



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
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April 25, 2024

Donna Kenney, Planning and Building Manager
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Governor's Office of Planning & Research

Apr 25 2024

STATE CLEARINGHOUSE

Subject: **River Walk Specific Plan (Project)**
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH: 2021060098

Dear Donna Kenney:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Riverbank, Development Services Department (City of Riverbank) 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, we appreciate 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. While the comment period may have ended, CDFW respectfully requests that the City of Riverbank 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 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).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Riverbank

Objective: The proposed Project is the expansion of the City of Riverbank's Sphere of Influence, and approval and subsequent implementation of the Specific Plan. The quantifiable objectives include expansion of the Riverbank Sphere of Influence by approximately 1,522 acres, annexation of approximately 993 acres into the Riverbank City limits, extension of infrastructure to the annexed area to serve development, and the subsequent development of the annexed area for: Low Density Residential, Medium Density Residential, High Density Residential, Mixed-Use, and Parks/Recreation, including all infrastructure and utilities necessary to service the development.

Location: The Project is located in the unincorporated area of Stanislaus County and adjacent to the City of Riverbank, north of Patterson Road/State Route 108, east of McHenry Avenue, and approximately two miles northwest of downtown Riverbank.

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Riverbank in adequately identifying and/or mitigating the Project's significant, or potentially

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significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the DEIR.

Currently, the DEIR acknowledges that the Project area is within the geographic range of several special status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special status animal species including the State threatened Swainson's hawk, (*Buteo swainsoni*), the the State candidate endangered Crotch's bumble bee (*Bombus crotchii*), the State species of special concern burrowing owl (*Athene cunicularia*), and nesting bird species.

Swainson's Hawk

CDFW concurs with Mitigation Measure 3.4-6, which proposes to avoid impacts to Swainson's hawk (SWHA). In addition to this measure, CDFW recommends the following measure be included for the Project:

Recommended Mitigation Measure 1: SWHA Take Authorization

If preconstruction surveys detect a nesting SWHA, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is recommended prior to any ground disturbing activities to obtain an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) to avoid the unauthorized take of SWHA.

Crotch's Bumble Bee

Mitigation Measure 3.4-2 proposes to survey for and avoid impacts to Crotch's bumble bee (CBB) and states, "If construction begins between March 1 and November 1, the ground shall also be searched for active bumble bee colonies. If bee colonies are identified, these colonies shall be demarcated with a flagged avoidance buffer, as determined by a qualified biologist and shall be avoided during the active season from March 1 through November 1, or until the qualified biologist has determined that the colony is no longer active or until the colony is relocated." CDFW does not concur that this measure is adequate to mitigate for impacts to CBB and recommends the following measures be included for the Project:

Recommended Mitigation Measure 2: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if there is habitat suitable to support CBB. Potential nesting sites, which include all

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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.

Recommended Mitigation Measure 3: CBB Surveys Prior to Construction

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) protocol, during the blooming period immediately prior to ground disturbance activities.

Recommended Mitigation Measure 4: CBB Avoidance Buffer

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses 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 avoid take. Any detection of CBB warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 5: CBB Take Authorization

If CBB is identified during surveys, and all small mammal burrows and thatched/bunched grasses are unable to be avoided by 50 feet, consultation with CDFW is warranted to obtain take authorization for CBB through issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Burrowing Owl

Mitigation Measure 3.4-5 states, "If needed the development of avoidance and minimization approaches shall be developed in consultation with CDFW, consistent with the March 7, 2012, CDFW Staff Report on Burrowing Owl Mitigation." CDFW concurs with utilizing CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012) guidance document and consulting with CDFW for the development of avoidance and minimization measures.

Nesting Birds

Mitigation Measure 3.4-7 states, "If any nests, or behaviors indicating that active nests are present, are observed, appropriate buffers around the nest sites shall be determined by a qualified biologist to avoid nest failure resulting from project activities. The size of the buffer shall depend on the species, nest location, nest stage, and specific

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construction activities to be performed while the nest is active.” CDFW does not concur that this measure is adequate to mitigate for impacts to nesting birds and recommends the following measure be included for the Project:

Recommended Mitigation Measure 6: Nesting Bird Surveys Prior to Construction

If ground-disturbing activities occur during the nesting bird season (February 1 – September 15), CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than one week prior to the start of ground 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 work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests.

Recommended Mitigation Measure 7: Nesting Bird Monitoring and/or Avoidance Buffer

Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change to cease and that CDFW be consulted 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 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 construction area 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.

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Editorial Comments and/or Suggestions

Lake and Streambed Alteration

The Project resides immediately adjacent to the Stanislaus River along its northern border for over two miles. Any ground-disturbing activities that have the potential to impact streams, including the Stanislaus River and adjacent riparian habitat, may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires the Project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

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 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.)

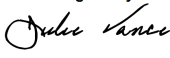
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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Riverbank in identifying and mitigating Project impacts on biological resources.

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:

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Julie A. Vance
Regional Manager

ec: State Clearinghouse
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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 candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

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Attachment 1

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

PROJECT: Riverwalk Specific Plan

SCH No.: 2021060098

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's Hawk	
Recommended Mitigation Measure 1: SWHA Take Authorization	
Crotch's Bumble Bee	
Recommended Mitigation Measure 2: CBB Habitat Assessment	
Recommended Mitigation Measure 3: CBB Pre-Construction Survey	
Recommended Mitigation Measure 5: CBB Take Authorization	
Nesting Birds	
Recommended Mitigation Measure 6: NB Pre-Construction Survey	
<i>During Construction</i>	
Crotch's Bumble Bee	
Recommended Mitigation Measure 4: CBB Avoidance Buffers	
Nesting Birds	
Recommended Mitigation Measure 7: NB Avoidance Buffers	