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November 25, 2025

Claudia Calderon, Director
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**Subject: Villas at Winding Creek Subdivision (Conditional Use Permit (CUP)
2025-006-C, Tentative Subdivision Map (TSM) 2025-006-C) (Project)
Initial Study/Mitigated Negative Declaration (MND)
State Clearinghouse No.: 2025101555**

Dear Claudia Calderon:

The California Department of Fish and Wildlife (CDFW) received an MND from the City of Porterville (City) 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

Nesting Birds: CDFW has jurisdiction over actions with the potential to result in the disturbance or destruction of active nest sites or unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs, or 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 (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.

PROJECT DESCRIPTION SUMMARY

Proponent: Smee Homes, Inc.

Objective: The Project proposes to develop 32 single-family lots, ranging from 5,046-square feet to 8,242-square feet. The Project also proposes to construct an internal network of local streets with two points of ingress/egress on Wisconsin Street and one point of ingress/egress on South Indiana Street, and approximately 9,241-square feet of open space, which would include construction of a 10-foot-wide trail, and a 12-foot-wide service road along the north side of Poplar Ditch.

Location: The Project site is located in the City of Porterville within Tulare County. The site is located on the northwest corner of the Poplar Ditch and South Indiana Street. The Project site resides within Assessor's Parcel Number (APN) 268-100-008.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the MND prepared for this Project.

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Based on aerial imagery, the Project site is comprised of regularly disked annual grassland but has historically been utilized for agricultural purposes. The MND also notes the Project site contains ruderal habitats that are highly disturbed due to annual disking. The Project site is surrounded by vacant land and single-family residences to the north, single-family residences to the south, single-family residences and a church to the east, and single-family residences to the west. A large water retention basin is present within the annual grassland habitat north of the Project site. An ephemeral drainage ditch is located adjacent to the Project to the west and Poplar Ditch traverses east to west along the southern section of the Project site. Disked agricultural lands are present to the east and annual grasslands are present to the west of the Project site.

Currently, the MND 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 of these measures to reduce impacts to less than significant and avoid unauthorized take for special-status animal species, including but not limited to: the State threatened Swainson's hawk (*Buteo swainsoni*); the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*); and the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*).

Swainson's Hawk

The MND states that Swainson's hawk (SWHA) are potentially present within the Project site and Mitigation Measure (MM) BIO-1 is provided to mitigate for potentially significant impacts to the species. MM BIO-1 would require, if feasible, that all ground disturbing activities occur outside the nesting season from February 1 through August 31. If ground disturbing activities occur during the nesting season, a qualified biologist would conduct a pre-construction survey within the Project site and a 500-foot buffer. MM BIO-1 also states that if active nests are detected within the survey area, the qualified biologist will implement an appropriate no-disturbance buffer in consultation with CDFW. CDFW concurs with conducting preconstruction surveys for SWHA and implementing an appropriate no-disturbance buffer, but recommends MM BIO-1 be modified to require that preconstruction surveys follow the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000). CDFW also recommends that a minimum ½-mile no-disturbance buffer be delineated and maintained around each active SWHA 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. CDFW also recommends the MND include the following mitigation measure:

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Recommended Mitigation Measure 1: SWHA Take Authorization

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 Burrowing Owl

The California Fish and Game Commission (FGC) approved western burrowing owl (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 a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the known geographic range of BUOW. BUOW are known to utilize agricultural areas and have been documented breeding and foraging along canal banks and roadways within agricultural settings. Aerial imagery shows potential BUOW habitat within the Project site, including areas such as Poplar Ditch. The MND does not include an evaluation for BUOW and no mitigation measures were proposed to mitigate for potential significant impacts to the species and avoid unauthorized take. As such, CDFW recommends the following mitigation measures:

Recommended Mitigation Measure 2: BUOW Pre-construction Surveys

CDFW recommends that focused surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report) (CDFG 2012), be conducted the survey season immediately prior to construction. Please note that the 2012 Staff Report necessitates multiple surveys prior to the initiation of construction.

Recommended Mitigation Measure 3: 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.

Recommended Mitigation Measure 4: 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

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acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The MND states that Crotch's bumble bee (CBB) are potentially present within the Project site and MM BIO-5 is provided to mitigate for potentially significant impacts to the species. MM BIO-5 would require a qualified biologist to conduct a habitat assessment of the Project site prior to the initiation of construction and pre-construction surveys no more than 30 days prior to ground disturbance if it is determined that suitable CBB habitat is present. MM BIO-5 also states that if CBB are found during surveys and full avoidance of available habitat is not feasible, a plan would be prepared in coordination with CDFW to reduce Project impacts to less than significant and avoid take. CDFW concurs with the portion of MM BIO-5 that would require a qualified biologist to consult with CDFW if CBB are found during surveys; however, CDFW does not concur that survey efforts identified in MM BIO-5 would be sufficient to adequately detect the species. As such, CDFW recommends MM BIO-5 be modified to incorporate the following measures:

Recommended Mitigation Measure 5: CBB Focused Surveys

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 6: CBB Consultation and Take Authorization

If CBB is detected during surveys or implementation of the Project, consultation with CDFW is warranted to discuss how to implement Project activities 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.

Western Spadefoot

The Project site is within the geographic range of western spadefoot (WESP). WESP occur primarily in grasslands and seasonal wetlands with appropriate upland habitat and have also been found in agricultural settings. The MND notes that the Project site contains annual grassland habitat, as well several aquatic features, including a portion of Poplar Ditch and an additional ditch along the western edge of the Project site. The MND also states "Furthermore, these ditches could potentially function as a type of riparian habitat or a sensitive natural community if they contain riparian characteristics like elderberry shrubs or vernal pool-like habitat capable of supporting sensitive species." The MND does not include an evaluation for WESP and no mitigation

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measures were proposed to mitigate for potential significant impacts to the species. As such, CDFW recommends the following mitigation measures:

Recommended Mitigation Measure 7: WESP Focused Surveys

Prior to initiation of the Project, CDFW recommends that a qualified biologist conduct focused surveys for WESP and their requisite habitat within the Project site.

Recommended Mitigation Measure 8: WESP Avoidance Buffer

If burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources. If WESP are observed on the Project site, Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord.

Editorial Comments and/or Suggestions

Nesting Birds: To protect nesting birds, CDFW recommends that Project ground-disturbing and vegetation-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1 through September 15), 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.

If the nesting season cannot be avoided, CDFW 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

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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.

Artificial Lighting: The MND notes the Project site contains natural habitats for special-status species along Poplar Ditch and the drainage ditch along the western edge of the property (along South Wisconsin Street). The Project is also immediately adjacent to a large water retention basin with natural habitats to the north. Installation of outdoor artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the MND for the Project include an analysis of the impacts of artificial lighting on biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light fixtures as low as possible to minimize light trespass; use of light fittings that direct and confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting not be installed in ecologically sensitive areas (e.g., streams, wetlands, and habitat used by special status species, such as nesting/roosting sites and riparian corridors) and the use of the white/blue wavelengths of the light spectrum be avoided.

Lake and Streambed Alteration: The MND states that a portion of Poplar Ditch resides within the Project site. Additionally, an agricultural ditch is located along the western portion of the Project site. Project activities that substantially change or use any material from 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 or dispose of 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 prior to issuance of a Lake or Streambed Alteration Agreement; therefore, if the CEQA document approved for the Project does

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not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for Lake or Streambed Alteration Agreement 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 Positive Submission of Data: Please note that the California Natural Diversity Database (CNDDDB) is populated by and records 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 wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted 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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://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 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 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).

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CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included to assist the City 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 1 - MMRP Table

ec: State Clearinghouse
Land Use and Climate Innovation
state.clearinghouse@lci.ca.gov

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Attachment 1

Attachment 1

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

**PROJECT: Villas at Winding Creek Subdivision (Conditional Use
Permit (CUP) 2025-006-C, Tentative Subdivision Map
(TSM) 2025-006-C)**

SCH No.: 2025101555

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA take authorization	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 2: BUOW pre-construction surveys	
Recommended Mitigation Measure 4: BUOW take authorization	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 5: CBB focused surveys	
Recommended Mitigation Measure 6: CBB consultation and take authorization	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 7: WESP focused surveys	
Buena Vista Lake Ornate Shrew (BVLS)	
Recommended Mitigation Measure 9: BVLS focused surveys	
Recommended Mitigation Measure 10: BVLS consultation	
<i>During Construction</i>	

Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 3: BUOW avoidance buffer	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 8: WESP avoidance buffer	