



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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**GAVIN NEWSOM, Governor**

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Governor's Office of Planning & Research

April 7, 2020

**APR 08 2020**

## STATE CLEARINGHOUSE

Ranu Aggarwal, Environmental Project Manager  
City of San Jose, Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street, 3rd Floor Tower  
San Jose, CA 95113-1905  
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Subject: City of San Jose Sign Ordinance Update, Phase II, Notice of Preparation of a Draft Environmental Impact Report, SCH #2020039040, City of San Jose, Santa Clara County

Dear Ranu Aggarwal:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the City of San Jose (City) for the City of San Jose Sign Ordinance Update, Phase II (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 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 permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### PROJECT DESCRIPTION SUMMARY

**Proponent:** City of San Jose

**Objective:** The proposed Project would amend Title 23 (Sign Ordinance) of the San Jose Municipal Code, resulting in approximately 50 electronic illuminated commercial advertisement signs and 200 static commercial advertisement signs to be installed along freeways and public rights-of-way.

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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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**Location:** Various locations within the City of San Jose, Santa Clara County, California.

## **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.

The maps within the NOP do include points where signs could be located; however, the sign locations are unclear due to the large scale of the maps and the large size of the sign location points. Furthermore, the maps do not have the highway number labeled and only some of the street locations and names are delineated. Land use and wildlife habitat at the sign locations are also not delineated within the NOP maps nor specifically discussed within the NOP.

The NOP states that sign locations were partially determined by the land use designations as stated in the City General Plan and Land Use Policy and other policies (e.g. Open Space, Habitat, Agriculture, Mixed-use Neighborhood, Urban Residential). CDFW recommends that the draft EIR include a map delineating the land use designation at each sign location, and an explanation on how the sign locations were chosen according to land use. Land use designations that include habitat for special-status species should be described in more detail.

For each sign location, or very close group of sign locations, CDFW recommends that the draft EIR include both a vicinity map and a specific map with a sufficient number of landmarks (e.g. streets, highways, buildings, parks) so that the sign location can be clearly understood. Specific sign location maps should be delineated on an aerial photograph so that the general habitat present (e.g. urban, riparian, grasslands) can be viewed.

Although maps within the NOP do not show specific sign locations, the general areas of proposed signs are within or adjacent to grassland, wetland, and riparian habitats. The general sign locations are potentially in or adjacent to riparian corridors including, but not limited to, Calabazas Creek, Guadalupe River, and Coyote Creek. CDFW, as a Responsible Agency, issues LSA Agreements pursuant to Fish and Game Code § 1600 et. seq. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream.

Wildlife species, including special-status species, could be impacted by the following Project activities: sign construction (e.g. permanent loss of habitat or disturbance during work activities) or by flying into constructed signs that are located within migration routes or foraging areas (e.g. birds and bats).

The Project could also result in impacts to wildlife due to installation of electronic illuminated signs. The effects of artificial light on individuals or populations of various taxa are documented in several studies (Dutta 2018, Gaston et al. 2013, Longcore and Rich 2004, Perry et al. 2008, Rich and Longcore 2006). Specific examples of artificial light impacts include disruption of bat flight pattern and feeding rate (Kuijper et al. 2008), effects on bird reproductive behavior timing and individual mating patterns (Kempnaers et al. 2010), reduction in nocturnal activity during

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toad breeding period (Touzot et al. 2019), and reduction in mouse nocturnal activity (Kramer and Birney 2001).

Special-status species that may be present within the general sign locations, include, but are not limited to, the following (CDFW 2020):

- Salt-marsh harvest mouse (SMHM) (*Reithrodontomys raviventris*) - State Endangered and Fully Protected, Federal Endangered
- Salt-marsh wandering shrew (shrew) (*Sorex vagrans halicoetes*) - State Species of Special Concern
- Pallid bat (*Antrozous pallidus*) - State Species of Special Concern
- Western red bat (*Lasiurus blossevillii*) - State Species of Special Concern
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) - State Species of Special Concern
- White-tailed kite (*Elanus leucurus*) - State Fully Protected
- American peregrine falcon (*Falco peregrinus anatum*) - State Fully Protected
- Tricolored blackbird (*Agelaius tricolor*) - State Threatened
- Northern harrier (*Circus cyaneus*) - State Species of Special Concern
- Alameda song sparrow (*Melospiza melodia pusillula*) - State Species of Special Concern
- Western burrowing owl (*Athene cunicularia*) - State Species of Special Concern
- Western pond turtle (WPT) (*Emmys marmorata*) - State Species of Special Concern
- California red-legged frog (CRLF) (*Rana draytonii*) - Federally Threatened, State Species of Special Concern
- Steelhead (*Oncorhynchus mykiss irideus pop. 8*), Central California Coast Distinct Population Segment (DPS) - Federal Threatened

CDFW recommends that the draft EIR analyze all potential impacts to sensitive habitat types (e.g. grassland, riparian, wetland) and special-status species that could be present at each sign location. Sign locations should be avoided in habitat types that are known to support or may potentially support special-status wildlife or plant species.

The City of San Jose is a co-permittee of the Santa Clara Valley Habitat Plan Natural Community Conservation Plan/Habitat Conservation Plan (SCVHP). Some of the wildlife species listed above, in addition to other species, are covered by the SCVHP. The entire Project area is located within the SCVHP permit area; however, the Project area is described as being Urban Development less than 2 acres not covered (Santa Clara Valley Habitat Agency (SCVHA) 2020) and some types of projects, including potentially the proposed Project, may not be covered by the SCVHP. Therefore, CDFW recommends that the City consult with SCVHA which is the entity implementing the SCVHP.

Take should be fully avoided for fully protected species and CESA-listed species. If the Project is not covered by the SCVHP, CDFW may act as a Responsible Agency in issuing an Incidental Take Permit if Project activities result in "take" of any species listed as candidate, threatened, or endangered pursuant to CESA (Fish and Game Code, § 2050 et seq.).

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CDFW provides the following general recommendations and or measures to be included in the draft EIR:

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment to determine if the Project site or its vicinity contains suitable habitat for sensitive species. This assessment should include foraging habitat for special-status birds and bats. This should also include assessment of any potential riparian habitat to be impacted.
2. Prioritize Sign Locations: Specific sign locations within urban areas where signs may be constructed immediately adjacent to buildings or other existing barriers to wildlife movement should be prioritized. Signs should not be placed within or adjacent to special-status species breeding or foraging habitat.
3. Impact Avoidance and Minimization – Sign Type and Design: If signs must be placed within special-status species habitat, the draft EIR should include an analysis and measures to avoid or minimize impacts to special-status species. This may include, but is not limited to, the following: static signs should be chosen over electronic illuminated signs; if electronic signs are to be constructed, they should be shielded on all sides to direct light towards the potential sign readers and to minimize the spillage of light outwards into adjacent habitat; a qualified biologist should analyze the flight and movement of birds and bats to determine strike risk and potential sign designs, such as height or size, that may reduce strike risk.
4. Impact Avoidance and Minimization – Sign Construction: The draft EIR should include measures to avoid or minimize impacts to special-status species during sign construction. This may include, but is not limited to, the following: species-specific focused surveys, within and adjacent to the Project site and using appropriate protocols, should be conducted by qualified biologists prior to Project implementation; and if special-status species are found, the qualified biologist should establish a no-disturbance buffer appropriate for the species and season (e.g. nesting season or breeding season, dispersal or overwintering) that will be monitored during the Project work activities.
5. State-listed Species Take Authorization: If the Project can be covered by the SCVHP, the draft EIR should describe habitat impacts and include information on the SCVHP impact fees and mitigation measures that may be required. If the Project cannot be covered by the SCVHP and impacts to State-listed wildlife species cannot be fully avoided, the City should apply to CDFW for take authorization through issuance of an Incidental Take Permit.
6. Notification of Lake or Streambed Alteration: The City is required to notify CDFW prior to commencing any Project that may substantially divert or obstruct the natural flow of any river, stream, or lake; change or use any material from the bed, bank, or channel of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream, or lake.

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The map on page 8 of the NOP appears to indicate that signs may be located on the northern side of Highway 237, between the area just east of Lafayette Street in the west to McCarthy Boulevard in the east. The grasslands located north of Highway 237 are habitat for western burrowing owls and burrowing owl occurrences have been recorded in those areas (CDFW 2020). Some of the grasslands at the San José-Santa Clara Regional Wastewater Facility are preserves for the western burrowing owl as part of mitigation for past projects. Placement of signs within these grasslands may result in impacts to currently used nest burrows, potential future nesting burrows, and foraging habitat.

CDFW recommends the additional measures for burrowing owls be included in the draft EIR:

1. Consistency with Burrowing Owl Preserves: The draft EIR should describe the preserve area and provide an analysis of whether signs in this area may conflict with the management objectives of the preserves. The analysis should include both static and electronic illuminated signs. If a conflict exists, signs should not be located within or adjacent to the owl preserves.
2. Habitat Assessment: A qualified biologist with experience specific to western burrowing owls should conduct an assessment for nesting habitat, existing burrows (i.e. potential future nesting habitat), and foraging habitat within 150 meters of the impact area.
3. Impact Avoidance and Minimization: To decrease the potential for predation of burrowing owls by raptors, signs should be designed to discourage perching.

## **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 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.

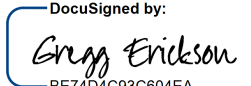
## **CONCLUSION**

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

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

Sincerely,

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

cc:

Edmund Sullivan, Santa Clara Valley Habitat Agency, [edmund.sullivan@scv-habitatagency.org](mailto:edmund.sullivan@scv-habitatagency.org)  
Office of Planning and Research, State Clearinghouse, Sacramento

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