



December 6, 2022

Randall Cates

Kern County Planning and Natural Resources Department

2700 "M" Street Suite 100

Bakersfield California, 93301

**Subject: Gem Hill Quarry Project (Project)  
Final Environmental Impact Report (FEIR)  
SCH No. 2021110076**

Dear Randall Cates:

The California Department of Fish and Wildlife (CDFW) received a FEIR from the Kern County Planning and Natural Resources Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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

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<sup>1</sup> 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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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.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

**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).

## **1PROJECT DESCRIPTION SUMMARY**

**Proponent:** CalPortland Company

**Objective:** The project proponent has submitted: (a) a Conditional Use Permit (CUP 45, Map 214) application, to allow a surface mining operation and development of a reclamation plan on approximately 82 acres of an approximately 210-acre reclamation plan boundary, which would utilize a 0.75-acre primary access road outside of such reclamation plan boundary to provide access to/from Mojave Tropico Road.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the Kern County Planning and Natural Resources Department 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 be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

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CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State and Federally threatened desert tortoise (*Gopherus agassizii*) and State candidate endangered 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/botanist 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: Desert Tortoise**

The DEIR indicates that protocol surveys were conducted for desert tortoise on September 26, 2019, resulting in zero tortoises detected. CDFW recognizes desert tortoise protocol surveys as valid for only 1 year, and as such cannot concur with the conclusion of species absence. CDFW recommends protocol level surveys be done within a year prior to any project related activities on the Project site, or to pursue an ITP to avoid any inadvertent take of listed species.

#### **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, one of which was CBB. 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, including CBB.

As of September 30, 2022, Crotch bumble bee, 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

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activities), possess, purchase, or sell the four candidate bumble bee species or any part or product thereof (Fish & G. Code, §§ 86, 2080, 2085).

CNDDDB records indicate that CBB have the potential to occur in the project vicinity. 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 Kern County 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 including equipment staging and materials laydown areas, potential CBB nesting sites in these areas would have to be avoided 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).

## II. Editorial Comments and/or Suggestions

**Desert Kit Fox:** Desert kit fox (*Vulpes macrotis arsipus*) is protected under the California Code of Regulations, Chapter 5, Section 460, which prohibits “take” of the species for any reason. If any active or potential dens are found on the Project site, consultation with the Department would be warranted for guidance on take avoidance measures for the desert kit fox.

**Golden Eagle:** Golden eagle (*Aquila chrysaetos*) is a fully protected species in California and is granted further protection under the federal BGEPA thus, if any active or potential nests are detected in range of the Project site consultation is required with CDFW to determine requirements for full avoidance.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, desert tortoise, desert kit fox, and golden eagle. Take under FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral

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patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

## 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 mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto: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>.

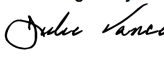
## FILING FEES

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 Kern County Planning and Natural Resources Department 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](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

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## REFERENCES

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