



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
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Governor’s Office of Planning & Research

Aug 11 2022

STATE CLEARINGHOUSE

August 11, 2022

Keyomi Jones, Staff Analyst
County of Fresno Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, California 93721
kejones@fresnocountyca.gov

Subject: Initial Study (IS) Application No. 8177/Mitigated Negative Declaration (MND) and Tentative Parcel Map (TPM) Application No. 8235 Project (Project) SCH No.: 2022070216

Dear Keyomi Jones:

The California Department of Fish and Wildlife (CDFW) received an IS/MND and TPM Application from Fresno County Department of Public Works and Planning 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.

Keyomi Jones, Staff Analyst
Fresno County Department of Public Works and Planning
August 11, 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).

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to streams/lakes include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to "Waters of the State".

PROJECT DESCRIPTION SUMMARY

Proponent: Gwenlee Cedar

Objective: The Proponent is proposing the creation of four (4) parcels, three 5.01-acre parcels and one 5.03-acre parcel from an existing 23-acre parcel in the located in the RR-5 (Rural Residential, 5- acre minimum) Zone District.

Location: The subject property is generally located on the east side of Millerton Lake, west of Sky Harbor Road, approximately 4.75 miles northeast of the nearest city limits of the City of Clovis. (SUP. DIST.: 5) (APN: 300-330-17). This location is composed of scattered oak trees, grassland, and some small rocky areas. Millerton Lake is adjacent to the west side of the property.

Timeframe: None given.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Fresno County Department of Public Works and Planning in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife

Keyomi Jones, Staff Analyst
Fresno County Department of Public Works and Planning
August 11, 2022
Page 3

(biological) resources. Editorial comments or other suggestions may also be included to improve the environmental document for this Project.

The Project area is within the geographic range of the Federally and State threatened California tiger salamander (*Ambystoma californiense*). In addition, the State endangered bald eagle (*Haliaeetus leucocephalus*) has been observed in the area as well.

CDFW is concerned regarding potential impacts to these special-status species due to potential future ground-disturbing development activities and provides the following species-specific recommendations.

California Tiger Salamanders (CTS)

CTS are known to occur in the Project vicinity (CDFW 2022). Per California Natural Diversity Database records, CTS have been observed approximately 1.05 miles southwest of the proposed Project site.

CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011). CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types. Because potential upland 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 United States Fish and Wildlife Service (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. 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 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 prior to commencing any ground- and/or vegetation-disturbance activities. 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. Alternatively, the applicant can assume presence of CTS within the Project site and acquire from CDFW a State Incidental Take Permit (ITP) in accordance with Fish and Game Code section 2081(b).

Bald Eagle (BAEA)

BAEA are known to occur in the vicinity of the Project area, and have been reported to roost, nest, and winter in the Project area (CDFW 2022). Without appropriate survey methods, BAEA in the vicinity of a project can remain undetected resulting in avoidance and

Keyomi Jones, Staff Analyst
Fresno County Department of Public Works and Planning
August 11, 2022
Page 4

minimization measures not being effectively implemented (AERI 2010). Depending on the timing of construction, Project activities including noise, vibration, odors, and movement of workers or equipment could affect nests and have the potential to result in nest abandonment.

CDFW recommends that a qualified wildlife biologist conduct surveys using the "Protocol for Evaluating Bald Eagle Habitat and Populations in California" (Jackman & Jenkins 2004). If ground-disturbing activities take place during the normal bird breeding season (February 1 through September 15), CDFW recommends that additional pre-construction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction. If an active nest is found, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer 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 nesting BAEA are detected and the ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. Please note that BAEA are State fully protected species. Therefore, no take, incidental or otherwise, of those species can be authorized by CDFW.


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>).

Federally Listed Species

CDFW also recommends consulting with the USFWS on potential impacts to Federally listed species including, but not limited to, the CTS. 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.

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:

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Julie A. Vance
Regional Manager

cc: See Page Five

Keyomi Jones, Staff Analyst
Fresno County Department of Public Works and Planning
August 11, 2022
Page 5

cc: Regional Water Quality Control Board
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Fresno, California 93706-2020

United States Army Corps of Engineers
San Joaquin Valley Office
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Keyomi Jones, Staff Analyst
Fresno County Department of Public Works and Planning
August 11, 2022
Page 6

LITERATURE CITED

- American Eagle Research Institute (AERI), 2010. Protocol for golden eagle occupancy, reproduction, and pretty population assessment.
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- Jackman, R.E. and J.M. Jenkins, 2004. Protocol for Evaluating Bald Eagle Habitat and Populations in California. Prepared for U.S. Fish and Wildlife Servicem Endangered Species Division, Sacramento, CA, USA.
- Searcy, C.A. and H.B. Shaffer. 2011. Determining the migration distance of a vagile vernal pool specialist: How much land is required for conservation of California tiger salamanders? *In* Research and Recovery in Vernal Pool Landscapes, D. G. Alexander and R. A. Schlising, Eds. California State University, Chico, California.
- United States Fish and Wildlife Service. 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003.