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DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 17, 2020

Governor's Office of Planning & Research

Aug 18 2020

Ms. Jessica Garner, Planning Manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035
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STATE CLEARINGHOUSE

Subject: Milpitas General Plan Update, Notice of Preparation of a Programmatic Draft Environmental Impact Report, SCH No. 2020070348, City of Milpitas, Santa Clara County

Dear Ms. Garner:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a Programmatic Draft Environmental Impact Report (PDEIR) from the City of Milpitas (City) for the Milpitas General Plan Update (Project, General Plan) pursuant to 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.

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.

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Objective: The General Plan will be a framework for development, resource conservation, and provision of public services through a comprehensive set of goals, policies, and actions (implementation measures) over an approximate 20-year period. The Plan will include, at minimum, land use, circulation, housing, conservation, open space, noise, and safety elements.

Location: City of Milpitas and related Urban Service Area and Sphere of Influence, Santa Clara County.

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.

Impacts to Special-Status Species and Nesting Birds

CDFW is concerned regarding potential impacts to special-status species that may be present within the Project location, including, but not limited to, those listed below (CDFW 2020).

- Mountain lion (*Felis concolor*) - Central Coast North Evolutionarily Significant Unit - State Candidate Threatened
- Salt-marsh harvest mouse (*Reithrodontomys raviventris*) - State Endangered and Fully Protected, Federal Endangered
- California Ridgway's rail (*Rallus obsoletus obsoletus*) - State Endangered and Fully Protected, Federal Endangered
- California black rail (*Laterallus jamaicensis coturniculus*) - State Threatened and Fully Protected
- Golden eagle (*Aquila chrysaetos*) - State Fully Protected
- White-tailed kite (*Elanus leucurus*) - State Fully Protected
- Alameda whipsnake (*Masticophis lateralis euryxanthus*) - State Threatened and Federal Threatened
- California tiger salamander (*Ambystoma californiense*) – State Threatened and Federal Threatened
- Longfin smelt (*Spirinchus thaleichthys*) - State Threatened, Federally Candidate for Endangered or Threatened
- Tricolored blackbird (*Agelaius tricolor*) - State Threatened
- Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*) - California Rare Plant Rank 1B.2
- Salt-marsh wandering shrew (shrew) (*Sorex vagrans halicoetes*) - State Species of Special Concern

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- Townsend's big-eared bat (*Corynorhinus townsendii*) - State Species of Special Concern
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) - State Species of Special Concern
- San Francisco common yellowthroat (*Geothlypis trichas sinuosa*) - 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 (*Emmys marmorata*) - State Species of Special Concern
- California red-legged frog (*Rana draytonii*) - Federally Threatened, State Species of Special Concern

Due to the limited information provided in the NOP, CDFW is providing the general comments below with regards to potential impacts of the Project to special-status species and mitigation measures to offset any unavoidable impacts.

State Fully Protected Species and Nesting Birds:

Issue: State fully protected small mammals and nesting birds may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific Impacts: Without appropriate avoidance measures for nesting birds, potentially significant impacts associated with Project activities may include reduced reproductive success, reduced health and vigor, nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact nesting birds.

Recommended Potentially Feasible Mitigation Measures:

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for special-status small mammals and nesting bird species.
2. Small Mammal and Bird Nest Surveys: A focused survey using appropriate protocols should be conducted by qualified biologists at Project locations prior to Project implementation. If Project activities are to take place during the avian

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nesting season, an additional pre-Project activity survey for active nests should be conducted by a qualified biologist no more than seven days prior to the start of Project activity.

3. Avoidance: If special-status small mammals are found, work activities should stop and the individual should be allowed to leave the site through it's own volition. If an active nest is found within or adjacent to the Project site, a no-disturbance buffer should be established and monitoring of the active nest should be conducted by a qualified biologist during all Project-related construction activities. The qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until the eggs have hatched and young have fledged.

State Threatened or Endangered Wildlife Species:

Issue: State threatened or endangered wildlife species may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific impact: Potential impacts to State-listed wildlife species include the inability to reproduce, capture, burrow/den collapse, crushing as a result of burrow collapse, inadvertent entrapment or entrainment, impingement, reduced reproductive success, reduction in health and vigor of young, nest abandonment, loss of nesting habitat, loss or fragmentation of foraging habitat that would reduce nesting or breeding success (loss or reduced health or vigor of eggs or young), and direct mortality. Unauthorized take of species listed as threatened or endangered pursuant to CESA is a violation of Fish and Game Code.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact State-listed wildlife species. Roads, housing, and other urban development may fragment wildlife corridors or prevent passage along movement or migratory routes.

Recommended Potentially Feasible Mitigation Measures:

1. Habitat Assessment and Appropriate Project Design: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for CESA-listed or candidate species. For species in which habitat corridors are crucial, such as for the mountain lion, the habitat assessment should include review of habitat available within the specific Project location and adjacent habitats. If the Project may result in fragmentation of habitat, Project design should be altered to prevent

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this fragmentation. If fragmentation cannot be avoided, structures, such as roads, should be designed to allow wildlife movement.

2. State-listed Wildlife Species Focused Surveys: The Project location should be surveyed for State-listed wildlife species by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, additional surveys may be necessary.
3. State-listed Species Take Authorization: If State-listed wildlife species are identified during surveys and full avoidance of take is not feasible, the project proponents should apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

Rare Plant Species

Issue: Rare plant species may occur within the Project location. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific impact: Potential impacts to special-status plants include inability to reproduce and direct mortality. Unauthorized take of plant species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species. There is a potential for the Project have significant impacts to these species and their populations.

Recommended Potentially Feasible Mitigation Measures:

1. Special-Status Plant Focused Surveys: The Project location should be surveyed for State-listed plant species by a qualified biologist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.
2. Special-Status Plant Avoidance: For activities that will not be covered by the Santa Clara Valley Habitat Plan, special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

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3. Special-Status Plant Take Authorization: If State-listed plant species are identified during surveys and full avoidance of take is not feasible, take authorization through CDFW issuance of an ITP would be required.

State Species of Special Concern

Issue: Wildlife Species of Special Concern may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific impact: Potential impacts to Species of Special Concern wildlife species include inability to reproduce, capture, burrow/den collapse, crushing as a result of burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, nest abandonment, loss of nest/breeding/roosting habitat, or loss of foraging habitat that would reduce breeding success (loss or reduced health or vigor of eggs or young), and direct mortality.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact State-listed wildlife species.

Recommended Potentially Feasible Mitigation Measures:

1. State Species of Special Concern Focused Surveys: The Project location should be surveyed for Species of Special Concern by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, focused surveys for Species of Special Concern presence, nests, or indicators of presence (e.g. bat guano and acoustic surveys) should be conducted.
2. State Species of Special Concern Avoidance: If Species of Special Concern wildlife species are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. The PDEIR should include additional minimization and mitigation measures for each Species of Special Concern wildlife species that could be potentially impacted by Project activities.

Impacts to Lake and Riparian Habitat

CDFW is concerned regarding potential impacts to lakes and streams within the Project location. Due to the limited information provided in the NOP, CDFW is providing comments below with regards to potential impacts and mitigation measures for lakes and streams.

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Issue: The Project area has the potential to contain water features subject to CDFW's lake and streambed alteration authority, pursuant Fish and Game Code § 1600 et seq. There may be a potential for Project implementation to have temporary and permanent impacts to these features.

Specific impact: Work within freshwater marsh, wetland, and riparian features has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water feature causing water pollution that is deleterious to fish and wildlife.

Evidence impact is potentially significant: The Project area has the potential to include features subject to CDFW's lake and streambed alteration regulatory authority. Construction activities within these features has the potential to impact downstream waters and to significantly impact the remaining acreage of freshwater marsh, wetland, and riparian communities.

Recommended Potentially Feasible Mitigation Measures:

1. **Habitat Assessment:** A qualified biologist should conduct a habitat assessment in advance of Project implementation, 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 ponds, Coyote Creek, Lower Penitencia Creek, Berryessa Creek, Arroyo de los Coches Creek, Calera Creek, other creeks or streams, and drainages.
2. **Wetland Delineation:** CDFW recommends a formal wetland delineation 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, CDFW further recommends that the delineation identify both State and Federal wetlands as well as which activities may require LSA Notification to comply with Fish and Game Code.
3. **Notification of Lake and 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. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

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CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) on potential impacts to federally listed species. Consultation with the USFWS and NMFS in order to comply with FESA is advised well in advance of Project implementation.

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.

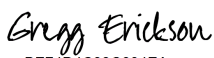
CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Milpitas 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.

Sincerely,

DocuSigned by:


BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

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

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LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed August 6, 2020.