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Governor's Office of Planning & Research

JAN 23 2020

January 23, 2020

STATE CLEARINGHOUSE

Hector Guerra, Chief Environmental Planner
County of Tulare Resource Management Agency
5961 South Mooney Boulevard
Visalia, California 93277

**Subject: Dunn Asphalt and Concrete Batch Plant (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2019011039**

Dear Mr. Guerra:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the County of Tulare Resource Management Agency 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.

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 and 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.

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

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or Project-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include, but are not limited to, the following: increased sediment input from vegetation removal and ground disturbance causing increased erosion; toxic runoff associated with Project implementation; temporal loss of wildlife habitat; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: County of Tulare Resource Management Agency

Objective: The Project proposes the development of an asphalt and concrete batch plant. The Project is being proposed by Dunn's Equipment, Inc. to produce concrete, asphalt, and recycle concrete and asphalt on an approximately 20.0-acre site. The concrete batch plant is expected to produce 100,000 cubic yards of concrete per year.

Aggregate, cement, and fly ash will be delivered to the site and ready-mix concrete will be delivered from the site. The concrete and asphalt recycling operation will consist of accepting broken concrete and asphalt from contractors. The concrete and asphalt will be crushed into recycled base; it is anticipated that 30,000 tons of recycled base will be produced per year and delivered from the site. The hot-mix asphalt (HMA) batch plant is expected to produce 125,000 tons of HMA per year. Aggregate, oil, and propane will be delivered to the site and HMA will be delivered from the site. The Project would generate approximately 276 (round-trip) truck trips per day, and 30 employee vehicle round trips per day. The Project will operate Monday-Saturday, generally from 7 a.m. to 7 p.m.; 50 weeks of the year.

Location: The Project site is located at 7763 Avenue 280 which is located along the south side of Avenue 280, approximately one mile west of State Route 99 and east of Road 68, in an unincorporated area of Tulare County.

Timeframe: Unknown

COMMENTS AND RECOMMENDATIONS

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

Currently, the DEIR indicates that the Project's impacts would be less than significant with the implementation of mitigation measures. However, as currently drafted, the mitigation measures described may not be sufficient in reducing impacts to a level that is less than significant. In particular, CDFW is concerned regarding adequacy of mitigation measures for special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), and the State candidate endangered tricolored blackbird (*Agelaius tricolor*).

If significant environmental impacts will occur as a result of Project implementation and cannot be mitigated to less than significant levels, a Mitigated Negative Declaration (MND) would not be appropriate. Further, when an MND is prepared, mitigation measures must be specific, clearly defined, and cannot be deferred to a future time. When an Environmental Impact Review (EIR) is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation. Regardless of whether an MND or EIR is prepared, CDFW recommends that the CEQA document provide quantifiable and enforceable measures, as needed, that will reduce impacts to less than significant levels.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA)

Mitigation Measure 3.4-1 through 3.4-3: Nest Avoidance, Nesting Bird Surveys, and Buffers

Issue: SWHA have the potential to nest within and near the Project site. The California Natural Diversity Database (CNDDDB) shows SWHA occurrences approximately 1 mile from the Project site (CDFW 2020). The proposed Project will involve ground-disturbing activities that will have an impact on SWHA foraging habitat and potentially affecting active nests.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for SWHA is present throughout and adjacent to the Project site, CDFW recommends conducting the following evaluation of the Project site, editing the Draft Environmental Impact Report (DEIR) to include the following measures specific to SWHA, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: SWHA Surveys

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project

implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Recommended Mitigation Measure 2: No-disturbance Buffer

If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW acknowledges that Mitigation Measure 3.4-2 states that pre-construction surveys for SWHA will be conducted within ½ miles from the Project site and that this is consistent with CDFW recommendations. However; Mitigation Measure 3.4-3 does not specify a no-disturbance buffer, but states that a qualified biologist will establish an appropriate no-disturbance buffer based on species tolerance of human disturbance, baseline levels of disturbance, and barriers that may separate the nest from construction disturbance. CDFW recommends a minimum no-disturbance buffer of ½-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 this buffer is not feasible, or if the Project intends to reduce the buffers based on the previously listed criteria, consultation with CDFW is warranted to discuss how these criteria will be implemented and determine if the Project will avoid take.

Recommended Mitigation Measure 3: SWHA Take Authorization

As stated above, CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted. If take cannot be avoided, take authorization through the issuance of an Incidental Take Permit (ITP), pursuant to Fish and Game Code Section 2081(b) is necessary to comply with CESA.

COMMENT 2: Tricolored Blackbird (TRBL)

Mitigation Measure 3.4-1 through 3.4-3: Nest Avoidance, Nesting Bird Surveys, and Buffers

Issue: TRBL have the potential to occur near the Project site. Review of aerial imagery indicates that the agricultural practices on the Project site and adjacent properties may involve dense low vegetation crop fields (i.e. wheat and/or alfalfa fields). These types of agricultural crop fields are known to serve as TRBL nest colony sites.

Specific impact: Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

Evidence impact would be significant: TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014).

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for TRBL is present throughout and/or adjacent to the Project site, CDFW recommends conducting the following evaluation of the Project site, editing the DEIR to include the following measures specific to TRBL, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 4: TRBL Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment of the Project site in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for TRBL.

Recommended Mitigation Measure 5: TRBL Surveys

CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting TRBL, within a minimum 500-foot buffer from the Project site, no more than 10 days prior to the start of implementation to evaluate presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 6: TRBL Avoidance

If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's *"Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015"* (CDFW

2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days prior to Project initiation.

Recommended Mitigation Measure 7: TRBL Take Authorization

In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.

II. Editorial Comments and/or Suggestions

Nesting birds: The Project area likely provides nesting habitat for birds. CDFW encourages that Project implementation occur during the bird non-nesting season. However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

CDFW agrees with Mitigation Measure 3.4-2 of the DEIR that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance. These pre-activity surveys serve to maximize the probability that nests that could potentially be impacted are detected. While Mitigation Measure 3.4-2 indicates that pre-activity nest survey distance from the Project site is species dependent, CDFW recommends extending the survey radius around the Project site to 500 feet for TRBL as stated above. As part of these surveys, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project ground- or vegetation- disturbing 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 during ground- or vegetation activities continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is

possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & Game Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the County of Tulare Resource Management Agency in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

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