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Mitigation Monitoring and Reporting Program

1.1 Introduction

CEQA Guidelines section 15097 requires public agencies to adopt reporting or monitoring programs when they approve projects subject to an environmental impact report or a negative declaration that includes mitigation measures to avoid significant adverse environmental effects. The reporting or monitoring program is to be designed to ensure compliance with conditions of project approval during project implementation in order to avoid significant adverse environmental effects.

The law was passed in response to historic non-implementation of mitigation measures presented in environmental documents and subsequently adopted as conditions of project approval. In addition, monitoring ensures that mitigation measures are implemented and thereby provides a mechanism to evaluate the effectiveness of the mitigation measures.

A definitive set of project conditions would include enough detailed information and enforcement procedures to ensure the measure's compliance. This monitoring program is designed to provide a mechanism to ensure that mitigation measures and subsequent conditions of project approval are implemented.

1.2 Monitoring and Reporting Program

The bases for this monitoring program are the mitigation measures included in the project mitigated negative declaration. These mitigation measures are designed to eliminate or reduce significant adverse environmental effects to less than significant levels. These mitigation measures become conditions of project approval, which the project proponent is required to complete during and after implementation of the proposed project.

The attached checklist is proposed for monitoring the implementation of the mitigation measures. This monitoring checklist contains all appropriate mitigation measures in the mitigated negative declaration.

1.3 Monitoring and Reporting Program Procedures

The County of Merced shall use the attached monitoring checklist for the proposed project. The monitoring program should be implemented as follows:

1. The County of Merced Community and Economic Development Department should be responsible for coordination of the monitoring program, including the monitoring checklist. The County of Merced should be responsible for completing the monitoring checklist and distributing the checklist to the responsible individuals or agencies for their use in monitoring the mitigation measures.
2. Each responsible individual or agency will then be responsible for determining whether the mitigation measures contained in the monitoring checklist have been complied with. Once all mitigation measures have been complied with, the responsible individual or agency should submit a copy of the monitoring checklist to the County of Merced to be placed in the project file. If the mitigation measure has not been complied with, the monitoring checklist should not be returned to the County of Merced.
3. The County of Merced will review the checklist to ensure that appropriate mitigation measures and additional conditions of project approval included in the monitoring checklist have been complied with at the appropriate time, e.g. prior to issuance of a use permit, etc. Compliance with mitigation measures is required for project approvals.
4. If a responsible individual or agency determines that a non-compliance has occurred, a written notice should be delivered by certified mail to the project proponent within 10 days, with a copy to the County of Merced, describing the non-compliance and requiring compliance within a specified period of time. If non-compliance still exists at the expiration of the specified period of time, construction may be halted and fines may be imposed at the discretion of the County of Merced.

1.4 Monitoring and Reporting Checklist

Step 1 - Prior to Issuance of Demolition, Grading, or Tree Removal Permits

BIO-1 Swainson's Hawk. The following measures shall be implemented to avoid loss of or harm to Swainson's hawk:

- a. Road paving shall be completed between September 16 and March 14, which is outside of the nesting season for Swainson's hawk.
- b. If paving cannot be timed outside of nesting season, to avoid, minimize, and mitigate potential impacts on Swainson's hawk nesting on or adjacent to the project site, a qualified biologist shall be contracted to conduct preconstruction surveys and identify active nests on and within 0.5 mile of the project site for construction activities conducted before and during the breeding season (February 1–September 15). The surveys shall be conducted no less than 14 days and no more than 30 days before the beginning of construction. Guidelines, provided in Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley (Swainson's Hawk Technical Advisory Committee 2000) or updated, current guidance, shall be

followed for surveys for Swainson’s hawk. If no nests are found, a report documenting the results of the survey will be submitted to the Merced County Community and Economic Development Department and no further mitigation will be required.

- c. If found, impacts to nesting Swainson’s hawks shall be avoided by establishing appropriate buffers around active nest sites identified during preconstruction raptor surveys. No project activity shall commence within the buffer areas until a qualified biologist has determined, in coordination with California Department of Fish and Wildlife, the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment. California Department of Fish and Wildlife guidelines recommend implementation of 0.25- or 0.5-mile-wide buffers for Swainson’s hawk nests, but the size of the buffer may be decreased if a qualified biologist, in consultation with California Department of Fish and Wildlife, determine that such an adjustment would not be likely to adversely affect the nest.
- d. Monitoring of all Swainson hawk nests by a qualified biologist during construction activities will be required if the activity has potential to adversely affect the nest. If construction activities cause the nesting bird to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, then the no-disturbance buffer shall be increased until the agitated behavior ceases. The exclusionary buffer will remain in place until the chicks have fledged or as otherwise determined appropriate by a qualified biologist.
- e. If impacts to Swainson’s hawk cannot be avoided, consultation with the California Department of Fish and Wildlife will be conducted, and an Incidental Take Permit will be obtained. Compliance with permit conditions shall be required prior to the start of disturbance activities.

Party Responsible for Implementation: *Project Developer*

Party Responsible for Monitoring: *Merced County*

Monitoring Notes:

BIO-2 Protected Nesting Birds. To avoid impacts to mountain plover and other nesting birds during the nesting season (January 15 through September 15), all construction activities should be conducted between September 16 and January 14, which is 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 shall occur within 14 days prior to start of paving activities, with the final survey conducted within 48 hours prior to ground disturbance. 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 shall 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 confirming absence will be prepared and submitted to the Merced County Community and Economic Development Department and no further mitigation is 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 will 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.

Party Responsible for Implementation: *Project Developer*

Party Responsible for Monitoring: *Merced County*

Monitoring Notes:

BIO-3 Special-Status Bats. The following measures shall be implemented to avoid loss of or harm to special-status bat species:

- a. Approximately 14 days prior to paving activities, a qualified biologist shall conduct a habitat assessment for bats and potential roosting sites in trees or buildings within 50 feet of construction activities. These surveys shall include a visual inspection of potential roosting features (bats need not be present) and a search for presence of guano within the project site, construction access routes, and 50 feet around these areas. Cavities, crevices, exfoliating bark, and bark fissures that could provide suitable potential nest or roost habitat for bats shall be surveyed. Assumptions can be made on what species is present due to observed visual characteristics along with habitat use, or the bats can be identified to the species level with the use of a bat echolocation detector such as an “Anabat” unit. Potential roosting features found during the survey shall be flagged or marked.
- b. If no roosting sites or bats are found, a letter report shall be prepared by the biologist and submitted to the Merced County Community and Economic Development Department, where it shall be kept on file, and no further measures are required.
- c. If bats or roosting sites are found, bats shall not be disturbed without specific notice to and consultation with California Department of Fish and Wildlife.
- d. The nursery season is typically from May 1 to October 1. If bats are found roosting outside of the nursery season, California Department of Fish and Wildlife shall be consulted prior to any eviction or other action. If avoidance or postponement is not feasible, a Bat Eviction Plan shall be submitted to California Department of Fish and Wildlife for written approval prior to project implementation. A request to evict bats from a roost includes details for excluding bats from the roost site and monitoring to ensure that all bats have exited the roost prior to the start of activity and are unable to re-enter the roost until activity is completed. Any bat eviction shall be timed to avoid lactation and young-rearing. If bats are found roosting during the nursery season, they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone (or different size if determined in consultation with the California Department of Fish and Wildlife) shall be established around the roosting site within which no construction activities including tree removal or structure disturbance shall occur until after the nursery season.

Party Responsible for Implementation: *Project Developer*

Party Responsible for Monitoring: *Merced County*

Monitoring Notes:

CR-1 The following language shall be incorporated into any plans associated with tree removal, grading, and construction, “In the event that archaeological resources are encountered during ground disturbing activities, contractor shall temporarily halt or divert excavations within a 50 meter (165 feet) of the find until it can be evaluated. All potentially significant archaeological deposits shall be evaluated to demonstrate whether the resource is eligible for inclusion on the California Register of Historic Resources, even if discovered during construction. If archaeological deposits are encountered, they will be evaluated and mitigated simultaneously in the timeliest manner practicable, allowing for recovery of materials and data by standard archaeological procedures. For prehistoric archaeological sites, this data recovery involves the hand-excavated recovery and non-destructive analysis of a small sample of the deposit. Historic resources shall also be sampled through hand excavation, though architectural features may require careful mechanical exposure and hand excavation.

Any previously undiscovered resources found during construction activities shall be recorded on appropriate California Department of Parks and Recreation (DPR) forms and evaluated for significance by a qualified Archaeologist. Significant cultural resources consist of but are not limited to stone, bone, glass, ceramics, fossils, wood, or shell artifacts, or features including hearths, structural remains, or historic dumpsites.”

Party Responsible for Implementation: Project Developer

Party Responsible for Monitoring: Merced County

Monitoring Notes:

CR-2 The following language shall be incorporated into any plans associated with tree removal, grading, and construction, “In the event that human remains (or remains that may be human) are discovered at the project site, Public Resource Code Section 5097.98 must be followed. All grading or earthmoving activities shall immediately stop within 50 meters (165 feet) of the find. The Merced County Coroner will be notified immediately, and the coroner

shall be permitted to examine the remains as required by California Health and Safety Code Section 7050.5(b).

Section 7050.5 requires that excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If human remains are determined as those of Native American origin, the project proponent shall comply with the state relating to the disposition of Native American burials that fall within the jurisdiction of the NAHC (Public Resource Code [PRC] § 5097). The coroner shall contact the Native American Heritage Commission (NAHC) to determine the most likely descendant(s) (MLD). The MLD shall complete his or her inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site. The MLD will determine the most appropriate means of treating the human remains and associated grave artifacts, and shall oversee the disposition of the remains. In the event the NAHC is unable to identify an MLD or the MLD fails to make a recommendation within 48 hours after being granted access to the site, the landowner or his/her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity within the project area in a location not subject to further subsurface disturbance if: a) the Native American Heritage Commission is unable to identify the MLD or the MLD 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.”

Party Responsible for Implementation: *Project Developer*

Party Responsible for Monitoring: *Merced County*

Monitoring Notes:

GEO-1 Prior to issuance of a grading permit, the applicant shall prepare an erosion control plan indicating proposed methods for the control of runoff, erosion, and sediment control, subject to review and approval by the county. The erosion control plan will be implemented during grading and construction activities.

Party Responsible for Implementation: *Project Applicant*

Party Responsible for Monitoring: *Merced County*

Monitoring Notes:

GHG-1 The proposed project shall be designed to include electric vehicle support improvements consistent with the latest adopted version of 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.

Party Responsible for Implementation: *Project Applicant*

Party Responsible for Monitoring: *Merced County Building and Safety Official*

Monitoring Notes:

HYD-1 Prior to issuance of a grading permit, the applicant shall prepare a drainage plan that complies with the Merced County Best Management Practices and standards established for compliance with non-point discharge emissions for storm water. The drainage plan shall incorporate Low Impact Development strategies and Best Management Practices to reduce storm water runoff, encourage infiltration, and reduce pollutant transmission. The drainage plan shall be subject to review and approval by the county and be implemented with development of the project.

Party Responsible for Implementation: *Project Applicant*

Party Responsible for Monitoring: *Merced County*

Monitoring Notes:
