



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



Governor's Office of Planning & Research

March 6, 2023

**March 6 2023**

## **STATE CLEARING HOUSE**

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
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(559) 327-9260  
DenverStairs@clovisusd.k12.ca.us

Subject: **Fourth Educational Center - Terry Bradley Education Center (TBEC)  
Additional Infrastructure Project – Notice of Preparation (NOP) (Project)  
SCH No.: 2005101054**

Dear Denver Stairs:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Clovis Unified School District for the above-referenced Project pursuant to 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 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

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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.

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 2

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 to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project will 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).

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to streams/lakes include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to "Waters of the State".

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Clovis Unified School District (CUSD)

**Objective:** The proposed Project would be located on an approximately 15-acre site immediately adjacent to the planned Terry Bradley Education Center (TBEC) campus. The Project would consist of construction and operation of sewer, water, and potential

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 3

solar facilities, including a wastewater treatment package plant (a pre-manufactured facility), an on-site groundwater well and wellhead treatment system, an on-site storage tank for potable water, and potential solar panel installation.

**Project Background:** The TBEC is a CUSD site that was designed to provide the student capacity necessary to accommodate population growth in the district, as projected in 2008. The TBEC includes a high school, intermediate school, and elementary school, along with recreational areas and supporting facilities consistent with other educational center sites. The project site is within the City of Fresno's Southeast Development Area (SEDA) as identified in the City of Fresno General Plan adopted on December 18, 2014. As the TBEC is located within SEDA, CUSD anticipated that the City of Fresno municipal water and sewer services would be provided to the site as reflected in the Fourth Educational Center (FEC) EIR certified by CUSD's Board of Directors on August 28, 2008, along with project approval of the TBEC. Because development of SEDA was put on hold by the City of Fresno, the municipal facilities for water and sewer have not been developed to allow the TBEC to utilize. CUSD has assessed and determined that extending City water and sewer facilities from their current end point to the project site would be cost prohibitive. This Project would provide the water and sewer facilities needed for the TBEC's operation for the TBEC to become operational in 2025. The TBEC would connect to City services once extended to the TBEC.

**Location:** The Project site is situated east of North Highland Avenue and north of East Clinton Avenue in the County of Fresno, approximately 1.5 miles from the city limits of Fresno. The Project site is immediately east across North Highland Avenue, adjacent to the 160-acre TBEC site. The Project site is flat and denoted by Assessor Parcel Number (APN) 309-200-47. Regional access to the Project site would be provided by State Route 180 and local access would be provided by North Highland Avenue and East Clinton Avenue. The dirt-lined Gould Canal borders the proposed Project site immediately to the east.

**Timeframe:** No timeframe given.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the CUSD 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 environmental document for this Project.

The NOP indicates that there will be a Supplemental Environmental Impact Report (SEIR) for the Project that will consider potential environmental effects of the proposed Project to determine the level of significance of the environmental effect and will analyze these potential effects to the detail necessary to make a determination on the level of

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 4

significance. The SEIR will also identify and evaluate alternatives to the proposed Project. When an SEIR 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 and/or surrounding area is known to and/or 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 Species of Special Concern (SSC) Burrowing owl (*Athene cunicularia*) and the American badger (*Taxidea taxus*); and the State candidate-listed as endangered crotch bumble bee (*Bombus crotchii*).

### **Burrowing Owl (BUOW)**

BUOW may occur in or near the Project site per Google aerial imagery. BUOW inhabit open grassland or adjacent canal banks, Right-Of-Ways (ROWs), vacant lots, etc. containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover. Review of aerial imagery indicates that the Project site is in the immediate vicinity of annual grassland, potentially fallow agricultural fields, and the dirt-lined Gould Canal, which is immediately adjacent to the east of the proposed Project site.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys as part of the biological technical studies conducted in support of the CEQA document following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable. These surveys are to determine if there are more BUOW in addition to the 2018/2019 observations on-site (CDFW 2023).

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Denver Stairs, Assistant Superintendent  
 Clovis Unified School District  
 March 6, 2023  
 Page 5

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

### **American Badger (AMBA)**

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 may support these requisite habitat features. There are also disturbed grassland features to the west and southwest of the Project site, across North Highland Avenue therefore, the Project has the potential to impact AMBA.

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.

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 6

### **Crotch Bumble Bee (CBB)**

The proposed Project location is within CBB range (CDFW 2023). Suitable CBB habitat includes areas of grasslands that contain requisite habitat elements, such as small mammal burrows, which have the potential to be present within and surrounding the Project area. 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, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

CBB was once common throughout most of central and southern California; however, it now appears to be absent from most of it, 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.

CDFW recommends that a qualified biologist with experience in invertebrate, and particularly bee species, conduct focused surveys for CBB, and their requisite habitat features as part of the biological technical studies conducted in support of the CEQA document to evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from the construction of the Project.

The U.S. Fish and Wildlife (USFWS) Rusty Patch Bumble Bee (*Bombus affinis*) Survey Protocol (April 2019) is currently being consulted and modified for the development of surveys for CBB. CDFW recommends this protocol be adapted to survey for CBB until the development of an approved CBB protocol is completed.

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

CDFW requests that the SEIR fully identify potential impacts to biological resources, including the above-mentioned species. In order to adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat features may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol level surveys, and to identify any Project-related impacts under CESA and other species of concern.

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 7

CDFW recommends the SEIR address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

**Waters of the State and U.S.:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize watercourses in the Project area include the following: increased sediment input from road or structure runoff; construction-related activity runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement through the area. The Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) also have jurisdiction regarding discharge and pollution to Waters of the State.

**Lake and Streambed:** The Project is subject to CDFW's regulatory authority pursuant to 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; or (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 in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement. If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be able to issue the Final LSAA Lake and Streambed Alteration Agreement until CEQA analysis for the project is complete. This may lead to considerable Project delays.

**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.

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 8

**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](mailto: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 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).

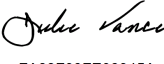
CDFW appreciates the opportunity to comment on the Project to assist the Clovis Unified School District in identifying and mitigating the Project's impacts on biological resources.



Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 9

If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at [Kelley.Nelson@wildlife.ca.gov](mailto:Kelley.Nelson@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

cc: Regional Water Quality Control Board  
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ec: California Department of Fish and Wildlife  
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Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 10

## LITERATURE CITED

California Department of Fish and Wildlife. 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 21, 2023.

### ***BUOW Literature Citations***

California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.

California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game.

### ***AMBA Literature Citations***

Gittleman, J. L., S. M. Funk, D. MacDonald, and R. K. Wayne. 2001. Carnivore conservation. Cambridge University Press, Cambridge, United Kingdom.

Zeiner, D. C., W. F. Laudenslayer, Jr, K. E. Mayer, and M. White. 1990. California's Wildlife Volume I-III. California Department of Fish and Game, editor. Sacramento, CA, USA.

### ***Crotch Bumble Bee Literature Citations***

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](http://www.xerces.org), Portland, OR.

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

U.S. Fish and Wildlife Service. 2019. Rusty Patch Bumble Bee (*Bombus affinis*) Survey Protocol: <https://www.fws.gov/midwest/Endangered/insects/rpbb/surveys.html>

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.

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*

Denver Stairs, Assistant Superintendent  
Clovis Unified School District  
March 6, 2023  
Page 11

*franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.