



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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February 13, 2026

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**Subject: Sherwood South Subdivision (Project)
Initial Study (IS) and Mitigated Negative Declaration (MND)
State Clearinghouse No.: 2026010340**

Dear Steven Sopp:

The California Department of Fish and Wildlife (CDFW) received an MND from the City of Tulare (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. CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may

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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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 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 (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: Summit Home Builders, Inc.

Objective: The proposed Project involves the construction of 285 new residential units consisting of 209 single-family homes and 76 units of multi-family apartments on approximately 59.30 acres.

Location: The Project is located in the eastern portion of the City of Tulare, ¼ mile south of Highway 137 and approximately 2 ½ miles west of Highway 99, on the northeast corner of West Bardsley Avenue and Enterprise Street. The Project site is located within Assessor's Parcel Number's (APN's) 168-090-010, 168-147-018, and 168-090-011.

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.

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The MND notes the Project site is relatively flat at approximately 250 to 270 feet elevation and consists of actively disked agricultural land that had served as orchards until recently. The MND also notes the property has been active agricultural land for more than five decades and has one large heritage native valley oak (*Quercus lobata*) tree. As observed by an onsite survey for the Biological Resource Assessment (BRA), an agricultural ditch (Hooper Ditch) is present along the northern edge of the Property and had water, floating vegetation such as Mosquito fern (*Azolla filiculoides*), algae, and mosquito fish (*Gambusia affinis*) in the eastern sections and was dry in the western portion. The MND also notes the proposed Project site is bound by agricultural fields to the south and west, with single-family homes to the north and a new residential development to the east. Based on aerial imagery, irrigation ponds are located on the southeast border and northeast corner 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 these measures to reduce impacts to less than significant and avoid unauthorized take for several 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 Project site is within the geographic range of Swainson's Hawk (SWHA), and a historical occurrence was documented within $\frac{3}{4}$ -mile of the Project site (CDFW 2026). The MND states the Project site has the potential to impact nesting and foraging habitat for SWHA. The MND provides Mitigation Measure (MM) BIO-1 to mitigate for potential significant impacts and requires a focused survey for SWHA nests within $\frac{1}{4}$ -mile of the Project site if Project-related activities are expected to commence between March 1 and September 15. The MND also notes that if active SWHA nests are found, CDFW shall be contacted to determine appropriate protective measures, and these measures shall be implemented prior to the start of any ground disturbing activities. CDFW does not concur that conducting a single focused survey within $\frac{1}{4}$ -mile of the Project site is sufficient to detect SWHA and their nests and sufficiently mitigate for potential significant impacts and avoid the unauthorized take of SWHA. As such, CDFW recommends MM BIO-1 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 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 geographic range of BUOW and a historical occurrence was documented within approximately 8 miles of the Project site (CDFW 2026). The MND states that while the potential for occurrence of BUOW within the Project site is low, the Project has the potential to impact the species nesting and foraging habitat. The MND provides MM BIO-2a, BIO-2b, and 2c to mitigate for potential significant impacts to BUOW. If Project activities are anticipated to occur during the BUOW nesting season, MM-BIO-2a would require a qualified biologist to conduct a focused survey for BUOW within the Project site and a 500-foot buffer within 3 days of beginning Project-related activities. MM BIO-2b would require consultation with CDFW if an occupied BUOW burrow is located, for appropriate avoidance buffers and to discuss the use of one-way doors. MM-BIO-2c would require additional focused surveys if there is a 14-day lapse in Project activities. CDFW does not concur that conducting a single focused survey within the Project site and 500-foot buffer is sufficient to detect BUOW and

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sufficiently mitigate for potential significant impacts and avoid the unauthorized take of the species. As such, CDFW recommends MM BIO-2a, 2b, and 2c be modified to include the following measures.:

Recommended Mitigation Measure 4: BUOW Focused 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 5: 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 6: 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.

Western Spadefoot

The Project site is within the geographic range of western spadefoot (WESP), and a historical occurrence has been documented within approximately 8 miles of the Project site (CDFW 2026). The MND states there is no potential for WESP to occur within the Project site as there is no breeding habitat and limited upland dispersal habitat for the species in the Project site. CDFW does not concur that there is no potential for the species to occur as WESP populations have been known to persist for years in agricultural and anthropogenic habitats in the San Joaquin Valley. The BRA notes that an agricultural ditch and multiple retention ponds are present within the Project vicinity, which may provide suitable breeding habitat, and suitable small mammal burrows are present within certain within certain portions of the site for dispersal. As such, CDFW recommends the MND include the following measures:

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Recommended Mitigation Measure 11: WESP Focused Surveys

CDFW recommends that a qualified biologist conduct focused surveys for WESP, using appropriate survey methodologies, prior to any ground-disturbing activities that may occur as part of the Project.

Recommended Mitigation Measure 12: 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: 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 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.

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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 reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Lake and Streambed Alteration: The MND notes the Project site contains an open water canal (Hooper Ditch) extending east to west at the site's northern boundary. This feature may be jurisdictional under Fish and Game Code Section 1600 et seq. 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; 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 Lake or Streambed Alteration Agreement

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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.

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 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 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 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 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

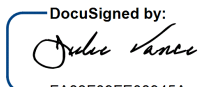
The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment - MMRP Table

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U.S. Fish and Wildlife Service
Matt Nelson
mattew_nelson@fws.gov

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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.

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California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2026. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 28 January 2026.

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: Sherwood South Subdivision

SCH No.: 2026010340

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	
Burrowing Owl (BUOW)	
Recommended Mitigation Measure 4: BUOW focused surveys	
Recommended Mitigation Measure 6: BUOW take authorization	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 7: CBB habitat assessment	
Recommended Mitigation Measure 8: CBB focused surveys	
Recommended Mitigation Measure 10: CBB take authorization	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 11: WESP focused surveys	
<i>During Construction</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
Western Burrowing Owl (BUOW)	

Recommended Mitigation Measure 5: BUOW avoidance buffer	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 9: CBB avoidance buffer	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 12: WESP avoidance and minimization	