



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](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Nov 01 2021**

## STATE CLEARINGHOUSE

November 1, 2021

Jamie Bax, Deputy Director  
Madera County Community and Economic Development Department - Planning  
200 West 4<sup>th</sup> Street, Suite 3100  
Madera, California 93637  
[jamie.bax@maderacounty.com](mailto:jamie.bax@maderacounty.com)

**Subject: Riverwood Fulfillment Center Project (Project)  
Notice of Preparation (NOP)  
State Clearinghouse No. 2021100010**

Dear Ms. Bax:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Madera County Community and Economic Development Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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,

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<sup>1</sup> 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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focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), 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:** Seefried Industrial Properties

**Objective:** The proposed Project would construct and operate a new industrial building northeast of Highway 99 and south of Avenue 7 on a 122-acre site in unincorporated Madera County. The proposed Project includes an approximately three million-square-foot industrial building to be used as an e-commerce storage and distribution facility. The building would include five levels with a total height of approximately 100 feet. Level 1 would serve to facilitate material handling equipment and warehouse uses and would be approximately 635,000 square feet in area, including approximately 39,000 square feet of office space, breakrooms, and other ancillary space. Levels 2 through 5 would house an automated storage and retrieval system with storage units moved by low profile robotic equipment. The total floor area of the proposed facility is approximately 2,900,000 square feet. The facility would operate 24 hours a day, 365 days per year. The proposed site plan include 325 trailer stalls and approximately 1,800 parking stalls, including ADA and EV-ready stalls. The proposed building footprint would occupy approximately 15. Approximately 37 acres of the site would be paved for parking, driveways, and other vehicle and pedestrian areas. Other areas of the site would be used for stormwater collection, landscaped, or left undisturbed. Estimated water use is approximately 35,000 gallons per day and water supply is anticipated to be obtained via groundwater wells. The proposed Project includes construction and operation of an onsite wastewater treatment plant to serve the facility and a water storage tank and pumphouse for emergency fire suppression. Access to the site is proposed to be provided with five access driveways connecting with Avenue 7. The Project may include offsite road and utility infrastructure improvements.

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**Location:** The Project site located southeast of the Highway 99 and Avenue 7 intersection, in unincorporated Madera County.

**Timeframe:** Unspecified.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the Madera County Community and Economic Development Department 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.

The EIR that will be prepared will determine the likely environmental impacts associated with the Project. CDFW is concerned regarding potential impacts to special-status species from the ground disturbance development activities, including but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), and the Species of Special Concern burrowing owl (*Athene cunicularia*).

### **Swainson's Hawk (SWHA)**

The Project site, which is adjacent to the San Joaquin River, consists of an orchard and approximately 15 acres of disturbed grasslands. The disturbed grasslands may provide suitable foraging habitat for SWHA and riparian vegetation along the San Joaquin River provides potential nest trees. 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. Therefore, CDFW recommend surveys following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) be conducted by a qualified wildlife biologist 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 and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

SWHA are known to travel for miles to forage. CDFW also recommends compensation for the loss of Swainson's hawk foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (CDFG, 1994) to reduce impacts to foraging

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habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

### **Burrowing Owl (BUOW)**

The disturbed grasslands on the Project site may provide suitable BUOW habitat if small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover, are present. Dispersing juveniles, migrants, transients or new colonizers may utilize the Project site year-round. Therefore, Project activities could impact this species. 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)

### **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.

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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 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 construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction 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 construction area 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.

**Lake and Streambed Alteration:** The Project involves work adjacent to the San Joaquin River and may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); 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 as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

## 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

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form can be mailed electronically to CNDDDB at the following email address:  
[CNDDDB@wildlife.ca.gov](mailto: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>.

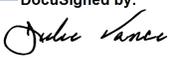
## FILING FEES

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).

CDFW appreciates the opportunity to comment on the Project to assist the Madera County Community and Economic Development Department 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) 580-3203, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

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## LITERATURE CITED

California Department of Fish and Game (CDFG). 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Game.

CDFG. 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: Riverwood Fulfillment Center Project**

**SCH No.: 2021100010**

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