



DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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March 2, 2026

Jeff Ramsay, Director, General Services
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(559) 733-6601
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Subject: **Performing Arts Theater, AcCEL Center, and Library Project (Project)**
Draft Environmental Impact Report (DEIR)
SCH: 2025041045

Dear Jeff Ramsay:

The California Department of Fish and Wildlife (CDFW) received a DEIR from Tulare County for the 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 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 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, the Project may be subject to CDFW's lake and streambed

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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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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

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).

PROJECT DESCRIPTION SUMMARY

Proponent: Tulare County Office of Education

Objective: The Project proposes to construct a single-story, 31,000-square-foot performing arts theater. The proposed Project includes construction of the single-story, 24,442-square-foot AcCEL Center and 12,000-square foot library that would feature a shade structure, landscaping, walkways, basketball courts, and a play area. The proposed Project also includes a 500-space parking lot for the performing arts theater and primary access by two driveways from N Mooney Boulevard/State Route 63, that would include approximately 243,126 square feet of landscaping, extension of sidewalks along the public right-of-way, and two photovoltaic (PV) systems—one shading the AcCEL Center play area and one over the performing arts theater parking lot. Outdoor lighting would be installed throughout the site for building accents, landscaping, safety, security, and wayfinding.

Location: The Project site is located in the northwest part of Tulare County, 4.38 miles northeast of downtown Tulare and 4.45 miles southwest of downtown Visalia, near the southwest corner of Avenue 264/Liberty Road and N Mooney Boulevard/State Route 63. The Project site is located within Assessor’s Parcel Numbers (APNs) 149-030-005 and -008.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Tulare County 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 DEIR prepared for the Project.

The DEIR notes the Project site currently includes a fallow agricultural field (not in production) with an irrigation well, a paved drive aisle and parking area, disturbed land comprised of ruderal vegetation, fencing, and landscaping/grass for a total of 15.63 acres. The DEIR also notes to the north and east of the Project site, uses consist of farmland, residential, commercial, and the Tulare County Office of Education (TCOE) Liberty campus. To the south of the Project site, uses consist of farmland, and to the west, farmland and commercial uses. The Biological Resources Assessment (BRA), prepared to inform the DEIR, also notes two small retention basins located adjacent to the northern border of the Project site on the TCOE campus.

The DEIR acknowledges that the Project site is within the geographic range of special-status species and proposes specific mitigation measures for some species to reduce impacts to less than significant. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce potential impacts to less than significant and avoid unauthorized take for special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*); and the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*).

Swainson's Hawk

The DEIR states that Swainson's Hawk (SWHA) has a moderate potential to occur within the Project site as it is within the breeding range of the species and the site contains suitable foraging habitat. The DEIR includes Mitigation Measure (MM) BIO-1 to mitigate for potential significant impacts, which requires a qualified biologist to conduct a preconstruction avian survey for the species (and nesting birds in general) and implement a 200-foot no-disturbance buffer around active nests. CDFW does not concur that MM BIO-1 is sufficient to detect SWHA and their nests, mitigate for potential significant impacts, and avoid the unauthorized take of species. As such, CDFW recommends the Final EIR be modified to include the following measures:

Recommended Mitigation Measure 1: SWHA Protocol Surveys

CDFW recommends that a qualified biologist conduct protocol surveys following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) the survey season immediately prior to construction. Please note

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this survey methodology requires that multiple surveys be conducted during the SWHA nesting season.

Recommended Mitigation Measure 2: 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 3: 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.

Western Spadefoot

The DEIR states that western spadefoot (WESP) has a low potential to occur as suitable breeding and upland habitat is absent from the Project site, although there are two retention basins within the vicinity of the Project. No mitigation measures were incorporated within the DEIR to mitigate for potential significant impacts. While the potential for WESP may be low currently, CDFW does not concur there is no potential for the species to occur prior to Project construction, particularly if construction occurs in 2027 and beyond. WESP have been known to persist for years in agricultural and anthropogenic habitats in the San Joaquin Valley and may disperse from breeding locations to suitable upland habitat during the rainy season. As such, CDFW recommends that the DEIR include the following measures:

Recommended Mitigation Measure 4: WESP Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment prior to the initiation of construction activities to determine if the Project site and the immediate surrounding vicinity contain habitat suitable to support WESP. Potential breeding habitat and upland refugia should be evaluated as part of this assessment.

Recommended Mitigation Measure 5: WESP Focused Surveys

If it is determined that suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for WESP, using appropriate survey

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methodologies, prior to any ground-disturbing activities that may occur as part of the Project.

Recommended Mitigation Measure 6: WESP Minimization and Avoidance

If WESP burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources, including all potential breeding habitat, which can include agricultural sumps and irrigation ditches in addition to any areas that pool water for only a few weeks. Avoidance of potential breeding habitat should occur even when dry, since post-metamorphic WESP juveniles have a unique adaptation to the drying of their temporary breeding pools; they utilize the dried pond bottom as a refuge, burying themselves in the desiccation cracks and damp soil beneath the surface crust (Baumberger et al., 2020). If any lifestage of WESP are observed on the Project site, Project activities in their immediate vicinity should cease, allowing individuals to leave the Project site on their own accord.

On September 24, 2025, the California Fish and Game Commission (Commission) received a petition to list the northern population of WESP as threatened species and the southern population of WESP as an endangered species under CESA. If the Commission takes action and WESP becomes listed as a Candidate for listing pursuant to CESA (possible in 2026), or ultimately becomes listed as threatened or endangered pursuant to CESA, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA if full avoidance of WESP could not be achieved. Please note that implementation of the above recommended measures would help minimize impacts to WESP as required by CEQA, but would not fully avoid impacts and thus take; additional measures would need to be implemented to avoid take of WESP. In the event that WESP becomes protected under CESA, CDFW recommends early consultation to help identify if avoidance is feasible or if not, to initiate discussions regarding the need for ITP acquisition.

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 proponent 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

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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.

MM BIO-1 requires a qualified biologist to implement a no-disturbance buffer of 75 feet for passerine birds and a minimum of 200 feet for raptors. CDFW recommends the buffer distances be adjusted and a no-disturbance buffer of 250 feet be implemented around active nests of non-listed bird species and a 500-foot no-disturbance buffer be implemented around active nests of non-listed raptors if continuous monitoring is infeasible. 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.

California Natural Diversity Database (CNDDDB) Positive Submission of Data:

Please note that the CNDDDB is populated by voluntary record 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, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist/botanist during 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 filled out and submitted online at the following link:

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<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

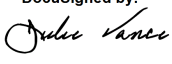
FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 Tulare County in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included to assist the Tulare County with incorporating the recommended mitigation measures provided above. Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or john.riedel@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

ATTACHMENT- MMRP Table

ec: State Clearinghouse
Land Use and Climate Innovation
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References

Baumberger, K., A. Backlin, E. Gallegos, C. Hitchcock, and R. Fisher. Mitigation ponds offer drought resiliency for western spadefoot (*Spea hammondi*) populations. Southern California Academy of Sciences, 119(1), pp. 6-17.

Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.

Attachment 1

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

**PROJECT: Performing Arts Theater, AcCEL Center, and Library
Project**

SCH No.: 2025041045

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA protocol surveys	
Recommended Mitigation Measure 3: SWHA take authorization	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 4: WESP habitat assessment	
Recommended Mitigation Measure 5: WESP focused surveys	
Recommended Mitigation Measure 7: WESP take authorization	
<i>During Construction</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 6: WESP avoidance buffer	