



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

September 14 2021

STATE CLEARINGHOUSE

September 13, 2021

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
1010 10th Street, Suite 3400
Modesto, California 95354
MCDONALDT@stancounty.com

**Subject: Use Permit and Reclamation Plan Application No. PLN2018-0045 –
Reeves Sand and Gravel (Project)
Early Consultation
State Clearinghouse No. 2021080503**

Dear Ms. McDonald:

The California Department of Fish and Wildlife (CDFW) received an Early Consultation from the Stanislaus County Planning and Community Development 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 & 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

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.

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
September 13, 2021
Page 2

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.), 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).

PROJECT DESCRIPTION SUMMARY

Proponent: Roy Reeves

Objective: The Project is a request to operate a sand extraction enterprise on a parcel under Williamson Act Contract located in the A-2-40 zoning district. The applicant has included a reclamation plan for 7.26 acres of the total 8.58-acre site. The site is improved with a single-family dwelling, private well, and septic system. Approximately 84,900 cubic yards of sand have already been removed under the agriculture exemption permit, without approval of a reclamation plan. Grading permits GRA2014-0006 & GRA2016-0017 were approved to allow steepness of the cut surfaces at a 3:1 ratio and a depth of cut not to exceed 13 feet; however, the depth of cut was approximately 30 feet, and the steepness of the cut surfaces was a ratio of 1:1 along certain surfaces, which threatened the structural integrity of the dwelling on the adjacent parcel it surrounded, as well as Carver Road. Subsequently, a Stop Work Order and Notice of Violation was issued for the site and the applicant signed a Stipulated Order requiring the site to be secured and stabilized, and for a Use Permit to be obtained. The site has since been backfilled with approximately 29,000 cubic yards of clean dirt as part of the Interim Slope Stabilization Plan required by Stipulated Order, to a maximum depth of 12 feet. The applicant anticipates a maximum of an additional 23,200 cubic yards of sand to be removed, for a total of 108,100 cubic yards. The remaining 23,200 cubic yards will be removed over a two-year period beginning upon Project approval. No sorting or crushing will occur on site. Once the sand is removed by wheel loader, it will

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
September 13, 2021
Page 3

be loaded on to dump trucks and transported to job sites. Equipment utilized for the proposed Project includes a water truck for dust control, a 5-cubic-yard wheel loader, 4-cubic-yard excavator, dump truck, and laser land leveling tractor with scraper.

Location: The Project site is located at 6060 Carver Road, in between Ladd Road and St. Francis Avenue, in the Modesto Area.

Timeframe: N/A.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Stanislaus County Planning and Community Development 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 environmental document prepared for this project.

CDFW is concerned regarding potential impacts to special-status species from the ground disturbance activities, including but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*).

Swainson's Hawk (SWHA)

SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (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. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat.

The Project is within SWHA range and there are a few suitable nesting trees adjacent to the Project site. Therefore, CDFW recommends surveys following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) be conducted prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-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. If an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the issuance of an incidental take permit, pursuant to Fish and Game Code section 2081(b), is necessary to comply with CESA.

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
September 13, 2021
Page 4

Burrowing Owl: Burrowing owl have the potential to be present on and adjacent to the Project site if suitable small mammal burrows are present, a requisite habitat feature used by BUOW for nesting and cover. If these burrows are present, Project activities could impact this species. Burrowing owls have the potential to be year-round residents. Dispersing juveniles, migrants, transients or new colonizers and can utilize the Project site year-round. If any small mammal burrows are present on or adjacent to the Project site, CDFW recommends that a qualified biologist determine if species-specific surveys are necessary to determine if BUOW may be impacted by Project activities. CDFW recommends the survey methods described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) be followed before beginning ground disturbing activities. In the event that burrowing owls are found, CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) recommend that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist 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)

Failure to implement the recommended buffer zones could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure, in violation of Fish and Game Code and the Migratory Bird Treaty Act.

Nesting 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 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

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
September 13, 2021
Page 5

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. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of ground-disturbing 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 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 construction area 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.

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>.

FILING FEES

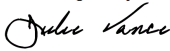
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is 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).

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
September 13, 2021
Page 6

CDFW appreciates the opportunity to comment on the Project to assist the Stanislaus County Planning and Community Development 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 Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1

ec: State Clearinghouse
Governor's Office of Planning and Research

Jim Vang
California Department of Fish and Wildlife

Teresa McDonald, Associate Planner
Stanislaus County Planning and Community Development
September 13, 2021
Page 7

LITERATURE CITED

California Department of Fish and Game. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

California Department of Fish and Wildlife. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.

Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

Attachment 1

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

PROJECT: Reeves Sand and Gravel Project

SCH No.: 2021080503

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: SWHA	
SWHA Surveys	
SWHA Take Authorization	
Mitigation Measure: BUOW	
BUOW Surveys	
<i>During Construction</i>	
Mitigation Measure: SWHA	
SWHA Avoidance	
Mitigation Measure: BUOW	
BUOW Avoidance	