



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 21, 2023

Steve Sopp
City of Tulare
411 E Kern Avenue
Tulare California, 93274



**Subject: Chandler Grove Master Plan and Annexation Project (Project)
Draft Environmental Impact Report (DEIR)
SCH No. 2022090149**

Dear Steve Sopp:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Tulare 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 would 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.

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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: Toor Capital LLC

Objective: The proposed Project consists of a mixed-use development on approximately 231 acres of active agricultural land in Tulare County, CA. A total of 10.3 acres of perimeter right-of way would be dedicated as part of the Project, leaving approximately 220 acres for development. Once developed, the proposed Project would include approximately 1,197 total units of low, medium, and high-density residential (163.1 acres), a central park (14.1 acres), a neighborhood commercial center (10.8 acres), a school (4.9 acres), and a community center (0.78 acres). Parks would act as natural areas, provide stormwater detention, and include playgrounds, plazas and shelters, open turf areas for field sports, as well as trails for recreation. Trails throughout the site would connect to schools, parks, the community center and the commercial center. An open irrigation canal currently passes through the property from the north to the south and would be piped underground within the same general alignment during project development and flow through the channel would not be changed.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Tulare in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

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Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There are special-status species that may be present at the Project site that were not appropriately evaluated in the DEIR for this project (CDFW 2023a). CDFW recommends that these resources 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 candidate endangered Crotch's bumblebee (*Bombus crotchii*) and the State threatened Swainson's hawk (*Buteo swainsoni*).

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 protocol-level biological surveys, and the information assembled from them, are essential to identify any necessary avoidance measures to fully avoid any potential impacts to these species or the need for CESA take permits along with associated minimization and compensatory mitigation measures, and to identify any Project-related impacts under CEQA.

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: Crotch's Bumblebee

The DEIR does not include any evaluation for Crotch's bumblebee (CBB). CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. 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.

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project area and the immediate surrounding vicinity contain habitat suitable to support CBB. Potential nesting sites, which include all 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. If potentially suitable habitat is identified, CDFW recommends that a qualified biologist

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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 2023b).

COMMENT 2: Crotch's Bumblebee

If CBB is detected, then 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 implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

COMMENT 3: Crotch's Bumblebee

If take cannot be avoided, CDFW recommends acquiring an Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

COMMENT 4: Swainson's Hawk

MM-BIO-3 mentions performing surveys according to the "Swainson's Hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley" (SWHA TAC, 2000) with a modified 0.25-mile buffer area. CDFW recommends adhering to the 0.5-mile buffer area as described in the SWHA TAC in order to avoid inadvertent take.

COMMENT 5: Swainson's Hawk

If a 0.5-mile avoidance buffer is not feasible and take cannot be avoided, CDFW recommends acquiring an ITP prior to initiating ground-disturbing activities.

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

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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>.

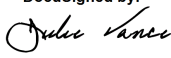
FILING FEES

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 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 Tulare 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:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: State Clearinghouse
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REFERENCES

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- California Department of Fish and Wildlife. 2023b. Survey considerations for California Endangered Species Act candidate bumble bee species. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=213150&inline> June 6, 2023.
- Hatfield, R., S. Jepsen, R. Thorp, L. Richardson, and S. Colla. 2015. *Bombus crotchii*. The International Union for Conservation of Nature red list of threatened Species. <https://www.iucnredlist.org/species/44937582/46440211>
- Swainson's Hawk Technical Advisory Committee [SWHA TAC]. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's central valley. Swainson's Hawk Technical Advisory Committee. May 31, 2000.
- 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's 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.