

APPENDIX

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
Sacramento, California 95825

IN REPLY REFER TO

1-1-99-TA-2066

October 1, 1999

Kris Cardoza
Associate Planner
Kern County Planning Department
Public Services Building
2700 M Street
Bakersfield, California 93301-2370

Subject: Proposed Negative Declaration for EA KC 1-99; Conditional Use Permit No. 48, Map No. 142; Conditional Use Permit No. 6, Map No. 160 (Hershel Moore by Brokers of Bakersfield (PPN99230)), Kern County, California

Dear Ms. Cardoza:

This is in response to your September 6, 1999, proposed Negative Declaration for the proposed Hershel Moore Dairy, located on the southeast corner of Bear Mountain Boulevard and Old River Road south of Bakersfield in Kern County, California. The project is to encompass 1,072 acres and is outside the boundaries of the Metropolitan Bakersfield Habitat Conservation Plan. The proposed project will consist of 905 acres of cultivated crops, and 163 acres of dairy facilities, as described in the CUP site plan. Facilities include a milk house, two milk parlors, two drip pens, two sprinkler pens, a maternity hospital barn, a heifer corral, freestall barns, a commodity barn, hay barns, separation ponds for waste, a lagoon for waste, a parking lot, a scale, an office, and two single-family residences. The facility will house 5,000 milk cows and 4,000 support stock.

We are concerned about the effects of the project on San Joaquin kit fox (*Vulpes macrotis mutica*), which is protected under the Federal Endangered Species Act of 1973, as amended (Act). Kit fox are known to forage in row crops and alfalfa fields and use agricultural fields as travel corridors. We do not agree with the County's determination in the Environmental Checklist Form attached to the Proposed Negative Declaration that this project will have "less than significant impact" on habitat for endangered species. The Service has determined that a mitigation measure is required in order for the project to have a less than significant effect.

Section 9 of the Act and its implementing regulations prohibit the "take" of federally listed fish and wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any listed wildlife species. "Harm" in this definition includes

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Ms. Kris Cardoza

2

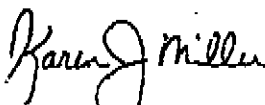
significant habitat modification or degradation where it actually kills or injures wildlife, by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR § 17.3). The Service considers the development of dairy structures on the former cropland to constitute harm to the kit fox, as this area can no longer be used for foraging or travel, and is removed for the foreseeable future from potential denning activities by foxes. While cropland is not as intensely used by kit fox for foraging and travel, it is used, and is becoming more important as foraging habitat and travel corridors as natural lands are converted to other uses. Therefore the Service considers the proposed 163 acres of development on the existing cropland to require incidental take authorization from us under the Act.

Take incidental to an otherwise lawful activity may be authorized for listed species. The Service may issue a permit under section 10 of the Act if Hershel Moore Dairy submits a satisfactory conservation plan for the kit fox and any other species that would be affected by their project. We strongly recommend that the Hershel Moore Dairy work with us to develop a plan that avoids or minimizes take of listed species and compensates for the projects' impacts to listed species habitat. This requirement is consistent with the endangered species protection requirements for dairies under the Metropolitan Bakersfield Habitat Conservation Plan.

The Service requests that the County add a mitigation measure to the Negative Declaration that states that prior to issuance of building or grading permits, the applicant shall submit a copy of an approved permit from the U.S. Fish and Wildlife Service allowing incidental take of endangered species.

Thank you for your interest in conserving threatened and endangered species. Please contact Susan Jones or Peter Cross at (916) 414-6600 if you have any questions about this letter.

Sincerely,



Karen J. Miller
Chief, Endangered Species Division

cc: CDFG, Fresno, California

001583