

of costs associated with mitigating improvements for cumulative impacts not included in the City's Development Impact Fee program.

Table 8
Project's Fair Share of Roadway Improvements for Phase 1 (87 units)

<u>Intersection</u>	<u>Existing Traffic Volumes (PM Peak)</u>	<u>Year 2035 + Project Traffic Volumes (PM Peak)</u>	<u>Project (Phase I) Traffic Volumes (PM Peak)</u>	<u>Improvement</u>	<u>Estimated Construction Cost</u>	<u>Amount Covered by Current Fee Program(s)</u>	<u>Funding Shortfall</u>	<u>Project Fair Share (%)</u>	<u>Phase I Fair Share Contribution</u>
<u>Inyo Avenue / West Street</u>	1,214	2,291	38	<u>Signalization and Intersection Improvements</u>	\$550,000.00	\$225,000.00	\$325,000.00	3.53%	\$11,472.50

Source: JLB Traffic Engineering, Inc. Correspondence 7/18/18.

Conclusion: Implementation of Mitigation Measures TR-1 and TR-2 would reduce impacts to a less than significant level.

Mitigation Measures:

~~TR-1~~ — ~~The Project Applicant shall pay its fair share of the City's established Development Impact Fees for City Streets and State Highways for roadway/intersection improvements as identified in Table 7. The required improvements and actual construction costs associated with these identified intersections will be determined by the City, and payment amounts and terms will be set forth in a development agreement between the City (or other responsible agency) and the Applicant and will be a condition of approval.~~

TR-1 For City-controlled intersection improvements (Sonora Avenue / West Street, Bardsley Avenue / West Street, and Bardsley Avenue / Pratt Street): As a condition of approval, the Project Applicant shall pay its fair share of costs for roadway/intersection improvements as identified in Table 7 through the payment of fees established by the City's Development Impact Fee Program for City Streets and State Highways.

TR-2 For the Caltrans-controlled intersection of SR 137 (Inyo Ave.) and West Street: Phase I of the project (87 units) will require the Project Applicant to pay standard development impact fees, and an additional fair share contribution (3.53%) of costs as identified in Table 8 for future mitigation improvements at the intersection of Inyo Avenue (State Route 137) and West Street that are not included in the City's established Development Impact Fee Program. For any further development beyond Phase I (87 units), the Project Applicant shall pay standard development impact fees, and an additional fair share contribution (14.02%) based on the Cumulative Year 2035 Plus Project scenario of the roadway/intersection improvements as identified in Table 7. The Applicant will work with the City of Tulare and/or Caltrans to establish timing and fee amounts to ensure

implementation of the Cumulative Year 2035 Plus Project intersection improvements listed in this analysis (either Option A: Traffic Signals or Option B: Roundabout) or other agreed upon mitigation that would satisfy the City of Tulare and Caltrans. The actual method of intersection improvements will be determined during the Intersection Control Evaluation (ICE) process that the Applicant must participate in with Caltrans prior to any construction activities beyond Phase I (87 units). This will be set forth in a development agreement between the City (or other responsible agency) and the Applicant and will be a condition of approval for any further development beyond Phase 1 (87 units).

Comment Letter 2:

CA Department of Fish & Wildlife (July 17, 2018)
Julie Vance
1234 E. Shaw Ave.
Fresno, CA 93710

Summary of Comments – The CA Department of Fish & Wildlife (CDFW) provided additional/clarified language for biological mitigation measures pertaining to protected species that may potentially occur on the project site. The language outlines what must be done if protected species are identified during the required pre-construction surveys. Specifically, CDFW is requesting additional mitigation language for the following species: San Joaquin kit fox, tricolored blackbird, and Swainson’s hawk.

City Response – The City acknowledges and appreciates the information provided by CDFW. The applicant is already required to conduct pre-construction surveys. However, the requested language has been added to the mitigation measures and is shown in ~~strike through~~ and underline as follows:

San Joaquin Kit Fox

BIO-2: *Avoidance.* Should an active kit fox den be detected within or immediately adjacent to the area of work, a disturbance-free buffer will be established around the den in consultation with the USFWS and CDFW, to be maintained until a qualified biologist has determined that the den is no longer occupied. Known kit fox dens may not be destroyed until they have been vacant for a period of at least three days, as demonstrated by use of motion-triggered cameras or tracking medium, and then only after obtaining take authorization from the USFWS. In addition, if San Joaquin kit fox are detected, the project applicant will be required to consult directly with CDFW to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code Section 2081 (b).

Tricolored Blackbird

BIO-7: *Pre-construction Surveys.* If Project construction must occur during the bird breeding season (February 1 through September 15), CDFW recommends that a qualified wildlife biologist conduct surveys for nesting tricolored blackbird (TCBL), in areas of suitable habitat, no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies. In addition, because TRBL colonies expand over time as individuals are recruited to a colony, CDFW recommends that if a colony is detected within the Project area, a qualified biologist reassess the areal extent of the colony immediately prior to construction and adjust no-disturbance buffers, in consultation with CDFW, as necessary to avoid impacts. ~~the nesting season, a pre-construction survey shall be conducted by a qualified biologist for nesting tricolored blackbirds within 15 days of the onset of construction. All suitable habitats of the BSA will be covered during this survey.~~

BIO-7A: *TRBL Take Avoidance.* In the event that 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(b), prior to ground disturbing activities.

BIO-8: *Establish Buffers.* If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer, as specified for recurring construction activities in CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting within the colony has ceased and that the birds have fledged. ~~active nests are identified within or near construction zones, an appropriate construction-free buffer will be established around the nests (as determined by a qualified biologist) and maintained until the nesting season is over, or until the biologist determines the nests are no longer active.~~

Swainson's Hawk

BIO-14A: *Nesting Tree Replacement.* CDFW recommends impacts to known Swainson's Hawk (SWHA) nest trees be avoided at all times of the year (see Mitigation Measure Bio-14 regarding pre-construction survey requirements). However, if through pre-construction surveys it is determined that SWHA are nesting within the trees that will be removed, in addition to consultation, the project applicant will replace these trees with an appropriate native tree species, planted at a ratio of 3:1, in an area that will be protected in perpetuity.

-Decision not to recirculate-

City staff evaluated the changes that were made to the traffic mitigation measures in the Draft MND within the context of CEQA Guidelines Section 15073.5 (Recirculation of a Negative Declaration Prior to Adoption) and concluded that recirculation of the Draft MND was not necessary. Staff conferred with the CEQA consultant and traffic study engineer and concluded that the changes were minor in nature and did not meet the criteria necessary for recirculation. In addition, the mitigation measure that was modified was updated with equal or more effective measures. The following is the criteria that was evaluated in the City's decision not to recirculate the Draft MND:

15073.5. Recirculation of a Negative Declaration Prior to Adoption.

(a) A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given pursuant to Section 15072, but prior to its adoption. Notice of recirculation shall comply with Sections 15072 and 15073.

(b) A "substantial revision" of the negative declaration shall mean:

(1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or

(2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

(c) Recirculation is not required under the following circumstances:

(1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

(2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.

(3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.

(4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

(d) If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for

consultation and review pursuant to Sections 15086 and 15087 and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project.

DEPARTMENT OF TRANSPORTATION**DISTRICT 6**

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July 16, 2018

06-TUL-137-14.19
2135-IGR/CEQA
LIBERTY HILL SUBDIVISION
SCH # 2018061018

Mr. Steven Sopp, Associate Planner
City of Tulare
Community Development – Planning Division
411 E. Tulare Street
Tulare, CA 93274

Dear Mr. Sopp:

Thank you for the opportunity to review the Liberty Hill Residential Subdivision proposing to divide a 79.5-acre site into 384 single family lots. The project site is located at the northwest corner of West Street and Bardsley Avenue, approximately 1,100 feet south of the State Route (SR) 137/West Street intersection.

The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. The Local Development -Intergovernmental Review (LD-IGR) Program reviews land use projects and plans through the lenses of our mission and state planning priorities of infill, conservation, and travel-efficient development. To ensure a safe and efficient transportation system, we encourage early consultation and coordination with local jurisdictions and project proponents on all development projects that utilize the multimodal transportation network.

Caltrans provides the *following comments* consistent with the State's smart mobility goals that support a vibrant economy and sustainable communities:

1. Alternative transportation policies should be applied to the development. An assessment of multi-modal facilities should be conducted. This assessment should be used to develop an integrated multi-modal transportation system to serve and help alleviate traffic congestion caused by the project and related development in this area of the City. The assessment should include the following:
 - a. Pedestrian walkways should link this proposal to an internal project area walkway, transit facilities, as well as other walkways in the surrounding area.
 - b. The project should consider bicycles as an alternative mode of transportation and offer internal amenities to encourage bicycle use which should include parking, security, lockers, etc. However, internal bicycle paths should be coordinated with local and

regional pathways to further encourage the use of bicycles for commuter and recreational purposes.

- c. If transit is not available within ¼-mile of the site, transit should be extended to provide services.
2. The TIS indicates that the SR 137/West Street intersection will drop from Level of Service (LOS) D to LOS F during the peak hours, especially the southbound approach on West Street would experience significant delay. The TIS concluded that opening day improvements to mitigate this impact would be to add a southbound left-turn lane by restriping the roadway within the existing road right-of-way (ROW) width.
3. Caltrans does not concur with the restriping of the southbound left-turn lane mitigation alone for “Existing plus Project (Buildout) Traffic Conditions” and the “Near Term plus Project Traffic Conditions” scenarios because the road ROW is too narrow to accommodate another lane. Caltrans recommends that the project should take into consideration the need to widen the intersection to achieve the addition of the left-turn lane.
4. Caltrans recommends as indicated in the TIS, that the Project should develop a cost estimate associated with Table XI under the “Projects Pro-Rata Fair Share of Future Transportation Improvements” for the mitigation measure identified under “Cumulative Year 2035 plus Project Traffic Conditions” at the SR 137/West Street intersection.
5. The TIS recommended mitigation for the “Cumulative Year 2035 plus Project Traffic Conditions” scenario is to construct a roundabout at the SR 137/West Street intersection. The TIS indicated that although a roundabout is potentially costlier due to ROW acquisition, it would be the *preferred* mitigation because it provides significantly lower delay during the PM peak period and would reduce the severity of collisions.
6. It is Caltrans policy to analyze all potential intersection improvement solutions. An Intersection Control Evaluation (ICE) report is required for any proposed intersection improvement, in accordance with Traffic Operations Policy Directive No. 13-02, dated: August 30, 2013 (<http://www.dot.ca.gov/hq/traffops/policy/13-02.pdf>).
7. Any new project that may require employing full control at state highway intersections (i.e. to control all approaching traffic via use of signal, stop or yield control) must consider all three intersection control strategies (stop, roundabout and signal) and the supporting design configurations per the Intersection Control Evaluation (ICE) guidelines. ICE establishes a context and performance based evaluation process to produce engineering recommendations on intersection traffic control strategies and geometric configurations for location specific needs and conditions. The first step of the ICE process will constitute conceptual approval by Caltrans Traffic Operations Office. The project opening day mitigation at an intersection must be evaluated per the ICE procedure. This new policy will affect the engineering process to determine the intersection improvement on State Route 137. The TOPD #13-02 can be found at <http://www.dot.ca.gov/hq/traffops/policy/13-02.pdf>. The ICE requirements can be found on the Caltrans website: <http://www.dot.ca.gov/hq/traffops/liaisons/ice.html>.

Mr. Steven Sopp
July 16, 2018
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8. An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect. Engineering documents for encroachment permit activity and work in the State right-of-way may be submitted using English Units. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. The Streets and Highways Code Section 670 provides Caltrans discretionary approval authority for projects that encroach on the State Highway System. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change of ownership requires a new permit application. Only the legal property owner or his/her authorized agent can pursue obtaining an encroachment permit. **Please call the Caltrans Encroachment Permit Office - District 6: 1352 W. Olive, Fresno, CA 93778, at (559) 488-4058. Please review the permit application checklist at:**
<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=TR0402&distpath=MAOTO&brapath=PERM>

9. Due to the complexity of the project, prior to an encroachment permit application submittal, the project proponent is required to schedule a "Pre-Submittal" meeting with District 6 Encroachment Permit Office. **Please contact District 6 Encroachment Permit Office at (559) 488-4058 to schedule this meeting. Please review the permit application checklist at:**
<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmId=TR0402&distpath=MAOTO&brapath=PERM>.

If you have any other questions, please call me at (559) 488-7396.

Sincerely,



DAVID DEEL
Associate Transportation Planner
Transportation Planning - North



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



July 17, 2018

Steven Sopp
City of Tulare
411 East Kern Avenue
Tulare, California 93274

**Subject: Liberty Hill Residential Development (Project)
Initial Study-Mitigated Negative Declaration
SCH No.: 2018061018**

Dear Mr. Sopp:

The California Department of Fish and Wildlife (CDFW) received an Initial Study Mitigated Negative Declaration (IS/MND) from the City of Tulare 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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of its own regulatory authority under the Fish and Game Code. Although the comment period for your request has passed, CDFW would appreciate if you would still consider the following comments.

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 and Game 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.

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. For example, 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 and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Central Pacific Development Group, LLC

Objective: The Project proponent proposes to develop single-family residences. The Project will include construction of 384 single-family lots, including a mixture of 5,000- and 6,000-square-foot lots; construction of five out-lots of various acreage, totaling 198,910 square feet, to be used for open space, landscaping, storm drainage, and a Tulare Irrigation Pipeline easement. The Railroad Irrigation Ditch will be undergrounded. New roadways will be constructed, along with associated curbs, gutters, and sidewalks. Roadway signage and street lights will also be installed. Sewer, water, electricity, drainage, gas, telephone, and cable television utilities will also be installed. Block walls will be constructed along all lots on the far west side of the development. The site has historically been used for agricultural purposes and a single residential home, which will be demolished prior to construction. Thirteen trees currently on the property will be removed prior to construction.

Location: The proposed Project is located at the northwest corner of W. Bardsley Avenue and S. West Street on 79.5-acres in the southwest portion of the City of Tulare, Tulare County; Assessor's Parcel Number 168-09-06; 36° 11' 51.99" N, 119° 22' 16.05" W.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below 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 document.

Currently, the IS/MND prepared for the Project indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the IS/MND. However, as currently drafted, it is unclear whether the mitigation measures described will be enforceable or sufficient in reducing impacts to a level that is less than significant. In particular, CDFW is concerned regarding adequacy of mitigation measures

for the State Threatened and federally Endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State Candidate for listing as endangered tricolored blackbird (*Agelaius tricolor*), and the State Threatened Swainson's hawk (*Buteo swainsoni*).

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin kit fox (SJKF)

Biological Resources, Section IV, Mitigation Measures BIO-1 through BIO-5, pages 3-28 through 3-29.

Issue: The IS/MND identifies destruction of kit fox dens as a potential component of the Project. In the event that an occupied kit fox den is detected on the Project site and take cannot be avoided, as currently drafted Mitigation Measure BIO-2 on page 3 through 28 of the IS/MND requires that take authorization only be sought from the USFWS, not CDFW as well.

Specific impact: Without appropriate avoidance and minimization measures for SJKF, potential significant impacts resulting from ground-and vegetation-disturbing activities associated with construction of the Project include den collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals.

Evidence impact would be significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF. Very little suitable habitat remains in Tulare County (Cypher et al. 2013). The Project area contains some of the only remaining potentially suitable habitat in the vicinity, which is otherwise intensively managed for agriculture. Therefore, ground-disturbing activities within the Project area have the potential to significantly impact local SJKF populations.

Recommended Potentially Feasible Mitigation Measure(s)

Because the IS/MND identifies a potential for SJKF to occur on the Project site and identifies den collapse as a potential mitigation measure, CDFW recommends editing Mitigation Measure BIO-2 to include the following additional measure and that this additional measure also be made a condition of approval for the Project.

Mitigation Measure BIO-2: SJKF Take Authorization

SJKF detection warrants consultation with CDFW to discuss how to avoid take, or if

avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code Section 2081(b).

COMMENT 2: Tricolored blackbird (TRBL)

Biological Resources, Section IV, Mitigation Measures BIO-6 through BIO-8, page 3- 3-29.

Issue: The IS/MND identifies potential for TRBL to nest within or adjacent to the Project area. The IS/MND includes Mitigation Measures BIO-7 and BIO-8 on page 3 through 29, which require, respectively, preconstruction surveys within 15 days prior to project initiation and appropriate buffers as determined by a biologist should a nesting colony be found. However, it is not clear that these measures will be sufficient in reducing impacts to nesting TRBL to a level that is less than significant. For example, there is no mitigation measure that requires take authorization should a TRBL be detected within the Project area and cannot be avoided.

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts associated with development of the Project include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: Agricultural grain fields are an increasingly important nesting habitat type for TRBL, particularly in the San Joaquin Valley (Meese et al. 2014). This potential nesting substrate is present throughout the Project area. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in agricultural fields (Kelsey 2008). In 2017, approximately 8,150 TRBL were distributed among only three colonies in Tulare County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for TRBL has already been determined to be present within the Project area, CDFW recommends editing Mitigation Measures BIO-7 and BIO-8 to include the following measures. Also, CDFW recommends including "Recommended Mitigation Measure 1," below. CDFW recommends that these measures be made conditions of approval for the Project.

Mitigation Measure BIO-7: Pre-Construction Surveys

If construction must take place during the bird breeding season (February 1 through September 15), CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL, in areas of suitable habitat, no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies. In addition, because TRBL colonies expand over time as individuals are recruited to a colony, CDFW recommends that if a colony is detected within the Project area, a qualified biologist reassess the areal extent of the colony immediately prior to construction and adjust no-disturbance buffers, in consultation with CDFW, as necessary to avoid impacts.

Mitigation Measure BIO-8: Establish Buffers

If an active TRBL nesting colony is found during preconstruction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer, as specified for recurring construction activities in CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting within the colony has ceased and that the birds have fledged.

Recommended Mitigation Measure 1: TRBL Take Avoidance

In the event that 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(b), prior to any ground-disturbing activities.

COMMENT 3: Swainson's Hawk (SWHA)

Biological Resources, Section IV, Mitigation Measure BIO-14, page 3-30.

Issue: As stated on page 2-1 of the IS/MND, the Project area has 13 trees on the property that will be removed prior to construction. Review of aerial imagery indicates that these trees may be suitable to support nesting SWHA. Despite this, the IS/MND does not address impacts to nest trees.

Specific impact: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts associated with development of the Project include loss of nest trees, nest abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: Nest trees are a limited resource in the San Joaquin Valley. CDFW considers removal of known SWHA nest trees, even outside of the nesting season, a potentially significant impact under CEQA because SWHA exhibit high nest-site fidelity year after year and suitable nesting habitat features are limited in the San Joaquin Valley (CDFW 2016).

Recommended Potentially Feasible Mitigation Measure(s)

Because potentially suitable nesting habitat for SWHA is present within the Project area, and because the Project will result in removal of potentially suitable nest trees, CDFW recommends editing Mitigation Measure BIO-14 to include the following measures and that these be made conditions of approval for the Project.

Mitigation Measure BIO-14: Pre-Construction Surveys

CDFW recommends impacts to known SWHA nest trees be avoided at all times of year. However, if through pre-construction surveys it is determined that SWHA are nesting within the trees that will be removed, CDFW recommends that, in addition to consultation with CDFW and potential acquisition of an ITP as described in the IS/MND, any potential SWHA nesting trees be replaced with an appropriate native tree species, planted at a ratio of 3:1, in an area that will be protected in perpetuity. This mitigation will offset impacts of the loss of potential SWHA nesting habitat. In addition, the removal of mature trees that provide nesting habitat features is a potentially significant impact to other raptor species and CDFW advises that the IS/MND consider potential impacts to general raptor nesting habitat.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SJKF. 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 that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (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

Steven Sopp
City of Tulare
July 17, 2018
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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>.

FILING FEES

If it is determined that the Project will impact fish and/or wildlife, an assessment of filing fees may be 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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the City of Tulare in identifying and mitigating subsequent project's 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>). Should you have questions regarding this letter or for further coordination please contact Renée Robison, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 274, or by email at Renee.Robison@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

cc: Timothy Ludwick
United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

Office of Planning and Research
Post Office Box 3044
Sacramento, California 95814

REFERENCES

- California Department of Fish and Wildlife (CDFW), 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.
- California Department of Fish and Wildlife (CDFW), 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). April 2016.
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