



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Jul 07 2020

STATE CLEARINGHOUSE

July 6, 2020

Chrissy Monfette, Planner
Fresno County Department of Public Works and Planning
2220 Tulare Street, 6th Floor
Fresno, California 93721

**Subject: CEMEX Rockfield Modification Project (Project) (EIR 7763)
Notice of Preparation
State Clearinghouse No. 2020060123**

Dear Ms. Monfette:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation from the Fresno County Department of Public Works and Planning for the above-referenced Project pursuant to 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 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 and 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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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).

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: CEMEX Construction Materials Pacific, LLC

Objective: The Project proposes a continuation and modification of its current aggregate (rock, sand, and gravel) mining and processing operations located on two properties, the Plant Site and the Quarry Site, between North Friant Road and the San Joaquin River in Fresno County.

The Plant Site operates under several Conditional Use Permits (CUP) allowing aggregate mining of the alluvial deposit; plant operations including an aggregate processing plant, a ready-mix concrete plant, a hot-mix plant and relate supportive facilities; and the processing of raw aggregate mined from CEMEX's current Quarry Site. A portable plant is brought in periodically to recycle come-back concrete (unused concrete in mixer truck upon return to plant) into crushed miscellaneous base (CMB).

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Aggregate from the alluvial deposit has been partially mined from portions of the Plant Site.

At the Quarry Site, aggregate mining of the alluvial deposit has been permitted under several CUPs. Since there are no plant operations permitted at the Quarry Site, the CUPs allow the interplant haul of approximately 1.4 million tons per year of raw aggregate to the Plant Site for processing.

The Project would occur in two stages:

- Stage 1 would continue concurrent operations at both the Quarry Site and Plant Site for up to 30 years. At the Plant Site, the existing aggregate processing plant would continue to be used to wash, screen, and sort aggregate mined from the Plant Site. The existing ready-mix concrete plant would continue to operate and the existing inactive asphalt plant would be replaced with a modern asphalt plant. Aggregate products from the Plant Site and ready-mix concrete would continue to be sold to customers and asphalt sales would resume. Periodic use of a portable crushing plant to recycle come-back concrete would continue with the addition of asphalt recycling and the import of concrete debris to recycle into CMB and asphalt debris to be recycled asphalt product (RAP). The remaining alluvial deposit would be mined to a depth of approximately 85 feet below ground surface (bgs). The ready-mix concrete plant and the hot-mix asphalt plant may be relocated from the Plant Site to the Quarry Site in less than 30 years in order to recover the remaining alluvial deposit under the plants. Upon completion of mining at the Plant Site, operations at the Plant Site would cease, all equipment would be removed and the site reclaimed as 122 acres of open space, riparian and open water wildlife habitat.

At the Quarry Site, mining would be modified to include the hard rock (granite) that lies beneath the alluvial deposit currently being mined. Mining of the hard rock would require drilling and blasting and would occur to a depth of approximately 600 feet bgs. An aggregate processing plant would be added to the Quarry Site to wash, screen, crush and sort the aggregate. A portable aggregate processing plant for the asphalt and ready-mix plants would be transported approximately 2 miles south to the Plant Site via an interplant haul on Friant Road. Other aggregate products produced at the Quarry Site not used by the asphalt and ready-mix plants at the Plant Site (e.g. road base, various-sized crushed rock, sand, etc.) would be sold directly from the quarry.

- Stage 2 would continue hard rock mining and processing operations only at the Quarry Site for approximately 70 more years. The ready-mix concrete plant and the hot-mix asphalt plant would be relocated from the Plant Site to the Quarry Site. The periodic use of a portable plant to recycle concrete and asphalt debris

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(including imported) into CMB and RAP would be added to the Quarry Site. Upon completion of mining at the Quarry Site, operations at the Quarry Site would cease and all equipment would be removed. Reclamation of the Quarry Site would create approximately 349 acres of open space, riparian, and open water wildlife habitat.

Location:

Plant Site: The Plant Site is located on approximately 122 acres on the west side of North Friant Road (APNs 300-070-56S, 57S, 58S, 59S, and 60S), approximately 1.5 miles north of the City of Fresno and approximately 0.7 miles north of the intersection of North Willow Avenue and North Friant Road (including portions of Section 36 of T11N/R21E MDB&M).

Quarry Site: The Quarry Site is located on approximately 349 acres on the west side of North Friant Road (APNs 300-040-19 and 20, 300-080-01S, 300-250-12 and portion of 300-310-01) approximately 2.0 miles north of CEMEX's current Plant Site and approximately 2.0 miles south of the town of Friant (including portions of Sections 24 and 25 of T11N/R20E MDB&M and Sections 19 and 30 of T11N/R21E MDB&M).

Timeframe: The total Project life of the combined Stages 1 and 2 is estimated to be up to 100 years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Fresno County Department of Public Works and Planning 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 document.

Currently, an Environmental Impact Report (EIR) is being prepared to determine the likely environmental impacts associated with the Project's expansion of use. CDFW is concerned regarding adequacy of mitigation measures for special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State candidate endangered tricolored blackbird (*Agelaius tricolor*), the State fully protected white-tailed kite (*Elanus leucurus*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the following species of special concern burrowing owl (*Athene cunicularia*), and western pond turtle (*Actinemys marmorata*). In addition, CDFW is concerned regarding adequacy of mitigation measures for Project activities which are subject to CDFW's lake and streambed alteration regulatory authority.

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I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status-species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA)

Issue: SWHA have the potential to nest adjacent to or near the Project site. The proposed Project will involve activities near large trees that may serve as potential nest sites.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for SWHA is present adjacent to the Project site, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: SWHA Surveys

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

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Recommended Mitigation Measure 2: No-disturbance Buffer

If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active nests 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.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, 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(b) is warranted to comply with CESA.

COMMENT 2: California Tiger Salamander (CTS)

Issue: CTS are known to occur in the Project vicinity (CDFW 2020). Excavation of any small mammal burrow within the Project site could result in take of CTS through capture, crushing as a result of burrow collapse, entombment, etc. Please be advised that any take that occurs without prior acquisition of an Incidental Take Permit (ITP) (pursuant to Fish and Game Code section 2081(b)) from CDFW would result in a violation of CESA.

Specific Impacts: Aerial photos show that the proposed Project site is within the vicinity of both upland and breeding habitat. Due to the proposed ground-disturbing activities, potential Project-related impacts include collapse of small mammal burrows, inadvertent entrapment, direct mortality of individuals, and displacement due to sound or vibration.

Evidence impact would be significant: Up to 75% of historic CTS habitat has been lost to development (Searcy et al. 2013). Loss, degradation, and fragmentation of habitat are the primary threats to CTS. Contaminants and vehicle strikes are also sources of mortality for the species (CDFW 2015a, USFWS 2017). The Project site is within the range of CTS and is adjacent to suitable habitat (i.e., aquatic breeding habitat, grasslands interspersed with burrows). CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and have the potential to occur near the Project site (CDFW 2020). Given the presence of suitable habitat adjacent to the

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Project site, Project activities have the potential to significantly impact local populations of CTS.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for CTS is present near the Project site and CTS has been documented adjacent to the Project site, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

Recommended Mitigation Measure 4: Focused CTS Protocol-level Surveys

CTS are known to occur adjacent to the Project site (CDFW 2020). Therefore, protocol-level surveys are advised to be conducted in accordance with the USFWS' Interim Guidance document (USFWS 2003). CDFW advises that the survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. CDFW recommends that survey findings be submitted for review. In order for a negative finding for CTS to be accepted, CDFW must make a determination on whether there has been sufficient rainfall to accept negative finding results. In addition, acceptance of a negative finding for CTS requires protocol-level surveys for two consecutive wet seasons.

Recommended Mitigation Measure 5: CTS Avoidance

CDFW recommends that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows within and/or adjacent to the Project construction footprint and occupied breeding pools within and/or adjacent to the Project site footprint. CDFW also recommends avoiding any impacts that could alter the hydrology or result in sedimentation of breeding pools. If avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

Recommended Mitigation Measure 6: CTS Take Authorization

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site and take cannot be avoided, acquisition of take authorization would be warranted prior to initiating ground-disturbing activities. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b). Alternatively, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW. Due to known CTS occurrences adjacent to the Project site, CDFW recommends that an ITP will be pursued.

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COMMENT 3: Tricolored Blackbird (TRBL)

Issue: TRBL have the potential to occur near the Project site. Review of aerial imagery indicates that the Project site is near dense low vegetation fields that may serve as nest colony sites.

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential Project-related impacts to TRBL, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

Recommended Mitigation Measure 7: TRBL Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment adjacent to the Project site in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for TRBL.

Recommended Mitigation Measure 8: TRBL Surveys

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL, within a minimum 500-foot buffer from the Project site, no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

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Recommended Mitigation Measure 9: TRBL Avoidance

If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015b). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days prior to Project initiation.

Recommended Mitigation Measure 10: TRBL Take Authorization

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.

COMMENT 4: Fully Protected Raptors

Issue: The State fully protected white-tailed kite and the State endangered and fully protected bald eagle have the potential to nest and/or forage adjacent to the Project site. Without appropriate mitigation measures, Project activities conducted within occupied territories have the potential to significantly impact these species.

Specific Impacts: Potentially significant impacts that may result from Project activities include nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

Evidence impact would be significant: The Project will involve noise, groundwork, and movement of workers that may occur directly adjacent to large trees and other features with potential to serve as nest sites have the potential to significantly impact fully protected raptor populations.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to fully protected raptors, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

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Recommended Mitigation Measure 11: Fully Protected Raptor Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity (within ½ mile) contains suitable habitat for fully protected raptors.

Recommended Mitigation Measure 12: Fully Protected Raptor Surveys

CDFW recommends that focused surveys be conducted by experienced biologists at the Project site prior to Project implementation. To avoid impacts to these species, CDFW recommends conducting these surveys in accordance with protocols developed by CDFW (CDFG 2010). If Project activities are to take place during the typical bird breeding season (February 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project activity.

Recommended Mitigation Measure 13: Fully Protected Raptor Avoidance

In the event a fully protected raptor species is found within ½ mile of the Project site, implementation of avoidance measures is warranted. CDFW recommends that a qualified wildlife biologist be on-site during all Project-related activities and that a ½-mile no-disturbance buffer be implemented. If the ½-mile no-disturbance buffer cannot feasibly be implemented, contacting CDFW for assistance with additional avoidance measures is recommended. Fully addressing potential impacts to fully protected raptor species and requiring measurable and enforceable mitigation in the EIR is recommended.

COMMENT 5: Burrowing Owl (BUOW)

Issue: BUOW may occur near the Project site (CDFW 2020). BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc., containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Habitat adjacent to the Project site supports grassland habitat.

Specific impact: Potentially significant direct impacts associated with subsequent activities and development include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact is potentially significant: BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project site contains and is bordered by some of the only remaining

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undeveloped land in the vicinity, which is otherwise intensively managed for agriculture or housing developments. Therefore, subsequent ground-disturbing activities associated with Project approval have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

Recommended Mitigation Measure 14: BUOW Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

Recommended Mitigation Measure 15: BUOW Avoidance

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

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Recommended Mitigation Measure 16: BUOW Passive Relocation and Mitigation

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

COMMENT 6: Western Pond Turtle (WPT)

Issue: WPT have the potential to occur adjacent to the Project site. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016).

Specific impact: Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Evidence impact is potentially significant: The Project involves ground-disturbing activities adjacent to the San Joaquin River. Additionally, noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

Recommended Mitigation Measure 17: WPT Surveys

CDFW recommends that a qualified biologist conduct focused surveys for WPT no more than ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through

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August) and that any nests discovered remain undisturbed until the eggs have hatched.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 7: San Joaquin River and Riparian Impacts

Issue: The Project involves work activities, including blasting, adjacent to the San Joaquin River and other waterways that may feed into it. These activities have the potential to remove riparian habitat, impact Chinook salmon, and disrupt San Joaquin river hydrology.

Specific impact: Potential direct impacts to riparian vegetation include removal either prior to or during blasting and/or construction activity or change subsurface flows between the San Joaquin River and the Project site and alter the hydrology of the river, adjacent floodplain areas, and nearby tributaries. Indirect impacts could occur as a result of blasted material becoming projectiles that hit riparian vegetative features causing breakage or other damage, or by fine materials and dust settling on riparian vegetation. Sound or vibration from blasting activities have the potential to disturb or displace fish and wildlife species relying on the San Joaquin River and its associated riparian habitat.

Evidence impact is potentially significant:

Riparian and associated floodplain and wetland areas along the San Joaquin River and its tributaries are valuable for their ecosystem processes such as protecting water quality by filtering pollutants and transforming nutrients; stabilizing stream banks to prevent erosion and sedimentation/siltation; and dissipating flow energy during flood conditions, thereby spreading the volume of surface water, reducing peak flows downstream, and increasing the duration of low flows by slowly releasing stored water into the channel through subsurface flow. The river and riparian vegetation in the Project area provide potential habitat for many species, including those with special status. In addition, dust creation from Project activities could settle on plant material in riparian habitats on site or off site and affect processes such as respiration, photosynthesis, pollination, and seed set.

Recommended Potentially Feasible Mitigation Measure(s)

CDFW recommend implementing the following mitigation measures.

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Recommended Mitigation Measure 18: Riparian Habitat Assessment

CDFW recommends that the riparian habitats of the San Joaquin River and any offsite streams potentially impacted by the Project, including habitat within the blasting radii, be described to establish the baseline condition. CDFW also recommends that the potential direct and indirect impacts to riparian habitat be analyzed according to each Project activity.

Recommended Mitigation Measure 19: Geology Habitat

CDFW recommends that a qualified engineering geologist evaluate the geology at and surrounding the Project site and the subsurface flow between the Project site, the San Joaquin River, and any tributaries be analyzed, quantified, and fully discussed to establish the baseline conditions. CDFW also recommends that the potential direct and indirect impacts to the geology and subsurface flow between the Project site and the San Joaquin River and its tributaries be analyzed according to each Project activity. CDFW recommends that related direct and indirect impacts to fish and wildlife species as result of any changes also be analyzed according to each Project activity.

Recommended Mitigation Measure 20: Riparian Vegetation Avoidance and Replacement

If Project activities will occur in the riparian environment, CDFW recommends avoidance of tree and shrub removal whenever possible. If Project activities cannot avoid the riparian environment, CDFW recommends preparation of a revegetation plan that incorporates native tree and shrub plantings within the San Joaquin River Restoration Area to replace removed vegetation.

COMMENT 8: Spring- and Fall-Run Chinook Salmon

Issue: Activities such as vegetation removal within the riparian zone, landscaping, access roads, etc., could impact the San Joaquin River and adjacent riparian habitat, especially in areas that are seasonally flooded away from the main stem of the river. These floodplain areas provide seasonal habitat for rearing and holding of juvenile spring- and fall-run Chinook salmon and are potential breeding habitat for spring- and fall-run Chinook salmon.

Specific impact: Without appropriate avoidance and minimization measures, potential impacts to Chinook salmon include disrupted spawning behavior, reduced reproductive success, and inability to reproduce.

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Evidence impact would be significant: The Project area contains a part of the San Joaquin River; ground-disturbing activities or in-water work have the potential to impact salmon. Spring-run Chinook salmon are believed to have been the more abundant run and once spawned as high in the watershed as Mammoth Pool, the San Joaquin River represents the southernmost extent of the spring-run Chinook salmon geographic range and was once the largest such population in California (SJRRP 2018).

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to Chinook salmon associated with the Project, CDFW recommends conducting the following evaluation of Project sites, incorporating the following mitigation measures for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 21: Chinook Salmon Habitat Avoidance

CDFW recommends Project activities avoid work in water and floodplains whenever possible, conduct Project activities during less critical times of the year (late June through August), and avoid spawning riffles or holding pools.

Recommended Mitigation Measure 22: Chinook Salmon Habitat Mitigation

If Project activities will occur in the Floodplain, CDFW advises consultation with us to determine how to minimize and mitigate impacts to juvenile salmon utilization.

COMMENT 9: Impacts to Adjacent State Protected Lands

Issue: The Willow Unit of CDFW's San Joaquin River Ecological Reserve (SJRRER) surrounds the current Cemex batch plant on three sides (the fourth side being Friant Road). The Willow Unit was acquired with State Bond Funds, for the intended purpose of perpetual protection of riparian habitat and associated wildlife. The Willow Unit supports high quality riparian habitat for both nesting and migratory bird species. While the existing batch plant was present at the time of CDFW's acquisition of the Willow Unit, the proposed Project will result in significant impacts (noise, traffic, hydrology, etc.) beyond baseline conditions. We are concerned with potential Project-related impacts to riparian habitat and associated wildlife on these adjacent properties, specifically impacts associated with noise, traffic, and blasting. In addition, deep mining activities could severely impact the underlying hydrology on which the San Joaquin River riparian vegetation depends. We recommend that the DEIR prepared for the project evaluate these specific impacts and include appropriate avoidance, minimization, and mitigation measures.

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Lastly, a portion of the existing batch plant impact acreage is on property owned by the State of California (both CDFW and the San Joaquin River Conservancy). This encroachment outside of lands now owned by Cemex was a condition present at the time of CDFW's acquisition of the Willow Unit from the Ball Family. However, the condition was to be remedied within a certain timeframe of purchase but the intended retraction and restoration of the State-owned acreage never occurred. Cemex and CDFW have had preliminary discussions about this issue, which could be resolved with a property exchange and parcel boundary adjustment, but final resolution will be needed prior to any expanded activities at the batch plant.

II. Editorial Comments and/or Suggestions

Lake or Streambed Alteration: The Project contains activities that may result in the Project site being 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; or (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, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Nesting Birds: The Project is adjacent to habitat that provide nesting habitat for birds. CDFW encourages that Project implementation occur during the bird non-nesting season. However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), 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 Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist 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 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

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their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities 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 wildlife 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 Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, California tiger salamander. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA 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 FESA is advised well in advance of any ground-disturbing activities.

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 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>.

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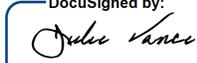
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist Fresno County Department of Public Works and Planning in identifying and mitigating the 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>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

cc: Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706-2020

United States Army Corps of Engineers
San Joaquin Valley Office
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

ec: Patricia Cole (patricia_cole@fws.gov)
United States Fish and Wildlife Service

John Shelton (john.shelton@sjrc.ca.gov)
San Joaquin River Conservancy

Linda Connolly
California Department of Fish and Wildlife

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Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)****PROJECT: CEMEX Rockfield Modification Project (EIR 7763)****SCH No.: 2020060123**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Surveys	
Mitigation Measure 3: SWHA Take Authorization	
Mitigation Measure 4: Focused CTS Protocol Surveys	
Mitigation Measure 5: CTS Avoidance	
Mitigation Measure 6: CTS Take Authorization	
Mitigation Measure 7: TRBL Habitat Assessment	
Mitigation Measure 8: TRBL Surveys	
Mitigation Measure 9: TRBL Avoidance	
Mitigation Measure 10: TRBL Take Authorization	
Mitigation Measure 11: Fully Protected Raptor Habitat Assessment	
Mitigation Measure 12: Fully Protected Raptor Surveys	
Mitigation Measure 14: BUOW Surveys	
Mitigation Measure 15: BUOW Avoidance	
Mitigation Measure 16: BUOW Passive Relocation and Mitigation	
Mitigation Measure 17: WPT Surveys	
Mitigation Measure 18: Riparian Habitat Assessment	
Mitigation Measure 19: Geology Habitat	
Mitigation Measure 21: Chinook Salmon Habitat Avoidance	
Mitigation Measure 22: Chinook Salmon Habitat Mitigation	
<i>During Construction</i>	
Mitigation Measure 2: SWHA No-disturbance Buffer	
Mitigation Measure 13: Fully Protected Raptor Avoidance	
Mitigation Measure 20: Riparian Vegetation Avoidance and Replacement	