



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 02, 2024

Jesus R. Orozco, Community Development Director
City of Kerman
850 S. Madera Avenue
Kerman, California 93630
(559) 846-6199
jorozco@cityofkerman.org

Governor's Office of Planning & Research

May 03 2024

STATE CLEARINGHOUSE

Subject: **Del Norte Estates Project (Project)**
Notice of Preparation (NOP)
State Clearinghouse No. 2024031008

Dear Jesus R. Orozco:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) for an Environmental Impact Report (EIR) from the City of Kerman for the Del Norte Estates Project (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. While the comment period may have ended, CDFW respectfully requests that the City of Kerman 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

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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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 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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Kerman

Objective: The proposed Project consists of entitlement and development of 48 acres of land with up to 200 single-family dwelling units, 100 multi-family dwelling units, a 15,000 square foot retail plaza, and two 3,500 square foot fast-food restaurants with drive-throughs. The proposed Project includes a General Plan Amendment, Rezone, Cancellation of a Williamson Act Contract, and Tentative Subdivision Map. The Project site and some contiguous surrounding parcels are proposed to be annexed into the City of Kerman.

Location: The proposed Project would be located on approximately 48 acres at the northwest corner of West Whitesbridge Road (State Route 180) and North Del Norte Avenue. The subject site is currently in the unincorporated area of Fresno County and

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borders the City of Kerman on the west and south and will require annexation to the City of Kerman. Assessor's Parcel Numbers (APNs) are 020-120-29S and 020-120-30S.

Timeframe: Undetermined.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist the City of Kerman in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions have also been included to improve the Draft EIR.

Current aerial imagery of the proposed Project site shows that an orchard is located within the southern portion of the site, and recently tilled lands are present within the northern portion of the Project site (CDFW 2024). Historical images indicates the entire Project site contained orchards from approximately 2009 to 2021. Within the areas surrounding the Project site, a residential neighborhood is being constructed immediately west, State Route (SR) 180 is adjacent to the south, North Del Norte Avenue is directly east, and another orchard is immediately north. Additional orchards are located to the east, northeast and northwest, and a large residential neighborhood is directly south of SR 180.

Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special status species could potentially be impacted by Project activities. The Project site is within the geographic range of several special status animal species including but not limited to the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern (SSC) burrowing owl (*Athene cunicularia*). The Project site is also within the geographic range of several species of migratory and non-migratory nesting birds.

To evaluate Project-related impacts to listed species, SSC species, and unlisted biological species, CDFW recommends that a general habitat assessment be conducted as part of the biological technical studies conducted in support of the Draft EIR. CDFW recommends that this general habitat assessment be followed with specific protocol surveys for listed species including Swainson's hawk and burrowing owl. Additional survey and mitigation measure recommendations are provided below.

Swainson's Hawk

The Project is within the known geographic range of Swainson's hawk (SWHA) (CDFW 2024). SWHA are known to breed within the Central Valley of California and prefer to

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nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). SWHA have been observed approximately four miles west of the Project site (CDFW 2024).

Additionally, SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). Based on aerial imagery, adjacent areas and the general vicinity contain suitable nesting and foraging habitat for SWHA. In addition, there are trees and structures located within the Project site that may provide suitable nesting habitat.

CDFW recommends that a qualified biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) as part of the biological technical studies conducted in support of the Draft EIR.

In addition to conducting SWHA surveys to inform the Draft EIR, CDFW recommends the Draft EIR include the following measures:

Recommended Mitigation Measure 1: SWHA Protocol Surveys Prior to Construction

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA TAC 2000 be repeated the survey season immediately prior to construction. 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.

Recommended Mitigation Measure 2: 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 would 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 parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: 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

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discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Burrowing Owl

The Project site is within the known geographic range of burrowing owl (BUOW) and the species has been observed approximately four miles west of the Project site (CNDDDB 2024). BUOW inhabit open grasslands and agricultural lands and canals containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. There is an un-named dirt-lined canal 1.34-miles west of the Project site, and the dirt-lined Houghton Canal is 0.21-mile northwest of the Project limits. These features may provide suitable habitat for BUOW nesting and foraging.

As BUOW have the potential to nest and/or forage in the vicinity of the Project site, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFW 2012) as part of the biological studies conducted in support of the Draft EIR.

In addition to conducting BUOW surveys, CDFW recommends the Draft EIR include the following measures:

Recommended Mitigation Measure 4: BUOW Surveys Prior to Construction

Depending on the time between the initial survey efforts conducted in support of the Draft EIR and project construction, CDFW recommends that additional surveys, following the "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFW 2012) be repeated the survey season immediately prior to construction.

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" (CDFW 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 Passive Relocation and Mitigation

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), excluding birds from burrows is not a take avoidance, minimization, or mitigation method and is instead considered a potentially significant impact under CEQA. However, avoidance of direct impacts to BUOW and BUOW eggs and chicks is necessary to avoid violations of Fish and Game Code Sections 3503 (taking or destroying nests or eggs, 3503.5 (take of birds of prey or their eggs), and/or 3513 (take of migratory non-game birds). However, if it is necessary for Project implementation, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, by a qualified biologist, 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 one (1) burrow collapsed to one (1) artificial burrow constructed (1:1) to mitigate for evicting BUOW and the loss of burrows. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance at a rate that is sufficient to detect BUOW if they return.

Nesting Birds

CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project 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 Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the Draft EIR.

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Editorial Comments and/or Suggestions

Artificial Lighting: This Project will cover approximately 48 acres once completed per Project information. The southern portion of the Project site is currently in orchards, and orchards in the northern portion of the Project site were removed in approximately 2021 per Google historical imagery. The northern portion of the Project site now appears to support disturbed habitat (CDFW 2024). Areas adjacent to the Project site are mainly in orchards, aside from the residential development to the west. Installation of outdoor artificial night lighting in the Project area is likely to disrupting the circadian rhythms of wildlife species. Many species use photoperiod cues for communication, determining when to begin foraging, thermoregulation behavior, and migration (Longcore and Rich 2004, Miller 2006, Nightingale et al. 2006, Perry et al. 2008, Stone et al. 2009). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004). As a result, Project activities could result in disruption of wildlife behavior, inadvertent injury, or mortality.

CDFW recommends that the Draft EIR for the Project include an analysis of the impacts of artificial lighting on biological resources and incorporate enforceable mitigation measures to decrease the impacts of artificial outdoor lighting on wildlife species. Potentially feasible mitigation measures include motion sensitive lighting; mounting light fixtures as low as possible to minimize light trespass; use of light fittings that direct and confine the spread of light downward; and use of long-wavelength light sources. In addition, CDFW recommends that lighting is not installed in ecologically sensitive areas (e.g., streams, wetlands, and habitat used by special status species, such as nesting/roosting sites and riparian corridors) and that the use of the white/blue wavelengths of the light spectrum be avoided.

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 Draft EIR 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, CDFW advises that remaining impacts to sensitive biological resources 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 are recommended to be analyzed using an acceptable methodology to evaluate

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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 should also be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the following species as part of the Draft EIR: SWHA and BUOW.

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 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 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).

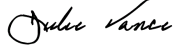
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CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Kerman in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194 or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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

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Attachment 1

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

**PROJECT: Del Norte Estates (NOP)
 SCH#: 2024031008**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Protocol Surveys Prior to Construction	
Mitigation Measure 3: SWHA Take Authorization	
Mitigation Measure 4: BUOW Surveys Prior to Construction	
Mitigation Measure 6: BUOW Passive Relocation and Mitigation	
<i>During Construction</i>	
Mitigation Measure 2: SWHA Avoidance	
Mitigation Measure 5: BUOW Avoidance Buffer	