



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 11, 2025

Claudia Calderon, Community Development Director
City of Porterville
291 North Main Street
Porterville, California 93257
(559) 782-7460
planning@ci.porterville.ca.us

**Subject: Henderson Commercial Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No.: 2023060320**

Dear Claudia Calderon:

The California Department of Fish and Wildlife (CDFW) received a DEIR from City of Porterville, as Lead Agency, for the above-referenced Project pursuant 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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that City of Porterville 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

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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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 need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects 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).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Henderson & 65, LLC

Objective: The Project proposes to construct retail and restaurant buildings on approximately 10.54 acres of land. Specific Project components include: three quick serve drive-thru buildings (+/- 3,750 sf, +/- 5,500 sf, +/- 4,500 sf), major buildings and retail buildings totaling +/- 77,585 square feet (General Retail, Grocery store with alcohol sales, 24-hour drug store). The Project will tie into existing facilities for water, sewer, and stormwater. Additionally, the proposed Project will include gas, telephone, cable, and electrical improvements. The Project also includes associated improvements including parking areas, nighttime lighting, and site landscaping.

Location: The Project site 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,

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California. The Project is located on approximately 10.54 acres on Assessor's Parcel Numbers (APN's): 246-111-065, -026, -046, -043, -045, and 246-240-020.

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 CEQA document prepared for this Project.

Aerial imagery of the Project site and its surroundings show the area contains regularly disked, vacant land. The Project site is bordered by residential housing to the north, a residential subdivision; fallow land and commercial development to the west, a frontage road to SR 65 to the east, and commercial development to the south. CDFW previously commented on the Notice of Preparation (NOP) for the Project in a letter dated July 12, 2023.

The DEIR acknowledges that the Project site is within the geographic range of several special-status wildlife species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW notes that all five (5) biological measures in the DEIR incorporate recommendations from CDFW during the NOP public review period. However, the DEIR does not include evidence of a site biological resources assessment/evaluation; as a result, CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern American badger (*Taxidea taxus*).

Comment 1: Swainson's Hawk

Mitigation measures BIO-1 and BIO-2 of the DEIR include pre-construction surveys, nest monitoring, and compensation for loss of Swainson's hawk (SWHA) habitat intended to minimize potential impacts to SWHA. CDFW concurs with utilization of the survey protocols developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) for conducting pre-construction surveys and with the planned monitoring of active Swainson's hawk nests. Additionally, CDFW recommends including the following mitigation measures in the Final Environmental Impact Report (FEIR):

Recommended Mitigation Measure 1: SWHA Avoidance Buffer

If Project-specific ground disturbance activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests

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are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place 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, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 2: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to 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.

CDFW concurs with mitigation measure BIO-2 regarding compensation for the loss of Swainson's hawk foraging habitat.

Comment 2: Crotch's bumble bee

Suitable CBB habitat, such as areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows, may be present within the Project vicinity. BIO-3 describes a mitigation measure intended to minimize impacts to Crotch's bumble bee (CBB). The measure includes focused surveys and avoidance of all small mammal burrows and thatched/bunch grasses, if the surveys cannot be completed. The measure also describes activities that will be implemented if detection of CBB occurs prior to or during Project implementation, including consultation with CDFW. CDFW concurs with the described avoidance measures and the plan to pursue take authorization if take cannot be avoided. However, CDFW is concerned that the measure's language, which indicates CBB surveys would be conducted but does not specify whether they would be protocol level surveys, and therefore may not be sufficient to identify CBB and their nests nor sufficient to minimize potentially significant impacts.

As stated in CDFW's NOP comment letter, "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." Additionally, the CDFW letter states, "To increase probability of detection, bumble bee survey efforts should be

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conducted during the Colony Active Period (April-August) and when floral resources are present, ideally during peak bloom.” As it does not appear that the DEIR included an evaluation for the species, and BIO-3 does not specify the type of surveys that would be conducted prior to the initiation of the Project, CDFW recommends the addition of the following mitigation measures be incorporated in the FEIR:

Recommended Mitigation Measure 3: CBB Habitat Assessment

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project site 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.

Recommended Mitigation Measure 4: CBB Surveys Prior to Construction

If potentially suitable habitat is identified, CDFW recommends that a qualified biologist 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 2023).

Comment 3: American badger

The DEIR also includes mitigation measures for minimizing the impact to American badger (AMBA). BIO-4 describes measures such as pre-construction surveys and avoidance buffers around maternity and non-maternity dens. CDFW concurs with the avoidance measures described; but would like to reiterate the recommendation noted in CDFW’s NOP comment letter to conduct pre-construction surveys for AMBA for each phase of the Project development at least ten days prior to the beginning of Project activities.

Editorial Comments and/or Suggestions

Nesting birds: CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the

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Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

CNDDDB:

Please note that the CNDDDB is populated by records through 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 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 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 site.

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 mailed electronically to the CNDDDB at the following email address:

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CNDDDB@wildlife.ca.gov. The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

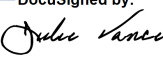
The Project, as proposed, could have an impact on biological resources, and an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City of Porterville in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Reporting Program (Attachment 1) is included below to assist the City of Porterville with incorporating the recommended mitigation measures provided above.

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 regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at marile.colindres@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ATTACHMENT

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

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REFERENCES

California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. California Department of Fish and Wildlife, Sacramento, California, USA.

Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Henderson Commercial Project (Project)
Draft Environmental Impact Report (DEIR)**

SCH No.: 2023060320

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA Take Authorization	
Crotch's bumble bee (CBB)	
Recommended Mitigation Measure 3: CBB Habitat Assessment	
Recommended Mitigation Measure 4: CBB Surveys Prior to Construction	
<i>During Construction</i>	
Swainson's hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA Avoidance Buffer	