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Governor's Office of Planning & Research

Dec 23 2020

December 22, 2020

STATE CLEARINGHOUSE

Ms. Alisa Goulart, Associate Planner
San Joaquin County Community Development Department
1810 East Hazelton Avenue
Stockton, CA 92505
Alisa.Goulart@sjgov.org

Subject: PA-1900208 (SA) & PA-2000162 (ER) - 14800 W. Schulte Logistics Center Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2020110406, City of Tracy, San Joaquin County

Dear Ms. Goulart:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation of a draft Environmental Impact Report (EIR) from the San Joaquin County Community Development Department (County) for the PA-1900208 (SA) & PA-2000162 (ER) - 14800 W. Schulte Logistics Center Project (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's fish and wildlife. Likewise, we appreciate 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 and Game Code, §§ 711.7, subd. (a) and 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.

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

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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proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish and Game 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 and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: LBA RVI-Company XXXII, LLC

Objective: The objective of the Project is to construct and operate three (3) single-story industrial warehouse buildings totaling approximately 678,913 square feet, as well as associated improvements including loading docks, tractor trailer stalls, parking for passenger vehicles, and street, sidewalk, and landscape improvements. The Project will also involve street improvements on Schulte Road, including adding a right-turn lane on eastbound Schulte Road and widening a portion of westbound Schulte Road. Additionally, the Project will involve the construction of new water, wastewater treatment, and stormwater drainage facilities. Two on-site water wells will be installed, and the Project will include a 500,000-gallon aboveground water storage tank for fire suppression use only. Wastewater generated by the three (3) new buildings will be directed to on-site septic tanks and leach fields. Stormwater will be managed and treated by three below-grade, open, earthen infiltration basins that will be sized to capture and treat all on-site stormwater generated by two (2) consecutive 10-year, 24-hour storm events.

Location: The 37.96-acre Project site is located within southwestern unincorporated San Joaquin County, California and is located at 14800 West Schulte Road in Tracy. The Project site is bounded by Schulte Road and agricultural uses to the north, Quality Road and agricultural uses to the east, a manufacturing/warehouse use to the south, and a warehouse/distribution use to the west. It is composed of one parcel (Assessor's Parcel Number 209-240-23). The site was formerly used as a biomass energy facility, which was decommissioned and demolished in 2019.

Timeframe: Construction is expected to commence in 2021 and continue through 2022.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on plants and wildlife (biological) resources in the draft EIR. Editorial comments or other suggestions may also be included to improve the document.

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Environmental Setting

The environmental setting should contain sufficient information to understand the Project's, and its alternatives', significant impacts on the environment (CEQA Guidelines, §§15125 and 15360).

According to a preliminary search of the California Natural Diversity Database (CNDDDB), fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or that have the potential to occur in or near the Project area, include, but are not limited to the species listed below.

Common Name	Scientific Name	Status
California tiger salamander	<i>Ambystoma californiense</i>	FT, ST ²
California red-legged frog	<i>Rana draytonii</i>	FT, SSC
Burrowing owl	<i>Athene cunicularia</i>	SSC
Swainson's hawk	<i>Buteo swainsonii</i>	ST
Tricolor blackbird	<i>Agelaius tricolor</i>	ST
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	FE, ST
Caper-fruited tropidocarpum	<i>Tropidocarpum capparideum</i>	1B.1
Big tarplant	<i>Blepharizonia plumosa</i>	1B.1

² Source: CDFW, California Natural Diversity Database, 2016

FE = Federally Endangered; FT = Federally Threatened; FC = Federal Candidate; SE = State Endangered; ST = State Threatened; SC = State Candidate; SSC = State Species of Special Concern; FP = Fully Protected

CNPS Plant Ranks

- 1B = Rare, Threatened, or Endangered in California and Elsewhere
- 2A = Presumed Extirpated in California, But Common Elsewhere
- 2B = Rare, Threatened, or Endangered in California, But More Common Elsewhere

CNPS Threat Ranks

- 0.1-Seriously threatened in California (over 80% of occurrences threatened / high degree and immediacy of threat)
- 0.2-Moderately threatened in California (20-80% occurrences threatened / moderate degree and immediacy of threat)
- 0.3-Not very threatened in California (less than 20% of occurrences threatened / low degree and immediacy of threat or no current threats known)

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CDFW recommends that the draft EIR provide baseline habitat assessments for all special-status plant and wildlife species located within the Project area and surrounding lands per CEQA Guidelines, §15380. The draft EIR should also include habitat assessments for sensitive habitat types and plant communities.

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from “positive occurrence” databases such as the CNDDDB. Based on the habitat assessment, the draft EIR should assess which special-status species are likely to occur in the vicinity of the Project area.

CDFW recommends that surveys be conducted for special-status species likely to occur, following agency-recommended survey protocol. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/conservation/survey-protocols>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>) should be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area. Please refer to CDFW protocols (*Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities*) for surveying and evaluating impacts to rare plants available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>. Potential impacts to these species, including take, habitat loss, habitat impairment and temporary disturbances, should be thoroughly addressed in the draft EIR.

Impact Analysis and Mitigation Measures

The draft EIR should discuss all direct and indirect impacts (temporary and permanent) that could occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Potential for “take” (Fish and Game Code, §86) of special-status species;
- Loss or modification of breeding, nesting, denning, dispersal, and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of natural habitat structural features (e.g., snags, roosts, overhanging banks) as well as modification of artificial structures such as bridges that may provide habitat for certain species (e.g., birds and bats);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors and impediments to connectivity, fish passage, or access to water sources and other core habitat features.

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The draft EIR should identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable. A contribution to a significant cumulative impact, such as reduction of the available habitat for a listed species, should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

A description of all feasible mitigation measures to avoid potentially significant impacts, and/or mitigate significant impacts of the Project on the environment should be included in the draft EIR (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 and 15370). Take avoidance and minimization measures for special-status species should be developed in consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and CDFW.

Fully protected species may not be taken or possessed at any time (Fish and Game Code § 3511). Therefore, the EIR should include measures to ensure complete take avoidance of such species.

Specific Guidance for the Draft EIR

Due to the limited information provided in the NOP, CDFW is providing the comments below with regards to potential impacts of the Project to special-status species and mitigation measures to offset any unavoidable impacts.

Comment 1: Special Status Plant Impacts Avoidance

CDFW recommends that the draft EIR include a mitigation measure requiring special-status plant species avoidance through delineation and establishment of no-disturbance buffers of at least 50 feet or greater from the outer edge of the plant population or specific habitat type required by special-status plant species. Buffer sizes should be developed by a qualified botanist and based on seed dispersal and other biological characteristics of the plant species being avoided.

Comment 2: Mitigate Special Status Plants to a Less-than-Significant Level

CDFW recommends that the draft EIR include a statement defining compensatory mitigation in the event impacts to special-status plants are not fully avoidable. CDFW recommends the EIR includes a requirement for compensatory mitigation for impacts to special-status plant species and their habitats at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for all permanent impacts and those related to grading or compaction where the soils may take years to recover to baseline conditions.

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Comment 3: Nesting Bird Surveys

CDFW encourages Project implementation outside of the bird nesting season, which extends from February through early September. However, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season, the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or Fish and Game Code.

CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every fourteen (14) days during Project activities 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 by the Project. Prior to initiation of ground or vegetation disturbance, 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 the 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.

Comment 5: Mitigate Impacts to Burrowing Owls to a Less-Than-Significant Level

Burrowing owls are known to utilize rodent burrows and dormant or infrequently maintained urban infrastructure for nesting habitat, such as utility conduits and graded subdivision lots. Therefore, the draft EIR should include measures to require annual surveys for burrowing owls throughout each phase or each construction season of the Project to address potential impacts from Project phasing or dormancy periods.

CDFW recommends the draft EIR include a mitigation measure with detailed burrowing owl survey requirements consistent with Appendix D of CDFW's 2012 *Staff Report on Burrowing Owl Mitigation* found at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

CDFW recommends the draft EIR adhere to the mitigation strategies and survey guidelines as defined in CDFW's 2012 *Staff Report on Burrowing Owl Mitigation*. The EIR should include measures requiring compensatory mitigation for impacts to burrowing owl breeding, foraging and wintering habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts (i.e., less than one year from initial impact to full recovery to baseline conditions).

Mitigation lands for owls should have presence of ground squirrel and their burrows, well-drained soils, abundant and available prey within close proximity to burrows, as

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well as foraging habitat. The mitigation areas for burrowing owls should be currently occupied by owls and approved by CDFW prior to the start of Project-related activities.

Comment 6: TRBL Take Authorization

CDFW recommends the draft EIR include the following mitigation measure:

“In the event that a TRBL nesting colony is detected during biological 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.”

Comment 7: Swainson’s Hawk Surveys

CDFW recommends the draft EIR incorporate survey protocols using the methodology prescribed in the *Recommended Timing and Methodology for Swainson’s Hawks Nesting Survey’s in California’s Central Valley* (2000) and compensatory mitigation guidelines as prescribed in the Management Conditions section of the *Staff Report regarding Mitigation for Impacts to Swainson’s Hawks (Buteo swainsoni) in the Central Valley of California* (1994). Both documents are available online at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>. If impacts to Swainson’s hawk (SWHA) cannot be fully avoided, then CDFW recommends the Project obtain SWHA take coverage through an ITP issued by CDFW.

CDFW also recommends inclusion of the following defined protection buffers as specific and enforceable avoidance and minimization measures in the event nesting SWHA are detected:

“If an active nest is identified, a 1/2-mile buffer in non-urban settings or a ¼ mile buffer in urban settings shall be maintained around the nest until the young fledge. If any active Swainson’s hawk nests are found within 1/2-mile of the Project site, CDFW shall immediately be contacted and additional measures may be required for Project activities.”

Comment 8: Swainson’s Hawk Nesting Tree Impacts

Any trees within the Project site and within ½-mile of the Project site with known SWHA or other raptor nests, or with historically active nests (i.e., occupied within the last 10 years), should be avoided to the maximum extent practicable. If a known SWHA nest tree is removed, even during the non-breeding season, the loss of nesting habitat should be mitigated. The draft EIR should describe impacts and include clear and effective measures to adequately mitigate for all permanent and temporary impacts to active, historically active, or suitable nesting habitat that cannot be completely avoided. See the *Staff Report Regarding Mitigation for Impacts to Swainson’s Hawk (Buteo*

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swainsoni) in the Central Valley of California (CDFW 1994) at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

Comment 9: Resurvey of Biological Resources for Each Project Phase or on Dormant Previously Graded Areas

Project activities may have additional significant biological impacts due to the Project's phasing over time. Delays or phasing of full buildout of a Project after initial mass grading over periods of time negates the sufficiency of one-time-only pre-construction surveys and their validity becomes questionable over the lifetime of the Project. For example, if an area is left dormant for a season or two post-grading, grassland and scrub habitats or ground squirrel colonies can be quickly established. These elements then provide nesting habitat for nesting birds and other wildlife.

CDFW recommends the draft EIR include a description of the Project's phasing and estimated timeframes from start of construction to complete buildout and require resurveys for biological resources. If the Project's timeframe from start of construction to complete build out includes breaks in construction longer than 15 days or periods of inactivity that could allow establishment of habitat elements such as ground squirrel burrows or vegetation, then impacts to wildlife that may use these habitat elements should be addressed in the draft EIR. CDFW recommends including in the draft EIR a mitigation measure that includes the following elements: 1) a qualified biologist shall conduct a wildlife survey and habitat assessment to determine potential wildlife and habitat elements present that may be utilizing the vacant sections prior to Project-related activities taking place when there is a break in these activities greater than 15-days; 2) if unbuilt or fallow sections are being utilized by wildlife, avoidance and minimization measures shall be specified to prevent impacts and mortality, 3) if impacts and "take" are not fully avoidable, additional compensatory mitigation shall be discussed and agreed upon with CDFW's approval prior to the re-initiation of construction activities, and 4) if there is a break in these activities greater than 15 days, compliance checks by a qualified biologist are required to ensure habitat assessments, preconstruction surveys, and other biological mitigation measures in the draft EIR are being implemented.

Comment 10: Mitigation Language Recommendation

Mitigation language in the draft EIR must be enforceable. If the Project plans to participate in the San Joaquin Multi Species Conservation Plan (SJMSCP), stating that the Project Proponent has confirmed participation in the SJMSCP is not an enforceable mitigation measure. The draft EIR must propose or identify specific, sufficient, and enforceable mitigation in the event the SJMSCP does not approve coverage or the Proponent chooses to not participate (as discussed in the other species-specific comments). Because participation in the Plan is voluntary, the draft EIR must include 1) an evaluation and discussion of potential direct and indirect impacts of the Project to

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biological resources including wildlife and their habitats, 2) avoidance and minimization mitigation measures to decrease those impacts, and 3) specific and sufficient compensatory mitigation in the event the avoidance and minimization measures do not mitigate to less-than-significant or in the event SJMSCP does not approve coverage of the Project in whole or part to mitigate to less-than-significant.

If the impacts analysis indicates there will be direct or indirect take of CESA-listed species, and the Project cannot fully avoid take of CESA-listed species and SJMSCP does not offer take coverage, then CDFW recommends the draft EIR include language defining the Project's obligation to obtain take coverage through an ITP issued by CDFW.

Comment 11: Open or Hollow Pipes Wildlife Checks, Filling and Capping

CDFW recommends inclusion of the following avoidance and minimization measures in the draft EIR:

"To prevent entrapment and mortality of smaller wildlife and birds, all pipes, culverts, or similar structures that are stored at the construction site vertically or horizontally for one or more overnight periods will be securely capped on both ends prior to storage and thoroughly inspected for wildlife prior to implementation at the Project site by the Qualified Biologist. All hollow pipes or posts installed as part of the Project and exposed to the environment shall be capped, screened or filled with material by Permittee prior to the end of the workday in which installation occurs."

- a) *"To prevent entanglement of raptor talons, any post with exposed perforations installed on the Project site and exposed to the environment shall have the holes permanently filled within the top six (6) inches of the post upon installation by Permittee."*
- b) *"Any open trenches, pits, or holes with a depth larger than one-foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (i.e., plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope in each open trench, hole, or pit that is capable of allowing large (i.e., deer) and small (i.e., snakes) from escaping on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, a Qualified Biologist or on-site personnel shall inspect the open trench, pit, or hole for wildlife. If wildlife is discovered, it shall be allowed to leave on its own accord."*

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ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found 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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the Notice of Preparation of a draft EIR to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at Andrea.Boertien@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento