



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Jan 12 2022

STATE CLEARINGHOUSE

January 12, 2022

Hector Guerra, Chief Env. Planner
Tulare County Resource Management Agency
5961 South Mooney Boulevard
Visalia, California 93277
hguerra@tularecounty.ca.gov

Subject: Kingsburg Area Community Plan (Project)
Notice of Preparation (NOP)
State Clearinghouse No. 2021120339

Dear Mr. Guerra:

The California Department of Fish and Wildlife (CDFW) received a NOP for an Environmental Impact Report (EIR) from Tulare County, as Lead Agency, for the Project pursuant to 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, 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.

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.

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

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.

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 2

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.

As a responsible agency, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

Other Rare Species: Species of plants and animals need not be officially listed as Endangered, Rare or Threatened (E, R, or T) on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for a listing as E, R, or T under CESA and/or ESA as specified in the CEQA Guidelines (Cal. Code Regs. tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

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: County of Tulare and City of Kingsburg

On December 10, 2013, the Tulare County Board of Supervisors (BOS) approved the Economic Development and Planning Branch proposal to update the County Adopted City Urban Development Boundary (CACUDB) for Kingsburg (Kingsburg UDB). The Project also includes amendments Land Use Designations; amendments Zoning Classifications; and amendments to the Zoning Ordinance (collectively, Kingsburg Area Community Plan Update). The Kingsburg Area Community Plan Update will become consistent with the approved Tulare County General Plan 2030 Update and includes the following primary goals and objectives: land use and environmental Planning, improvements for a "disadvantaged community", and strengthening relationship with the Tulare County Association of Governments.

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 3

Location: The Kingsburg UDB is located in the central San Joaquin Valley, approximately 20 miles southeast of the City of Fresno and 20 miles northwest of the City of Visalia, at the northwestern portion of Tulare County. The Project is within the City of Kingsburg UDB (UDB) and encompasses approximately 0.8 square miles of land. The UDB is a Notice of Preparation and Scoping Meeting General Plan Amendment No. 20-001 December 15, 2021 Page 3 of 12 agriculturally oriented service area surrounded by lands in agricultural production, scattered rural residential homes, scattered commercial and light industrial uses, the recently developed single-family (and future multi-family) residences that are part of the Andersen Village Specific Plan Area, and vacant lands. State Route (SR) 99 provides primary access to the cities of Selma, Fowler and Fresno to the north and Visalia to the south. Nearby State Route 201 provides access to the City of Dinuba approximately 12 miles northeast of Kingsburg

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County 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.

The Project area is within the geographic range of several special-status animal species including the State threatened Swainson's hawk (*Buteo swainsoni*) the State species of special concern American badger (*Taxidea taxus*), and burrowing owl (*Athene cunicularia*).

CDFW requests that the EIR fully identify potential impacts to biological resources, including the above-mentioned species. In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern. CDFW recommends that the following be incorporated into the EIR.

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

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 4

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: Swainson's Hawk (SWHA)

Issue: SWHA have been documented to occur less than 1 mile from the Project area (CDFW 2022). Suitable SWHA foraging habitat is also within the Project area, 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.

Specific impact: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include: nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. All trees, including non-native or ornamental varieties, near Project sites may provide potential nesting sites.

Evidence impact would be significant: 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 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.

Recommended Mitigation Measure 1: Focused SWHA Surveys

To evaluate potential Project-related impacts, 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) at any specific Project site. SWHA detection during protocol-level surveys warrants consultation with CDFW to discuss how to implement Project activities and avoid take.

Recommended Mitigation Measure 2: SWHA Avoidance

CDFW recommends that if Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, a minimum 1/2-mile no-disturbance buffer be delineated and maintained around each nest, regardless if when it was detected by surveys or incidentally, 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

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 5

survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

Recommended Mitigation Measure 4: Loss of SWHA Foraging Habitat

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.

Recommended Mitigation Measure 5: SWHA Tree Removal

CDFW recommends that the removal of known SWHA 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. This mitigation would offset the local and temporal impacts of nesting habitat loss.

COMMENT 2: Burrowing Owl (BUOW)

Issue: BUOW have the potential to occur in the Project area vicinity. BUOW inhabit open grassland and similar habitat types containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. The NOP indicates that these habitat features are present in the Project area, therefore, there is potential for BUOW to occupy or colonize Project sites.

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 6

Specific impact: Potentially significant direct impacts associated with subsequent activities and land conversion include habitat loss, 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 and surrounding area contain undeveloped land; 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 6: Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if areas an individual Project site or its immediate vicinity contains suitable habitat features for BUOW.

Recommended Mitigation Measure 7: BUOW Surveys

If suitable habitat features are present, CDFW recommends assessing presence or absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), which suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (i.e., April 15 to July 15), when BUOW are most detectable. In addition, CDFW advises that surveys include a minimum 500-foot buffer area around an individual Project site.

Recommended Mitigation Measure 8: BUOW Avoidance

Should a BUOW be detected, CDFW recommends that 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.

Hector Guerra
 Tulare County Resource Management Agency
 January 12, 2022
 Page 7

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 9: 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), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. However, if it is necessary for Project implementation, 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 one (1) burrow collapsed to one (1) artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. 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 3: American Badger

Issue: American badger have the potential to occur in the Project area, which supports requisite habitat elements.

Specific impact: Without appropriate avoidance and minimization measures for these species, potentially significant impacts associated with ground disturbance include habitat loss and burrow abandonment, which may result in reduced health or vigor of young, and direct mortality.

Evidence impact is potentially significant: Habitat loss threatens American Badger (Gittleman et al. 2001). The Project and surrounding area contain undeveloped land; therefore, subsequent ground disturbing activities and habitat conversion associated with the Project may have the potential to significantly impact local the populations of these species.

Recommended Mitigation Measure 10: Habitat Assessment

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 8

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation at individual Project sites, to determine if project areas or their immediate vicinity contain potential habitat for the species mentioned above.

Recommended Mitigation Measure 11: Surveys

If potential habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

Recommended Mitigation Measure 12: Avoidance

Avoidance whenever possible is encouraged via delineation and observance a 50-foot no-disturbance buffer around American badger dens.

Editorial Comments and/or Suggestions

Lake and Streambed Alteration: If streams, swales, or drainages occur at individual Project sites, those Project activities may be 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 (including the removal of riparian vegetation); (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 as well as those that are perennial.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

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).

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 9

CDFW encourages Project implementation to occur during the bird non-nesting season; however, if Project activities must occur during the breeding season (i.e., February through mid-September), 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 qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted by the Project are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends that a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends that the work causing that change cease and CDFW be consulted 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 parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction 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.

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 CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address:

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 10

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).

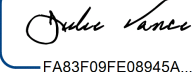
CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist Tulare County 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.

Sincerely,

DocuSigned by:



FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment

ec: State Clearinghouse
state.clearinghouse@opr.ca.gov

Jaime Marquez
California Department of Fish and Wildlife

Hector Guerra
Tulare County Resource Management Agency
January 12, 2022
Page 11

Literature Cited

- California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 in Lincer, J. L. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- 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>
- CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- 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, 2021. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed January 7, 2022.
- Estep, J. 2009. The influence of vegetation structure on Swainson's hawk (*Buteo swainsoni*) foraging habitat suitability in Yolo County, California. Prepared for the Yolo Natural Heritage Program, Woodland, CA.
- Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*) In California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern in California (W. D. Shuford and T. Gardali, editors). Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.
- Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne, 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.
- 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.

Attachment 1

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

**PROJECT: Kingsburg Area Community Plan
SCH No.: 2021120339**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: Focused SWHA Surveys	
Mitigation Measure 3: SWHA Take Authorization	
Mitigation Measure 4: Loss of SWHA Foraging Habitat	
Mitigation Measure 5: SWHA Tree Removal	
Mitigation Measure 6: Habitat Assessment	
Mitigation Measure 7: BUOW Surveys	
Mitigation Measure 10: Habitat Assessment	
Mitigation Measure 11: Surveys	
<i>During Construction</i>	
Mitigation Measure 2: SWHA Avoidance	
Mitigation Measure 8: BUOW Avoidance	
Mitigation Measure 9: BUOW Passive Relocation and Mitigation	
Mitigation Measure 12: Avoidance	