



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

November 15, 2023

Nov 16 2023

STATE CLEARINGHOUSE

Hector Guerra
Tulare County
Resource Management Agency
5961 S. Mooney Blvd
Visalia, California 93277

**Subject: Kingsburg Area Community Plan
Draft Environmental Impact Report (DEIR) SCH: 2021120339**

Dear Hector Guerra:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the County of Tulare for the above-referenced 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 Fish and Game Code. While the comment period may have ended, CDFW requests that Tulare County 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 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

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
November 15, 2023
Page 2

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: Tulare County

Objective: The Tulare County Board of Supervisors passed Resolution 2019-0884 on October 15, 2019, approving the General Plan Initiation No. GPI 19-004 to authorize a General Plan Amendment No. GPA 20-001 for the Kingsburg Area Community Plan (Plan), to update the Tulare County General Plan. The Plan will become consistent with the approved Tulare County General Plan 2030 Update.

Location: The proposed Plan is identified within the City of Kingsburg sphere of influence and County of Tulare's County Adopted City Urban Development Boundary (CACUDB) for Kingsburg located along the Tulare County/Fresno County line (that is, adjacent to and south of Kingsburg), generally north of Avenue 390, west of Road 20, and south of State Route 201.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County of Tulare in adequately identifying and/or mitigating the Plan'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 the Plan.

There are special-status species that may be present within the Plan Area. These resources may need to be evaluated and addressed prior to any subsequent project

Hector Guerra
Tulare County
November 15, 2023
Page 3

specific 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, the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the federally and State threatened California tiger salamander (*Ambystoma californiense*), and the State threatened Swainson's hawk (*Buteo swainsoni*).

San Joaquin Kit Fox

Mitigation Measure 3.4.2.d and Mitigation Measure 3.4.2.e reference protocols for the performance of den excavations. The measures do not mention the requirement to conduct clearance surveys or the acquisition of an Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081(b) prior to the commencement of any of these activities. Absent take coverage afforded by an ITP issued by CDFW, den excavation may result in pursuit and/or capture and thus, inadvertent take. If projects utilizing the Plan have the potential to impact San Joaquin kit fox (SJKF), consultation with CDFW is warranted to discuss how to implement the project and avoid take. Any detection of SJKF prior to or during project construction warrants consultation with CDFW to discuss how to avoid take.

Mitigation Measure 3.4.2.k mentions the use of zinc phosphide as a rodenticide to reduce risk to SJKF. Use of any rodenticide poses risk to SJKF via secondary poisoning and direct exposure and could result in take.

As proposed in the DEIR, CDFW is concerned that the measures identified above are likely to result in unauthorized take of SJKF and strongly recommends they either be removed in their entirety and full avoidance measures incorporated to avoid any potential take of SJKF, or, that these proposed measures be preceded by the requirement for the project to obtain an ITP from CDFW. Where SJKF are present, CDFW strongly recommends acquiring an ITP prior to initiating ground-disturbing activities.

California Tiger Salamander

On Table ES-1 on page ES-30 of the document, Mitigation Measures 3.4.1.g and 3.4.1.h are included for California tiger salamander (CTS). The measures referenced are for the delineation of Swainson's hawk (SWHA) avoidance buffers and compensation of SWHA foraging habitat respectively. These measures do not include any measure intended for CTS and should be removed as they are repeated in the appropriate SWHA section.

Hector Guerra
Tulare County
November 15, 2023
Page 4

Mitigation Measure 3.4.4.b states, "Where ground disturbing activities in these areas must occur outside of pavement, potential CTS aestivation burrows in grassland edges will be avoided by a minimum distance of 50 feet, as practicable." For projects utilizing the Plan, if the minimum avoidance buffer of 50 feet cannot be met, then consultation with CDFW is warranted to discuss how to implement project activities and avoid take. Further, any detection of CTS prior to or during project construction warrants consultation with CDFW to discuss how to avoid take.

If take cannot be avoided, CDFW recommends acquiring an ITP prior to initiating ground-disturbing activities.

Swainson's Hawk

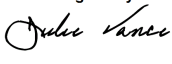
Mitigation Measure 3.4.1.c discusses surveys for SWHA, CDFW recommends that surveys be done following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) during the appropriate survey season just prior to construction.

CDFW recommends that Mitigation Measure 3.4.1.f be modified to include a 0.5-mile full avoidance buffer for SWHA and a 500 foot full avoidance buffer for other raptor species to avoid inadvertent take.

Federally Listed Species: CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) regarding potential impacts to federally listed species including but not limited to CTS and SJKF. 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 to assist the County of Tulare 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

Hector Guerra
Tulare County
November 15, 2023
Page 5

ec: Jaime Marquez
California Department of Fish and Wildlife

Patricia Cole
PatriciaCole@fws.gov
United States Fish and Wildlife Service

State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

Hector Guerra
Tulare County
November 15, 2023
Page 6

REFERENCES

Swainson's hawk technical advisory committee. 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.