



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



Governor's Office of Planning & Research

June 11 2021

June 11, 2021

STATE CLEARINGHOUSE

Orlando Ramirez, Planner
City of Kerman, Planning Commission
850 South Madera Avenue
Kerman, California 93630-1799
CityPlanner@cityofkerman.org

**Subject: Initial Study/Mitigated Negative Declaration (IS/MND) No. 2021-01 and
Classified Conditional Use Permit (CUP) Application No. 2021-02 –
Buttonwillow Warehouse Company Facility Project (Project)
SCH No.: 2021050194**

Dear Mr. Ramirez:

The California Department of Fish and Wildlife (CDFW) received an IS/MND from the City of Kerman for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, 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 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 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

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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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 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.), related authorization as provided by the Fish and Game Code will be required.

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).

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Kerman

Objective: This project proposes to expand the existing Buttonwillow Warehouse Company facility. Expansion would include installation of new liquid storage tanks, construction of a new shop and the expansion of an existing warehouse at the existing agricultural chemical facility. A new CUP will be required for proposed hazardous material handling in the M-2 (General Manufacturing) zone.

The facility would be developed for the retail sale of agricultural products to local farmers in the area. Products to be sold would include but not be limited to: Herbicides, Insecticides, Fungicides, Rodenticides and Fertilizers.

Site improvements would consist of the following:

- Expand the existing 11,200 square foot warehouse by 5,000 square feet, with a total roof expansion of 2,450 square feet.

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- Construct a 2,400-square foot new shop for auto repair.
- Construct a 8,212.5-square foot partially-enclosed dry storage area.
- Construct concrete liquid storage area with a 20,000 gallon liquid mixer, 4 – 180,000 gallon storage tanks, 3 – 50,000 gallon storage tanks, and 9 smaller storage tanks varying from 15,000 to 30,000 gallon capacity.
- Install 6 foot high chain link fencing along the property perimeter.
- Install 21 parking spaces.
- Other site improvements such as landscaping, sidewalks, pavement and gutters.

Location: The proposed Project is located at 1405 South Industrial Way off West Church Avenue and encompasses the area west, north and east of a cul-de-sac. The Project site contains four parcels totaling approximately 6.65-acres, which is currently occupied by the Buttonwillow Ag Chemical facility. The City of Kerman lies just south of State Route (SR)-180 and is bisected by SR-145. (APN No's: 023-061-43S, -42S, -01S, and -49S.)

Timeframe: None specified.

COMMENTS AND RECOMMENDATIONS

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

There are special-status resources that may utilize the Project site, and these resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*).

I. Environmental Setting and Related Impact

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

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COMMENT 1: Swainson's Hawk (SWHA)

Issue: SWHA have been documented within the proposed Project area (CNDDDB 2021) and have the potential to nest within areas adjacent to the site. Based upon aerial photography, the Project site is mainly disturbed grassland, which could provide foraging habitat for SWHA as well.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable foraging habitat for SWHA is present within the Project site and suitable nesting habitat is present near the Project site, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: Focused SWHA Surveys

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Recommended Mitigation Measure 2: SWHA Avoidance/No-disturbance Buffer

If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½ mile be delineated around active nests until the breeding season has ended or until a qualified biologist has

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determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, 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 warranted to comply with CESA.

COMMENT 2: Burrowing Owl (BUOW)

Issue: BUOW have been documented to occur near the Project site (CNDDDB 2021). BUOW inhabit open grassland or adjacent canal banks, etc., containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery indicates that the Project site contains disturbed grassland within Project limits.

Specific impact: Potentially significant direct impacts associated with subsequent activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). Subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site, and that the following mitigation measures be made conditions of approval for the Project.

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Recommended Mitigation Measure 4: BUOW Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat for BUOW.

Recommended Mitigation Measure 5: BUOW Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, the California Burrowing Owl Consortium (CBOC) and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

Recommended Mitigation Measure 6: BUOW Avoidance

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

| Location | Time of Year | Level of Disturbance | | |
|---------------|----------------|----------------------|-------|-------|
| | | Low | Med | High |
| Nesting sites | April 1-Aug 15 | 200 m* | 500 m | 500 m |
| Nesting sites | Aug 16-Oct 15 | 200 m | 200 m | 500 m |
| Nesting sites | Oct 16-Mar 31 | 50 m | 100 m | 500 m |

* meters (m)

Recommended Mitigation Measure 7: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary,

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CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

II. Editorial Comments and/or Suggestions

Nesting Birds: The Project contains and is adjacent to habitat that provides nesting habitat for birds. CDFW encourages that Project implementation occur during the bird non-nesting season. However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), 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 Codes sections referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys 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 by the Project. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, 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 wildlife 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 that 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 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 wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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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 found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

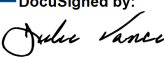
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Fresno County Department of Public Works and Planning in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment

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LITERATURE CITED

SWHA Literature Citations

CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*).
California Department of Fish and Wildlife. April 11, 2016.

CDFW. 2020. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed May 19, 2021.

Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended
Timing and Methodology for Swainson's Hawk Nesting Surveys in California's
Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

BUOW Literature Citations

California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and
mitigation guidelines. April 1993.

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish
and Game.

Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. 2008. Burrowing Owl (*Athene
cunicularia*) in Shuford, W.D. and T. Gardali, editors.

Attachment 1

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

**PROJECT: Buttonwillow Warehouse Project (IS/MND 2021-01 and
CUP 2021-02.**

SCH No.: 2021050194

| RECOMMENDED MITIGATION MEASURE | STATUS/DATE/INITIALS |
|--|-----------------------------|
| <i>Before Disturbing Soil or Vegetation</i> | |
| Mitigation Measure 1: Focused SWHA Surveys | |
| Mitigation Measure 3: SWHA Take Authorization | |
| Mitigation Measure 4: BUOW Habitat Assessment | |
| Mitigation Measure 5: BUOW Surveys | |
| <i>During Construction</i> | |
| Mitigation Measure 2: SWHA Avoidance/No-disturbance Buffer | |
| Mitigation Measure 6: BUOW Avoidance | |
| Mitigation Measure 7: BUOW Passive Relocation and Mitigation | |