



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



October 14, 2024

Scott Claar, Senior Planner
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
Scott.Claar@cityoftracy.org

Subject: Schulte Road Warehouse Project, Draft Environmental Impact Report,
SCH No. 2023120437, San Joaquin County, City of Tracy

Dear Mr. Claar:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a draft Environmental Impact Report (EIR) from the City of Tracy for the Schulte Road Warehouse Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the draft EIR to inform the City of Tracy, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a Project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY AUTHORITY

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures,

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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and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

Lake or Streambed Alteration

Pursuant to Fish and Game Code section 1600 et seq., an LSA notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian; or deposit or dispose of material where it may pass into a river, lake or stream. The Project proponent should submit a 1602 notification covering all activities subject to Fish and Game Code 1602 authority. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the Final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Fully Protected Species

Fully protected species, such as white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows. The take is for necessary scientific research, efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests 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: City of Tracy

Project Description: The Project includes the demolition of three single family residences and six ancillary structures and construction and operation of a one-story

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217,466-square-foot (sf) warehouse building and a surface parking lot. The 217,466-sf warehouse would include 206,593-sf of warehouse uses and 10,873-sf of office space.

Location: The Project site is located at 16286 West Schulte Road in unincorporated San Joaquin County, California. The Assessor's Parcel Numbers are 209-230-250 and 209-230-260. The larger parcel (APN 209-230-250) is proposed for development as part of the Project. The Project site is immediately south of the intersection of Bud Lyons Way and West Schulte Road. The Project site is bounded on the north by West Schulte Road, on the west by an unnamed driveway serving the adjacent rural residence, on the south by the Delta Mendota Canal, and on the east by vacant agricultural land. The Project site is located within Sections 35 of Township 2 South, Range 4 East Mount Diablo Base Meridian (MDBM).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends, CDFW concludes that an EIR is appropriate for the Project. Please see Attachment 1 Draft Mitigation and Monitoring Reporting Plan outlining the mitigation measures recommended by CDFW below.

COMMENT 1: Proposal of No Bumble Bees on the Project Site

Issue: Page 3.4-27 of the draft EIR states that Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*) are documented within the nine-quad region for the Project site, but they are not documented on the Project site. The habitat present on the Project site is not ideal natural habitat for these species and none are believed to be present.

The draft EIR disclosed that a simple field reconnaissance survey was conducted on the site April 16, 2022 to establish the existing conditions of the site. The draft EIR does not describe that focused surveys for bumble bees by a qualified entomologist were conducted on the site. Therefore, the presence or absence of bumble bees should be further investigated.

Recommendations: CDFW recommends the following mitigation measures to detect bumble bees on the Project site for avoidance and minimization.

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Recommended Mitigation Measure 1: Habitat Assessment

CDFW recommends the draft EIR include a thorough habitat assessment for Crotch's and western bumble bee within the Project site and surrounding areas that may be impacted by Project construction and operations. The assessment should be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's and western bumble bee, and include all areas of suitable overwintering, nesting, and foraging habitats.

Suitable habitat includes areas of grasslands and upland scrub that contain requisite habitat elements such as small mammal burrows and forage plants. Potential nest habitat (late February to late October) could contain underground abandoned small mammal burrows, perennial bunch grasses and/or thatched annual grasses, brush piles, old bird nests, dead trees, or hollow logs Williams et al. 2014; Hatfield et al. 2015). Overwintering sites (November through early February) utilized by mated queens in self-excavated hibernacula could be present in soft, disturbed soil (Goulson 2010), sand, well-drained, or loose soils, under leaf litter or other debris (Williams et al. 2014) with ground cover requisites such as barren areas, tree litter, bare patches within short grass in areas lacking dense vegetation.

Recommended Mitigation Measure 2: Surveys

The draft EIR should state that preconstruction surveys will be conducted within the Project site and surrounding areas which may be impacted by Project construction and/or operations. CDFW recommends following the guidance outlined in the California Bumble Bee Atlas Habitat surveys- Cali Bumble Bee Atlas – California Bumble Bee Atlas (<https://www.cabumblebeeatlas.org/habitat-surveys.html>).

The peak flying time for Crotch's bumble bee is March to August, but bees could be flying anytime between February 1 and October 31. Surveys between March and June are expected to have highest detection probability and are therefore the period recommended for pre-construction surveys. Surveys should be conducted no more than 30 days prior to start of Project construction activities, assessing all areas of suitable habitat for overwintering, nesting and foraging at, and within 100 feet of the proposed work area. Surveys should include a minimum of three survey efforts, over a three-day period within a temperature range of 15C and 30C although bumble bees and can fly and forage at near freezing temperatures. If the surveyor suspects Crotch's bumble bee detection or occupancy, CDFW should be consulted immediately.

Goals of the surveys should be to potentially identify the bee species through non-take methods (close lens photography), foraging plants, and potential ground nest sites on site. Surveys should include examining flowering vegetation, any potential preferred nectar plants, small mammal burrows, bunch grasses, thatch, brush piles, old bird

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bests, dead trees, or hollow logs. Survey results, after the protocol was followed, would be good for one year (until the next flying period season) but a pre-activity survey would still be needed prior to ground-disturbing activities.

COMMENT 2: Crotch's Bumble Bee

Issue: The Project site is within the current known range of the Crotch's bumble bee; however, the draft EIR does not analyze potential impacts to this species, nor does it identify any mitigation measures. Potential adverse effects to this species from vegetation removal, clearing, grubbing, and grading work on-site may include direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of suitable breeding and foraging habitats, and loss of native vegetation that may support essential foraging habitat.

Recommendation: CDFW recommends the EIR include an analysis of impacts to Crotch's bumble bee and identify avoidance, minimization and mitigation measures based on the analysis to ensure impacts are reduced to a level of less-than-significant. CDFW also recommends that the EIR include a mitigation measure that requires focused surveys for the species to 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, focused surveys should 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>).

CDFW recommends that habitat removal (i.e. grading of floral resources) be conducted in a patchwork pattern to the extent feasible in occupied or suitable habitat, such that the entirety of the habitat is not removed and untreated portions of occupied or suitable habitat are retained.

COMMENT 3: Bumble Bees Not Covered in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan

Issue: The draft EIR proposes that biological resource impacts will be mitigated to a less-than-significant level by participation in the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Participation in the SJMSCP provides compensation for habitat impacts to covered species, avoidance and minimization of covered species, and take authority for covered species. However, Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis*) are not species that are covered by the SJMSCP. The draft EIR does not provide avoidance and minimization measures or mitigation for impacts to bumble bees that may utilize the Project site.

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Recommendations: CDFW recommends the following mitigation measures to avoid and mitigate direct and indirect impacts to Crotch's bumble bee and western bumble bee.

If surveys document presence of Crotch's bumble bee or their habitats within the Project site, due to the difficulty of completely avoiding take of individuals of the species, CDFW strongly recommends that the Project proponent apply for an ITP under CESA to provide take authorization for Crotch's bumble bee as a covered species.

Recommended Mitigation Measure 3: Avoidance of Nesting Colonies

CDFW recommends that inactive small mammal burrows and thatched/bunch grasses be avoided whenever feasible. If an inactive burrow may be disturbed by Project activities, it should be resurveyed for Crotch's bumble bee presence within seven days prior to the scheduled disturbance. If Crotch's bumble bee has been detected during surveys, the qualified entomologist should identify the location of all nests in or adjacent to the Project site. If nests are identified, 45-foot no-disturbance buffer zones should be established around nests to reduce the risk of disturbance or accidental take. If Project activities may result in disturbance or potential take, the qualified entomologist should expand the buffer zone as necessary to prevent disturbance or take.

Recommended Mitigation Measure 5: Compensatory Mitigation

CDFW recommends that the draft EIR include compensatory mitigation for the loss of all suitable Crotch's bumble bee habitat. Bumble bee floral resources should be mitigated for permanent impacts in the absence of information regarding the compensatory mitigation site. Floral resources should be replaced as close to their original location as is feasible. If active Crotch's bumble bee nests have been identified and floral resources cannot be replaced within 600 feet of their original location, floral resources should be planted in the most centrally available location relative to identified nests. This location should be no more than 4,900 feet (1.5-km) from any identified nest. Replaced floral resources may be split into multiple patches to meet distance requirements for multiple nests. The draft EIR should state that mitigation lands will be protected in perpetuity under a conservation easement with an endowment established for long-term management of the lands.

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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link:

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<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. (See 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 draft EIR to assist the City of Tracy in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Andrea Boertien, Environmental Scientist, at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Sara Kern, Environmental Scientist (Supervisory), at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023120437)

REFERENCES

- Goulson, D. 2010. Bumblebees: behaviour, ecology, and conservation. Oxford University Press, New York. 317pp.
- Hatfield, R, S. 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.

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Hatfield, R., Jepsen, S., Thorp, R., Richardson, L., Colla, S. & Foltz Jordan, S. 2015. *Bombus occidentalis*. The IUCN Red List of Threatened Species 2015.

Williams, P. H., R. W. Thorp, L. L. Richardson, and S.R. Colla. 2014. Bumble bees of North America: An Identification guide. Princeton University Press, Princeton, New Jersey. 208pp.