



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 18, 2024

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354
BallardJ@stancounty.com

**Subject: General Plan Amendment Scannell Properties, LLC
Notice of Preparation (NOP) for an Environmental Impact Report
SCH: 2024020257**

Dear Jeremy Ballard:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from Stanislaus County Department of Planning and Community Development (Stanislaus County) for the 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 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. While the comment period may have ended, CDFW respectfully requests that Stanislaus County Department of Planning and Community Development 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, sections 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 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.*, section 1802). Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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.

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 2

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, section 21069; CEQA Guidelines, section 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, section 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, section 2050 et seq), the project proponent may seek related take authorization as provided by the Fish and Game Code.

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: Scannell Properties, LLC

Objective: The Project proposes to develop approximately 145 acres of agricultural land. The Project would include the construction of approximately seven buildings comprising of between 2,000,000 and 2,500,000 square feet of warehouse, distribution, and manufacturing space. Additionally, up to three acres of retail development would be constructed.

Location: The Project is located at 3243 Kiernan Avenue (State Route 219), at the northwest corner of Kiernan Avenue and Dale Road intersection, within the Community of Salida, Assessor's Parcel Number (APN) 003-019-026.

Timeframe: N/A

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 3

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Stanislaus County 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.

Aerial imagery of the Project site and its surroundings shows the area contains agricultural lands, including row crops and orchards, and residential and developed areas. A review of the California Natural Diversity Database (CNDDDB) (CDFW 2024) indicates that the Project site, and its surroundings are within suitable habitat for the following special-status species: the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), and the State species of special concern burrowing owl (*Athene cunicularia*).

Swainson's Hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA) (CDFW 2024). SWHA are known to breed within the Central Valley of California and prefer to nest near and forage in alfalfa, fallow fields, field crops, and grassland habitats with a sufficient source of small mammals (CDFG 1994). Based on aerial imagery and the information provided in the NOP, most of the Project site contains agricultural lands suitable for SWHA foraging. In addition, there are trees and structures located within the vicinity of the Project site that may provide suitable nesting habitat.

CDFW recommends surveys for SWHA be conducted as part of the biological technical studies conducted in support of the CEQA document by a qualified biologist following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). Depending on the time between the initial survey efforts conducted in support of the CEQA document and project construction, CDFW recommends that additional surveys be conducted again by a qualified biologist within the survey season immediately prior to project construction.

In the event an active SWHA nest is detected during surveys and the nest cannot be avoided by a minimum ½-mile no-disturbance buffer, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, a take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081(b) is necessary to comply with CESA.

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*

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 4

Hawks (CDFG 1994). This 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 $\frac{3}{4}$ acre 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 $\frac{1}{2}$ acre of HM land for each acre of development is advised.

Tricolored Blackbird

The Project site is within the known geographic range of the tricolored blackbird (TRBL) (CDFW 2024). TRBL breed within the vicinity of fresh water, primarily in marshy areas. Important sites for nesting colonies include heavy growths of cattails, tules, thistles, willows, blackberries, mustard, nettles, and salt cedar (Grinnell and Miller 1944). TRBL are also known to breed in alfalfa, wheat, and other low agricultural crop fields, and these fields are becoming an increasingly important nesting habitat type, particularly in the San Joaquin Valley (Beedy et al. 2023). Based on aerial imagery and the information provided, there are agricultural fields within the vicinity of the Project site that could contain habitat suitable for TRBL nesting and foraging (CDFW 2024).

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on focused survey methods and mitigation measures such avoidance, take authorization, and mitigation.

Burrowing Owl

The Project site is within the known geographic range of burrowing owl (BUOW) (CDFW 2024). BUOW inhabits open grasslands and agricultural lands containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Based on aerial imagery, land in the Project vicinity may contain suitable habitat for nesting and foraging.

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 5

CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on focused survey methods and mitigation measures such as avoidance, take authorization, and mitigation.

Nesting birds

CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), 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 Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document. CDFW further recommends that the CEQA document for this Project include that a qualified biologist conduct a pre-construction survey 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, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, 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 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 a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notifies CDFW in advance of implementing a variance.

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 6

Editorial Comments and/or Suggestions

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). CDFW recommends cumulative impacts 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 identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

CNDDDB Positive Submission of Data

Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist/botanist 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 at or near the Project site.

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, section 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 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>.

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 7

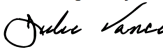
FILING FEES

The Project, as proposed, could 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, section 753.5; Fish & G. Code, section 711.4; Pub. Resources Code, section 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist Stanislaus County in identifying and mitigating Project impacts on biological resources. 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.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

Jeremy Ballard, Senior Planner
Stanislaus County
Department of Planning and Community Development
March 18, 2024
Page 8

REFERENCES

Beedy, E., W. Hamilton III, R. Meese, D. Airola, W. Schackwitz, and P. Pyle. 2023. Tricolored Blackbird (*Agelaius tricolor*), version 2.0. Birds of the World. P. G. Rodewald and B. K. Keeney, editors. Cornell Lab of Ornithology, Ithaca, NY, USA. <https://birdsoftheworld.org/bow/species/tribla/cur/demography>. Accessed 26 February 2024.

California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system. <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 26 February 2024.

Grinnell, J., and A. Miller. 1944. The birds of California. Cooper Ornithological Club, Berkeley, California. 608 pp.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.