



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 26, 2024

Katrina Slayton, Division Chief
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, California 93301
(661) 862-8957
slaytonk@kerncounty.com

**Subject: Malibu Vineyards Industrial Parkway Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2022080056**

Dear Katrina Slayton:

The California Department of Fish and Wildlife (CDFW) received a DEIR from Kern 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 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.), 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Malibu Vineyards, LP

Objective: The Project proposes to convert 739 acres of existing agricultural lands to an industrial park. The Project includes the construction of approximately 8,907,446 square-feet of industrial use space, comprised of 24 buildings. The Project would consist of 24 buildable future parcels with proposed office and warehouse uses with drainage basins on each. Up to 25 percent, approximately 2,196,684 square-feet, would include refrigerated warehouse space. Site improvements, including associated driveways, parking areas, truck courts, landscaping, and retention basins to control surface drainage, are also included as part of the Project.

Location: The Project site is located within unincorporated Kern County, north of Imperial Avenue, immediately east of State Route 99, east of the City of Shafter, and approximately 1.5 miles north of the City of Bakersfield. The Assessor's Parcel Numbers (APNs) associated with the Project site are: 482-010-01, 482-010-03, 482-040-01, 482-040-03, 482-010-02, 482-010-11, 482-040-02, 091-150-03, 091-160-03, 091-160-16, 091-200-07, 091-160-01, 091-160-09, 091-200-04, 091-200-14, 091-160-02, 091-160-13, 091-200-05, 091-200-13, 482-040-04, and 482-040-05.

Timeframe: Uncertain but initial grading is anticipated to begin in 2025.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Kern County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

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Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands including orchards and routinely disked row crops. Based on a review of the Project description, California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the DEIR acknowledges that the Project area 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 of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*).

COMMENT 1: San Joaquin kit fox

The DEIR notes that San Joaquin kit fox (SJKF) has the potential to occur on the proposed Project site and Mitigation Measures MM 4.4-3 and 4.4.-4 are provided to mitigate for impacts to SJKF. Mitigation Measure 4.4-4 on page 4.4-33, states that "No more than (30) days prior to the issuance of any grading or building permits or the start of ground disturbance, a qualified biologist knowledgeable in the identification of all special-status wildlife species shall conduct a pre-construction survey of areas proposed for disturbance within the project site and 500-foot buffer (where legally accessible) to determine if any special-status species are present. If, as a result of this pre-construction survey it is determined that special-status wildlife species are present, the project proponent shall confer with the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife, as required by applicable law, for proper avoidance measures or the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (d)." CDFW concurs with conducting surveys for SJKF and recommends that these surveys be conducted prior to the issuance of any grading or building permits or the start of ground disturbance. In addition, CDFW recommends the following:

Recommended Mitigation Measure 1: SJKF Avoidance Buffer

CDFW recommends implementing no-disturbance buffers, as described in the USFWS' "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011) (USFWS Protocol) around potentially suitable or known SJKF den sites.

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Recommended Mitigation Measure 2: SJKF Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF is not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, CDFW recommends the Project proponent pursue take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA.

COMMENT 2: Swainson's Hawk

The DEIR notes that Swainson's hawk (SWHA) has the potential to occur on the proposed Project site and states that, "The potential for occurrence is moderate due to the presence of suitable foraging habitat within the fallow fields and known occurrences within the San Joaquin Valley." Mitigation Measures MM 4.4-3 and 4.4.-4 are provided to mitigate for impacts to SWHA. Mitigation Measure 4.4-4 on page 4.4-33, states that "No more than (30) days prior to the issuance of any grading or building permits or the start of ground disturbance, a qualified biologist knowledgeable in the identification of all special-status wildlife species shall conduct a pre-construction survey of areas proposed for disturbance within the project site and 500-foot buffer (where legally accessible) to determine if any special-status species are present. If, as a result of this pre-construction survey it is determined that special-status wildlife species are present, the project proponent shall confer with the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife, as required by applicable law, for proper avoidance measures or the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (d)." CDFW concurs with conducting surveys for SWHA and recommends that SWHA protocol-level surveys be conducted consistent with the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) prior to the issuance of any grading or building permits or the start of ground disturbance. In addition, CDFW recommends the following:

Recommended Mitigation Measure 3: 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 should remain in place until the breeding season ends 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.

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Recommended Mitigation Measure 4: 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, CDFW recommends pursuing an ITP pursuant to Fish and Game Code section 2081 subdivision (b) to prevent inadvertent take of the species in advance of any Project construction.

COMMENT 3: Burrowing Owl

The DEIR notes that burrowing owl (BUOW) has the potential to occur on the proposed Project site and Mitigation Measures MM 4.4-3 and 4.4.-4 are provided to mitigate for impacts to BUOW. Mitigation Measure 4.4-4 on page 4.4-33, states that “No more than (30) days prior to the issuance of any grading or building permits or the start of ground disturbance, a qualified biologist knowledgeable in the identification of all special-status wildlife species shall conduct a pre-construction survey of areas proposed for disturbance within the project site and 500-foot buffer (where legally accessible) to determine if any special-status species are present. If, as a result of this pre-construction survey it is determined that special-status wildlife species are present, the project proponent shall confer with the U.S. Fish and Wildlife Service or California Department of Fish and Wildlife, as required by applicable law, for proper avoidance measures or the need for take authorization through the acquisition of an incidental take permit, pursuant to Fish and Game Code section 2081 subdivision (d).” CDFW concurs with conducting surveys for BUOW and recommends that BUOW protocol-level surveys be conducted by a qualified biologist following CDFW’s “Staff Report on Burrowing Owl Mitigation” (CDFG 2012) prior to the issuance of any grading or building permits or the start of ground disturbance. In addition, CDFW recommends the following:

Recommended Mitigation Measure 5: BUOW Avoidance Buffer

Should a BUOW be detected, CDFW recommends that 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.

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| 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 6: BUOW Consultation

If BUOW are found within these recommended buffers and avoidance is not possible, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to the, SJKF. 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 Project activities.

Lake and Streambed Alteration: 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 (LSAA); 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 LSAA 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.

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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 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 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

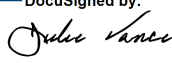
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee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

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Kern County in identifying and mitigating Project 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 regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at marile.colindres@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

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REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.

Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's hawk technical advisory committee. May 31, 2000.

U. S. Fish and Wildlife Service. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California.

Attachment 1

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

**PROJECT: Malibu Vineyards Industrial Parkway
SCH No.: 2022080056**

| RECOMMENDED MITIGATION MEASURE | STATUS/DATE/INITIALS |
|---|-----------------------------|
| <i>Before Disturbing Soil or Vegetation</i> | |
| SJKF | |
| Recommended Mitigation Measure 2: SJKF take authorization | |
| SWHA | |
| Recommended Mitigation Measure 4: SWHA take authorization | |
| BUOW | |
| Recommended Mitigation Measure 6: BUOW consultation | |
| | |
| <i>During Construction</i> | |
| SJKF | |
| Recommended Mitigation Measure 1: SJKF avoidance buffer | |
| SWHA | |
| Recommended Mitigation Measure 3: SWHA avoidance buffer | |
| BUOW | |
| Recommended Mitigation Measure 5: BUOW avoidance buffer | |