

**Aug 25 2022****Dorman, April@Wildlife****STATE CLEARINGHOUSE**

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**From:** Xiong, Mary@Wildlife  
**Sent:** Tuesday, July 26, 2022 10:28 AM  
**To:** cmurray@co.sutter.ca.us  
**Cc:** Wildlife R2 CEQA; Brusati, Elizabeth@Wildlife; Garcia, Jennifer@Wildlife; Thomas, Kevin@Wildlife  
**Subject:** CDFW's Comments on the IS/MND for the U-19-010 (Singh) Project (SCH #2022060593)

Dear Casey Murray,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from the Sutter County Department of Development Services (County) for the Project #U-19-010 (Singh) (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat.

#### **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. (Fish & G. Code., § 1802.) Similarly, for purposes of CEQA, CDFW provides, 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 may also act 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. 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.

#### **PROJECT DESCRIPTION SUMMARY**

The proposed Project is a use permit to legitimize a previously established large general truck yard for a maximum of 30 trucks and trailers that was established without land use approval. The proposed use permit will be for a large general trucking operation of the 1.8-acre gravel surfaced truck parking area on the 8.14-acre Project site in conjunction with an existing farming operation at the site. The trucking parking area is located between existing structures to the south and an orchard to the north of the property. Proposed Project activities include trucking operation of a maximum of 30 trucks/trailers, use of an existing barn area for minor truck repairs, removal of an existing 24-foot-wide gravel driveway on the west side of the site, maintenance and widening of an existing 36-foot-wide gravel driveway to a minimum of 45 feet on the east side of the site, chain link fencing installation, asphalt pavement of 24 automobile parking spaces, installation of five 18-foot tall LED pole lights adjacent to the paved automobile parking area and two wall mounted LED lights on an existing shop building, and maintenance of the east driveway and on-site turn around areas for access and truck traffic. The Project is located on the north side of Wilson Road, approximately 1,600 feet west of State Highway 99 at 499 Wilson Road, Yuba City in the unincorporated area of Sutter County, California.

#### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

#### Worker Environmental Awareness Program (WEAP) training

CDFW recommends a qualified biologist provide a WEAP training for all construction personnel before any construction activities begin. At a minimum, the training should include a description and discussion of the mitigation measures within the IS/MND and a brief description of each species that have a potential to occur on the Project, including a discussion of identification, habitat, and legal protections.

#### Nesting Bird Surveys and Protection

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

The IS/MND Mitigation Measure No. 2 (Biological Resources) requires that prior to any on-site grading, paving, landscaping or construction activities, a qualified biologist will conduct a pre-construction survey for nesting migratory birds and raptors if any ground disturbing activities (including grading and vegetation removal) will occur during the breeding season (February 15 through August 31).

Please note that Fish and Game Code section 3503 protects the nests and eggs of all birds, not just special-status bird species, migratory birds, and birds of prey. Fish and Game Code protections for nesting and migratory birds apply regardless of the time of year, and some bird species may nest during the winter and fall months. If an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

#### Swainson's Hawk (*Buteo Swainsoni*)

The IS/MND states that a biological resources report was prepared back in November 2016, and the biological field surveys were conducted on September 30, 2016 and October 18, 2016. Mitigation Measure No. 2 requires that a pre-construction survey for nesting migratory birds and raptors be conducted if any ground disturbing activities will occur during the breeding season (February 15 through August 31).

A single pre-construction survey may not be adequate to identify and avoid Swainson's hawk nests. Swainson's hawks are migratory and return to their breeding grounds in early March to April. They generally lay their eggs in early April to early May (CDFW, 1994). Nests are often extremely difficult to locate while eggs are being laid and incubated and while newly hatched chicks are present because the parents avoid drawing attention to the nest site.

Due to the length of time since the last biological field surveys were performed in conjunction with the surveys conducted outside of the nesting season and the presence of suitable nesting trees for migratory and raptors within and adjacent to the Project site, CDFW recommends that Mitigation Measure No. 2 be revised to require multiple surveys conducted in different periods of the nesting season as described in the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley to adequately identify and avoid Swainson's hawk nests if

Project construction is anticipated to commence during the Swainson's hawk nesting season (March 1 through September 15) (Swainson's Hawk Technical Advisory Committee, 2000).

## ENVIRONMENTAL DATA

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

## FILING FEE

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 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

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Please direct written notifications to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [R2CEQA@wildlife.ca.gov](mailto:R2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the IS/MND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Mary Xiong, Senior Environmental Scientist (Specialist) at (916) 212-3876 or [mary.xiong@wildlife.ca.gov](mailto:mary.xiong@wildlife.ca.gov).

Sincerely,

***Mary Xiong***

Senior Environmental Scientist (Specialist)  
Habitat Conservation Program  
California Department of Fish and Wildlife – North Central Region  
Cell: (916) 212-3876

## REFERENCES

California Department of Fish and Wildlife (CDFW). 1994. Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>