



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

Jun 15 2022

STATE CLEARINGHOUSE

June 14, 2022

Chris Lang/Planner III
City of Fresno – Planning and Development Department
2600 Fresno Street, Room 3043
Fresno, California 93721
(559) 621-8023
Chris.Lang@fresno.gov

Subject: Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Vesting Tentative Tract Map No. 6294 Project in Fresno (Project) SCH No.: 2022050335

Dear Mr. Lang:

The California Department of Fish and Wildlife (CDFW) received a NOP from the City of Fresno 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.

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

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.

Chris Land, Planner III
City of Fresno
June 14, 2022
Page 2

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.

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 Fresno

Objective: Vesting Tentative Tract Map No. 6294 proposes the construction of 185 single-family residences, a 0.61-acre park, and public improvements on approximately 30-acres, located at the southeast corner of Grantland Avenue and Barstow Avenue in the City of Fresno. Associated entitlements to facilitate development of the proposed subdivision include a General Plan Amendment (Regional Mixed Use to Medium Density Residential), a Rezone from RMX to RS-5 (*Regional Mixed Use to Single Family Residential, Medium Density*), and a Planned Development Permit to modify building setback requirements. The Project will also require dedications and/or acquisitions for public street rights-of-way and utility easements, as well as the construction of public facilities and infrastructure in accordance with the standards, specifications, and policies of the City of Fresno in order to facilitate the future proposed development of the subject property

Location: The proposed Project is located on approximately 30 acres at 5326 North Grantland Avenue, Fresno, California at the southeast corner of North Grantland Avenue and West Barstow Avenue. Site Latitude: 36.817221°, Site Longitude: -119.916142°. Mount Diablo Base & Meridian, NW quarter of Section 9, Township 13 South, Range 19 East (APN 505-060-07).

Timeframe: None given.

COMMENTS AND RECOMMENDATIONS

The NOP indicates that the Environmental Impact Report (EIR) for the Project will consider potential environmental effects of the proposed Project to determine the level of significance of the environmental effect and will analyze these potential effects to the detail necessary to

Chris Land, Planner III
City of Fresno
June 14, 2022
Page 3

make a determination on the level of significance. The EIR will also identify and evaluate alternatives to the proposed project.

When an EIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation. Special-status species have been documented in the Project area per the California Natural Diversity Database (CNDDDB), these include, but are not limited to, the State and Federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*) and American badger (*Taxidea taxus*). While this list may not include all special-status species present in or near the Project area, it does provide a source of information as to which species could potentially be impacted by vegetation and/or ground disturbance. CDFW recommends the EIR prepared for the Project analyze potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels.

California tiger salamanders (CTS), were observed in the Project vicinity in 2017 per CNDDDB records approximately 2.5-miles southeast of the Project site. Because potential habitat for CTS is present in the area of the Project site, and there is a possibility they could enter the site, CDFW recommends that a qualified biologist conduct protocol- level surveys 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.

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 breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. CDFW recommends that these surveys are repeated any time the disturbance area of the Project expands or there is the potential to eliminate small mammal burrows. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW an ITP in accordance with Fish and Game Code section 2081 subdivision (b).

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid

Chris Land, Planner III
City of Fresno
June 14, 2022
Page 4

take. If take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through acquisition of an ITP from 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.

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

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) during biological surveys in support of the development of the EIR and 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. 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. 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>).

CDFW also recommends consulting with the United States Fish and Wildlife Service (USFWS) on potential impacts to Federally listed species including, but not limited to, the California tiger salamander. In addition, there is a ponding basin northwest across West Barstow Avenue, which could potentially provide habitat. 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 ground disturbing activities.

In addition to potential species impacts, the dirt-lined Herndon Canal is directly adjacent to the proposed Project area to the north and east. Dust and other construction-related

Chris Land, Planner III
City of Fresno
June 14, 2022
Page 5

contaminants could enter and pollute the waterway. It is likely that some Project activities will be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. If a Lake or Streambed Alteration Agreement (LSAA) is needed, CDFW is required to comply with CEQA in the issuance or the renewal of a LSAA. Therefore, for efficiency in environmental compliance, we recommend that a delineation of jurisdiction under Fish and Game code section 1600 be completed and any disturbance that may result from Project activities to LSAA resources or jurisdiction be described, and mitigation for the disturbance be developed as part of the EIR. Failure to adequately survey for and delineate CDFW 1600 LSAA jurisdiction may require the Department to require extensive additional environmental review in the future. 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.

CDFW is available to meet with you ahead of DEIR preparation to discuss survey needs and protocols, potential impacts, and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. 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:

96D42C58E092466...
Valerie Cook
Acting Regional Manager

cc: Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706-2020

United States Army Corps of Engineers
San Joaquin Valley Office
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

ec: California Department of Fish and Wildlife:
LSA Program; R4LSA@wildlife.ca.gov

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

Chris Land, Planner III
City of Fresno
June 14, 2022
Page 6

LITERATURE CITED

California Department of Fish and Wildlife. 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.