



State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 13, 2023

Governor’s Office of Planning & Research

Oct 13 2023

STATE CLEARINGHOUSE

Cort Hitchens
City of San José
200 East Santa Clara Street, Third Floor Tower
San José, California 95113
Cort.Hitchens@sanjoseca.gov

Subject: 644-675 Piercy Road Industrial Development, Mitigated Negative Declaration, SCH No. 2023090628, City of San José, Santa Clara County

Dear Cort Hitchens:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of San José (City) for the 644-675 Piercy Road Industrial Development (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, we appreciate 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 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. The Project as proposed may result in “take” as defined by State law of any species

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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protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: HUSPRF Investor SPV I LP (Hanns Lee)

Objective: Primary Project activities include construction of a 216,252 square-foot industrial building with associated surface parking lots and within-parcels roadways.

Location: 644 and 675 Piercy Road, City of San Jose, CA 95138. The coordinates for the approximate center of the Project are 37.25204° N latitude and -121.77087 W longitude (NAD 83 or WGS 84). The Assessor's Parcel Numbers are 678-08-045 and 678-08-055.

Timeframe: The MND includes a construction period of October 2023 through July 2024

COMMENTS AND RECOMMENDATIONS

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

I. Mitigation Measures and Impacts

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 U.S. Fish and Wildlife Service?

COMMENT 1: D. Biological Resources, page 55; Appendix C Biological Resources Memorandum, Appendix D Special-status Species Table, page 72

Issue: Crotch's bumble bee (*Bombus crotchii*) is currently a Candidate Endangered species under CESA. Recent (2019 and 2020) Crotch's bumble bee occurrences have been documented less than 3.4 miles from the Project site and historic observations occur elsewhere in Santa Clara County (CDFW 2023). Appendix D Special-Status Species Table states that there is marginal habitat on-site, and that floral resources are not sufficient to support feeding during the nesting season. The table states that habitat assessments were conducted in December 2022 on the Project site. A habitat assessment was conducted on the property immediately to the northeast; however, the timing of the surveys is not specified. Only one of the habitat assessments was conducted on the Project site and none of the habitat

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assessments, either on the Project site or adjacent property, were conducted during the appropriate season or during the peak bloom period. These habitat assessments and surveys are therefore not sufficient to confirm absence of Crotch's bumble bee within the Project area or on the adjacent property. Additionally, habitat assessments did not include all of Crotch's bumble bee life cycle (i.e., nesting such as rodent burrows and overwintering such as leaf litter).

Why impact would occur: Implementation of the Project includes construction of buildings, parking lots, and roads.

Specific impact: Direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of suitable breeding and foraging habitats, loss of native vegetation that may support essential foraging habitat.

Evidence impact would be significant: Bumblebees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species. Crotch's bumble bees are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). Unauthorized take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

Recommended Potentially Feasible Mitigation Measures to minimize significant impacts:

The MND should be revised to include the following measures:

Mitigation Measure 1: Habitat Assessment

A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumblebee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bees feed. Further guidance on habitat surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).

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Mitigation Measure 2: Survey Plan

If Crotch's bumble bee habitat is present within the Project area, a pre-construction survey plan shall be developed and be submitted to CDFW for review and approval. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bees. If CESA candidate bumble bees will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding from CDFW.

Surveys shall be conducted during the colony active period (i.e., April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year; therefore, surveys shall be conducted each year that Project work activities will occur. Further guidance on presence surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).

Mitigation Measure 3: Crotch's Bumble Bee Avoidance or Take Authorization.

If Crotch's bumble bees are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan shall be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal.

If full take avoidance is not feasible, CDFW strongly recommends that the Project proponent apply to CDFW for take authorization under an Incidental Take Permit (ITP).

COMMENT 2: D. Biological Resources, Mitigation Measure BIO-1b, page 63

Issue: American badger (*Taxidea taxus*) is a CDFW Species of Special Concern (SSC). The MND states that a habitat assessment and den survey was conducted. The MND states that dens were not detected, but denning habitat is present within the Project area. The MND proposes measures for conducting badger den surveys and den excavation. However, CDFW does not consider these measures as effective avoidance techniques. Badgers can dig a new burrow nightly; therefore, surveys two weeks prior would not identify newly dug dens. Exclusion by increasingly blocking openings with soil, sticks, and debris may increase the chances of entrapment due to the unknown structure of the underground den burrow complex. It is unclear how entrapment will be avoided. The mitigation measure does not differentiate between natal dens and non-natal dens. Hand excavation of dens should not occur when young may be present.

Why impact would occur: Implementation of the Project includes construction of buildings, parking lots, and roads.

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Specific impact: Loss of suitable breeding habitat, loss of dens, den abandonment, and direct mortality through crushing of adults or young within dens.

Evidence impact would be significant: The American badger is a rare species under CEQA (CEQA Guidelines, §15380 subds. (b)(2)) because it is designated by CDFW as a California SCC.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:

The MND should be revised to include the following measures:

Mitigation Measure 1: Focused Den Surveys

A qualified biologist shall conduct focused den surveys (e.g., walking line transect surveys) within the Project area and 250-foot radii surrounding the work area at least 14 days prior to the start of work as well as daily prior to beginning the ground-disturbing work for the day.

Mitigation Measure 2: Establish a Buffer around Natal Den

If badger dens are found and Project work is to occur during the gestation and pup-rearing period (i.e., February 15 through July 1), a buffer of 250 feet around the den complex shall be established, and Project work shall not occur within the buffer. A qualified biologist shall monitor the den to detect when young are nearing independence (e.g., can be observed emerging from den opening or are located outside of the den) and disperse.

Mitigation Measure 3: Den Activity Surveys and Habitat Compensation

After the gestation and pup-rearing period, the qualified biologist shall conduct focused surveys to determine if the den is active (e.g., burrow scoping, camera stations, track plates, observation of new signs such as tracks, claw marks, or fur). If it is determined that the den is active, and establishing an avoidance buffer surrounding the active den is not feasible, a Badger Mitigation Plan shall be developed and submitted to CDFW. Any badger habitat permanently lost shall be compensated at a suitable off-site location at a minimum 1:1 replacement ratio with the same or greater quality habitat.

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, §

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

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Kristin Garrison, Environmental Scientist, at (707) 944-5534 or Kristin.Garrison@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023090628)
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov

REFERENCES

California Department of Fish and Wildlife (CDFW). 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed October 3, 2023.