



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

July 21, 2020

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STATE CLEARINGHOUSE

Mr. John Davidson, Principal Planner
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
JDavidson@santaclaraca.gov

Subject: Freedom Circle Focus Area and Greystar General Plan Amendment, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2020060425, City and County of Santa Clara

Dear Mr. Davidson:

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 Santa Clara (City) for the Freedom Circle Focus Area and Greystar General Plan Amendment (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 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. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

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.

Mr. John Davidson
City of Santa Clara
July 21, 2020
Page 2

PROJECT DESCRIPTION SUMMARY

Objective: The proposed Project is a General Plan Amendment to change the 13.3-acre Greystar site from High Intensity Office to Very High Density Residential. There would be construction of three residential buildings with a maximum height of 100 feet. Up to 2,000 square feet of retail would be constructed. There would be a two-acre public park with a connection to the San Tomas Aquino Creek trail. A vision for the Freedom Circle Focus Area is proposed to be incorporated into the General Plan. The Freedom Circle Focus Area is approximately 108 acres, including the Greystar site. Within the Freedom Circle Focus Area, there is a potential for 2,500 dwelling units and 2 million square feet of office space.

Location: The Freedom Circle Focus Plan Area is bounded by San Tomas Aquino Creek to the east, Great America Parkway to the west, Great America Theme Park to the north, and Highway 101 to the south. The APNs for the Greystar site are 104-40-036 and 104-40-021. The APNs for the Freedom Circle Focus Area were not provided in the NOP.

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.

Western Burrowing Owl Measures

The NOP does not discuss the existing conditions within the Greystar parcels. In review of Google Maps aerials and street view, the existing condition seems to consist of open land with mowed ruderal grass and herbaceous vegetation. There are known western burrowing owl (*Athene cunicularia*, State Species of Special Concern) occurrences within two miles of the Greystar parcels (CDFW 2020) and the site could potentially contain western burrowing owl foraging or nesting habitat.

Specific information on habitat assessment, burrowing owl survey methods, buffer distances, relocation, and mitigation is provided in the *CDFW Staff Report on Burrowing Owl Mitigation*, dated March 7, 2012, and available at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

To reduce potential impacts to burrowing owls within or adjacent to the Project area to less-than-significant levels, CDFW recommends the following mitigation measures be included in the draft EIR:

1. Habitat Assessment: A qualified biologist shall conduct a literature search for information on burrowing owl occurrences in and near the Project site. The

Mr. John Davidson
City of Santa Clara
July 21, 2020
Page 3

qualified biologist shall conduct a habitat assessment that includes all areas that will be directly or indirectly impacted by the Project and shall include collection of data such as vegetation type, vegetation structure, and presence of burrows.

2. **Burrowing Owl Surveys:** If western burrowing owl habitat is found, the qualified biologist shall conduct burrowing owl presence surveys. Appropriate surveys should be conducted during both the nesting season (February 1 to August 31) and overwintering period. Burrowing owl surveys shall follow protocol-level survey methodologies.
3. **Burrowing Owl Avoidance:** A protective buffer in which construction activities would not occur shall be established. Appropriate buffers typically have a 50- to 500-meter radius and vary depending on the level of disturbance and timing of construction. If the burrowing owls show signs of distress (e.g. defensive vocalizations and/or flying away from the nest), buffer distance should be increased.
4. **Relocation and Mitigation Plan:** If permanent removal of burrows cannot be avoided, the draft EIR should include measures to minimize the impacts of construction on the burrowing owl, such as passive relocation, and mitigation measures to compensate for habitat loss. Compensatory mitigation at a 3:1 ratio should be provided for burrowing owl-occupied burrows that are permanently removed. A Relocation and Mitigation Plan should be prepared in consultation with CDFW.

Riparian Habitat Recommendations

The NOP does not discuss whether or not the Project will result in direct or indirect impacts to San Tomas Aquino Creek that is located immediately adjacent to the Greystar parcels.

The draft EIR should fully analyze potential impacts to San Tomas Aquino Creek and include all appropriate and effective avoidance, minimization, and mitigation measures. CDFW recommends that any impacts to San Tomas Aquino Creek be avoided. For example, stormwater systems should connect to pre-existing systems and new stormwater outfalls to San Tomas Aquino Creek should be avoided. The NOP discusses a two-acre public park with a connection to the San Tomas Aquino Creek trail. Trail improvement often includes grading, spreading of aggregate base, paving, and other trail improvement activities. Details of construction activities should also be included in the draft EIR analysis.

Note that an LSA Agreement may be 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

Mr. John Davidson
City of Santa Clara
July 21, 2020
Page 4

material where it may pass into a river, lake or stream. If any of these activities should occur, the Project proponent should provide an LSA Notification to CDFW. For additional information, see <https://www.wildlife.ca.gov/Conservation/LSA>.

The Greystar parcels will include construction of buildings for residential and retail use, as well as a two-acre public park with a connection to the San Tomas Aquino Creek trail. CDFW recommends that measures be included in the draft EIR to minimize the potential long-term direct and indirect impacts of increased human disturbance/ degradation within San Tomas Aquino Creek and associated riparian habitats. Impacts could include trampling of vegetation, sedimentation to creek, wildlife disturbance and nest abandonment, trash, etc. Measures to avoid impacts to sensitive habitats and wildlife could include wildlife-friendly barriers, installation of signs explaining the sensitivity of aquatic and riparian habitat and that people avoid entering such habitats, implementation of a long-term trash cleanup plan, and others.

Bird Nest Measures

The NOP does not discuss what kind of physical change may occur within the portion of the Freedom Circle Focus Area that does not include the Greystar parcels. In review of Google Maps aerials, this area appears urbanized and consists of buildings and parking lots. However, trees are present throughout the urbanized area. The NOP does not specify that the proposed Project could potentially result in tree removal. 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 draft EIR include a clear analysis of potential impacts to trees located within or adjacent to the Project area, and appropriate and effective compensatory mitigation to completely offset any permanent impacts of removing trees from the Project area.

If tree removal is expected to occur, CDFW also recommends that the following protective measures be included in the draft EIR:

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.

Mr. John Davidson
City of Santa Clara
July 21, 2020
Page 5

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 address: 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; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

Mr. John Davidson
City of Santa Clara
July 21, 2020
Page 6

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

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

LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 9, 2020.