



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



April 17, 2023

Governor’s Office of Planning & Research

**Apr 17 2023**

**STATE CLEARINGHOUSE**

Hector Guerra  
Tulare County Resource Management Agency  
5961 S Mooney Blvd  
Visalia California, 93277

**Subject: Setton Pistachio Treated Wastewater Land Application Expansion Project  
Notice of Preparation  
SCH No. 2023030410**

Dear Hector Guerra:

The California Department of Fish and Wildlife (CDFW) received a notice of preparation from the Tulare County Resource Management Agency (Tulare County), as Lead Agency, for the Setton Pistachio Treated Wastewater Land Application Expansion Project (Project) pursuant 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 the 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

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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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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 will be required.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Setton Pistachio

**Objective:** Setton Pistachio (the applicant) is proposing to increase the volume of treated wastewater that would be applied to the Land Application Areas (LAAs) during the pistachio harvest season. To account for the increased volume of treated wastewater to be used for irrigation, Setton is proposing to add 89 acres of LAAs to expand their wastewater treatment disposal capacity. The additional 89 acres would include APNs 320-040-004, -005, -006, -007, -008, -009; 320-040-034; and 320-070-023, -024, and -025 (89 acres of pistachio orchards with crop cover). The sites are owned by Setton Pistachio and are zoned AE-20 (Exclusive Agricultural Zone - 20 Acre Minimum) by Tulare County. The proposed LAAs are surrounded by land developed with agriculture and local roads.

The project would include installation of a 15-inch subsurface pipeline to connect the additional LAAs to the existing treated wastewater distribution pipelines and installation of irrigation lines within the LAAs. Two encroachment permits would be required from Tulare County for the new pipeline to reach two of the new LAAs. The additional LAAs would allow Setton Pistachio to increase the annual wastewater discharge from 60 million gallons per year (MGY) to 85 MGY (maximum daily discharge rates would remain at 3 million gallons), allowing the facility to fully utilize its current design capacity. Improvements to the existing wastewater treatment facilities are also proposed to protect beneficial uses of water, prevent nuisance conditions, and comply with waste discharge requirements issued by the Central Valley Regional Water Quality Control Board. This would include adding fiber filters to the existing gunite-lined pond to remove excess solids from treated wastewater prior to its release into the East and West Ponds, where it is stored on a short-term basis for distribution to the LAAs. Further, paddles would be installed in the West Pond for aeration, and a Venturi Model 06 EMOHTM

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system would be installed in the East Pond to improve aeration to prevent septicity and odor production.

**Location:** The Setton Terra Bella Pistachio Facility is an existing pistachio and citrus processing facility (the citrus processing facility is owned by Porterville Citrus Inc.) located at 9370 Road 234, in the town of Terra Bella, east of State Route (SR) 65, in unincorporated Tulare County (Figure 1). The Setton facility includes wastewater treatment facilities, which are located east and west of SR 65 and south of SR 190. The project site includes the existing wastewater treatment facilities, storage ponds, and LAAs (Figure 2). LAAs are agricultural lands that are authorized by the Central Valley Region of the Regional Water Quality Control Board (Regional Board) to receive treated wastewater from the Setton wastewater treatment facilities for irrigation purposes.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Tulare County 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.

The Project area is within the geographic range of several special-status animal species including the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*); the State candidate threatened Crotch's bumblebee (*Bombus crotchii*); the State threatened Swainson's hawk (*Buteo swainsoni*); and the State species of special concern burrowing owl (*Athene cunicularia*) and American badger (*Taxidea taxus*).

### San Joaquin Kit Fox (SJKF)

CNDDDB records show that SJKF have been documented near the project area and are known to occur near Terra Bella. Aerial records show that the area is comprised of agricultural and ruderal habitat. In addition to grasslands, SJKF den in a variety of areas such as rights-of-way, vacant lots, agricultural and fallow or ruderal habitat, dry stream channels, and canal levees, and populations can fluctuate over time. SJKF are also capable of occupying urban environments (Cypher and Frost 1999). SJKF may be attracted to the Project area due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance. As a result, there is potential for SJKF to occupy the Project site and surrounding area.

CDFW recommends assessing presence/absence of SJKF by conducting surveys following the USFWS' "Standardized recommendations for protection of the San

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Joaquin kit fox prior to or during ground disturbance” (2011) as part of the biological technical studies conducted in support of the CEQA document. Specifically, CDFW advises conducting these surveys in all areas of potentially suitable habitat no less than 14-days and no more than 30-days prior to beginning of ground and/or vegetation disturbing activities. CDFW also recommends a qualified biologist conduct on-site worker awareness training and inspect all construction materials for kit fox before use. Any pits or trenches created shall be sloped or covered to prevent inadvertent take.

SJKF detection warrants consultation with CDFW to discuss how to avoid take or, if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) prior to ground-disturbing activities, pursuant to Fish and Game Code section 2081 subdivision (b).

### **Crotch Bumblebee (CBB)**

CNDDDB records indicate that the Project site is within the habitat range of CBB. 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. CDFW recommends a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document to determine if the Project area or its immediate vicinity contain habitat suitable to support CBB. If suitable CBB habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, potential CBB nesting sites in these areas would have to be avoided in order to reduce to less-than-significant the Project-related impacts to the species. As such, if potentially suitable habitat is identified, coordination with CDFW is recommended for guidance on developing focused CBB survey methodology to be conducted as part of the biological technical studies.

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).

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### **Swainson's Hawk (SWHA)**

CNDDDB records indicate that the project area is within SWHA's range and predicted habitat model (CDFW 2023). The habitat types present at and surrounding the Project site all provide suitable foraging habitat for SWHA, increasing the likelihood of SWHA occurrence within the vicinity. In addition, any trees in the Project vicinity have the potential to provide suitable nesting habitat and any power poles may be utilized for perching. SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat limits their local distribution and abundance (CDFW 2016). If potential nest sites occur in the Project vicinity, approval of the Project may lead to subsequent ground-disturbing activities that involve noise, groundwork, construction of structures, and movement of workers that could affect nests and has the potential to result in nest abandonment and/or loss of foraging habitat, significantly impacting local nesting SWHA. In addition, conversion of undeveloped land can directly influence distribution and abundance of SWHA, due to the reduction in foraging habitat.

To evaluate potential Project-related impacts, CDFW recommends that a qualified biologist conduct a habitat assessment as part of the biological technical studies conducted in support of the CEQA document, to determine if the Project site or the immediate vicinity contain suitable habitat for SWHA. If suitable foraging or nesting habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the entire survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project implementation (during CEQA analysis). The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities. If ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½ 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.

### **State Species of Special Concern**

American badger (AMBA) and Burrowing owl (BUOW) have the potential to occur in the Project area. These species have been documented to occur in the vicinity of the Project site, which supports requisite habitat elements (CDFW 2023).

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CDFW recommends that a qualified biologist conduct a habitat assessment for AMBA and BUOW as part of the biological technical studies conducted in support of the CEQA document, to determine if project areas or their immediate vicinity contain potential habitat for the species mentioned above. If potential habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for applicable species and their requisite habitat features to evaluate potential impacts resulting from ground and vegetation disturbance.

For AMBA, CDFW recommends delineation and observance of a 50-foot no-disturbance buffer around mammals dens that could be suitable for AMBA, as well as the entrances of burrows that can provide refuge.

For BUOW, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document following the California Burrowing Owl Consortium's Burrowing Owl Survey Protocol and Mitigation Guidelines (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012). Specifically, if suitable habitat is present at an individual Project site, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

If BUOW are detected, CDFW recommends no-disturbance buffers, as outlined in the Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and

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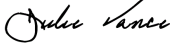
only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

### **Editorial Comments and/or Suggestions**

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to the San Joaquin kit fox. Take under the Federal Endangered Species Act (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 patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any Project activities.

CDFW appreciates the opportunity to comment to assist the Tulare County in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3200, or by electronic mail at [Jaime.Marquez@wildlife.ca.gov](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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