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



July 15, 2020

Governor's Office of Planning & Research

Ms. Meenaxi Raval  
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**Jul 16 2020**

**STATE CLEARINGHOUSE**

Dear Ms. Raval:

Subject: Woz Way Project, Notice of Preparation of a Supplemental Draft Environmental Impact Report, SCH No. 2003042127, City of San Jose, Santa Clara County

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a Supplemental Draft Environmental Impact Report (SDEIR) to the Downtown Strategy 2040 EIR (SCH No. 2003042127) from the City of San José (City) for the Woz Way Project (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 resources. 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 expected to be a Trustee Agency with regards to this Project. As a Trustee Agency, CDFW has a responsibility pursuant to CEQA for commenting on projects that could directly or indirectly impact biological resources. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e. biological resources). As a Trustee Agency, CDFW is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities (CEQA Guidelines, § 15386; Fish and Game Code, § 1802).

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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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## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** KT Properties

**Objective:** The proposed Project site is 3.08 acres. The Project includes demolition of 16 single-family residential structures and removal of on-site trees, and construction of two office and retail towers with a maximum height of 297 feet. The Project also includes excavation to 40 feet of depth for construction of four levels and 1,046 parking spaces of subterranean parking. At an above-surface level, there would be a parking lot with 205 parking spaces constructed.

**Location:** The Project site is bound by Woz Way to the north, South Almaden Boulevard to the east, Interstate 280 to the south, and the Guadalupe River pedestrian pathway to the west; APN#s are 264-31-037, 264-31-062, 264-31-038, 264-31-063, 264-31-039, 264-31-064, 264-31-040, 264-31-065, 264-31-041, 264-31-066, 264-31-0421, 264-31-067, 264-31-043, 264-31-092, 264-31-044, 264-31-107, 264-31-0612, and 264-31-108.

## **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.

### **Riparian Setback and Bird Collision with Proposed Buildings**

The Santa Clara Valley Natural Community Conservation Plan/Habitat Conservation Plan (SCVHP) includes conditions to minimize impacts on natural communities (Section 6.5). Analysis conducted during development of the SCVHP found that Stream and Riparian Setbacks (Condition 11, Section 6.5) avoided impacts to 16-55% of modeled covered species habitat in comparison to the modeled reserve system habitat alone. Under Condition 11 Stream and Riparian Setbacks, the exceptions to these setbacks is specified. Exceptions may be approved by the local jurisdiction (for this Project the City of San José), upon the Project proponent conducting the analysis as required by the SCVHP and by providing this information in an exception request for review by the City, Santa Clara Valley Habitat Agency, CDFW, and the U.S. Fish and Wildlife Service.

The NOP does not specifically discuss whether or not the Project will be covered by the SCVHP. However, the NOP does discuss a 35-foot setback from the riparian corridor and that this setback is in conformance with the SCVHP. This statement should be clarified since the SCVHP setback is not 35 feet, but rather 100 feet, since the reach of Guadalupe River adjacent to the Project is a Category 1 Stream. CDFW reviewed and coordinated with the Santa Clara Valley Habitat Agency in the review of the City setback exception request.

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The setback exception request contained information as to why an exception to the 100-foot setback should be approved, including providing information that demonstrates the Project does not preclude achieving the biological goals and objectives of the SCVHP. This section of the exception request, and the Biological Technical Report, explained that the Project site is not habitat for riparian special-status species and that bird-safe building designs would be used to reduce collisions with the buildings.

CDFW recommends that the SDEIR sufficiently characterize the relationship of the Project with the SCVHP. It is recommended that the SDEIR clearly identify whether or not the City has determined that the Project is covered under the SCVHP. It is recommended that the SDEIR clearly explain the process and circumstances in which the City may approve a setback exception request.

The Biological Technical Report provided with the setback exception request, dated October 22, 2019, states that bird collisions due to the existence of the buildings constructed as part of the Project would result in a “higher degree” of bird collisions than the existing residential housing and that the impact “would constitute a significant adverse impact”. The Biological Technical Report provided a list of measures to reduce the impact, such as the use of glass that is not transparent or reflective, avoidance of interior plantings close to transparent windows, direct night lighting downward and away from the riparian corridor, and planting a visual screen of native trees between the buildings and the Guadalupe River. The SCVHA response to the City, regarding the exception request, dated April 7, 2020, stated that SCVHA agrees with all mitigation measures and supports the inclusion of those measures in any Project approval by the City.

CDFW agrees with the measures to reduce bird collisions with the proposed buildings, as set forth in the Biological Technical Report, and recommends that these measures be incorporated into the SDEIR. In addition, it is recommended that the City evaluate the applicability of the measures as set forth in the following documents and that any applicable measures be incorporated into the SDEIR: the City of San José Council Policy Number 6-34, Riparian Corridor Protection and Bird-safe Design, effective August 23, 2016; Green Building Council bird-safe building design, available at <https://www.usgbc.org/credits/core-shell-existing-buildings-healthcare-new-construction-retail-nc-schools/v2009/pc55>; and American Bird Conservancy bird-friendly building design at <https://abcbirds.org/program/glass-collisions/learn-more/>.

### **Bat Measures**

The Biological Technical Report provided with the setback exception request, dated October 22, 2019 and discussed above, stated that, although roosting bats and guano were not detected during reconnaissance surveys, there is potential for Pallid bat (*Antrozous pallidus*, State Species of Special Concern) and Townsend's big-eared bat

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(*Corynorhinus townsendii*, State Species of Special Concern) to use the residential housing for roosting. The Biological Technical Report states that demolition of the buildings could cause direct mortality that would constitute a significant adverse impact of the Project.

To reduce impacts to less-than-significant levels, CDFW recommends the following mitigation measures be included in the SDEIR:

1. **Bat Surveys:** A qualified biologist shall conduct surveys for bats within the Project area. The survey should include a visual inspection of potential roosting features (buildings and trees to be removed) and presence of guano within the Project area, access routes, and 50 feet around these areas. The qualified biologist shall survey these areas 14 days prior to the start of work. Potential roosting features found during the survey shall be flagged or marked.
2. **Roost Disturbance Avoidance:** A minimum 50-foot buffer shall be established around maternity roosts adjacent to the work area. Construction proposed adjacent to roosts, including adjacent tree removal, shall not occur within the established buffer area until the time of year in which young are able to fly.
3. **Exclusion Plan:** The exclusion structures (e.g. one-way doors or similar methods) shall be installed after pre-construction surveys have determined that there are bats present in the buildings and trees to be removed. The exclusion structures shall not be placed until the time of year in which young are able to fly. This exclusion plan should be submitted to CDFW for review.
4. **Bat Mitigation and Monitoring Plan.** A Bat Mitigation and Monitoring Plan shall be prepared and implemented to mitigate for the loss of roosting habitat. The Plan should include information pertaining to the species of bat and location of the roost, compensatory mitigation for permanent impacts (including specific mitigation ratios and location of proposed mitigation) and monitoring to assess bat use of mitigation areas. This exclusion plan should be submitted to CDFW for review.

### **Bird Nest Measures**

The NOP does not specify that the proposed Project could potentially result in tree removal. However, upon review of Figure 2 within the NOP, the proposed Project site includes many trees located immediately adjacent to the building to be demolished. Trees are also located within 200 feet of the building to be demolished. Please be advised that both native and non-native trees provide nesting habitat for birds, and habitat value for other wildlife. CDFW recommends that the SDEIR include a clear analysis of potential impacts to trees located within or adjacent to the Project area, and

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appropriate and effective compensatory mitigation to completely offset any permanent impacts of removing trees from the Project area.

CDFW also recommends that the following protective measures be included in the SDEIR:

1. **Nesting Bird Surveys:** If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), CDFW recommends that a qualified biologist conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
2. **Active Nest Buffers:** If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base 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://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>.

The completed form can be mailed electronically to CNDDDB at the following email

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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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

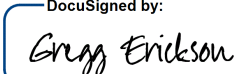
CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

## CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse, Sacramento