



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

August 12, 2022

Aug 12 2022

STATE CLEARINGHOUSE

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

**Subject: Initial Study/Mitigated Negative Declaration (IS/MND) Application No. 8184
and Tentative Parcel Map (TPM) Application No. 8233 Project (Project)
SCH No.: 2022070217**

Dear Keyomi L. Jones:

The California Department of Fish and Wildlife (CDFW) received an IS/MND from the 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.

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.

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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 will be required.

In this role, 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.

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 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: Steve Wood

Objective: The Project involves the creation of two (2) parcels (one 2.5-acre parcel and one 3.5-acre parcel) from an existing 6-acre parcel located in the R-R (Rural Residential, 2- acre minimum lot size) Zone District.

Location: The subject property is located approximately 300 feet south of East International Avenue, between North Fowler Avenue and North Armstrong Avenue, approximately 1.3 miles north of the City of Clovis. (SUP. DIST.: 5) (APN: 581-160-65)

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Timeframe: None listed.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the 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 (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*). CDFW is concerned regarding potential impacts to this special-status species due to future ground-disturbing development activities, and provides the following species specific recommendations.

California Tiger Salamander (CTS)

CTS are known to occur in the Project area and its vicinity. Per the California Natural Diversity Database (CNDDDB) records, CTS have been observed approximately 0.89-mile southeast of the Project site (CDFW 2022).

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. The Project site contains grassland habitat and Google aerial imagery indicates the presence of a streambed feature that runs from the northwest to the southeast through the proposed Project site. In addition, the Project site and its immediate surroundings may support small mammal burrows, a requisite upland habitat feature for CTS. Disturbance in this area could potentially include collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

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 with any ground- and/or vegetation-disturbance activities. Further, CDFW recommends potential

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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 obtain from CDFW a State Incidental Take Permit (ITP) in accordance with Fish and Game Code section 2081(b).

Nesting birds: There are numerous large trees in the Project area and vicinity. CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (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 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 sites to identify nests and determine their status. A sufficient area means any area potentially affected by the 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 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 compelling biological or ecological reason to do so, such as when the construction areas 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.

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

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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). Cumulative impacts need to be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and need to be focused specifically on the resource, not the project. CDFW advises an appropriate resource study area be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

Lake and Stream Alteration

In addition to potential species impacts, any Project activities that have the potential to affect the bed, bank, or channel of the streambed feature may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Please note that a no-disturbance buffer alone may not be sufficient to avoid the need for a Lake or Streambed Alteration Agreement (LSA Agreement). If an LSA Agreement is needed, CDFW is required to comply with CEQA in the issuance or the amendment of an LSA Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

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

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 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: 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>.

CDFW appreciates the opportunity to comment on the Project to assist the Fresno County Department of Public Works and Planning Department in identifying and mitigating the Project's impacts on biological resources.

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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:

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Julie A. Vance
Regional Manager

cc: California Regional Water Quality Control Board
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Kelley Nelson
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LITERATURE CITED

CDFW. 2022. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed August 5, 2022.

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 (USFWS), 2003. Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003