



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 5, 2022

Diana Lowrance, Planner III
Merced County Community and Economic Development Department
2222 M Street
Merced, California 95340
Diana.Lowrance@countyofmerced.com

Subject: Notice of Preparation of a Draft Delhi Community Plan Supplemental Environmental Impact Report for the Bradbury Master Plan (Project)
SCH No.: 2022040085

Dear Ms. Lowrance:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation from the Merced County Community and Economic Development Department (County) 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. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

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,

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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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.

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, 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Merced County

Objective: The applicant is requesting approval of a general plan amendment to modify the land use designations in the Delhi Community Plan that apply to the Bradbury Master Plan area. The primary proposed changes are to eliminate the Business Park use, reduce the size of the area designated Medium Density Residential, and increase the size of the area designed Low Density Residential.

Location: The Project site is located in the community of Delhi. The Project site is bounded by Bradbury Road on the north, Vincent Road on the east, Shanks Road on the south, and State Route 99 and Union Pacific Railroad tracks on the west.

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

Several special-status species have been documented in the Project area vicinity. Records from the California Natural Diversity Database (CNDDDB) demonstrate that special status species may include, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the State species of special concern burrowing owl (*Athene cunicularia*). CDFW recommends the Supplemental Environmental Impact Report prepared for the Project analyze potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. More information on survey and monitoring

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protocols for sensitive species can be found at CDFW's website
(<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Nesting Birds: CDFW encourages implementation of ground disturbing projects during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (i.e., February through mid-September), CDFW recommends pre-construction surveys for nesting birds and an appropriate no-disturbance buffer be implemented around active nests. The Project's 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 as referenced above.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 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 emailed 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 will impact fish and/or wildlife, an assessment of 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 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). With this cursory review, CDFW anticipates that the Project will require the payment of fees.

CDFW appreciates the opportunity to comment on the Project to assist the County in identifying and mitigating the Project's impacts on biological resources. 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.

Sincerely,

DocuSigned by:

96D42C58E092466...
Valerie Cook
Acting Regional Manager

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LITERATURE CITED

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