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DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

Jul 13 2023

STATE CLEARINGHOUSE

July 12, 2023

Jason Ridenour, Assistant City Manager
City of Porterville
291 North Main Street
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**Subject: Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Proposed Henderson Commercial Project
State Clearinghouse No: 2023060320**

Dear Jason Ridenour:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) from the City of Porterville 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, 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.), related authorization as provided by the Fish and Game Code will 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: Henderson and 64, LLC.

Objective: The proposed Project consists of the development of retail and restaurant buildings on approximately 10.54 acres of land, for a total of 91,335 square feet of building. Specific project components include: Three quick serve drive-thru buildings, +/- 3,750 square feet, +/- 5,500 square feet, +/- 4,500 square feet. Inline major buildings and retail buildings totaling +/- 77,585 square feet to be used for: General retail, a grocery store with alcohol sales and a 24-hour drug store. The proposed Project also includes the installation of a new east-bound left turn lane off West Henderson Avenue, new signage including: an 80-foot pylon sign in the northeast site corner, a 60-foot pylon sign in the southeast site corner, and a 20-foot monument sign along West Henderson Avenue. And associated improvements including parking areas, nighttime lighting, and site landscaping, in accordance with Porterville City standards.

The existing City services (water, sewer, and stormwater) are located in West Henderson Avenue and the applicant will be required to tie into these existing facilities. The proposed Project would require gas, telephone, cable, and electrical improvements. Natural gas would be provided by The Gas Company; telephone services would be provided by AT&T; electric power would be provided by Southern California Edison Company; and cable television would be provided by Charter Communication. The extent of work required for utilities and gas would be determined during final project design. A General Plan Amendment is required to change APN 246-240-020 from Low Density Residential to Retail Centers. Since the development is proposed to be greater than 50,000 square feet, a Conditional Use Permit is required for project approval.

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Additionally, a Parcel Map may be required to reconfigure parcel lines and/or create new parcels meeting the requirements of all applicable codes for sale or lease.

Location: The proposed Project is located on the northwest corner of State Route (SR) 65 and West Henderson Avenue in the north-central area of the City of Porterville, California. The site comprises six parcels: APNs 246-111-065, -026, -046, -043, and -045, and 246-240-020. The site is vacant, while single-family residences lie to the west, commercial businesses and a shopping center to the west and south, SR 65 to the east, West Henderson Avenue to the south, and single-family residences to the north. APNs 246-111-065, -026, -046, -045, and -043 are designated as Retail Centers and APN 246-240-020 is designated as Low Density Residential by the Porterville General Plan. The entire site is zoned as CR (Retail Centers). There are no aquatic resources present within the proposed Project area or adjacent area per Google aerial photography and Street View.

Timeframe: n/a

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Porterville 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 document.

The NOP indicates that the forthcoming Environmental Impact Report (EIR) will address CEQA Guidelines including but not limited to Biological Resources. The EIR will also analyze Project alternatives as well as cumulative impacts. When an EIR is prepared, the specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation.

Special-Status Species: Based on aerial imagery and species occurrence records as documented in the California Natural Diversity Database (CNDDDB), the proposed Project site has the potential to support special-status species (CDFW 2023). These resources may need to be evaluated and addressed prior to any approvals that would allow ground disturbing activities. CDFW is concerned regarding potential impacts to special-status species including, but not limited to, the State Threatened (ST) Swainson's hawk (*Buteo swainsoni*), the State candidate-listed as endangered (SCE) Crotch bumble bee (*Bombus crotchii*), and the State species of special concern (SSC) American badger (*Taxidea taxus*).

Swainson's Hawk (*Buteo swainsoni*)

Swainson's hawks (SWHA) exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). There was a SWHA occurrence approximately 2.5-miles

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west of Project limits in 2017 (CDFW 2023). Per Google Earth historical imagery, the proposed Project site habitat has been grassland and has frequently been disturbed since at least 1994. There was an orchard directly to the west until 2011 and by 2014, the site appears to have been graded/disturbed and still appears to contain grasslands. This habitat has the potential to contain insects, rodents, etc., that could serve as prey for this species. Trees that remain in the Project vicinity are located to the east, adjacent to SR 65.

The Project as proposed would involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat. CDFW recommends the CEQA document prepared for this Project address potential impacts to SWHA by including the following avoidance and minimization measures.

CDFW recommends compensation for the loss of Swainson's hawk foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Staff Report) (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

SWHA are known to travel for miles to forage. Therefore, CDFW recommends surveys be conducted as part of the biological technical studies conducted in support of the CEQA document by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). CDFW recommends that the survey be conducted by a qualified biologist again within the survey season immediately prior to project implementation. CDFW recommends a minimum no-disturbance buffer of 0.5-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. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to

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discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Crotch Bumble Bee (*Bombus crotchii*)

The Crotch bumble bee (CBB) has the potential to occur within the Project site. 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.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows, which may be present within Project limits. 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, ground disturbance and vegetation removal associated with project activities have the potential to significantly impact local CBB populations.

CDFW recommends that a habitat assessment be conducted by a qualified biologist for suitable CBB habitat as part of the biological technical studies conducted in support of the CEQA document and that surveys be conducted for CBB, CBB nesting habitat, and CBB foraging resources. With the highest detection probability occurring from April through August. 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.

On-site surveys provide the most valuable information for determining potential impacts of proposed projects and activities on the CBB, and subsequently developing measures to avoid or minimize take of this species. Survey efforts should include multiple on-site surveys and should be developed to detect foraging bumble bees and potential nesting sites (nesting surveys). Survey timing should be determined on a project-by-project basis based on seasonality and when activity or foraging will most likely occur each year. Timing of the surveys may vary depending on the location, elevation, seasonal rainfall, average ambient air temperatures, and local seasonal weather conditions. To increase probability of detection, bumble bee survey efforts should be conducted during the Colony Active Period (April-August) and when floral resources are present, ideally during peak bloom. Survey efforts should occur and results should be submitted to

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CDFW prior to initiation of ground disturbing project activities. The number and type of surveys conducted during a survey effort may vary on a project- and site-specific basis. For very large project sites, for example, surveyors should use large meandering transects that incorporate patches of floral resources across the landscape. It is recommended that at least 3 on-site surveys take place prior to project implementation. Each survey should ideally be spaced 2-4 weeks apart during the Colony Active Period to ensure that they cover a range of dates and account for variability in resource use by the candidate species and floral resource phenology within the site.

While surveys conducted using these flight seasons/active periods as a guide are considered the most effective and protective to the species, surveys may fail to detect the presence of CBB. Therefore, some project proponents may choose to assume presence and rely on habitat as an indicator of presence in lieu of, or in addition to, surveys. CBB move nests sites each year; therefore, surveys should be conducted each year that project activities will occur. Even if surveys from a particular project site failed to detect CBB one year, project proponents should perform a full round of surveys each year that project activities will occur or assume presence.

American Badger (*Taxidea taxus*)

American badgers (AMBA) occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). Per Google aerial and Street View imagery (2023), the Project site appears to have been disturbed, and contains grassland habitat, which may support burrows and dens. There are also disturbed areas to the immediate west of the Project site.

Habitat loss is a primary threat to AMBA (Gittleman et al. 2001). The Project will result in a high degree of land conversion and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of AMBA.

CDFW recommends that a qualified biologist conduct focused surveys for AMBA as part of the biological technical studies conducted in support of the CEQA document and perform an analysis of the Project's direct, indirect, and cumulative impacts to AMBA in this area. Regardless of the results of the initial surveys, CDFW recommends pre-construction surveys for AMBA be performed for each phase of the Projects development at least ten days prior to the beginning of project activities. Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

CNDDDB: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of

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supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

Project Alternatives Analysis: CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources should be mitigated to reduce impacts to a less than significant level, if feasible.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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. 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

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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 Porterville in identifying and mitigating the Project's 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.

Sincerely,

DocuSigned by:

Sarah Paulson

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Sarah Paulson for Julie A. Vance
Regional Manager

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California Department of Fish and Wildlife

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LITERATURE CITED

- California Department of Fish and Game (CDFG). 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. California Department of Fish and Wildlife.
- California Department of Fish and Wildlife (CDFW). 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*). California Department of Fish and Wildlife. April 11, 2016.
- CDFW. 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 6, 2023.
- Gittleman, J., Funk, S., MacDonald, D., and Wayne, R. 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.
- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- Hatfield, R., Colla, S. Jepsen, L. Richardson, R. Thorp, and S. Foltz Jordan. 2014. Draft IUCN Assessments for North American *Bombus* spp. for the North American IUCN Bumble Bee Specialist Group. The Xerces Society for Invertebrate Conservation, www.xerces.org, Portland, OR.
- Hatfield, R., Jepsen, S., Thorp, R., Richardson, L., Colla, S. and Foltz Jordan, S. 2015. *Bombus occidentalis*. The IUCN Red List of Threatened Species 2015.
- 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.
- Williams, P., Thorp, R., Richardson, L., and Colla, S. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.
- 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 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.
- Zeiner, D., Laudenslayer, Jr, W., Mayer, K., and White, M. 1990. California's Wildlife Volume I-III. California Department of Fish and Game, editor. Sacramento, CA, USA.