



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 4, 2025

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**Subject: Don Chapin Sand Dryer Plant Project (Project)
MITIGATED NEGATIVE DECLARATION (MND)
SCH: 2025010969**

Dear Tiffany Ho:

The California Department of Fish and Wildlife (CDFW) received a MND from Merced 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, 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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Merced 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,

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 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.

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.

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).

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.

PROJECT DESCRIPTION SUMMARY

Proponent: The Don Chapin Co., LLC

Objective: The Project proposes to construct and operate a new sand drying plant and precast concrete manufacturing facility as an addition/expansion to the adjacent Ready-Mix Concrete Batch Plant ("Don Chapin Ready Mix Concrete Batch Plant"). The Project would include the construction and operation of a sand dryer plant and precast concrete manufacturing facility with an operations building, truck scale, and other associated equipment; three (3) storage buildings; and other associated features, including a precast shop office and breakroom, an employee parking area, concrete storage areas, a catch basin, a lined retention basin, and fencing.

Location: The Project site is located on the northeast side of Ingomar Grade, approximately 948 feet east of Volta Road in the Volta area, identified as Assessor's Parcel Numbers (APNs) 081-060-086, 081-060-087, and 081-060-088.

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Timeframe: Construction activities are anticipated to begin in early 2025 and would occur over a total estimated timeframe of 36 months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Merced County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

The MND notes the Project site as undeveloped and consisting of perennial rye grass grassland and alkali weed – salt grass flats. The MND also notes that a roadside irrigation canal runs outside of the Project site, along the southern edge parallel to Ingomar Grade and that the U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) identified freshwater emergent wetlands within the northern portion of the Project site. Aerial imagery of the Project site boundary and its surroundings show the Don Chapin Co. Plant to the west, a construction storage facility to the east, a railroad and large storage container facility to the south and annual grasslands to the north. Further surrounding the Project site are tilled agricultural lands and the Volta Wildlife Area located approximately 0.60-mile to the north.

Currently, the MND acknowledges that the Project site 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 these measures to reduce impacts to less than significant and avoid unauthorized take for special-status animal species, including but not limited to: the State threatened and federally threatened San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State and federally threatened California tiger salamander - Central California Distinct Population Segment (DPS) (*Ambystoma californiense* pop. 1), the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*), the State species of special concern and federally threatened California red-legged frog (*Rana draytonii*), the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*), the State special animal and federally endangered conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardii*), and the State special animal and federally threatened vernal pool fairy shrimp (*Branchinecta lynchi*). CDFW also has concerns about the ability of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for the special-status plant species, including the California Rare Plant Rank (CRPR) 1B.2 alkali milk-vetch (*Astragalus tener* var. *tener*), the CRPR 1B.1 alkali-sink goldfields (*Lasthenia chrysantha*), and Coulter's goldfields (*Lasthenia glabrata* ssp. *coulteri*), the State endangered and CRPR

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1B.1 Delta button-celery (*Eryngium racemosum*), the CRPR 1B.2 heartscale (*Atriplex cordulata* var. *cordulata*), the CRPR 1B.1 hispid salty birds-beak (*Chloropyron molle* ssp. *hispidum*), the CRPR 4.2 Parrys rough tarplant (*Centromodia parryi* ssp. *rudis*), and the CRPR 1B.2 prostrate vernal pool navarretia (*Navarretia prostrata*) and vernal pool smallscale (*Atriplex persistens*).

San Joaquin Kit Fox

The Project site is within the geographic range of San Joaquin kit fox (SJKF) and the MND notes that the species has the potential to occur within the Project site. Mitigation Measure (MM) BIO-4 is provided to mitigate for significant impacts to the species and requires a preconstruction survey within 30 days prior to the start of Project initiation, and implementation of avoidance buffers. For SJKF avoidance, MM BIO-4 states that, "...during the non-reproductive season, a no-entry exclusion buffer shall be established within 50 feet of the den. If active dens are found during the American badger or San Joaquin kit fox reproductive season, no activity shall occur within 200 feet of the den." CDFW concurs with the implementation of no-disturbance buffers around known SJKF dens but recommends the buffers be implemented as outlined in the USFWS "Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance" (2011). MM BIO-4 also states, "If an exclusion buffer is not feasible, the applicant will contact the County of Merced for further guidance." CDFW concurs with this portion of the measure but also recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, CDFW recommends the following:

Recommended Mitigation Measure 1: SJKF Take Authorization

If the no-disturbance buffers outlined in the USFWS Protocol for SJKF is not feasible, CDFW recommends that consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, CDFW recommends the Project proponent pursue take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) to comply with CESA.

Swainson's Hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA) and the MND notes that the species has the potential to occur. MM BIO-4 is provided to mitigate for significant impacts to the species through the implementation of surveys, avoidance buffers, and consultation with CDFW if necessary. CDFW concurs with the portion of MM-BIO-4 to that requires preconstruction surveys following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000), but recommends the following if SWHA nests are documented during surveys:

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Recommended Mitigation Measure 2: SWHA Avoidance Buffer

CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, during nesting season, 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 3: 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 ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 4: SWHA Foraging Habitat Mitigation

Finally, CDFW recommends compensation for the loss of SWHA foraging habitat as described in CDFW's "Staff Report Regarding Mitigation for Impacts to Swainson's Hawks" (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occurs 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 1 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 ¾ 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 ½ acre of HM land for each acre of development is advised

California Tiger Salamander

The Project site is within the geographic range of California tiger salamander (CTS) and the MND states, "...the USFWS NWI Wetlands Mapper identified Freshwater Emergent Wetlands within the northern portion of the project site." The MND also details irrigation Table B-3 states that suitable conditions are absent for this species and no mitigation measures were proposed to canals parallel to Ingomar Grade, located nearby the Project site. Additionally, based on aerial imagery, it appears that ephemeral ponding occurs at least seasonally between the Projects site and adjacent train tracks to the

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south. mitigate for potential Project-related impacts. CDFW doesn't concur as CTS are known to breed and develop in aquatic habitats in both grassland and agricultural habitats and have been documented within the San Luis National Wildlife Refuge to the northeast. As there is an abundance of wetland and grassland habitats located near the Project site in the Volta Wildlife Area and San Luis National Wildlife Refuge, suitable habitat appears to be present within and adjacent to the Project site, and CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from these habitats, CDFW recommends the following:

Recommended Mitigation Measure 5: CTS Protocol-level Surveys

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project site in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Recommended Mitigation Measure 6: CTS Avoidance Buffer

If CTS protocol-level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW a State ITP in accordance with Fish and Game Code section 2081(b).

Recommended Mitigation Measure 7: CTS Take Authorization

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can 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. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

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Western Burrowing Owl

The Project site is within the known geographic range of western burrowing owl (BUOW) and the MND notes that the species has the potential to occur within the Project site. The MND also identified BUOW as a “CDFW species of special concern (SSC)”, however, CDFW would like to note the California Fish and Game Commission (FGC) approved BUOW as a candidate for potential listing as a protected species under CESA on October 10, 2024, and published these findings in the California Regulatory Notice Register (Notice Register) on October 25, 2024. As such, BUOW is now considered a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

MM BIO-4 is provided to mitigate for significant impacts to the species through the implementation of a preconstruction survey and no-disturbance buffers as outlined in the CDFW 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report). MM BIO-4 also states, “If avoidance of active burrows is infeasible, the applicant shall contact the County of Merced for further guidance. The County of Merced shall coordinate with the California Department of Fish and Wildlife for guidance to implement project activities and avoid take or proceed with an Incidental Take Permit.” CDFW concurs with this measure but recommends that the pre-construction surveys follow the entire survey methodology detailed in the 2012 Staff Report, which necessitates the need for multiple surveys prior to implementation of the Project. In addition, CDFW recommends that if a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report are 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

The Project site is within the geographic range of Crotch’s bumble bee (CBB) and the MND notes that the species has the potential to occur within the Project site. MM BIO-4 is provided to mitigate for significant impacts to the species through the implementation of preconstruction surveys and a no-disturbance buffers and states that, “If a Crotch bumble bee nest is observed, no work shall occur within 25 feet of the nest until it is no longer active.” CDFW recommends extending this no-disturbance buffer to a minimum of 50 feet to avoid take and potentially significant impacts. MM BIO-4 also requires consultation with CDFW, “for guidance to implement project activities and avoid take or proceed with an Incidental Take Permit.” CDFW concurs with this measure and would like to note that 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.

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California Red-Legged Frog

The Project site is within the geographic range of California red-legged frog (CRLF) and the MND states that suitable habitat is absent within the Project site. CDFW does not concur suitable dispersal and upland habitat is absent from the Project site as CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in ephemeral waters (Thomson et al. 2016). The MND details irrigation canals parallel to Ingomar Grade, located nearby the Project site. Additionally, based on aerial imagery, it appears that ephemeral ponding occurs at least seasonally between the Projects site and adjacent train tracks to the south, which may facilitate dispersal. As such, CDFW recommends the following:

Recommended Mitigation Measure 8: CRLF Surveys

CDFW recommends that a qualified biologist conduct focused surveys for CRLF within areas of suitable habitat adjacent to or within the Project site 48-hours prior to initiating Project construction (two night surveys immediately prior to construction or as otherwise required by USFWS in accordance with the “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if CRLF are within or adjacent to the Project site.

Recommended Mitigation Measure 9: CRLF Avoidance

If any CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends avoidance whenever possible via delineation and observance of a 50-foot no-disturbance buffer around CRLF and their burrows. If CRLF are observed on the Project site, CDFW also recommends that Project activities in the immediate vicinity cease, allowing individuals to leave the Project site on their own accord. Finally, CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for CRLF.

Western Spadefoot

The Project site is within the geographic range of western spadefoot (WESP) and the MND states, “...the USFWS NWI Wetlands Mapper identified Freshwater Emergent Wetlands within the northern portion of the project site.” The MND also notes that irrigation canals parallel to Ingomar Grade are located near the Project site. Additionally, based on aerial imagery, it appears that ephemeral ponding occurs at least seasonally between the Projects site and adjacent train tracks to the south. Table B-3 states that suitable conditions are absent for this species and no mitigation measures were proposed to mitigate for potential Project-related impacts. CDFW doesn’t concur as WESP are known to breed and develop in aquatic habitats in both grassland and

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agricultural habitats and have been documented within the San Luis National Wildlife Refuge to the northeast. As there is an abundance of wetland and grassland habitats located near the Project site in the Volta Wildlife Area and San Luis National Wildlife Refuge, suitable habitat appears to be present within and adjacent to the Project site, and WESP have been documented within the Project vicinity, CDFW recommends the following:

Recommended Mitigation Measure 10: Focused WESP Survey

Prior to initiation of the Project, a qualified biologist shall conduct focused surveys for western spadefoot and their requisite habitat.

Recommended Mitigation Measure 11: WESP Avoidance Buffer

If burrows, cracks, loose soil areas or other refugia are found to be used by WESP during focused surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around these resources. If WESP are observed on the Project site, Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord.

Branchiopods

The Project site is within the geographic range of conservancy fairy shrimp, longhorn fairy shrimp, vernal pool tadpole shrimp, and vernal pool fairy shrimp (branchiopods). The MND states, "...the USFWS NWI Wetlands Mapper identified Freshwater Emergent Wetlands within the northern portion of the project site.", The MND also notes that irrigation canals parallel to Ingomar Grade are located near the Project site. Additionally, based on aerial imagery, it appears that ephemeral ponding occurs at least seasonally between the Projects site and adjacent train tracks to the south. Table B-3 states that suitable conditions are absent for this species and no mitigation measures were proposed to mitigate for potential Project-related impacts. CDFW doesn't concur as branchiopods are known to breed and develop in aquatic habitats in both grassland and agricultural habitats and have been documented within the San Luis National Wildlife Refuge to the northeast. As there is an abundance of wetland and grassland habitats located near the Project site in the Volta Wildlife Area and San Luis National Wildlife Refuge, suitable habitat appears to be present within and adjacent to the Project site, and branchiopods have been documented within the Project vicinity, CDFW recommends the following:

Recommended Mitigation Measure 12: Branchiopod Surveys and Consultation with CDFW

CDFW recommends that a qualified biologist conduct protocol level surveys in accordance with the USFWS "Survey Guidelines for the Listed Large Branchiopods" (USFWS 2017) the survey season prior to construction. These surveys would need to be conducted at the appropriate time of year to determine the existence and

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extent of branchiopods. If through surveys it is determined that branchiopods are occupying or have the potential to occupy the Project site, coordination with CDFW is recommended well in advance of any planned vegetation- or ground-disturbing activities to determine appropriate avoidance and minimization measures including adequate implementation of no-disturbance buffers. Additionally, consultation with USFWS may be necessary to minimize the potential for federal “take” and/or mitigate for potential impacts.

Special-Status Plant Species

The Project site is within the geographic range of several special-status plant species and, based on aerial imagery, it appears that suitable habitat is present within the Project site. CDFW has concerns related to the level of survey effort conducted to inform the MND as only one botanical survey was conducted during the blooming period and this survey did not occur within the typical bloom period for many of the species that may be present within the Project site. Additionally, no mitigation measures were proposed to mitigate for potential Project-related impacts to CRPR plants, outside of a measure specific to Parrys rough tarplant. CDFW would also like to note that Section 5.1 of the MND recommends supplementary 2025 spring surveys to determine if additional special-status plant species are present. CDFW concurs with this portion of the MND and recommends that the Project site be surveyed for special-status plant species by a qualified botanist following the Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Please note that adverse conditions from yearly weather patterns may prevent botanical field surveyors from determining the presence of, or accurately identifying, some special-status plants in the surveyed area. Disease, drought, predation, fire, herbivory, or other disturbance may also preclude presence or identification of special-status plants in any given year. Visiting the survey site in more than one year increases the likelihood of detection. If State endangered, threatened, or rare plants are identified during special-status plant surveys, consultation with CDFW is recommended. If take cannot be avoided, then to ensure compliance with CESA and the Native Plant Protection Act (NPPA), CDFW recommends consultation with CDFW for acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b) and/or California Code of Regulations, Title 14, section 786.9, subdivision (b).

Editorial Comments and/or Suggestions

Permanent Exclusion Fencing: The MND notes that a catch basin and retention lined basin are proposed to be constructed as part of the Project. CDFW recommends that exclusion fencing be installed around the Project features to help avoid and minimize

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the potential for entrapment for special-status species such as SJKF and CTS, and further recommends the exclusion fence for the basins remain in place and be maintained for the life of the Project. CDFW is available to discuss the recommendation for permanent exclusion fencing around the catch basin and retention lined basin along with appropriate fencing design or absent fencing, to discuss specific recommendations to ensure the basin design mitigates the risk of entrapment of wildlife (e.g. appropriate slope, textured slopes, escape ramps or floats, wildlife friendly designs, etc.).

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.

If the nesting season cannot be avoided, CDFW recommends 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 notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes

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significant habitat modification or degradation that could 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.

Lake and Streambed Alteration: 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.

CNDDDB Positive Submission of Data: Please note that the California Natural Diversity Database (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 wildlife 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, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form

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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>.

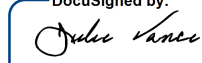
FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Merced County in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included to assist Merced County with incorporating the recommended mitigation measures provided above. 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:

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Julie A. Vance
Regional Manager

ATTACHMENT

Cc: State Clearinghouse
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U.S. Fish and Wildlife Service
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Tiffany Ho, Deputy Director of Planning
Merced County Community and Economic Development Department
March 4, 2025
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Attachment 1

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

**RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Don Chapin Sand Dryer Plant Project

SCH No.: 2025010969

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
San Joaquin Kit Fox (SJKF)	
Recommended Mitigation Measure 1: SJKF take authorization	
Swainson’s Hawk (SWHA)	
Recommended Mitigation Measure 3: SWHA take authorization	
Recommended Mitigation Measure 4: SWHA foraging habitat mitigation	
California Tiger Salamander (CTS)	
Recommended Mitigation Measure 5: CTS protocol-level survey	
Recommended Mitigation Measure 7: CTS take authorization	
California Red-Legged Frog (CRLF)	
Recommended Mitigation Measure 8: CRLF survey	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 10: WESP focused survey	
Vernal Pool Fairy Shrimp (VPFS)	
Recommended Mitigation Measure 12: Branchiopod survey and CDFW Consultation	

<i>During Construction</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA avoidance buffer	
California Tiger Salamander (CTS)	
Recommended Mitigation Measure 6: CTS avoidance buffer	
California Red-Legged Frog (CRLF)	
Recommended Mitigation Measure 9: CRLF avoidance	
Western Spadefoot (WESP)	
Recommended Mitigation Measure 11: WESP avoidance buffer	