

# MITIGATED NEGATIVE DECLARATION

Project Name	2355 Franklin Road Gas Station & Commercial Center (AA21-039; SPR21-008)
Lead Agency	County of Merced
Project Proponent	Inderjeet Singh (applicant) c/o Milestone Associates 1000 Lincoln Road, #H202 Yuba City, CA 95991
Project Location	2355 Franklin Road Merced CA, 95348
Project Description	This commercial project includes a 6,000 square-foot building to house a 3,200 square-foot convenience store and 2,800 square-foot restaurant with drive-through, a fueling facility with 20 fueling spaces (10 multi-product fuel dispensers and two RV/Boat fueling spaces), and a stand-alone 2,200 square-foot coffee shop building with drive-through. The convenience store will be open 24 hours a day, with other uses open until 1:00 a.m. Stormwater quality control facilities and landscaping are also planned. An off-site, 840 linear foot sewer line is required to connect the site with the nearest interconnect point.
Public Review Period	September 15, 2023  October 16, 2023
Written Comments To	Tiffany Ho, Deputy Director of Planning County of Merced 2222 M St, Merced, CA 95340 Tiffany.Ho@countyofmerced.com
Proposed Findings	The County of Merced is the custodian of the documents and other material that constitute the record of proceedings upon which this decision is based.  The initial study indicates that the proposed project has the potential to result in significant adverse environmental impacts. However, the mitigation measures identified in the initial study would reduce the impacts to a less than significant level. There is no substantial evidence, in light of the whole record before the lead agency, County of Merced,

that the project, with mitigation measures incorporated, may have a significant effect on the environment. See the following project-specific mitigation measures.

## **Mitigation Measures**

### *Air Quality*

AQ-1 All off-road diesel construction equipment greater than 25 horsepower and operating at the site and off-site during demolition and earthwork phases for more than 20 hours shall at a minimum meet U.S. EPA Tier 2 or 3 engine standards with Level 3 particulate filtration. Use of equipment with U.S. EPA Tier 4 engine standards would meet this requirement.

### *Biological Resources*

BIO-1 To avoid impacts to nesting birds during the nesting season (January 15 through September 15), all construction activities should be conducted between September 16 and January 14, outside of the bird nesting season. If construction or project-related work is scheduled during the nesting season (February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist shall conduct nesting bird surveys.

- a. Two surveys for active bird nests will occur within 14 days prior to start of construction, with the final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding each work area are typically 250 feet for passerines, 500 feet for smaller raptors, and 1,000 feet for larger raptors. Surveys will be conducted at the appropriate times of day to observe nesting activities. Locations off the site to which access is not available may be surveyed from within the site or from public areas. If no nesting birds are found, a letter report will be prepared by the biologist and submitted to the Merced County Community and Economic Development Department, where it will be kept on file, and no further measures are required.
- b. If the qualified biologist documents active nests within the project site or in nearby surrounding areas, an appropriate buffer between each nest and active construction shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of each nest to characterize “normal” bird behavior and establish a buffer distance, which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman shall have the authority to

cease all construction work in the area until the young have fledged and the nest is no longer active. Once the absence of nesting birds has been confirmed, a letter report will be prepared by the biologist and submitted to the Merced County Community and Economic Development Department, where it will be kept on file, and no further measures are required.

BIO-2 The following measures shall be implemented to avoid loss of or harm to Swainson's hawk and other raptors:

- a. An active nest tree was documented during the 2023 nesting season within 0.35 mile of the project area. Therefore, consultation with the California Department of Fish and Wildlife and mitigation for the loss of foraging habitat on the project site is required per the guidelines outlined in the California Department of Fish and Wildlife's 1994 *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California*. Suitable foraging habitat includes fallow land, alfalfa or other low growing crops. Prior to the issuance of building permits, the project applicant shall provide the Merced County Community and Economic Development Department with evidence that the applicant has compensated for the loss of Swainson's hawk foraging habitat.

There are two options for mitigation:

1. A 1:1 acre ratio of Habitat Management land (at least 10% of the habitat management land requirements shall be met by fee title acquisition or a conservation easement allowing for the active management of the habitat, with the remaining 90% of the habitat management lands protected by a conservation easement [acceptable to the California Department of Fish and Wildlife] on agricultural lands or other suitable habitats which provide foraging habitat for Swainson's hawk) for each acre of development authorized (3.5 acres total); or
  2. A 0.5:1 acre ratio of habitat management land (all of the habitat management land requirements shall be met by fee title acquisition or a conservation easement [acceptable to the California Department of Fish and Wildlife] which allows for the active management of the habitat for prey production on-the Habitat Management lands) for each acre of development authorized (1.75 acres total).
- b. If construction is to be initiated outside of the nesting season (March 1–September 15), construction may proceed once mitigation for the loss of foraging habitat has been completed and evidence submitted to the Merced County Community and Economic Department.
  - c. If construction is to be initiated during the breeding season (March 1 through September 15), a qualified biologist shall conduct preconstruction surveys for Swainson's hawk nests on or within 0.25 miles of the project site. The

preconstruction surveys shall be conducted between March 1 through September 15 and shall follow the protocol in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Technical Advisory Committee 2000). If no nests are found within 0.25 miles, a letter report will be prepared by the biologist and submitted to the Merced County Community and Economic Development Department, where it will be kept on file. Once mitigation for the loss of foraging habitat has been completed and evidence submitted to the Merced County Community and Economic Development Department, construction may proceed.

If active Swainson's hawk nests are located within 0.25 miles of proposed construction activities, construction shall not begin, or shall be discontinued, until the project applicant has consulted with the California Department of Fish and Wildlife to determine the appropriate course of action, consistent with the guidance provided in the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks in the Central Valley of California* (California Department of Fish and Game 1994), to reduce potential impacts on nesting Swainson's hawk and to determine under what circumstances construction activities can occur.

Options for measures to reduce potential impacts may include, but not be limited to one or more of the following: the creation of buffers as measured from the nest(s) locations within which no construction is permitted until the young have left the nest, limits on the timing or location of use of construction equipment, limits on the types of equipment used to reduce noise intensity, and/or other options acceptable to the California Department of Fish and Wildlife. Equipment operation and construction activities shall be suspended until the California Department of Fish and Wildlife provides direction. If ground-disturbing activities are delayed, then additional pre-disturbance surveys shall be conducted such that no more than seven days elapse between the survey and ground-disturbing activities. The qualified biologist shall serve as a construction monitor during those periods when construction activities are to occur near active nest areas to avoid inadvertent impacts to these nests.

- d. If it is determined during consultation with the California Department of Fish and Wildlife that impacts to Swainson's hawk cannot be avoided, Incidental Take Authorization will be obtained. Compliance with permit conditions shall be required prior to the start of disturbance activities.

### ***Cultural Resources***

CUL-1 If archaeological resources are discovered during soil-disturbing activities, then work should be stopped within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. If the find is determined to be significant, then appropriate mitigation measures will be formulated and implemented. The following language shall also be included on all project plans:

“If any archaeological resources are discovered during grading or construction, all work shall be immediately halted and appropriate personnel, including a qualified Native American representative, shall be contacted and consulted. Based on these consultations, appropriate measures shall be taken to protect the discovered resources, and only after such measures have been implemented shall grading or construction continue.”

CUL-2 If human remains are found during construction activities, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the coroner of Merced County is contacted to determine that no investigation of the cause of death is required.

If the coroner determines the remains to be Native American, the coroner will contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission will identify the person or persons it believes to be the most likely descendent from the deceased Native American. The most likely descendent may then make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in California Public Resources Code Section 5097.98.

The landowner or their authorized representative will rebury the Native American human remains and associated grave goods, with appropriate dignity, on the property in a location not subject to further disturbance if: a) the Native American Heritage Commission is unable to identify the most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being allowed access to the site; b) the descendent identified fails to make a recommendation; or c) the landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

### ***Geology and Soils***

GEO-1 The following language shall be included in all demolition and building permits:

“If paleontological resources are discovered during demolition and earthmoving activities, work shall stop within 100 feet of the find until a qualified paleontologist can assess if the find is unique and, if necessary, develop appropriate treatment measures in consultation with the County Community and Economic Development Department.”

### ***Greenhouse Gas Emissions***

GHG-1 The applicant shall prepare a Greenhouse Gas (GHG) Reduction Plan which identifies one or more GHG reduction actions that will be taken to reduce GHG emissions by 56.39 MT CO<sub>2</sub>e per year as a basis for fully mitigating GHG emissions from natural gas. The GHG Reduction Plan shall prioritize on-site GHG reduction design features. Additional measures may be added by the applicant.

In lieu of or in addition to one or more of the on-site measures above, the applicant may make direct investments in off-site GHG reduction activities/programs in the vicinity. Examples of direct investments include building retrofit programs that pay for cool roofs, solar panels, solar water heaters, smart meters, energy efficient lighting energy efficient windows, and insulation. Other examples include financing programs for installing electric vehicle charging stations, electrifying school buses, or planting local urban forests.

GHG-2 The proposed project shall be designed to include electric vehicle support improvements consistent with the latest adopted version the CALGreen Tier 2 voluntary standards. Inclusion of these design elements in the final project plans shall be verified by the Merced County Building and Safety Official prior to issuance of a building permit.