species Surveys	
Mitigation Measure 14: Consultation for Special-Status Bat Species	
Mitigation Measure 15: Coast Horned Lizard Habitat Assessment	
Mitigation Measure 16: Coast Horned Lizard Focused Surveys	
Mitigation Measure 18: Light Output Analysis	
Mitigation Measure 19: Light Output Limits	
During Construction	
Mitigation Measure 3: CTS Take Authorization	
Mitigation Measure 6: SWHA Take Authorization	
Mitigation Measure 8: SWHA Nest Trees	
Mitigation Measure 10: BUOW Avoidance	
Mitigation Measure 17: Coast Horned Lizard Avoidance	