



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
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June 04, 2024

Brandon Smith, Principal Planner
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Subject: **Shirk and Riggin Industrial Project (Project)**
Draft Environmental Impact Report (DEIR)
SCH: 2022080658

Dear Brandon Smith:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Visalia for the 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 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. While the comment period may have ended, CDFW respectfully requests that the City of Visalia still consider our comments.

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 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

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, Inc.

Objective: The Project applicant proposes to convert existing agricultural lands and develop the approximately 284-acre Project site into an industrial park, consisting of eight industrial buildings used for warehouse, distribution, and light manufacturing; six flex industrial buildings; two drive-through restaurants; a convenience store; a recreational vehicle (RV) and self-storage facility; gas station; and a car wash. The total building footprint is approximately 3,720,149 square feet.

Location: The Project site is located in Tulare County, generally bound by Riggins Avenue to the south, Shirk Street to the east, Kelsey Street to the west, and Modoc Ditch to the north. The Assessor's Parcel Numbers (APNs) associated with the Project site are 077-840-004, 077-840-005, and 077-840-006 (formerly APNs 077-840-001, 077-840-002, and 077-840-003).

Timeframe: N/A

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Visalia City 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 DEIR prepared for the Project.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species, including the State threatened Swainson's hawk (*Buteo swainsoni*) and the State candidate endangered Crotch's Bumble bee (*Bombus crotchii*).

Swainson's Hawk

Mitigation Measure MM BIO-1b proposes to mitigate for impacts to Swainson's hawk (SWHA) by requiring preconstruction surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC Methodology; SWHA TAC 2000). CDFW concurs with this portion of the measure as it follows CDFW guidance. This measure also states the following:

1. Construction activities shall be prohibited within 600 feet of an active and occupied Swainson's hawk nest or within 600 feet of nests under construction to prevent nest abandonment unless a smaller buffer is approved pursuant to subsection (2) below. This incorporates the maximum avoidance buffer size stated in the California Department of Fish and Wildlife (CDFW) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley.
2. If site-specific conditions or the nature of the construction activity (e.g., other nearby development, limited activities) indicate that a smaller buffer, or no buffer at all, could be used, the project developer may seek approval from the qualified Biologist who, in coordination with the CDFW, shall determine the appropriate buffer size, which, once approved, shall govern."

CDFW does not concur with this portion of the measure and implementation of the proposed 600-foot buffer (or smaller buffer based on MM BIO-1b 2.), as it is likely to result in the unauthorized take of SWHA. CDFW would also like to note that the SWHA TAC Methodology requires consultation with CDFW if an active nest is documented

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within ½-mile of Project activities. CDFW would like to further reiterate that it does not concur with MM-BIO 1b, 1. and 2. and recommends the following:

Recommended Mitigation Measure 1: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would 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 parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 2: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

Mitigation Measure MM BIO-1d proposes to mitigate for impacts to Crotch's bumble bee (CBB) by requiring preconstruction surveys no more than 14 days prior to construction. CDFW concurs with conducting surveys for CBB during the blooming period immediately prior to ground disturbing activities. CDFW recommends these surveys follow the survey methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) protocol. In the event a CBB nest is detected within the Project, consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. If take cannot be avoided, CDFW recommends the Project obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Editorial Comments and/or Suggestions

Lake and Streambed Alteration

Mitigation Measure (MM) BIO-3 mitigates for potential impacts to streams subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. by requiring the Project proponent to "submit a preliminary Jurisdictional Delineation and

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coordinate with” the appropriate regulatory agencies, including CDFW. CDFW concurs with this measure and recommends the Project applicant submit a notification pursuant to Fish and Game Code section 1602 to assist with review of the submitted delineation materials. CDFW would also like to note that Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are 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 (including the removal of riparian vegetation); (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 and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW’s website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). Cumulative impacts are recommended to be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area should also be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW recommends closely evaluating the need for a cumulative impacts analysis for the following species as part of the DEIR due to these species being in poor or declining health or at risk: SWHA and CBB. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

California Natural Diversity Database

Please note that the California Natural Diversity Database (CNDDDB) is populated by voluntary submissions of species detections. As a result, species may be present in

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locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present.

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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online 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://www.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 environmental document 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 environmental document filing 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).

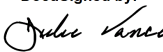
CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Visalia in identifying and mitigating Project impacts on biological resources.

Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. 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>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or john.riedel@wildlife.ca.gov.

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Sincerely,

DocuSigned by:

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Julie A. Vance
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REFERENCES

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

Swainson's hawk technical advisory committee (SWHA TAC). 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in the central valley of California. Swainson's Hawk Technical Advisory Committee.

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Attachment 1

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

PROJECT: Shirk and Riggan Industrial Project

SCH No.: 2022080658

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
SWHA	
Recommended Mitigation Measure 2: SWHA take authorization	
<i>During Construction</i>	
SWHA	
Recommended Mitigation Measure 1: SWHA avoidance buffer	