



DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov



March 28, 2023

Rebecca Keenan
City of Visalia
315 E. Acequia Ave
Visalia California, 93291

**Subject: East Side Regional Park (Project)
Draft Environmental Impact Report (DEIR)
SCH No. 2014121076**

Dear Rebecca Keenan:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Visalia 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. While the comment period may have ended, CDFW would appreciate if you will 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, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

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.

Rebecca Keenan
City of Visalia
March 28, 2023
Page 2

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.), related authorization as provided by the Fish and Game Code may 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).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Visalia

Objective: The City of Visalia proposes to design and construct the East Side Regional Park and Groundwater Recharge Project. The Project site is located on the north side of State Route (SR) 198, between the Road 148 alignment and Road 152, and extending north to SR 216. The total Project area to be potentially affected includes approximately 290 acres; however the Project design area is approximately 269 acres. The intent of the Project is to co-locate regional park amenities amongst functional recharge basins. The build-out of Tower Street as a new arterial roadway just east of the SCE power lines is also proposed.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Visalia in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There are special-status species that have been observed in the Project area and may be present at individual Project sites in the Project area. These resources may need to

Rebecca Keenan
City of Visalia
March 28, 2023
Page 3

be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*) and State candidate threatened Crotch bumblebee (*Bombus crotchii*). In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist during the appropriate survey period(s) in order to determine whether any special-status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys, and to identify any Project-related impacts under CESA and other species of concern.

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)

The DEIR indicates in Bio-5 that pre-construction surveys will be performed to evaluate the Project site for SWHA. CDFW is concerned that this will not be sufficient in detecting SWHA and adequately determining presence/absence of the species. CDFW recommends a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation (during CEQA analysis). CDFW recommends that results of protocol-level surveys for SWHA be included in the Final EIR (FEIR) for the project.

CDFW also recommends that if any activity will take place during the SWHA nesting season (March 1 through September 15), and active SWHA nests are present, a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of when it was detected by surveys or incidentally, 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.

SWHA detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Rebecca Keenan
City of Visalia
March 28, 2023
Page 4

COMMENT 2: Crotch Bumblebee (CBB)

The California Fish and Game Commission (Commission) determined that listing four bumble bee species “may be warranted” on June 12, 2019, advancing all four species to candidacy. The Commission’s determination was challenged in court soon after, and candidacy was stayed during much of the ensuing litigation. A California court of appeal ultimately upheld the Commission’s determination, and the state Supreme Court declined to review the case. On September 30, 2022, the court of appeal issued remittitur in the litigation, which had the legal effect of reinstating candidacy for all four bumble bee species.

As of September 30, 2022, CBB, Franklin’s bumble bee, Western bumble bee, and Suckley’s Cuckoo bumble bee are again candidate species under CESA and as such, receive the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085). It is illegal to import, export, take (hunt, pursue, catch, capture, or kill, or attempt engage in any of these activities), possess, purchase, or sell the four candidate bumble bee species or any part or product thereof (Fish & G. Code, §§ 86, 2080, 2085).

The DEIR does not mention any evaluation done for CBB. The California Natural Diversity Database (CNDDDB) records indicate that CBB have the potential to occur in the project vicinity (CDFW 2023). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations. While the land on the Project site and its adjacent plots are mostly active agricultural lands, to the west of the Project site are patches of ruderal grassland habitat. CDFW recommends the City of Visalia assess these habitat areas near the Project area for potentially suitable CBB habitat. If suitable CBB habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, potential CBB nesting sites in these areas would have to be avoided with a 50-foot no disturbance buffer to reduce to less-than-significant the Project-related impacts to the species.

CBB detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an ITP prior to ground disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

Rebecca Keenan
City of Visalia
March 28, 2023
Page 5

COMMENT 3: General Comments

Bio-3b states: "Take" of listed (rare, threatened, or endangered) is prohibited. If a listed species is observed within the Project area, the biologist will stop work and contact the appropriate regulatory agency (CDFW and/or USFWS) for guidance on how to proceed." Meanwhile Bio-6 states: "On discovery of any active nests or listed species near work areas, the biologist shall determine appropriate construction setback distances based on applicable CDFW and/or USFWS guidelines and/or the biology of the species in question." Both of these measures are predicated on the discovery of a listed species on the worksite. Bio-3b indicates that all work will be stopped while Bio-6 appears to indicate that work will continue with construction setback distances. These measures are in conflict with one another and CDFW recommends resolution of the conflicting measures Bio-3b, Bio-6 and Bio-7 and clearly indicating in the FEIR what the process of construction activities will be upon potential listed species discovery.

CDFW also recommends that adequate protocol-level surveys are conducted for sensitive biological species so that adequate permits can be acquired prior to construction in order to mitigate the risk of potential take of listed species. As proposed, the Project has not had appropriate, protocol-level surveys conducted for species and is assuming risk to listed species that would result in unauthorized take, a significant impact that cannot be mitigated.

II. Editorial Comments and/or Suggestions

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 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 for the underlying project approval to

Rebecca Keenan
City of Visalia
March 28, 2023
Page 6

be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist the City of Visalia 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 Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Jaime.Marquez@wildlife.ca.gov.

Sincerely,

DocuSigned by:



12950B95267A4F5...

Krista Tomlinson for Julie A. Vance
Regional Manager

Rebecca Keenan
City of Visalia
March 28, 2023
Page 7

REFERENCES

- California Department of Fish and Wildlife. 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed March 1, 2023.
- Goulson, D. 2010. *Bumblebees: behaviour, ecology, and conservation*. Oxford University Press, New York. 317pp.
- Hatfield, R., Jepsen, S., Thorp, R., Richardson, L. & Colla, S. 2015. *Bombus crotchii*. The IUCN Red List of Threatened Species. <http://dx.doi.org/10.2305/IUCN.UK.2015--2.RLTS.T44937582A46440211.en>. Accessed 16 August 2019.
- Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.
- Williams, P. H., R. W. Thorp, L. L. Richardson, and S. R. Colla. 2014. *The Bumble Bees of North America: An Identification guide*. Princeton University Press, Princeton, New Jersey, USA. 208 pp.