



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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December 19, 2024

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**Subject: Vesting Tentative Tract Map No. 6472 Project (Project)
Notice of Preparation (NOP)
SCH No. 2024110682**

Dear Juan Lara:

The California Department of Fish and Wildlife (CDFW) received a NOP to prepare a Draft Environmental Impact Report (DEIR) from the City of Fresno for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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, we appreciate 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 & Game 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.

Conserving California's Wildlife Since 1870

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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, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

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 this Project.

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: Lennar Homes of California

Objective: The Project proposes the development of 236 single-family detached dwelling units on 20.83 net acres west of the Veterans Boulevard alignment for a density of 11.3 dwelling units per net acre in the proposed RS-5 (Residential Single-Family, Medium Density) zone district. Lot sizes will range from 2,375 square feet to 5,538 square feet. The Project also proposes the development of 50-cluster style buildings on approximately 18.16 net acres east of the Veterans Boulevard alignment. Each cluster is comprised of five single-family attached units for a total of 250 units and a density of 13.76 units per net acre in the proposed RM-2 (Residential Multi-Family) zone district. Lot sizes will range from 1,234 square feet to 1,254 square feet. The buildings will have "alley-style" garage entries, private streets, guest parking, open space, bicycle and walking trails throughout. One 16.75-acre remainder lot is proposed at the southeast corner of West Shaw Avenue and North Grantland Avenue. The remainder lot is not included in the plan for development. On- and off-site improvements including circulation roads, interior local streets, curb, gutter, sidewalk, open space, and landscaping are proposed as part of the Project. The Project will construct the

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remainder of Veterans Boulevard between Shaw Avenue and Gettysburg Avenue. Water and sewer utilities will be provided by the City of Fresno and new pipelines will be installed along North Grantland Avenue and West Gettysburg Avenue.

Location: The Project is generally located on the southeast corner of West Shaw Avenue and North Grantland Avenue. The Project is located immediately south and west of the City of Fresno corporate limits, in unincorporated Fresno County, and lies within the boundaries of the sphere of influence. The site is bounded by West Shaw Avenue (north), North Grantland Avenue (west), West Gettysburg Avenue (south) and North Bryan Avenue (east), and is situated approximately one mile southwest of State Route (SR) 99. The Project is within Section 16, Township 13 South, Range 19 East, of the Mount Diablo Baseline and Meridian and the U.S. Geological Survey 7.5 Minute Herndon Quadrangle.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Fresno 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 document for this Project.

Aerial imagery of the Project site shows that the area supports a large orchard and a rural residential area adjacent to the southeast. The orchard has been in place since approximately 2002 per aerial imagery. There is an earthen-lined canal transecting the orchard between North Grant Avenue and North La Paz Avenue that undergirds on either side of the orchard. The surrounding area contains a residential neighborhood to the east, a residential home adjacent to West Shaw Avenue, and a fire station surrounded by a disked field also adjacent to West Shaw Avenue. There are rural residential homes to the immediate west with additional orchards and disturbed grassland to the west. The surrounding areas to the north and northeast contain disturbed grassland and there are scattered trees along Shaw Avenue just west of the Project site that may provide nesting habitat per aerial imagery.

A review of the California Natural Diversity Database (CNDDDB) (CDFW 2024) shows the Project site is within the geographic range of several special-status species, including: the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate western burrowing owl (*Athene cunicularia hypugaea*), and the California Rare Plant Rank 1B.2 Sanford's arrowhead (*Sagittaria sanfordii*).

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Swainson's Hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA). Historical occurrences have been documented within the Project vicinity (CDFW 2024).

SWHA are known to breed within the Central Valley of California and prefer to nest and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery, the Project site may contain suitable habitat for SWHA foraging and the surrounding area contains potential habitat for SWHA nesting. Therefore, 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 DEIR. In addition to conducting SWHA surveys, CDFW recommends the DEIR include the following:

Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys, following the survey methodology developed by the SWHA Technical Advisory Committee, be repeated the survey season immediately prior to construction.

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 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.

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Western Burrowing Owl

The Project site is within the known geographic range of western burrowing owl (BUOW), and, based on aerial imagery, it appears that suitable BUOW habitat may be present within the Project site, particularly within the earthen-lined canal transecting the middle of the Project site. The California Fish and Game Commission (FGC) approved BUOW as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

As BUOW have the potential to be present within the Project site or Project vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) as part of the biological studies conducted in support of the DEIR. In addition to the habitat assessment and focused surveys for BUOW, CDFW recommends the DEIR include the following:

Recommended Mitigation Measure 4: BUOW Preconstruction Surveys

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 5: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during preconstruction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 6: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

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Special-Status Plants

Sanford's arrowhead was documented within the Project site in 2020, likely within the earthen-lined canal transecting the middle of the Project site. As this species has the potential to occur within the Project site and is likely to be impacted by Project activities, CDFW recommends that the Project site be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities" (CDFW 2018) as part of the biological technical studies conducted in support of the DEIR. This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. CDFW also recommends the DEIR include the following:

Recommended Mitigation Measure 7: Special-status Plants Avoidance Buffers

CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Recommended Mitigation Measure 8: Special-status plants take authorization

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. However, if take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) or section 1900 and California Code of Regulations, title 14, section 786.9, subdivision (b) would be required to comply with CESA, prior to initiating ground-disturbing activities.

Editorial Comments and/or Suggestions

Nesting birds: CDFW recommends that the Project include ground disturbance activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), the applicant is responsible for ensuring that implementation of their Project does not result in a 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 biologist conduct an assessment of nesting habitat during biological surveys in

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support of the CEQA document, and then 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 the nests that could potentially be impacted are detected. CDFW also 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 a Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, 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 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 construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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

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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.

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 DEIR 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 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 staff are available for consultation in support of cumulative impacts analysis as a trustee and responsible agency under CEQA.

CNDDDB: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. All Project's that include activities for ground disturbance should adequately assess any potential Project-related impacts to biological resources by ensuring biological surveys are conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology as warranted in order to determine whether or not any special-status species are present at or near the Project area.

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

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communities detected during 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

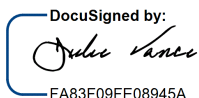
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order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

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Fresno in identifying and mitigating this 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>). Questions regarding this letter or further coordination should be directed to Kelley Nelson, Environmental Scientist, at (559) 580-3194 or Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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REFERENCES

California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. Sacramento, California, USA.

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

California Department of Fish and Wildlife. 2018. Protocols for surveying and evaluating impacts to special-status native plant populations and sensitive natural communities. California Department of Fish and Wildlife. Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 27 November 2024.

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.

Attachment 1

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

PROJECT: Vesting Tentative Tract Map No. 6472 Project

SCH No.: 2024110682

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA surveys prior to construction	
Recommended Mitigation Measure 3: SWHA take authorization	
BUOW	
Recommended Mitigation Measure 4: BUOW surveys prior to construction	
Recommended Mitigation Measure 6: BUOW take authorization	
Special-Status Plants	
Recommended Mitigation Measure 8: Special-status plants take authorization	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
BUOW	
Recommended Mitigation Measure 5: BUOW avoidance buffer	
Special-Status Plants	
Recommended Mitigation Measure 7: Special-status plants avoidance buffer	