



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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September 24, 2024

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**Subject: FNC Farming Annexation Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No.: 2024080904**

Dear Steven Sopp:

The California Department of Fish and Wildlife (CDFW) received a NOP from City of Tulare, as Lead Agency, for the above-referenced Project pursuant 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

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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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 proposed, for example, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects 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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria 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.

PROJECT DESCRIPTION SUMMARY

Proponent: San Joaquin Valley Homes

Objective: The Project proposes to construct 556 single-family residential units and a 5.47-acre central park and pond. The Project also includes annexation of 140.32 acres into the City of Tulare. Onsite and offsite infrastructure improvements for the Project will include new and relocated utilities, new residential streets, including the extension of North Oakmore Street. Morrison Street and Prosperity Avenue will be widened to their full planned right-of-way and curb, gutter, and sidewalk will be installed. The Project also proposes the zoning of a 7.8-acre parcel as Rural Residential, but the parcel will remain undeveloped at this time.

Location: The Project site is located approximately a half mile to the east of North Mooney Boulevard. It is immediately south of Prosperity Avenue, and immediately east of Morrison Street. The Project is located on approximately 140.32 acres on Assessor's Parcel Numbers (APNs): 172-010-021, 184-020-010, and 172-010-022.

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Timeframe: Project construction is anticipated to begin in 2025.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Tulare 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 prepared for this Project.

Aerial imagery of the Project site and its surroundings show the area contains agricultural lands comprised of row crops and regularly tilled and fallowed land. A pump pond is also located within the eastern portion of the Project site. The Project site is bordered by residential housing to the north, a single-family subdivision that is currently under construction to the west, and agricultural lands to the east and south. A review of the California Natural Diversity Database (CNDDDB) (CDFW 2024) shows the Project site is within the geographic range of several special-status species, including: the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), and the State species of special concern burrowing owl (*Athene cunicularia*).

Swainson's Hawk

Swainson's hawks (SWHA) are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, the Project site contains suitable habitat for SWHA foraging. In addition, there are trees located in the surrounding area that may provide suitable nesting habitat. There are numerous SWHA observations in the Project vicinity including the most recent being approximately 4.4-miles northwest in 2016 and another approximately 5.9-miles to the southeast in 2021 per CNDDDB records. Therefore, CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) as part of the biological technical studies conducted in support of the CEQA document. If surveys indicate the presence or potential presence of SWHA, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Tricolored blackbird

The Project site is within the known geographic range of tricolored blackbird (TRBL), and, based on aerial imagery and the information provided, there is a pump pond within the Project site and agricultural fields within the vicinity of the Project site that could

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contain habitat suitable for TRBL nesting and foraging. TRBL breed within the vicinity of fresh water, primarily in marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar (Grinnel and Miller 1944). TRBL are also known to breed in alfalfa, wheat, and other low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type, particularly in the San Joaquin Valley (Beedy et al. 2023).

As TRBL have the potential to use the Project site, CDFW recommends that a qualified biologist conduct a habitat assessment for TRBL within the Project site as part of the biological studies conducted in support of the CEQA document. If suitable TRBL nesting or foraging habitat is identified during this assessment, CDFW recommends that a qualified biologist conduct surveys for nesting TRBL as part of the biological studies conducted in support of the CEQA document. If surveys indicate the presence or potential presence of TRBL, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Burrowing Owl

The Project site is within the known geographic range of burrowing owl (BUOW) and there are documented historical occurrences within five miles from the Project site. BUOW typically inhabit open grasslands containing small mammal burrows, but are also known to occupy fallowed agricultural fields, canal banks, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used for nesting and cover. BUOW may also attempt to use “man-made burrows” such as pipes or culverts. As noted in the Project’s Initial Study document, these habitat features are present within the Project vicinity, and as such, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium’s (CBOC) “Burrowing Owl Survey Protocol and Mitigation Guidelines” (CBOC 1993) and CDFW’s “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) as part of the biological studies conducted in support of the CEQA document. If surveys indicate the presence or potential presence of BUOW, consultation with CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does

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not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey 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 site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, 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 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 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 a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Lake and Streambed Alteration: Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are 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 and may include those that are highly modified such as canals and retention basins.

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

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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.

CNDDDB: Please note that the CNDDDB is populated by records through voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

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 the CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an 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 the City of Tulare in identifying and mitigating Project impacts on biological resources.

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 regarding this letter or further coordination, please contact Marile

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Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at marile.colindres@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: State Clearinghouse
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