



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



July 17, 2023

Governor's Office of Planning & Research

Karl Schoettler
City of Dinuba
405 E. El Monte Way
Dinuba California, 93618

Jul 18 2023

STATE CLEARINGHOUSE

**Subject: Dinuba Focused General Plan Subsequent EIR (Project)
Subsequent Environmental Impact Report (SEIR)
SCH No. 2006031107**

Dear Karl Schoettler:

The California Department of Fish and Wildlife (CDFW) received a Subsequent Environmental Impact Report (SEIR) from the City of Dinuba 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 & 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.

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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 Dinuba

Objective: The City of Dinuba is proposing a Focused General Plan Update with various land use designation changes in multiple areas of the City including the southwest part of the City's Sphere of Influence around the proposed new High School, in the Downtown area, and several other locations such as the East El Monte Area. The focus of the focused General Plan Update will be on the Land Use and Circulation Elements, with other elements reviewed and updated as necessary. It should be noted that the proposed Focused General Plan Update does not change the amount of land currently within the City's Planning Area Boundary. Rather, the Project is proposing certain land use designation changes to existing acreage.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Dinuba 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.

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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 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 the State candidate threatened Crotch bumble bee (*Bombus crotchii*). In order to adequately assess any potential impact to biological resources, focused biological surveys should be conducted by a qualified 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 SEIR does not specifically address Swainson's hawk (SWHA) in any of its measures. Mitigation Measure #3.4.1.4 generally addresses raptor species, but these measures do not propose surveys that are adequate for detection and mitigation of impacts to SWHA. CDFW recommends including the following avoidance and minimization measures.

If the Project will involve conversion of low-crop agricultural fields to support new dairy facilities, CDFW recommends compensation for the loss of Swainson's hawk foraging habitat as described in the 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 one 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 0.75 acres of HM land for each acre of development is advised.

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- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

CDFW recommends surveys be conducted by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). CDFW recommends that the survey be conducted by a qualified biologist again within the survey season immediately prior to project implementation. CDFW recommends a minimum no disturbance buffer of 0.5-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 an active SWHA nest is detected during surveys and a 0.5-mile 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.

COMMENT 2: Crotch Bumble Bee (CBB)

The SEIR does not specifically address Crotch bumble bee (CBB) CBB have the potential to occur within the Project site. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

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, ground disturbance and vegetation removal associated with project activities have the potential to significantly impact local CBB populations.

CDFW recommends that a habitat assessment be conducted for suitable CBB habitat as part of the biological technical studies conducted in support of the CEQA document and that surveys be conducted for CBB, CBB nesting habitat, and CBB foraging resources. 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.

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On-site surveys provide the most valuable information for determining potential impacts of proposed projects and activities on the CBB, and subsequently developing measures to avoid or minimize take of this species. Survey efforts should include multiple on-site surveys and should be developed to detect foraging bumble bees and potential nesting sites (nesting surveys). Survey timing should be determined on a project-by-project basis based on seasonality and when activity or foraging will most likely occur each year. Timing of the surveys may vary depending on the location, elevation, seasonal rainfall, average ambient air temperatures, and local seasonal weather conditions. To increase probability of detection, bumble bee survey efforts should be conducted during the Colony Active Period (April-August) and when floral resources are present, ideally during peak bloom. Survey efforts should occur, and results should be submitted to CDFW prior to initiation of ground disturbing project activities. The number and type of surveys conducted during a survey effort may vary on a project- and site-specific basis. For very large project sites, for example, surveyors should use large meandering transects that incorporate patches of floral resources across the landscape. It is recommended that at least 3 on-site surveys take place prior to project implementation. Each survey should ideally be spaced 2-4 weeks apart during the Colony Active Period to ensure that they cover a range of dates and account for variability in resource use by the candidate species and floral resource phenology within the site.

While surveys conducted using these flight seasons/active periods as a guide are considered the most effective and protective to the species, surveys may fail to detect the presence of CBB. Therefore, some project proponents may choose to assume presence and rely on habitat as an indicator of presence in lieu of, or in addition to, surveys. CBB move nest sites each year; therefore, surveys should be conducted each year that project activities will occur. Even if surveys from a particular project site failed to detect CBB one year, project proponents should perform a full round of surveys each year that project activities will occur or assume presence. Any detection of CBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take.

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:

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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>.

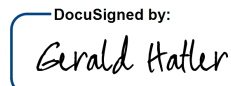
FILING FEES

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 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 Dinuba 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:


37BF80A1646F41C...
Gerald Hatler for Julie A. Vance
Regional Manager

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- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California fish and game commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

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

**PROJECT: City of Dinuba General Plan
SCH No.: 2006031107**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Surveys	
Mitigation Measure 3: SWHA Foraging Habitat	
Mitigation Measure 4: SWHA Take Authorization	
Mitigation Measure 5: CBB Habitat Assessment	
Mitigation Measure 6: CBB Surveys	
<i>During Construction</i>	
Mitigation Measure 2: SWHA No-disturbance buffer	
Mitigation Measure 7: Take CBB Avoidance	