



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

October 18, 2021

Oct 18 2021

STATE CLEARINGHOUSE

Kevin Riley
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
kriley@ci.milpitas.ca.gov

Subject: Milpitas Metro Specific Plan, Notice of Preparation of a Subsequent Draft Environmental Impact Report, SCH No. 2006032091, Santa Clara County

Dear Kevin Riley:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a Subsequent Draft Environmental Impact Report (SDEIR) from the City of Milpitas (City) for the Milpitas Metro Specific Plan (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 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 a Trustee Agency with responsibility under CEQA §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 the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act Permit, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Milpitas

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.

Kevin Riley
City of Milpitas
October 18, 2021
Page 2

Objective: City of Milpitas certified the Milpitas Transit Area Specific Plan (TASP) Environmental Impact Report in 2008. The SDEIR will expand the TASP area by approximately 73 additional acres for a total area of 510 acres and change land use classifications (e.g., increased allowable densities, new land use classifications, and change in location of land use classifications).

Location: The Project area is located in the southernmost portion of the City of Milpitas. The Project area is generally bounded by the Great Mall to the north, South Main Street to the west, Trade Zone Boulevard and the City limits to the south, Milpitas Boulevard to the southeast, and Highway 680 to the east.

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.

In order to avoid significant impacts to avian species potentially nesting within or near the Project area, CDFW recommends that the following protective measures be included in the SDEIR.

Potential Impacts to Habitat and Avian Species

Habitat Assessment

In review of the NOP, Figure 1 Project Location Map, and Google Earth aeriels, Berryessa Creek and two unnamed drainage channels are located within the Project area. Berryessa Creek and the unnamed drainage channels appear to include wetland plant species, riparian habitat and grass and herbaceous vegetation.

The NOP does not discuss if the proposed Project may result in impacts to Berryessa Creek, drainage channels, or associated habitats such as tree removal. The NOP, page 5, describes objective #15 to improve the City transportation network, and NOP, page 3, discusses that area-wide infrastructure improvements will take place to accommodate residential and mixed-use development. Several bridges or culvert crossings also appear to currently exist over Berryessa Creek and drainage channels. Implementation of projects such as bridge widening or replacement, replacing or installing new utility lines, and expansion of or new installation of stormwater outfalls within the Berryessa Creek or the drainage channels could result in impacts to riparian habitat, and fish and wildlife species.

If the Project may result in impacts to riparian areas and other habitat types, CDFW recommends the measures below be included in the DEIR to potentially offset some of the foreseeable impacts.

Kevin Riley
City of Milpitas
October 18, 2021
Page 3

1. Habitat Assessment: A qualified biologist will conduct a habitat assessment to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to the drainage channels located within the Project area (as listed above).
2. Wetland Delineation: A formal wetland delineation will be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. [Please note that, while there is overlap, State and federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602 differ; therefore, the delineation should identify both State and federal wetlands, as well as which activities may require Notification to comply with Fish and Game Code (§ 1602 and §2081(b)).]
3. 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), a qualified biologist will 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 will be conducted at the appropriate times of day and during appropriate nesting times.
4. 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 will be established. The buffer will be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist will 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 will 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 will have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.
5. Qualified Biologist: A qualified biologist is an individual who has a degree in biological sciences or related resource management with a minimum of two seasonal years post-degree experience conducting bird nest surveys. During or following academic training, a qualified biologist will have achieved a high level of

Kevin Riley
City of Milpitas
October 18, 2021
Page 4

professional experience and knowledge in biological sciences and special-status species identification, ecology and habitat requirements.

6. Notification of Lake or Streambed Alteration: Fish and Game Code §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; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Project activities in or around drainage channels and other waterbodies within the Project may require that the project proponent submit an LSA Notification to CDFW. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

Avian Collision with Buildings

The NOP describes, in comparison to the TASP, an additional 7,000 dwelling units, 700 hotel rooms, 300,000 square feet of retail, and 3 million square feet of office uses, including 500,000 square feet of industrial uses. The NOP does not discuss if this expansion will occur with a change of use of the current building height levels, or with other design or planning changes.

If the proposed Project will include an increase in building height over existing conditions, this could potentially result in an increase in the number or frequency of avian collisions with buildings, especially tall buildings located adjacent to riparian areas. CDFW therefore recommends that the SDEIR include building height and land use location alternatives that reduce environmental impacts such as locating tall buildings at a biologically appropriate distance away from wetlands or riparian areas. The SDEIR should analyze all potential impacts of increases in building height, types of materials used on the exterior façade of buildings, and changes in other design features on volant wildlife species, and include avoidance and minimization measures that reduce those impacts to a less-than-significant levels.

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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The

Kevin Riley
City of Milpitas
October 18, 2021
Page 5

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 & G. 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 Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Stephanie Fong

CF047D7F8D234E1...
Stephanie Fong
Acting Regional Manager
Bay Delta Region

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