



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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July 20, 2026

Jessica Hill, Director
City of Modesto, Planning Division
1010 10th Street
Modesto, California 95354
(209) 577-5267
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Subject: Scannel Industrial Project (Project)
Draft Environmental Impact Report (DEIR)
SCH: 2025020776

Dear Jessica Hill:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Modesto (City) for the 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 the 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 & 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.), 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: City of Modesto

Objective: The Project proposes to construct up to 2,503,230-square feet (sq-ft) of warehouse, distribution, and manufacturing space. The Project would also construct a retail site comprised of 6,000 sq-ft of convenience store space, and 8,000 sq-ft of quick-serve restaurants. As the Project is currently located outside the City's Sphere of Influence (SOI), an SOI amendment, annexation, and rezoning would also be incorporated as part of the Project.

Location: The Project site is comprised of approximately 145 acres located within Stanislaus County in the unincorporated Community of Salida at the northwest corner intersection of Kiernan Avenue and Dale Road. The Project site is located within Assessor's Parcel Number (APN) 003-019-026.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City 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 DEIR prepared for this Project.

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The DEIR notes the Project site is under active agricultural operations, including cropland and orchard operations, and historically has been used for intensive agricultural purposes. The DEIR also notes surrounding properties are in agricultural use, with light industrial developments east and west of the Project site, and Joseph A. Gregori High School is located immediately northwest of the Project site. The DEIR also notes that the Project site includes a basin on the west side of the Project site that serves as a buffer from the High School and vacant land to the west. Kaiser Permanente Modesto Medical Center is located over 1,000 feet to the south, along with other development.

CDFW submitted a comment letter for the Notice of Preparation on March 27, 2025 (NOP Letter) (Attachment 1). The NOP Letter provided recommendations for potential Project related significant impacts to the following species: the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*); and the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*). The NOP Letter also recommended minimization and avoidance measures for nesting birds and Project cumulative impacts.

The DEIR incorporated information from the NOP Letter and provided specific mitigation measures to mitigate for potential significant impacts to certain special-status animal species. CDFW has concerns about the ability of some the proposed mitigation measures to reduce potential impacts to less than significant and avoid unauthorized take of Swainson's hawk (SWHA), western burrowing owl (BUOW), and Crotch's bumble bee (CBB), and the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*).

Swainson's Hawk

The DEIR states that SWHA has a moderate potential to occur within the Project site as there is suitable foraging and nesting habitat present within the Project site and vicinity. The DEIR includes Mitigation Measure (MM) 3.4-3 to mitigate for potential significant impacts, which requires a qualified biologist to conduct a preconstruction survey for the species (and other raptors) no more than 30 days prior to the start of Project activities. MM 3.4-3 also requires that a qualified biologist implement a ½-mile no-disturbance buffer around active nests and consult with CDFW in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible. Finally, MM 3.4-3 requires the Project to mitigate for the loss of SWHA foraging habitat as outlined in the SWHA Technical Advisory Committee (SWHA TAC 2000). CDFW concurs with MM 3.4-3 but recommends that the survey language be modified to ensure that preconstruction surveys follow the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000), and that these surveys be conducted the survey season immediately prior to construction. Please note this survey methodology requires that multiple surveys be conducted during the SWHA nesting season.

Western Burrowing Owl

The DEIR states that BUOW has moderate potential to occur within the Project site as suitable habitat is present for foraging and nesting within the Project and vicinity. The DEIR

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includes MM 3.4-2 to mitigate for potential significant impacts, which requires that the Project applicant conduct a preconstruction survey and, if BUOW is detected during surveys, to develop avoidance and minimization measures following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012). MM 3.4-2 also requires the Project to mitigate for the loss of BUOW foraging habitat. CDFW concurs with portions of MM 3.4-2, particularly the portion that requires compensatory mitigation for the species. CDFW does not concur with the preconstruction survey requirements outlined in MM 3.4-2 and lack of defined no-disturbance buffers around active BUOW dens. As such, CDFW recommends the following be incorporated into MM 3.4-2:

Recommended Mitigation Measure 1: BUOW Pre-construction Surveys

CDFW recommends that focused surveys, following the 2012 Staff Report on Burrowing Owl Mitigation (2012 Staff Report) (CDFG 2012), be conducted the survey season immediately prior to construction. Please note that the 2012 Staff Report necessitates multiple surveys prior to the initiation of construction.

Recommended Mitigation Measure 2: BUOW Avoidance Buffer

Should a BUOW or known BUOW burrow (active or inactive) be detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 3: BUOW Take Authorization

If a BUOW or known BUOW burrow (active or inactive) is detected, and the no disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch's Bumble Bee

The DEIR states that CBB has no potential to occur within the Project site as suitable habitat is absent; however, MM 3.4-1 is included to mitigate for potential significant impacts to the species. MM 3.4-1 requires a qualified biologist to conduct a preconstruction survey within 7 days of the beginning of Project activities. If CBB is detected during surveys, an appropriate no-disturbance buffer would be implemented. CDFW does not concur that MM 3.4-1 is sufficient to mitigate for potential significant impacts to the species and recommends MM 3.4-1 be modified to include the following:

Recommended Mitigation Measure 4: CBB Focused Surveys

CDFW recommends that focused surveys follow the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) document. CDFW also recommends these surveys be conducted in areas where suitable habitat is present.

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Recommended Mitigation Measure 5: CBB Avoidance and Take Authorization

If CBB is detected, CDFW recommends that all small mammal burrows, thatched/bunch grasses, and any other potential nesting sites 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, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Western Spadefoot

The Project is within the range of western spadefoot (WESP) and the DEIR states that the species does not have the potential to occur within the Project site and notes that suitable grassland habitat with associated ephemeral pools is absent. While CDFW acknowledges the lack of grassland and vernal pool habitat within the Project site, WESP are also known to occur within agricultural settings and have been known to utilize agricultural sumps, pumps, ditches, canals, and basins that are seasonally flooded for a sufficient duration to promote breeding. As noted in the DEIR, there is an agricultural ditch and retention basin within close proximity the Project. These features could support WESP breeding and/or dispersal. As such, CDFW recommends that a habitat assessment be conducted within these areas to determine if potentially suitable habitat may be present. If it is determined that suitable habitat is present, consultation with CDFW is recommended for guidance on survey methods, and avoidance, minimization, and mitigation measures.

On September 24, 2025, the California Fish and Game Commission (FGC) received a petition to list the northern population of WESP as a threatened species and the southern population of WESP as an endangered species under CESA. At the FGC meeting on April 16, 2026, CDFW presented its determination that the petition provided sufficient scientific information that the petitioned action to list WESP under CESA may be warranted; however, the FGC deferred its decision on WESP candidacy until the next meeting in June 2026. If WESP becomes a candidate for listing or ultimately becomes listed as threatened or endangered pursuant to CESA, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), will be necessary to comply with CESA if full avoidance of WESP cannot be achieved.

Editorial comments and/or suggestions

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 proponent 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.

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CDFW further 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, 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.

California Natural Diversity Database (CNDDDB) Positive Submission of Data: Please note that the CNDDDB is populated by voluntary record 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, or lack of recent occurrence records, in the CNDDDB does not mean that 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 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 the 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>.

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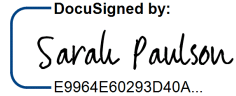
FILING FEES

The Project, as proposed, would 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 DEIR to assist the City in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 2) is included to assist the City with incorporating the recommended mitigation measures provided above. 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>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or at john.riedel@wildlife.ca.gov.

Sincerely,

DocuSigned by:

E9964E60293D40A...

For Julie A. Vance
Regional Manager

ATTACHMENT 1- CDFW 2025 NOP Letter
ATTACHMENT 2- MMRP Table

ec: State Clearinghouse
Land Use and Climate Innovation
state.clearinghouse@lci.ca.gov

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References

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. California Department of Fish and Game, Sacramento, California, USA.

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act (CESA) candidate bumble bee species. Sacramento, California, USA.

California Department of Fish and Wildlife. 2026. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS> Accessed 10 July 2026.

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.

Attachment 1



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
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(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 27, 2025

Tristan Osborn, Planning Manager
City of Modesto Planning Division
1010 10th Street
Modesto, California 95354
(209) 577-5267
tosborn@modestogov.com

Subject: Notice of Preparation (NOP)
The Scannell Industrial Project (Project)
State Clearinghouse No. 2025020776

Dear Tristan Osborn:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the City of Modesto for the 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 the 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 & 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

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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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.

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.

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: City of Modesto

Objective: The proposed Project includes the construction of between 2,000,000 and 2,500,000 square feet of warehouse, distribution, and manufacturing space. In addition, a small 2–3-acre retail site is proposed to provide retail service to the Project.

Location: The Project site is comprised of approximately 145 acres located at the northwest corner of Kiernan Avenue, State Route (SR) 219 and Dale Road intersection, within the unincorporated Community of Salida. The Project is located on Assessor's Parcel Number (APN) 003-019-026.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Modesto 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 DEIR prepared for this Project.

The NOP states, "The Project site and surrounding properties are generally in agricultural use. There are also light industrial developments east and west of the project site, along Kiernan Avenue. Joseph A. Gregori High School is located northwest of the site and the Kaiser Permanente Modesto Medical Center and similar business park uses are located immediately south, within the City of Modesto." Based on aerial imagery, the Project site and its surroundings is comprised of row crops, orchards, and residential and developed areas. A retaining pond is also present west of the Project site. Based on a review of the California Natural Diversity Database (CNDDDB) (CDFW 2025), the Project is within the geographic range of several special-status animal species including, but not limited to: the State threatened Swainson's hawk (*Buteo swainsoni*) and tricolored blackbird (*Agelaius tricolor*), and the State candidate western burrowing owl (*Athene cunicularia hypugaea*) and Crotch's bumble bee (*Bombus crotchii*).

Swainson's Hawk

The Project site is within the known geographic range of Swainson's hawk (SWHA) and there is a historical occurrence documented within three miles of the Project site (CDFW 2025). 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 located along the eastern boundary of the Project site that may provide suitable perching and nesting habitat.

Therefore, CDFW recommends surveys for SWHA be conducted as part of the biological technical studies conducted in support of the DEIR by a qualified biologist following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). In addition to conducting SWHA surveys, CDFW recommends the DEIR include the following measures:

Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction

Depending on the time between the initial survey efforts conducted in support of the DEIR and Project construction, CDFW recommends that additional surveys,

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following the survey methodology developed by the SWHA Technical Advisory Committee, be repeated the survey season immediately prior to construction.

Recommended Mitigation Measure 2: SWHA Avoidance Buffer

If Project-specific activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, 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 Incidental Take Permit (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 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 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.

Tricolored Blackbird

The Project site is within the known geographic range of tricolored blackbird (TRBL) and a historical occurrence was documented within approximately five miles of the Project

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site (CDFW 2025). 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 Project site and vicinity that may contain habitat suitable for TRBL nesting and foraging.

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

Western Burrowing Owl

The California Fish and Game Commission (FGC) approved western burrowing owl (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 a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

The Project site is within the known geographic range of BUOW and a historical occurrence has been documented withing approximately five miles of the Project site (CDFW 2025). BUOW inhabit open grasslands containing small mammal burrows, a requisite habitat feature used for nesting and cover. Based on aerial imagery, it appears that suitable BUOW burrowing and foraging habitat may be present within the Project site and vicinity.

As BUOW have the potential to be present within the Project site or vicinity, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) as part of the biological studies conducted in support of the DEIR. If surveys indicate the presence or potential presence of BUOW, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation. 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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Crotch's Bumble Bee

The Project site is within the known geographical range of Crotch's bumble bee (CBB) and a historical occurrence has been documented within two miles of the Project site (CDFW 2025). 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, and these habitat elements may be present within the Project site. As such, CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological studies conducted in support of the DEIR to determine if the Project site and the immediate surrounding 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 2023). If surveys indicate the presence or potential presence of CBB, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation. 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.

Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that all ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 15 through September 15), developers are responsible for ensuring that implementation of their project does not result in a violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

CDFW recommends that a qualified biologist conduct pre-activity surveys 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 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 conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, 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

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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 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 construction areas 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.

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.

California Natural Diversity Database: Please note that the CNDDDB is populated by 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, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist 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.

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,

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§ 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database. 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>.

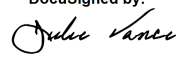
FILING FEES

The Project, as proposed, would 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 NOP to assist the City of Modesto in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included to assist the City of Modesto with incorporating the recommended mitigation measures provided above. 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>). 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

ATTACHMENT

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

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: The Scannell Industrial Project

SCH No.: 2025020776

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA surveys prior to construction	
Recommended Mitigation Measure 3: SWHA take authorization	
Recommended Mitigation Measure 4: SWHA foraging habitat mitigation	
<i>During Construction</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA avoidance buffer	

Attachment 2

Attachment 2

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Scannel Industrial Project

SCH No.: 2025020776

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 1: BUOW pre-construction surveys	
Recommended Mitigation Measure 2: BUOW avoidance buffer	
Recommended Mitigation Measure 3: BUOW take authorization	
Crotch's Bumble Bee (CBB)	
Recommended Mitigation Measure 4: CBB focused surveys	
Recommended Mitigation Measure 5: CBB avoidance take authorization	