



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
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July 7, 2025

Jonnie Lan, AICP
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Merced, California 95340
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**Subject: Merced Gateway Subdivision Project (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH: 2025060379**

Dear Jonnie Lan:

The California Department of Fish and Wildlife (CDFW) received an MND from the City of Merced for the above referenced Project pursuant 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.

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

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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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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

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, 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 Merced

Objective: The proposed Project includes the entitlement and development of almost 570 single-family residential lots, the future development of a 9-acre commercial area, and 3.0 acres of open space/park within the city limits of the City of Merced.

Location: The Project is located in the City of Merced, generally bounded by East Gerard Avenue to the north, East Mission Avenue to the south, South Coffee Street to the west, and Campus Parkway to the east. The Project will be bifurcated by Campus Parkway, with portions of both commercial and residential on either side of the roadway. The Project is located within Assessor's Parcel Number's (APN's) 061-710-009, 061-710-023, and 061-680-001.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Merced 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 MND.

The MND notes the Project site is comprised of agricultural lands, mainly comprised of cultivated oats (*Avena sativa*), and ruderal habitat in the northern portion of the Project site. Several irrigation ditches are also present within the eastern and northern portions of the Project site. The Project site is bound by East Gerard Avenue and residential development to the north, agricultural land to the east, residential and agricultural land to the south, and commercial developments and vacant land to the west. An irrigation ditch is also present south of the Project site and runs east to west.

Currently, the MND acknowledges that the Project site is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some these measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including but not limited to: the State candidate western burrowing owl (*Athene cunicularia hypugaea*); the State candidate Crotch's bumble bee (*Bombus crotchii*); the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*); the State special animal and federally endangered vernal pool tadpole shrimp (*Lepidurus packardii*), and the State special animal and federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*).

Western Burrowing Owl

The California Fish and Game Commission (FGC) approved western burrowing owl (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 considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the geographic range of western burrowing owl (BUOW) and a historical occurrence was documented, as the MND notes, within 4 ¼ miles of the Project site (CDFW 2025). The MND states the potential for occurrence of BUOW within the Project site as possible, "Burrowing owls may occasionally pass through or forage on site, if present in the vicinity." The MND provides mitigation measures to mitigate for potentially significant impacts to the species, including, requiring that a qualified

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biologist conduct a preconstruction survey, and requiring burrow monitoring and avoidance buffers in accordance with CDFW's Staff Report on Burrowing Owl Mitigation (2012 Staff Report; CDFG 2012). CDFW concurs with these measures but recommends that the pre-construction surveys follow the entire survey methodology detailed in the 2012 Staff Report. Please note the 2012 Staff Report requires multiple surveys prior to implementation of the Project. In addition, CDFW recommends that if a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The Project site is within the geographic range of Crotch's bumble bee (CBB) and a historical occurrence has been documented within 5 miles of the Project site. The MND states CBB are unlikely to occur within the Project site and notes, "While the project site contains some potential foraging resources for the Crotch's bumblebee, it is situated in a matrix of intensive agricultural, residential, and commercial uses incompatible with this species' ecology." The MND also states it is likely that the species is extirpated from the valley floor. CDFW does not concur the species is unlikely to occur within the Project site, as suitable habitat appears to be present within the ruderal vegetation located in the northern portion of the Project site. CDFW also does not concur that the species is believed to be extirpated from the San Joaquin valley, and would like to note that occurrences have been documented in the Project vicinity as recently as 2023. As such, to evaluate potential impacts to CBB, CDFW recommends conducting the following evaluation of the Project site and its vicinity and implementing the following mitigation measures:

Recommended Mitigation Measure 1: CBB Focused Surveys

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023).

Recommended Mitigation Measure 2: CBB Avoidance Buffer

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

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Recommended Mitigation Measure 3: CBB Take Authorization

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

Western Spadefoot

The Project site is within the geographic range of western spadefoot (WESP) and a historical occurrence has been documented within 5 ½ miles from the Project site. The MND states the potential for occurrence of WESP within the Project site as absent due to the surrounding areas having experienced decades of anthropomorphic disturbance and elimination of potential habitat for this species. CDFW would like to note that the ruderal habitat within the northern portion of the Project site, while not ideal, may provide suitable habitat for WESP and some WESP populations have been known to persist for years in agricultural and anthropogenic habitats. Additionally, the irrigation ditches in the northern and eastern sections of the Project site could provide potential WESP habitat. As such, to evaluate potential Project related impacts to WESP, CDFW recommends conducting the following evaluation of the Project site by implementing the following mitigation measures:

Recommended Mitigation Measure 4: WESP Focused Surveys

Prior to the start of work, a qualified biologist shall conduct focused surveys for western spadefoot and their requisite habitat features.

Recommended Mitigation Measure 5: WESP Avoidance Buffer

If burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources. If WESP are observed on the Project site, Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord. Alternately, a qualified biologist with appropriate authorization can relocate them to a more suitable location out of harm's way.

Branchiopods

The Project site is within the geographic range of several species of branchiopods (BRA), specifically vernal pool fairy shrimp (VPFS) and vernal pool tadpole shrimp (VPTS), and historical occurrences have been documented for both species within 4 ½ miles from the Project site respectively (CDFW 2025). The MND states the potential for occurrence of VPFS within the Project site as absent, "Suitable habitat in the form of vernal pools is absent from the site and immediately surrounding lands." CDFW would like to note that the ruderal habitat within the northern portion of the Project site and areas of rutted road and depressions that become inundated, while not ideal, may provide suitable habitat for VPTS and VPFS and populations have been known to occur

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in agricultural and anthropogenic habitats. Additionally, the irrigation ditches in the northern and eastern sections of the Project site could provide potential VPTS and VPFS habitat. To evaluate potential Project related impacts to BRA, CDFW recommends that a qualified biologist conduct a more focused habitat assessment for VPFS and VPTS to determine if the ruderal habitats and ditches within the northern and eastern portions of the Project site have sufficient inundation and/or climatic conditions to support VPFS or VPTS breeding. If it is determined that suitable habitat is present, CDFW recommends the following mitigation measures:

Recommended Mitigation Measure 6: Branchiopod Surveys and CDFW Consultation

CDFW recommends that a qualified biologist conduct protocol level surveys in accordance with the USFWS “Survey Guidelines for the Listed Large Branchiopods” (USFWS 2017) the survey season prior to construction. These surveys would need to be conducted at the appropriate time of year to determine the existence and extent of branchiopods. If through surveys it is determined that branchiopods are occupying or have the potential to occupy the Project site, coordination with CDFW is recommended well in advance of any planned vegetation- or ground-disturbing activities to determine appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers. Additionally, consultation with U.S. Fish and Wildlife Service (USFWS) may be necessary to minimize the potential for federal “take” and/or mitigate for potential impacts.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the USFWS regarding potential impacts to federally listed species, including but not limited to, WESP, VPFS, and VPTS. Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under the ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with ESA is advised well in advance of any Project activities.

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.

If the nesting season cannot be avoided, CDFW recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the

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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 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.

Lake and Streambed Alteration: The MND notes the Project site contains two irrigation ditches within the Project site. The ditch along the eastern margin of the Project site appears to connect to Miles Creek. These features may be jurisdictional under Fish and Game Code Section 1600 et seq. 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; 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 Lake or Streambed Alteration Agreement issuance. For information on notification requirements, please refer to CDFW's website

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(<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

CNDDDB Positive Submission of Data: Please note that the California Natural Diversity Database (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. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist 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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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, could have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 MND to assist Merced County in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included to assist Merced County with incorporating the recommended mitigation measures provided above. Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453 john.riedel@wildlife.ca.gov.

Sincerely,

DocuSigned by:

12950B95267A4F5...

For Julie A. Vance
Regional Manager

ATTACHMENT

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

U.S. Fish and Wildlife Service
Matt Nelson
mattew_nelson@fws.gov

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References

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. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

California Department of Fish and Wildlife. 2025. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 24 June 2025.

U. S. Fish & Wildlife Service. 2017. Survey guidelines for the listed large branchiopods. Pacific Southwest Region, Sacramento, California, USA. Revised November 2017.

Attachment 1

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

PROJECT: Merced Gateway Subdivision Project

SCH No.: 2025060379

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 1: CBB focused surveys	
Recommended Mitigation Measure 3: CBB take authorization	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 4: WESP focused surveys	
Branchiopods (BRA)	
Recommended Mitigation Measure 6: BRA surveys and CDFW consultation	
<i>During Construction</i>	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 2: CBB avoidance buffer	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 5: WESP avoidance buffer	