



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



December 31, 2024

Steven Sopp, Principal Planner
City of Tulare
411 East Kern Avenue
Tulare, California 93274
(559) 684-4216
ssopp@tulare.ca.gov

**Subject: FNC Farming Annexation and Subdivision Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No.: 2024080904**

Dear Steven Sopp:

The California Department of Fish and Wildlife (CDFW) received a DEIR 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.

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 2

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 546 low-density 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 (APN's): 172-010-021, 172-010-022, 172-080-002, and 184-020-010.

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 3

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. Currently, the DEIR acknowledges that the Project site is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the, including: the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), and the State candidate western burrowing owl (*Athene cunicularia hypugaea*).

Comment 1: 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 and Google Earth, 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 the California Natural Diversity Database (CNDDDB) records (CDFW 2024).

The DEIR's mitigation measure BIO-1 includes several activities intended to minimize potential impacts to SWHA including conducting pre-construction surveys and implementing avoidance buffers. CDFW concurs with construction surveys for SWHA and implementing avoidance buffers; however, CDFW recommends that the surveys be conducted by qualified biologist and following the entirety of the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000). Additionally, CDFW recommends including the following mitigation measures in the Final Environmental Impact Report:

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 4

Recommended Mitigation Measure 1: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would 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 parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 2: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. 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.

Recommended Mitigation Measure 3: SWHA Foraging Habitat Mitigation

Finally, CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of 1 acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of ¾ acre of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of ½ acre of HM land for each acre of development is advised.

Comment 2: 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

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 5

the Project site and agricultural fields within the vicinity of the Project site that could 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).

BIO-1a, BIO-1b, and BIO-1c in the DEIR describe methodologies that will be implemented to minimize the Project's impact on biological resources including nesting birds, roosting bats, and burrowing owl; no specific measures were included to mitigate for potential impacts to TRBL and it does not appear that focused habitat assessments or surveys were conducted for the species. As TRBL have the potential to use the Project site and focused habitat assessments and/or focused surveys were not conducted for the species, CDFW recommends the following:

Recommended Mitigation Measure 4: TRBL Surveys

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 5: TRBL Avoidance Buffer

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during the breeding season, then CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL and then repeat those surveys no more than 10 days prior to the start of ground-disturbing activities. If an active TRBL nesting colony is found during the pre-construction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer around the colony in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015). CDFW recommends that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival.

It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-construction surveys of an identified

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 6

nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's real extent.

Recommended Mitigation Measure 6: TRBL Take Authorization

If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Comment 3: Western Burrowing Owl

Factors support the conclusion that BUOW are likely present within the Project site or vicinity of the Project including: several CNDDDB historical occurrences within five miles of the Project site and a direct observation of an active burrowing owl nest in 2022 that was documented 0.25-mile west of the property during the surveys conducted to inform the DEIR. The California Fish and Game Commission (FGC) approved BUOW as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

Although BIO-1a through BIO-1c in the DEIR describe methodologies that will be implemented to minimize the Project's impact on nesting birds, roosting bats, burrowing owl, no species-specific measures for BUOW are included in the DEIR, even though the species is highly likely to occur within the Project site. As BUOW have the potential to be present within the Project site or Project vicinity, CDFW recommends the following:

Recommended Mitigation Measure 7: BUOW Pre-construction Surveys

CDFW recommends that a qualified biologist conduct surveys for BUOW prior to the initiation of ground-disturbance activities, following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012).

Recommended Mitigation Measure 8: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 7

Recommended Mitigation Measure 9: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. 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.

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 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.

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 8

Lake and Streambed Alteration: According to the DEIR, the Tulare Colony Ditch runs across east to west through the Project site on the north side of the property. 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 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:

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 9

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

The Project, as proposed, could have an impact on biological resources, and 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 DEIR to assist the City of Tulare in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Reporting Program (Attachment 1) is included below to assist the City of Tulare with incorporating the recommended mitigation measures provided above.

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 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,

Signed by:

37BF80A1646F41C...

Acting for Julie A. Vance
Regional Manager

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

Steven Sopp, Principal Planner
City of Tulare
December 31, 2024
Page 10

REFERENCES

- Beedy, E., W. Hamilton III, R. Meese, D. Airola, W. Schackwitz, and P. Pyle. 2023. Tricolored Blackbird (*Agelaius tricolor*), version 2.0. Birds of the World. P. G. Rodewald and B. K. Keeney, Editors. Cornell Lab of Ornithology, Ithaca, NY, USA. Accessed December 20, 2024.
- California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. Sacramento, California, USA.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA.
- California Department of Fish and Wildlife. 2015. Staff guidance regarding avoidance of impacts to tricolored blackbird breeding colonies on agricultural fields in 2015. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Referenced December 11, 2024.
- Grinnell, J. and A. Miller. 1944. The Birds of California. Cooper Ornithological Club, Berkeley, California. 608 pp.
- Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: FNC Farming Annexation and Subdivision Project (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2024080904**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson’s hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA Take Authorization	
Recommended Mitigation Measure 3: SWHA Foraging Habitat Mitigation	
Tricolored blackbird (TRBL)	
Recommended Mitigation Measure 4: TRBL Surveys	
Recommended Mitigation Measure 6: TRBL Take Authorization	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 7: BUOW Preconstruction Surveys	
Recommended Mitigation Measure 9: BUOW Take Authorization	
<i>During Construction</i>	
Swainson’s hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA Avoidance Buffer	
Tricolored blackbird (TRBL)	
Recommended Mitigation Measure 5: TRBL Avoidance Buffer	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 8: BUOW Avoidance Buffer	