



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



Governor's Office of Planning & Research

JUL 28 2022

July 28, 2022

STATE CLEARINGHOUSE

Stacy Souza Elms, Community & Economic Development Director
City of Los Banos Community & Economic Development Department
520 J Street
Los Banos, California 93635
stacy.souza@losbanos.org

Subject: Los Banos General Plan 2042 (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2022010254

Dear Ms. Elms:

The California Department of Fish and Wildlife (CDFW) received an NOP from the City of Los Banos Community & Economic Development Department 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,

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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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 activities 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 will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Los Banos Community & Economic Development Department

Objective: The Project is a targeted update to the current General Plan 2030 and will bring the general plan up to date with the latest State and federal legislation around urban development, transportation, climate resilience, and safety and address the city's growth, economic development, sustainability, and conservation of open space and land resources. The Project intends to respond to local and regional housing needs, promote economic growth, foster local job creation, enhance quality of life, and protect natural and agricultural resources. In addition to citywide planning issues, the Project will provide goals and policies for enhancing downtown Los Banos as the vibrant center of the city and community.

Location: The Project encompasses all land within the city limits, urban growth boundary, and adjacent land of Los Banos.

Timeframe: Until 2042.

COMMENTS AND RECOMMENDATIONS

The DEIR states that compliance with Section 4.4.1.1, *Regulatory Framework*, will protect biological resources. CDFW finds that the mitigation measures in Section 4.4.1.1 of the DEIR are inadequate. Given the city-wide implications of the Project, subsequent projects (hereafter, "projects") tiering from the Program EIR could impact special-status species including, but not limited to, the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), and the species of special concern burrowing owl (*Athene cunicularia*).

CDFW previously commented on the Notice of Preparation for the Project in a letter dated February 24, 2022. Our February 24, 2022 letter (Attachment 1) provided recommendations for listed wildlife species, and concerns for project impacts to

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waterways/waterbodies. CDFW advise that the recommendations from that letter be incorporated into the DEIR for the Project. CDFW maintains the same recommendations for advised survey methods and mitigations measures from our February 24, 2022 letter.

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 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 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).

CDFW appreciates the opportunity to comment on the Project to assist the City of Los Banos Community & Economic Development 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 Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Bob Stafford
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Bob Stafford for Julie A. Vance
Regional Manager