



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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December 14, 2022



Ejaz Ahmad, Project Planner
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**Subject: Notice of Preparation (NOP) of an Environmental Impact Report (EIR)
No. 7524 for the Malaga Industrial Development (Amendment
Application No. 3834 and General Plan Amendment Application No. 557
Project (Project)
SCH No.: 2022110260**

Dear Ejaz Ahmad:

The California Department of Fish and Wildlife (CDFW) received a NOP from the County of Fresno 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Assemi Group, Inc.

Objective: The Project Applicant is proposing to subdivide and develop approximately 159 acres of land into an industrial complex with up to ten (10) individual lots to accommodate future industrial uses. The lots will range in size from approximately 9-19 acres. No specific industrial uses are being proposed at this time; thus the environmental evaluation assumes the greatest/largest build-out available under the proposed M-3c (Heavy Industrial; Conditional) designation. The M-3 designation includes development that would also be allowed under the M-2 (General Industrial District) and M-1 (Light Manufacturing District) designations. Although no specific industrial uses are being proposed at this time, it should be noted that certain industrial uses such as aircraft factory, aluminum foundry, railroad repair shop, sawmill, cotton gin and oil mills, oils and fat refining, and many more have been eliminated from consideration under this Project.

Location: The proposed Project is located approximately 0.5 miles east of Malaga in Fresno County and is bounded generally by E. North Avenue to the north, S. Minnewawa Avenue to the west, Clovis Avenue to the east, and E. Central Avenue approximately 1,000 feet south of the Project's southern boundary. The site is approximately 4.5 miles southeast of downtown Fresno and approximately 7 miles west

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of the City of Sanger. The Project is comprised of four assessor's parcels: 331-200-07s, 331-200-08s, 331-020-32 and 331-020-33.

Per Google aerial photography and LandVision 2022, the proposed Project site mainly consists of fruit trees, along with several outbuildings, and a man-made dirt-lined ponding basin. Washington Canal is approximately 0.45-mile to the west and Briggs Canal is approximately 1.6-miles to the east. Both of these canals are dirt-lined. The area surrounding the proposed Project site includes vineyards, some industrial buildings, and a large ponding basin approximately 0.20-mile west, across S. Minnewawa Avenue.

Timeframe: None specified.

COMMENTS AND RECOMMENDATIONS

The NOP indicates that the EIR for the Project will consider potential environmental effects of the proposed Project to determine the level of significance of the environmental effect and will analyze these potential effects to the detail necessary to make a determination on the level of significance. The EIR will also identify and evaluate alternatives to the proposed project. When an EIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

Special-status species have been documented in the Project area per the California Natural Diversity Database (CNDDDB), these include, but are not limited to, the State threatened (ST) Swainson's hawk (*Buteo swainsoni*), and the State species of special concern (SSC) burrowing owl (*Athene cunicularia*).

Swainson's Hawk (SWHA)

SWHA have been observed approximately 2.5-miles southwest of the Project site, and are present in the overall vicinity (CNDDDB, 2022). The Project would create an industrial complex, thereby removing potential foraging, and possibly nesting, habitat for SWHA. 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). Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

To determine if suitable habitat is present within the Project site and adjoining area, CDFW recommends that a qualified biologist conduct a habitat assessment and protocol surveys for nesting SWHA as part of the biological technical studies conducted in support of the CEQA document. CDFW recommends that the qualified biologist follow the survey methods developed by the Swainson's Hawk Technical Advisory

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Committee (SWHA TAC, 2000). 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.

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

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 issuance of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Burrowing Owl (BUOW)

BUOW have been observed in the Project vicinity (CNDDDB 2022). BUOW inhabit open grassland or adjacent canal banks, right-of-ways, vacant lots, etc., containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of Google aerial imagery and Google street view (2022) indicates that there is a man-made ponding basin within Project limits, along with two canals in the Project vicinity, Washington Canal (approximately 0.45-mile to the west) and Briggs Canal (approximately 1.6-miles east).

The large, industrial complex that is being planned could potentially have significant direct impacts associated with construction activities resulting from burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

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). The Project site contains agricultural crops and is bordered by agriculture to the west. A disturbed grassland area is present directly across the canal to the south with more agriculture south of there. If suitable habitat and/or the species is present subsequent ground-disturbing activities associated with the Project have the potential to impact local BUOW populations. As described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or

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evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document to determine if the Project area or its vicinity contains suitable habitat for BUOW, along with 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.

If BUOW are present, 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)

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, 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;

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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 site and vicinity contain habitat that could provide 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 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 a habitat assessment for nesting birds as part of the biological technical studies conducted in support of the CEQA document with the findings reported therein. CDFW also 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 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 begin, 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.

Waters of the State and U.S.: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-

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native species. It is possible that without mitigation measures this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project area include the following: increased sediment input from road or structure runoff; construction-related activity runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement through the area. The Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) also have jurisdiction regarding discharge and pollution to Waters of the State.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

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). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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>.

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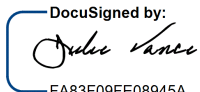
FILING FEES

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

ec: Patricia Cole (patricia_cole@fws.gov)
United States Fish and Wildlife Service

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LITERATURE CITED

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Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended
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Central Valley. Swainson's Hawk Technical Advisory Committee, May 31,
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BUOW Literature Citations

California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and
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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.