



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 30, 2023

Christopher Hoem, Director
City of Ceres Community Development Department
2200 Magnolia Street
Ceres, California 95307
christopher.hoem@ci.ceres.ca.us

**Subject: Copper Trails Specific Plan and Annexation Project (Project)
Notice of Preparation (NOP) of an Environmental Impact Report
State Clearinghouse No. 2023090637**

Dear Christopher Hoem:

The California Department of Fish and Wildlife (CDFW) received a NOP from the City of Ceres Community Development Department 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 it if you would 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

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.

Christopher Hoem, Director
City of Ceres Community Development Department
October 30, 2023
Page 2

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.

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: Stewart S. Fahmy and Nav Athwal

Objective: The Project consists of the approval, annexation, and subsequent development of the Project area, including related permits and approvals. The Project establishes a plan for, and would result in, development of residential, commercial, and other urban land uses within the approximately 534.6-acre Project area. Proposed urban development within the Project area would require City approval of the Project, the proposed annexation, amendments of the Ceres General Plan, pre-zoning of the annexation area, one or more development agreements, and future Tentative Map application submittals. Other required permits and approvals would include cancellation of Williamson Act contracts, adjustment of the boundaries of the Ceres Fire Protection District, and encroachment permits from the Turlock Irrigation District.

Project approval and annexation would result in the potential development of approximately 260.3 acres of low-, medium-, medium high-, and high-density residential units within the Project area. Approximately 107.4 acres is proposed for Regional Commercial development. The Project also proposes approximately 42.3 acres of parks and open space, including street landscapes, and 3.4 acres for new public uses that would be in addition to the 74.1 acres already occupied by the Central Valley High

Christopher Hoem, Director
City of Ceres Community Development Department
October 30, 2023
Page 3

School and Hidahl Elementary School, both operated by the Ceres Unified School District. The Project planned circulation system would utilize and improve existing roads and add new roads and streets and provide for development of new bicycle and pedestrian trails and open space linkages to provide access to and between the residential neighborhoods, commercial areas, schools, and parks of the developed Project area.

Along with annexation of the Project area, the Project proposes the annexation of 146.1 acres of currently unincorporated land outside the Project area to the City of Ceres.

All annexations would require approval from the Stanislaus Local Agency Formation Commission (LAFCO). City approvals would also be required for the annexation of the non-Project lands. Annexation of the non-Project area would include pre-zoning of the area consistent with the Ceres General Plan and potentially extending the availability of the City utilities and services to this largely developed unincorporated area. The non-Project area includes discontinuous tracts of undeveloped land with some new development potential.

Location: The Project area is located in unincorporated Stanislaus County south of and adjacent to the City of Ceres. The Project area is bounded by State Route 99 and Mitchell Road on the east, Service Road on the north, Blaker Road on the west, and Turlock Irrigation District's Lower Lateral 2 on the south. The non-Project annexation area is located just north and east of the Project area and south of the existing City boundary. Much of the non-Project area is located west of State Route 99 and is bounded by Service Road to the south, Central Avenue to the west, Industrial Way to the north, and State Route 99 to the east. The eastern portion of the non-Project annexation area consists primarily of the mainline State Route 99 and associated State Highway right-of-way between 9th Street on the northwest and Moore Road to the southeast. An additional area to be annexed is located between the State Route 99 right-of-way and the existing City of Ceres boundary to the northeast.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Ceres Community Development Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the EIR for this Project.

The EIR that will be prepared will determine the likely environmental impacts associated with the Project. CDFW is concerned regarding potential impacts to special-status

Christopher Hoem, Director
City of Ceres Community Development Department
October 30, 2023
Page 4

species from the ground disturbance development activities, including but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*).

In order to adequately assess potential impacts to biological resources, CDFW advises a qualified biologist perform database and other research of the Project area, then conduct focused habitat assessments and/or focused biological surveys during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site. CDFW recommends this initial work be documented and used to inform further efforts that may be needed thereafter including the need for additional protocol surveys and/or the development of avoidance, minimization, and/or mitigation measures. This information and analysis may then be used to consider the development of modified or new project alternatives to avoid and minimize potentially significant environmental impacts on the biological environment. This information is critical to make an informed decision during the CEQA process and to ensure Project compliance with CESA, Fish and Game code, and other applicable State and federal laws and regulations.

Swainson's Hawk (SWHA)

SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat.

CDFW recommends that protocol surveys for SWHA be conducted using SWHA survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). In addition, CDFW recommends a minimum no-disturbance buffer of 0.5-mile be delineated around all 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. If construction or other disturbance could occur within the 0.5 mile buffer of an active nest, CDFW recommends that the Project obtain an Incidental Take Permit, pursuant to Fish and Game Code section 2081 subdivision (b).

Nesting birds

CDFW encourages that all Project construction activities 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 proponent is responsible for ensuring that implementation of the Project does not result

Christopher Hoem, Director
City of Ceres Community Development Department
October 30, 2023
Page 5

in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW 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 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.

Lake and Stream Alteration: Potential streams such as Turlock Irrigation District's Lateral and other waterbodies are located within the Project site. Therefore, 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 (LSA Agreement) is needed, CDFW is required to comply with CEQA in the issuance of an LSA Agreement. 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.

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 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.

CDFW is available to meet with you ahead of draft EIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please contact Jim Vang, Senior

Christopher Hoem, Director
City of Ceres Community Development Department
October 30, 2023
Page 6

Environmental Scientist Specialist, 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:

Bob Stafford

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Bob Stafford for Julie A. Vance
Regional Manager

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

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Christopher Hoem, Director
City of Ceres Community Development Department
October 30, 2023
Page 7

LITERATURE CITED

California Department of Fish and Wildlife. 2016. Five-year status review: Swainson's hawk (*Buteo swainsoni*). Sacramento, California, USA.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.