



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 31, 2022

Kim Espinosa, Planning Manager  
City of Merced Planning Division  
678 West 18<sup>th</sup> Street  
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[espinosak@cityofmerced.org](mailto:espinosak@cityofmerced.org)

**Subject: University Vista Project (Project)  
Notice of Preparation (NOP)  
State Clearinghouse No.: 2022020103**

Dear Ms. Espinosa:

The California Department of Fish and Wildlife (CDFW) received a NOP from the City of Merced Planning Division for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 exercise of our own regulatory authority under the Fish and Game Code.

Due to the limited Project information provided, the following comments do not represent all of our concerns; more specific comments can be provided once CDFW has had the opportunity to review the draft Environmental Impact Report (EIR) that will be prepared for this Project. Our comments follow.

## **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,

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<sup>1</sup> 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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subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in the trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed 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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Playa Vista Equities

**Objective:** Passed in 2020, AB 3312 allows the City of Merced to annex the UC Merced campus via a road strip (Bellevue Road or Lake Road) without annexing properties located between UC Merced and the city limits. Following annexation of the UC Merced campus, the Project would be eligible for annexation because its eastern boundary is contiguous to the university.

With its proximity to UC Merced, the proposed 291-acre Project is envisioned as a mixed-use community integrating market rate housing, affordable housing, student housing, retail, entertainment, hospitality, offices, and research. The proposed Project is also envisioned as a sustainable place to live as its compact form supports a walkable, bikeable, and energy-efficient environment and encourages public transportation. The proposed Project would provide an extensive system of preserves, open space, and parks.

**Location:** The Project site is located in unincorporated Merced County and is generally bounded by Lake Road to the east, Bellevue Road to the south, and Golf Road to the west. The Project site is bordered by grazing land to the north, Yosemite Lake and Lake Yosemite County Park to the northeast, the UC Merced campus to the southeast, grazing land and scattered rural residences to the south, a small residential neighborhood located at the intersection of Bellevue Road and Golf Road to the southwest, and a large residential neighborhood to the northwest.

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**Timeframe:** N/A.

## **COMMENTS AND RECOMMENDATIONS**

Several special-status plant and animal species have been documented in the Project site per the California Natural Diversity Database (CNDDDB) and include, but are not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), the State fully protected white-tailed kite (*Elanus leucurus*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Harweg's golden sunburst (*Pseudobahia bahiifolia*), the State and federally endangered hairy Orcutt grass (*Orcuttia pilosa*), the State endangered and federally threatened succulent owl's clover (*Castilleja campestris var. succulenta*), the State endangered and federally threatened Colusa grass (*Neostapfia colusana*), and the State species of special concern burrowing owl (*Athene cunicularia*), and western spadefoot toad (*Spea hammondi*).

**Listed Animal Species:** The Project site is suitable habitat for many State-listed animal species and known State-listed animal species have been documented within and adjacent to the project area. CDFW advises that protocol-level surveys, the parameters of which were designed to optimize detectability, be conducted as part of the biological studies for the DEIR to reasonably determine if Project activities will impact State-listed species. In the absence of surveys, the applicant may assume presence within the Project site and immediately focus on the acquisition of an Incidental Take Permit (ITP) issued by CDFW, pursuant to Fish and Game Code section 2081(b). Absent obtaining a 2081 ITP, full avoidance measures are necessary to avoid all take as a result of the Project. CDFW recommends that the Lead Agency encourage the Project Proponent to contact us as soon as possible for early consultation relative to acquisition of an ITP to help streamline the permit application and acquisition process.

**Listed Plants Species:** There are several State-listed plant species known to occur in the vicinity of and within the Project area. CDFW recommends focused, repeated surveys be conducted over multiple seasons during the appropriate floristic period(s) in the Project area in order to adequately assess the potential Project-related impacts to listed plant species; identification of reference populations during the floristic period(s) is necessary to facilitate the likelihood of field investigations. If State-listed plants are detected during surveys, consultation with the Department is warranted to discuss the potential for take under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act without incidental take authority secured under Sections 2080.1 or 2081 of the Fish and Game

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Code. 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>). The EIR prepared for the Project will need to analyze potential impacts to listed plant species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels.

**Lake and Stream Alteration:** The Project may be subject to notification under Fish and Game Code section 1602. Fish and Game Code Section 1602 requires the Project proponent 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; or (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 in nature. If a Lake or Streambed Alteration Agreement (LSAA) is needed, CDFW is required to comply with CEQA in the issuance of an LSAA. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or by electronic mail at [R4LSA@wildlife.gov](mailto:R4LSA@wildlife.gov).

**Riparian Habitat and Wetlands:** Riparian habitat and wetlands are of extreme importance to a wide variety of plant and wildlife species. Riparian habitat and wetlands (vernal pools and waterways) exist within and adjacent to the proposed Project site. The Department considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. The Department has a no-net-loss policy regarding impacts to wetlands. Considering potential impacts to special status resources posed by wetland creation is advised. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy. An adequate buffer implemented to protect wetlands, riparian vegetation, and associated wildlife, including State- and Federally listed species is recommended. The Department recommends delineating wetlands, vernal pools, and swales with an appropriate no-disturbance buffer. In addition, the Department recommends delineation from the high-water mark of surface water channels and other blue-lined waterways that have no riparian vegetation to avoid impacts. Further, a wetland delineation may need to be conducted and submitted to the United States Army Corps of Engineers (ACOE) for verification.

**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on

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resources and be focused specifically on the resource, not the project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

**Federally Listed Species:** CDFW also recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, California tiger salamander, San Joaquin kit fox, Harweg's golden sunburst, hairy Orcutt grass, succulent owl's clover, Colusa grass, and federally protected vernal pool invertebrates. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW is available to meet with you ahead of draft EIR preparation to discuss LSAA and potential impacts and possible mitigation measures for some or all of the resources identified as potentially occurring in this letter. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:



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Valerie Cook

Acting Regional Manager

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## **REFERENCES**

CDFW. 2022. Biogeographic Information and Observation System (BIOS).  
<https://www.wildlife.ca.gov/Data/BIOS>.