



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 28, 2020

Mr. Frank Girardi
San Joaquin County
Community Development Department
1810 E Hazelton Avenue
Stockton, CA 95205
FGirardi@sjgov.org

Governor's Office of Planning & Research

Aug 31 2020

STATE CLEARINGHOUSE

Dear Mr. Girardi:

Subject: Master Plan Amendment No. PA-2000063, Specific Plan Amendment No. PA-2000064, and Site Approval No. PA-2000065, Mitigated Negative Declaration, SCH No. 2020070583, San Joaquin County

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from San Joaquin County Community Development Department for the Master Plan Amendment No. PA-2000063, Specific Plan Amendment No. PA-2000064, and Site Approval No. PA-2000065 Project (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, 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 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 and Game Code, §§ 711.7, subd. (a) and 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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REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as potential significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if the Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

PROJECT DESCRIPTION SUMMARY

Proponent: Rankins AG, Inc.

Objective: A revision of a Master Plan Amendment and a Specific Plan I Amendment and a Site Approval in the Specific Plan I planning area of Mountain House (Old River Park South Expansion Area) for an underlying Project consisting of Site Approval Application PA-000065 (SA). The underlying Project objective is to convert an existing Farm Service Headquarters facility to a Construction Services – Heavy Operation. The Project proposes the utilization of an existing 5,800-square-foot building. The Project also includes the construction of a 12,000-square-foot office and warehouse building and will include 50 parking stalls for 35 employees and five (5) customers per shift.

Location: The Project is located at the Mountain House Old River Industrial Park expansion area located on the north side of W. Bethany Road, 650 feet east of S. Henderson Road, Mountain House. The time frame for the Project is unknown.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Joaquin County Community Development Department in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct, and indirect impacts on fish and

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wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an MND is appropriate for the Project.

Comment 1: Revisions needed to mitigate impacts from Project phasing to less-than-significant.

The MND does not include a description of timeframe or period during which construction will occur. Phasing and the additional impacts from phasing are not discussed, analyzed, or mitigated for in the MND. Project activities may have additional significant biological impacts due to Project phasing over time. Projects that include multiple phases with different sections built out at different time periods may include whole-site or mass grading with separate sections developed at later dates. Delays in full buildout of a Project after initial mass grading or over long periods of time negates the sufficiency of one-time-only pre-construction surveys and their validity becomes questionable over the lifetime of the Project. For example, if an area is left dormant for a season or two post-grading, grassland and scrub habitats or ground squirrel colonies can be quickly established. These elements then provide nesting habitat for nesting birds and other wildlife. There is also the potential for habitat elements to develop and wildlife to occupy dormant lots where foundational infrastructure is in place.

To correct this, CDFW recommends the MND include a description of the Project's phasing and estimated timeframes from start of construction to complete buildout and require re-surveys for biological sources. If the Project's timeframe from start of construction to complete buildout includes breaks in construction longer than 15 days or periods of inactivity that could allow establishment of habitat elements such as ground squirrel burrows and vegetation, then impacts to wildlife that may use these habitat elements should be addressed in the MND. CDFW recommends including in the MND a mitigation measure that includes the following elements: 1) a qualified biologist shall conduct a habitat assessment to determine potential wildlife and habitat elements present that may be utilizing the vacant sections and/or parcels prior to Project-related activities taking place when there is a break in these activities greater than 15-days; 2) if unbuilt or fallow sections and/or parcels are being utilized by wildlife, avoidance and minimization measures shall be specified to prevent impacts and mortality, 3) if impacts and "take" are not fully avoidable, additional compensatory mitigation shall be discussed and agreed upon with CDFW's approval prior to the re-initiation of construction activities, and 4) if there is a break in these activities greater than 15 days, compliance checks by a qualified biologist are required to ensure habitat assessments, preconstruction surveys, and other biological mitigation measures in the MND are being implemented.

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Comment 2: Revisions needed to mitigate to a level of less-than-significant in the event the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP or Plan) does not approve coverage.

The statement presented in the Impact Discussion in Section IV. Biological Resources of the MND states that the applicant is subject to and may participate in the SJMSCP and if the applicant chooses not to participate, then the applicant will be required to participate in a similar mechanism that provides the same level of mitigation. This information is not stated in an enforceable mitigation measure within the section. The MND also does not propose or identify specific, sufficient, and enforceable mitigation in the event the SJMSCP does not approve coverage or the proponent chooses to not participate based on this lack of an enforceable measure. Because participation in the Plan is voluntary, the MND must include 1) an evaluation and discussion of potential direct and indirect impacts of the Project to biological resources including fish, wildlife, and their habitats, 2) avoidance and minimization mitigation measures to decrease those impacts, and 3) specific and sufficient compensatory mitigation in the event the avoidance and minimization measures do not mitigate to less-than-significant or in the event SJMSCP does not approve coverage of the Project in whole or part to mitigate to less-than-significant.

To correct this, please update the MND to include an impacts analysis that provides an evaluation and discussion of potential quantified impacts of the Project to biological resources including fish, wildlife, and their habitats. Based on this impact analysis, please update the section to include mitigation measures that will ensure Project impacts are less-than-significant in the event SJMSCP does not approve of coverage of the Project in whole or part, or in the event the Proponent opts-out of participation in the SJMSCP.

If the impacts analysis indicates there will be direct or indirect take of CESA-listed species, and the Project cannot fully avoid take of CESA-listed species and SJMSCP does not offer take coverage, then CDFW recommends the ISMND include language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

Comment 3: Section IV Biological Resources does not define floristic survey protocol and reporting requirements.

Section IV of the MND does not include defined survey protocols for floristic surveys or require a qualified botanist to conduct the surveys to determine if rare, threatened, or endangered plants exist on the Project site which may require avoidance, minimization of impacts, or mitigation of impacts.

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To correct this, CDFW recommends Section IV Biological Resources be revised to include measures that adhere to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009), including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols.

Comment 4: Take authorization for CESA-listed plants

If CESA-listed plant species are identified during surveys and full avoidance of impacts is not feasible, then the Project may receive take authorization through CDFW issuance of an ITP.

Comment 5: Revisions needed to mitigate impacts to special-status plants to less-than-significant.

The MND does not define avoidance measures in the event they or other special-status plants are discovered or reduce impacts to a level of less-than-significant by identifying compensatory mitigation in the event impacts to special-status plants cannot be fully avoided.

To correct this, CDFW recommends Section IV, Biological Resources be revised to include a statement of how impacts to special-status plants will be avoided in the event they are discovered in the Project area. If significant impacts to special-status plants are not fully avoidable, CDFW recommends the MND be revised to include a statement defining compensatory mitigation in the event that impacts to special-status plants are not fully avoidable. CDFW recommends the MND include a requirement for compensatory mitigation for impacts to special-status plant species and their habitats at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for all permanent impacts and those related to grading or compaction where the soils may take years to recover to baseline conditions.

Comment 6: Revisions needed to mitigate impacts to burrowing owls to a level of less-than-significant.

The MND does not mitigate potential impacts to burrowing owls (*Athene cunicularia*) to less-than-significant because the MND lacks an evaluation of impacts to burrowing owls and does not include mitigation measures requiring 1) pre-construction surveys conducted according to CDFW'S *Staff Report on Burrowing Owl Mitigation* (2012), 2) avoidance measures determined by CDFW if and when burrowing owls are discovered at the Project site, and 3) a measure requiring participation in SJMSCP. The MND does not define avoidance measures in the event burrowing owls are discovered or reduce impacts from permanent loss of burrowing owl nesting or foraging habitats to a level of less-than-significant as it does not offset those impacts with a compensatory mitigation requirement.

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To correct this, CDFW recommends the MND be revised and recirculated to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to burrowing owls and their habitats. If impacts are identified, CDFW recommends the MND be revised to include adherence to the mitigation strategies and survey guidelines defined in the CDFW 2012 *Staff Report on Burrowing Owl Mitigation* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>) or require participation in the SJMSCP. If the MND does not include a measure that requires participation in the Plan, CDFW recommends the MND be updated to include a measure requiring compensatory mitigation for impacts to burrowing owl breeding, foraging, and wintering habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts.

Mitigation lands for owls should have presence of ground squirrel and their burrows, well-drained soils, abundant and available prey within close proximity to burrows, as well as foraging habitat. The mitigation areas for burrowing owls should be currently occupied by owls and approved by CDFW prior to the start of Project-related activities.

Comment 7: Revisions needed to mitigate impacts to Swainson's hawks to a level of less-than-significant.

The MND does not mitigate potential impacts to Swainson's hawk (*Buteo swainsoni*) to less-than-significant because the MND lacks an evaluation of impacts to Swainson's hawks and does not include mitigation measures requiring 1) pre-construction surveys conducted according to CDFW'S *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), 2) avoidance measures determined by CDFW if and when Swainson's hawks are discovered at or within a half-mile of the Project site, and 3) a measure requiring participation in SJMSCP. The MND does not define avoidance measures in the event Swainson's hawks are discovered or reduce impacts from permanent loss of foraging habitats or indirect impacts to nesting hawks from increased construction activity to a level of less-than-significant as it does not offset those impacts with a compensatory mitigation requirement. Swainson's hawks are designated as a State of California Threatened Species and impacts to the species and its habitat is prohibited without meeting certain conditions. The loss and conversion of native grasslands and agricultural lands to urbanization and orchard and vineyard agriculture is the primary threat to Swainson's hawk populations throughout California, and about 80 percent of the Central Valley population of Swainson's hawks is located with the Sacramento, San Joaquin, and Yolo counties region. The Project's potential impacts to this historically denser population is a significant impact that warrants mitigation to less-than-significant through the MND.

To correct this, CDFW recommends the MND be revised and recirculated to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to Swainson's hawks and their habitats according to CDFW's *Staff Report*

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*Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California (1994).* If impacts are identified, CDFW recommends the MND be revised to include adherence to the mitigation strategies defined in the *Staff Report* in addition to adherence to *CDFW's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (2000)* survey protocol, or require participation in the SJMSCP. If the MND does not include a measure that requires participation in the Plan, CDFW recommends the MND be updated to include a measure requiring compensatory mitigation for impacts to Swainson's hawk nesting and foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts, as well as language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

In the event SJMSCP does not cover the Project or the proponent elects to not participate in the Plan, CDFW recommends the following specific and enforceable measures for Swainson's hawk be incorporated into a revised and recirculated MND to minimize and avoid impacts:

"Pre-Construction Surveys for Swainson's Hawk: If work is to be conducted during the nesting season, focused surveys for active Swainson's hawk nests shall be conducted by a qualified biologist in a manner consistent with the Recommended Timing and Methodology of Swainson's Hawk Nesting Surveys in California's Central Valley. At least two surveys shall be completed within two survey periods immediately prior to a Project's initiation. If a lapse in Project-related work of 15 days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. Surveys shall be conducted in all suitable habitat located at the Project work site, in staging, storage, and stockpile areas, and along transportation routes. Surveys shall be conducted within ½-mile of the Project area. If any active Swainson's hawk nests are found within ½-mile of the Project site, CDFW shall immediately be contacted and additional survey measures may be required for Project activities.

Comment 8: Revisions needed to fully avoid impacts to white-tailed kite.

Proposed activities described may impact white-tailed kite (*Elanus leucurus*). The white-tailed kite is a fully protected species under State law and may not be taken or possessed at any time.

To correct this, CDFW recommends the MND be revised to include an analysis of the Project's potential impacts to the fully protected species, including raptor surveys during the breeding and nesting seasons (February 15 to September 15) when detection is most likely to identify white-tailed kite nests and roosts. If impacts are identified, CDFW recommends the measure be revised to adhere to Fish and Game code to fully avoid

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impacts to the species and to require immediate notification to CDFW if the species is detected during Project activities.

Comment 9: Revisions needed to mitigate impacts to nesting birds to a level of less-than-significant.

Section IV Biological Resources does not include nesting survey protocol or avoidance measures for nesting birds that may be utilizing the Project site prior to start of Project.

To correct this, CDFW recommends the MND be revised to include the following nesting bird assessment and avoidance measure:

“Nesting Bird Assessment and Avoidance - Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a qualified biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The qualified biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight (48) hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the Project site shall be monitored by the qualified biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable.”

Comment 10: Filling of fencing or signage post holes on uppermost sections.

To prevent entanglement of raptor talons, any post with exposed perforations installed on the Project site and exposed to the environment shall have the holes permanently filled within the top six (6) inches of the post upon installation by permittee. CDFW has attached a Mitigation Monitoring and Reporting Program (MMRP) with our recommended measures that should be included in the Lead Agency’s revised MND and MMRP.

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ENVIRONMENTAL DATA

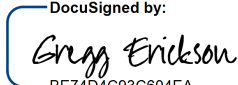
CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to 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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist San Joaquin County Community Development Department in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or Andrea.Boertien@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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Attachment 1

MITIGATION MONITORING AND REPORTING PROGRAM

Recommended Mitigation Measures Under the California Environmental Quality Act for
the Master Plan Amendment No. PA-2000063, Specific Plan Amendment No. PA-
2000064, & Site Approval No. PA-2000065 Project

STATE CLEARINGHOUSE NO. 2020070583

PROJECT PROPONENT: Rankins AG, Inc.

PROJECT: Master Plan Amendment No. PA-2000063, Specific Plan Amendment No.
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	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	BEFORE DISTURBING SOIL OR VEGETATION				
1	<p>Pre-Construction Surveys for Swainson's Hawk: If work is to be conducted during the nesting season, focused surveys for active Swainson's hawk nests shall be conducted by a qualified biologist in a manner consistent with the Recommended Timing and Methodology of Swainson's Hawk Nesting Surveys in California's Central Valley (2000). At least two surveys shall be completed within two survey periods immediately prior to the Project's initiation. If a lapse in project-related work of 15 days or longer occurs, another focused survey shall be performed, and the results sent to CDFW prior to resuming work. Surveys shall be conducted in all suitable habitat located at the Project work site, in staging, storage, and stockpile areas, and along transportation routes. Surveys shall be conducted within ½-mile of the Project area. If any active Swainson's hawk nests are found within ½-mile of the Project site, CDFW shall immediately be contacted and additional survey measures may be required for Project activities.</p>	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Project Proponent	
2	<p>Nesting Bird Assessment and Avoidance: Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight (48) hours prior to the initiation of the project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDFW.</p> <p>If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the Project site shall be monitored by the qualified biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable.</p> <p>The Permittee or representatives of the Permittee shall not disturb or destroy the nests or eggs of fully protected species or of other birds as per FGC 3503.</p>	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Project Proponent	

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	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
	DURING CONSTRUCTION				
3	Fence and Signpost Restriction: Any fencing posts or signs installed, temporarily or permanently, throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically birds of prey.	CDFW CEQA Comment Letter	Entire Project	Project Proponent	