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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

December 1, 2023

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STATE CLEARINGHOUSE

Mark Tolentino
Kern County Planning and Natural Resources Department
2700 "M" Street Suite 100
Bakersfield California, 93301
TolentinoM@kerncounty.com

Subject: Westside Industrial Project (Project)
Notice of Preparation (NOP) SCH No.: 2023100467

Dear Mark Tolentino:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the Kern County Planning and Natural Resources Department 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. While the comment period may have ended, CDFW requests that Kern County 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.), related authorization as provided by the Fish and Game Code may 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 Project proposes the construction and operation of a warehouse and distribution facility. The proposed Project would include the construction of an approximately 653,442 square-foot single-story warehouse and related site improvements, including but not limited to, perimeter security fencing and nighttime directional lighting at the on-site warehouse and distribution facility, new pavement, curb and gutter, and sidewalk on frontage roads with associated signing and markings, office, break and ancillary space.

Location: The proposed Project is located in unincorporated Kern County at the southeast corner of the Houghton Road and Wible Road intersection, approximately 1.25 miles west of State Route 99, at the southern end of the San Joaquin Valley. The Project site is located in Section 13 of Township 31 South, Range 27 East in the Mount Diablo Base and Meridian.

Timeline: September 2024 - September 2025

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Kern County Planning and Natural Resources 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 CEQA document prepared for this Project.

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There are special-status species that may be present at the Project site. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the federally endangered and State threatened San Joaquin Kit Fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate endangered Crotch's bumblebee (*Bombus crotchii*), and the State Species of Special Concern burrowing owl (*Athene cunicularia*), western spadefoot (*Spea hammondi*), and American badger (*Taxidea taxus*).

In order to adequately assess potential impacts to biological resources, CDFW recommends that a qualified biologist perform database and other research of the Project area, then conduct focused habitat assessments and/or focused biological surveys during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project site. CDFW recommends this initial work be documented and used to inform further efforts that may be needed thereafter including the need for additional protocol surveys and/or the development of avoidance, minimization, and/or mitigation measures. This information and analysis may then be used to consider the development of modified or new project alternatives to avoid and minimize potentially significant environmental impacts on the biological environment. This information is critical to make an informed decision during the CEQA process and to ensure Project compliance with CESA, Fish and Game code, and other applicable State and federal laws and regulations.

San Joaquin Kit Fox

Bakersfield is home to a unique urban population of the federally endangered and State threatened, San Joaquin kit fox (SJKF) with multiple recorded occurrences in the California Natural Diversity Database (CNDDDB) (CDFW 2023). While the Project may not contain typical native habitat for SJKF dens, its proximity to the City of Bakersfield means that any ground-disturbing activity could attract SJKF. The urban population of SJKF has also been recorded to use anthropogenically altered habitats while maintaining a robust population (Cypher 2013). As a result, the Project may result in impacts to SJKF and any take of SJKF without appropriate take authorization would be a violation of Fish and Game Code.

In addition to native habitats, SJKF can den in right-of-ways, vacant lots, etc., and populations can fluctuate over time. It is important to note that SJKF populations are known to fluctuate and a negative finding from biological surveys in any one year does not necessarily demonstrate absence of SJKF on a site. In addition, SJKF may be attracted to both construction materials (pipes, etc.) and construction footprints due to the type and level of activity (excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance.

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CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS' "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance", and implementing no-disturbance buffers around den sites, as described in the United States Fish and Wildlife Service document (USFWS 2011). Specifically, CDFW recommends conducting these surveys over the entirety of the Project site no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities. CDFW also recommends a qualified biologist conduct on-site worker awareness training and inspect all construction materials for SJKF before use. Any pits or trenches created should be sloped or covered to prevent inadvertent capture or entrapment (take).

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to initiating or resuming (whichever applies) ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Swainson's Hawk

According to the CNDDDB, there are multiple Swainson's hawk (SWHA) occurrences near the Project site – one approximately 2 miles north and another less than 1 mile west of the Project site. According to aerial imagery, the parcels to the north and west both support suitable nesting trees within ½ mile from the Project site. Given the proximity to known SWHA occurrences and the fact that SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016), SWHA have the potential to be present near the Project site, and CDFW has jurisdiction over this species under CESA.

The Project as proposed may 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. CDFW recommends that the CEQA document prepared for this Project address potential impacts to SWHA by including both mitigation for loss of foraging habitat and appropriate avoidance and minimization measures resulting from an analysis of potential impacts to nesting habitat beginning with protocol surveys as described below.

CDFW recommends compensation for the loss of SWHA foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (California Department of Fish and Game 1994). CDFW 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:

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- 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.

SWHA are known to travel up to 18 miles to forage (Estep 1989). Any SWHA in known nesting trees within that range may utilize the Project site for foraging. Therefore, CDFW recommends protocol surveys for SWHA be conducted as part of the biological technical studies conducted in support of the CEQA document by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000).

Due to the close proximity of potential nesting trees on the parcels north and west of the Project, if the initial protocol surveys do not detect nesting SWHA, CDFW recommends that protocol surveys be conducted again by a qualified biologist within the survey season immediately prior to Project construction. 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.

Crotch's Bumble Bee

According to CNDDDB, the State candidate endangered Crotch's bumble bee (CBB) have been recorded to occur less than 4 miles north of the Project site. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2015). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years. Additionally, CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. According to aerial photography some of these elements are present on the Project site, as a result, CBB have the potential to be present in the Project site, and CDFW has jurisdiction over this species under CESA.

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CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document to determine if the Project site or its immediate vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs would need to be documented as part of the assessment. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023b), as part of the biological technical studies conducted in support of the draft environmental impact report.

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

State Species of Special Concern

Burrowing owl (BUOW), western spadefoot, and American badger have the potential to occur within the Project site. According to CNDDDB, BUOW have been reported to occur less than 2 miles west of the Project site and American badger have been reported in the City of Bakersfield. Western spadefoot may utilize orchards and agricultural sumps for breeding. The Project site, and its vicinity, may support requisite habitat elements for these species.

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document, to determine if Project sites or their immediate vicinity contain potential habitat for the species mentioned above. If potential habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

Avoidance whenever possible is encouraged via delineating and observing a 50-foot no-disturbance buffer around the entrances of burrows that can provide refuge for American badger and western spadefoot.

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CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document following the California Burrowing Owl Consortium's Burrowing Owl Survey Protocol and Mitigation Guidelines (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012). Specifically, if suitable habitat is present at an individual Project site, 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.

If BUOW are detected, 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)

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 1 burrow collapsed to 1 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.

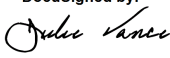
Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could

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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 Project activities.

CDFW appreciates the opportunity to comment to assist the Kern County Planning and Natural Resources Department in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

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California Department of Fish and Wildlife

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