



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, CA 93710  
www.wildlife.ca.gov

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 10, 2024

Samuel J. Rashe, Senior Planner  
County of Madera Community and Economic Development Department  
200 West 4<sup>th</sup> Street, Suite 3100  
Madera, California 93637  
(559) 675-7821  
[Samuel.Rashe@maderacounty.com](mailto:Samuel.Rashe@maderacounty.com)

**Subject: CUP #2022-003 – SWS Land Development (Project)**  
**MITIGATED NEGATIVE DECLARATION (MND)**  
**SCH: 2024050469**

Dear Samuel Rashe:

The California Department of Fish and Wildlife (CDFW) received an MND from Madera County for the 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. While the comment period may have ended, CDFW respectfully requests that Madera County 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 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

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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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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, 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

**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 (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** SWS Land Development

**Objective:** The Project proposes to construct and operate a convenience store/restaurant facility. The facility would be approximately 4,634 square feet, and include a Gas Island Canopy, an Island Diesel Canopy, and 35 parking stalls.

**Location:** The Project is located in Madera County on the east side of Road 36 at the intersection of Road 36 and State Route (SR)145. The Assessor's Parcel Number (APN) for the Project site is 051-481-009: 051-481-010)

**Timeframe:** N/A

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## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Madera County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

Aerial imagery of the Project boundary and its surroundings show the Project site contains recently disked annual grassland. The areas surrounding the Project site contain residential neighborhoods to the south and east, and annual grasslands to the north and west. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records (CDFW 2024), and the surrounding habitat, several special status species could potentially be impacted by Project activities.

Currently, the MND acknowledges that the Project site is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of these measures to reduce impacts to less than significant and avoid unauthorized take for special status animal species, including the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State candidate endangered Crotch's bumble bee (*Bombus crotchii*), and the State species of special concern and federally proposed threatened western spadefoot (*Spea hammondi*).

CDFW also has concerns about the ability of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for special status plant species, including but not limited to, the State and federally endangered hairy Orcutt grass (*Orcuttia pilosa*), and the State endangered and federally threatened succulent owls-clover (*Castilleja campestris* var. *succulenta*) and San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*). Finally, CDFW has concerns with potential impacts to migratory and non-migratory nesting birds.

### California Tiger Salamander

The Project site is within the range of California tiger salamander (CTS) and the MND noted that the species has been documented within the vicinity of the Project and two National Wetland Inventory (NWI) wetlands are located within the northern and southeastern corner of the Project site. Additionally, no mitigation measures were proposed to mitigate for potential Project-related impacts to the species. CTS are known to breed and develop in vernal and seasonal pools and stock ponds in grassland habitat types and have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from these habitats. As CTS have been documented in the

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Project vicinity, and have the potential to utilize the habitat within the Project site, CDFW recommends the following:

**Recommended Mitigation Measure 1: Focused CTS Protocol-level Surveys**

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS “Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

**Recommended Mitigation Measure 2: CTS Avoidance**

If CTS protocol-level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW a State Incidental Take Permit (ITP) in accordance with Fish and Game Code section 2081(b).

**Recommended Mitigation Measure 3: CTS Take Authorization**

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

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### **Crotch's Bumble bee**

The Project site is within the range of Crotch's bumblebee (CBB) and historical occurrences have been documented within the Project vicinity. Additionally, the MND does not include any evaluation for the species. CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses, and these habitat elements appear to be present within the Project site. As such, CDFW recommends the following:

#### **Recommended Mitigation Measure 4: CBB Habitat Assessment**

CDFW recommends a qualified biologist conduct a habitat assessment to determine if the Project area 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 5: CBB Surveys**

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).

#### **Recommended Mitigation Measure 6: CBB Avoidance**

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. 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.

#### **Recommended Mitigation Measure 7: CBB Take Authorization**

If take cannot be avoided, CDFW recommends acquiring an ITP pursuant to Fish and Game Code Section 2081(b), prior to initiating ground-disturbing activities.

### **Western Spadefoot**

The Project site is within the range of western spadefoot (WESP) and the MND noted that the species has been documented within the vicinity of the Project and two potential NWI wetlands are located within the northern and southeastern corner of the Project

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site. Additionally, no mitigation measures were proposed to mitigate for potential Project-related impacts to the species. WESP occur primarily in grasslands with shallow temporary pools and these habitat features are present within the Project site and Project vicinity. As WESP have been documented in the Project vicinity, and have the potential to utilize the habitat within the Project site, CDFW recommends the following:

**Recommended Mitigation Measure 8: WESP surveys**

CDFW recommends that a qualified biologist conduct focused surveys immediately prior to construction for WESP and their requisite habitat features.

**Recommended Mitigation Measure 9: WESP avoidance buffers and relocation**

If WESP are found during preconstruction surveys, avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If WESP are observed on the Project site, CDFW recommends that Project activities in their immediate vicinity cease, allowing individuals to leave the Project site on their own accord.

**Special-Status Plants**

The Project site is within the range of special status plant species, and the MND noted that hairy Orcutt grass, San Joaquin Valley Orcutt grass, and succulent owl's-clover have been documented within the vicinity of the Project and suitable habitat for these species, which includes wetland habitats, may be present within the Project site. Additionally, no mitigation measures were proposed to mitigate for potential Project-related impacts to special-status plants. As special-status plants have been documented in the Project vicinity, and have the potential to be present within the Project site, CDFW recommends the following:

**Recommended Mitigation Measure 10: Special-status plant Habitat Assessment and surveys**

CDFW recommends that a qualified botanist conduct a habitat assessment of the Project site well in advance of Project implementation to determine if the Project area or its vicinity contains suitable habitat for special-status plant species. If suitable habitat is present, CDFW recommends that individual Project sites be surveyed for special-status plants by a qualified botanist following the "Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities" (California Department of Fish and Wildlife 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

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### **Recommended Mitigation Measure 11: Special-status plants avoidance buffers**

If special-status plants are detected, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

### **Recommended Mitigation Measure 12: Special-status plants take authorization**

If take cannot be avoided, CDFW acquisition of an ITP pursuant to Fish and Game Code Section 2081(b) would be required to comply with CESA, prior to initiating ground-disturbing activities.

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

**CNDDDB Positive Submission of Data:** Please note that the California Natural Diversity Database (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 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/botanist 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.

**Federally Listed Species:** CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including, but not limited to, CTS, vernal pool fairy shrimp (*Branchinecta lynchi*), hairy Orcutt grass, San Joaquin Valley Orcutt grass, and succulent owl's-clover. 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.

**Lake and Streambed Alteration:** The MND notes that two wetlands were identified within the Project site. Based on a review of aerial imagery, it appears that these

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features may be subject to CDFW's regulatory authority pursuant to Fish and Game Code Section 1600 et seq. CDFW would like to note that Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

**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.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document. Depending on the results of that assessment, CDFW further recommends that the CEQA document for this Project include 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 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



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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 area 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.

## **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: <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>.

## **FILING FEES**

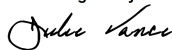
The Project, as proposed, could have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental 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).

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## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Madera County in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included below to assist Madera County with incorporating the recommended mitigation measures provided above. Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist at (559) 807-1453 or [john.riedel@wildlife.ca.gov](mailto:john.riedel@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

cc: State Clearinghouse  
Governor's Office of Planning and Research  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

U.S. Fish and Wildlife Service  
Angel Sprague  
[angelica\\_sprague@fws.gov](mailto:angelica_sprague@fws.gov)

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## **References**

California Department of Fish and Wildlife. 2018. Protocols for surveying and evaluating impacts to special status native plant populations and sensitive natural communities. California Department of Fish and Wildlife. Sacramento, California, USA.

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.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Referenced June 3, 2024

United States Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.

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<b>Attachment 1</b>	
<b>CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)</b>	
<b>PROJECT: CUP #2022-003 – SWS Land Development SCH No.: 2024050469</b>	
<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
California Tiger Salamander	
<b>Recommended Mitigation Measure 1:</b> CTS surveys	
<b>Recommended Mitigation Measure 3:</b> CTS take authorization	
Crotch's Bumble Bee	
<b>Recommended Mitigation Measure 4:</b> CBB habitat assessment	
<b>Recommended Mitigation Measure 5:</b> CBB surveys	
<b>Recommended Mitigation Measure 7:</b> CBB take authorization	
Western Spadefoot	
<b>Recommended Mitigation Measure 8:</b> WESP surveys	
Special-Status Plants	
<b>Recommended Mitigation Measure 10:</b> SSP surveys	
<b>Recommended Mitigation Measure 12:</b> SSP take authorization	
<i>During Construction</i>	
California Tiger Salamander	

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<b>Recommended Mitigation Measure 2:</b> CTS avoidance buffers	
Crotch's Bumble bee	
<b>Recommended Mitigation Measure 6:</b> CBB avoidance buffers	
Western Spadefoot	
<b>Recommended Mitigation Measure 9:</b> WESP avoidance buffers & relocation	
Special-Status Plants	
<b>Recommended Mitigation Measure 11:</b> SSP avoidance buffers	