



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



January 28, 2025

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City of Fowler  
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**Subject: Tentative Map No. 6471 (Project)  
Mitigated Negative Declaration (MND)  
State Clearinghouse No.: 2024121188**

Dear Dawn E. Marple:

The California Department of Fish and Wildlife (CDFW) received a MND from the City of Fowler, as Lead Agency, for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

### **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 purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

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<sup>1</sup> 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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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).

**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 under CEQA Guidelines section 15380, CDFW recommends it should be fully considered in the environmental analysis for the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Fowler

**Objective:** The Project proposes to annex approximately 83.04 acres of farmland into the City of Fowler and to prezone approximately 30.65 acres of the annexed land to the M-1 zone district and the remaining 52.39 acres prezoned to the R-1-6 zone district for future residential use. The area zoned M-1 would be subdivided into 44 parcels for future light industrial land uses. Streets would be constructed and designed to City of Fowler standards. A stormwater retention basin, approximately 0.5 miles of sewer main, and approximately 1.3 miles of water main would also be constructed to connect to existing facilities infrastructure. Approximately 14.39 acres of the 52.39-acre area zoned R-1-6 would be designated as a remainder on the proposed subdivision map and would not be part of the Project. The remaining 38 acres would be included in the annexation and prezoned R-1-6, but would not be part of the proposed subdivision. A lot line adjustment would be submitted to separate the designated remainder from the industrial subdivision. Future development for the whole R-1-6 zoned area would be subject to its own CEQA analysis.

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The Project would also include improvements to several intersections that would be developed when intersection delay exceeds established parameters. These include:

- Widening the eastbound approach to the intersection at Golden State Boulevard and Jefferson Avenue to include a left turn lane and a right turn lane,
- Widening the westbound approach to the intersection at Clovis Avenue and Lincoln Avenue to include a left turn lane and a right turn lane,
- Installing a traffic signal and widening the westbound approach to the intersection at Clayton Avenue and Golden State Boulevard to include a shared left-through lane and a right turn lane,
- Installing a traffic signal (when warranted) and widening the southbound approach to the intersection at State Route (SR) 99 Southbound Ramps and Clovis Avenue to include two left turn lanes, a through lane, and a shared through-right lane,
- Installing a traffic signal (when warranted) and widening the northbound approach to the intersection at Merced Street and SR 99 Southbound Off Ramp-Fowler Avenue to include a left turn lane and a right turn lane with right-turn overlap phasing, and
- Installing a traffic signal (when warranted) and widening the westbound approach to the intersection at Merced Street and SR 99 Southbound, Northbound Ramps to include a through lane and a right turn lane.

**Location:** The Project site is located outside the City of Fowler on the south side of Clayton Avenue and east of Golden State Boulevard. The parcel numbers affected by this Project are Assessor's Parcel Numbers (APNs): 340-120-05, -06, -28, and -29. The Project site also includes the following street intersections located in the City of Fowler and in unincorporated Fresno County:

- Golden State Boulevard and Jefferson Avenue
- Clovis Avenue and Lincoln Avenue
- Clayton Avenue and Golden State Boulevard
- State Route (SR) 99 Southbound Ramps and Clovis Avenue
- Merced Street and SR 99 South Bound (SB) Off Ramp-Fowler Avenue
- Merced Street and SR 99 SB Northbound Ramps

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City of Fowler 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 may also be included to improve the CEQA document prepared for this Project.

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Based on a review of the MND and aerial imagery of the Project vicinity, the Project site is comprised of agricultural lands including vineyards. The Project site is also surrounded by agricultural lands to the east and north, Golden State Boulevard to the west, and a residential development to the south. California Natural Diversity Database (CNDDDB) records show the Project is within the geographic range of several special-status animal species, including but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*).

The MND's Biological Resources section states that development of this Project will have a less than significant impact to special-status species due to the fact that the site is highly disturbed and sensitive species are not expected to regularly occur on the site. CDFW concurs that the site is highly disturbed and that sensitive species occurrence within the Project site may be low, however, CDFW has concerns about the lack of an adequate evaluation of biological resources that could be impacted by this Project, including raptors that may use the site for foraging. Therefore, CDFW recommends including the following mitigation measures in the MND's Mitigation Monitoring and Reporting Program (MMRP) to reduce impacts to less than significant and avoid unauthorized take of Swainson's hawk. CDFW also recommends the MND include nesting bird measures by incorporating the nesting bird editorial comment identified below.

### **Comment 1: Swainson's Hawk**

Swainson's hawks (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 and Google Earth, the Project site contains suitable habitat for SWHA foraging. Additionally, trees located in the surrounding area may provide suitable nesting habitat. CNDDDB notes numerous SWHA observations in the Project vicinity including several from 2016 within five (5) miles (CDFW 2025). SWHA exhibit high site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). 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) prior to the initiation of any ground disturbing activities associated with this Project. Further, CDFW recommends including the following mitigation measures to the Project's Mitigation, Monitoring, and Reporting Program.

#### **Recommended Mitigation Measure 1: SWHA Avoidance Buffer**

If Project-specific ground disturbance 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

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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 2: 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.

### **Editorial Comments and/or Suggestions**

**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.

CDFW further recommends that a qualified biologist conduct a pre-construction survey 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 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, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist 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 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 the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these

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no-disturbance buffers is possible when there is a 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 biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**CNDDDB:** Please note that the CNDDDB is populated by records through 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. In order to adequately assess any potential Project related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project site.

## **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 the CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **FILING FEES**

The Project, as proposed, could have an impact on biological resources, 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).

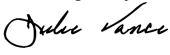
## **CONCLUSION**

CDFW appreciates the opportunity to comment on the MND to assist the City of Fowler in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Reporting Program (Attachment 1) is included below to assist the City of Fowler with incorporating the recommended mitigation measures provided above.

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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 regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at [marile.colindres@wildlife.ca.gov](mailto:marile.colindres@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

ec: State Clearinghouse  
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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 Wildlife. 2016. Five-year status review for Swainson's Hawk (*Buteo swainsoni*). Sacramento, California, USA.

California Department of Fish and Wildlife. 2025. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 15 January 2025.

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: Tentative Map No. 6471 (Project)  
Mitigated Negative Declaration (MND)  
SCH No.: 2024121188**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's hawk (SWHA)	
<b>Recommended Mitigation Measure 2:</b> SWHA Take Authorization	
<i>During Construction</i>	
Swainson's hawk (SWHA)	
<b>Recommended Mitigation Measure 1:</b> SWHA Avoidance Buffer	