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GAVIN NEWSOM, Governor
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September 8, 2022

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Planner
City of Davis
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Subject: Downtown Davis Specific Plan and Form Based Code - DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) SCH# 2020100103

Dear Mr. Lee:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Draft Environmental Impact Report (DEIR) from the City of Davis for the Downtown Davis Specific Plan and Form Based Code (Project) in Yolo County pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, plants and their habitats. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. Code).

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802.). Similarly, for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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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CDFW may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site covers approximately 132 acres in downtown central Davis, California. The Downtown Davis Specific Plan area is roughly bounded on the south by First Street, on the west by A Street, on the north by Fifth Street in addition to several blocks on G Street up to Eighth Street, and on the east by the properties located on the east side of the railroad tracks.

The Project consists of replacing the former 1996 Core Area Specific Plan, including more regulatory authority, largely through the Form-Based Code, and consolidating or amending several existing plans and regulations. Once adopted, the Specific Plan would serve as the overarching land use policy document and provide new zoning and development standards that guide long term development and infrastructure in downtown Davis with a mix of residential and non-residential uses. The Project would allow for the addition of 1,000 residential units and 600,000 square feet of nonresidential development in the Project area by 2040. The proposed Project assumes development would occur as either infill of vacant lots or redevelopment of underutilized sites.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the City of Davis in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources.

Worker Environmental Awareness Program (WEAP) training

1. CDFW recommends a qualified biologist provide a WEAP training for all construction personnel before any construction activities begin. At a minimum, the training should include a description and discussion of the biological mitigation measures within the EIR and a brief description of each species that have a potential to occur on the Project, including a discussion of identification, habitat, and legal protections.

Nesting Bird Surveys and Protection

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1. On page 4.3-10, under Biological Resources Section 4.3.3 Impact Discussion, Mitigation Measure BIO-1 (MM BIO-1) requires that if grading, tree trimming or removal, and/or demolition or construction activities occur during the migratory bird nesting season (March 15 – August 15), the project applicant shall provide preconstruction surveys to identify active bird nests conducted by a qualified biologist within 14 days prior to construction initiation on specific project sites; focused surveys must be performed by a qualified biologist for the purpose of determining the presence/absence of active nest sites within the proposed impact area and a 200-foot buffer (if accessible), and surveys shall be repeated if construction activities are delayed or postponed for more than 30 days.

The nesting bird season is generally defined as February 1 through August 31; however, earlier nesting may occur based on several factors including species, altitude, and weather. Fish and Game Code section 3503 protects the nests and eggs of all birds, not just migratory birds and birds of prey, regardless of the time of year. To minimize the chances of missing nests, pre-construction surveys for nesting birds may need to be performed outside of the general nesting bird season.

Also note that bird species can construct nests and begin laying eggs in less than 14 days, and a pre-construction nesting bird survey scheduled within 14 days prior to construction may therefore miss some instances of nesting. Many bird species may initiate nest-building and begin laying eggs very rapidly, and some bird species may construct a nest in as few as two or three days (Shaffer, 2021). To minimize the chances of missing nests, CDFW recommends scheduling the survey within three (3) days before the start of ground disturbing activities. CDFW also recommends revising MM BIO-1 to repeat surveys if construction activities are delayed or postponed for more than 15 calendar days.

2. MM BIO-1 also requires that if active nest sites are identified within 200 feet of Project activities, Project applicants shall impose a 100-foot setback for all active nest sites prior to commencement of any project construction activities to avoid disturbances to bird nesting activities and that activities permitted within and the size of setbacks may be adjusted through consultation with CDFW and/or the City of Davis.

All measures to protect nesting birds should be performance-based. The typical minimum buffer distance for passerines is a minimum of 250 feet and for raptors is 500 feet. While some birds may tolerate disturbances within 250 feet of construction activities, other birds may have a different disturbance threshold and “take” could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code and for the setback in MM BIO-1 to be revised to a minimum of 250 feet and to include language allowing for the buffer distances to be increased or decreased based on factors such as the species of bird, topographic features, intensity and extent of the disturbance, timing relative to the nesting cycle, and

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anticipated ground disturbance schedule as determined by the qualified biologist. CDFW also recommends including the following language to MM BIO-1: “Limits of construction to avoid active nests shall be established in the field with flagging, fencing, or other appropriate barriers and shall be maintained until the chicks have fledged, are foraging independently, and are no longer dependent on the nest, as determined by the qualified biologist. The qualified biologist shall regularly monitor the nest and shall have stop work authority if construction activities are having an adverse impact on the nest.”

Bat Surveys

Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). Bats can occupy trees year-round and are particularly susceptible to disturbance during the maternity season and during hibernation. Disturbance of roost sites during the maternity and hibernation seasons are considered primary factors that may negatively impact bats and have the potential to result in take. During the hibernation period, bats are very slow to respond to disturbance during torpor and can lose fat stores needed to survive the winter. During the maternity season, pups are not volant and dependent on their mother. Several bat species are also considered Species of Special Concern, which meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines §15065); therefore, impacts may be considered potentially significant unless adequate mitigation is incorporated.

1. On page 4.3-10, under Biological Resources Section 4.3.3 Impact Discussion, Mitigation Measure BIO-1 (MM BIO-1) requires that if the project requires tree trimming, and/or building demolition or construction activities would occur during bat roosting season (April 1 – September 30), the project applicant shall provide preconstruction surveys to identify roosting bats conducted within 14 days prior to project initiation on specific project sites and that focused surveys must be performed by a qualified wildlife biologist for the purpose of determining the presence/absence of roosting bats within the proposed impact area with surveys needing to be repeated if construction activities are delayed or postponed for more than 30 days. Mitigation Measure BIO-2a (MM BIO-2a) requires that if roosting bats are discovered during the preconstruction surveys, pruning or removal of living trees or snags or the demolition of buildings should not occur during the maternity season between April 1 and September 1 to avoid impacts to bat species and to minimize the disturbance of young that may be present and unable to fly.

CDFW recommends that within six months prior to the start of tree trimming and/or removal, building demolition, or construction activities, a qualified bat biologist with education and experience in bat biology and identification should survey the Project site for potentially suitable bat roosting habitat. Within 48 hours prior to the start of any Project activities that may directly or indirectly impact potentially suitable roosting habitat, the qualified biologist should survey the potential roosting habitat for occupied roosts. If an active bat roost is found, the qualified biologist should

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establish a no-disturbance buffer around the roost. The width of the buffer should be determined by the qualified bat biologist based on the bat species, specific site conditions, and level of disturbance. The buffer should be maintained until the qualified bat biologist determines that the roost is no longer occupied.

2. MM BIO-2b requires that if roosting bats are discovered during the surveys in the non-maternity season, bats roosting in buildings must be passively excluded within 48 hours of building and demolition or disturbance.

Bat Exclusion: CDFW recommends that if an active bat roost is found in a tree or structure that must be removed, the qualified bat biologist should prepare a plan for the passive exclusion of the bats from the roost. Exclusion should be scheduled either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½ inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 prior to hibernation (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours). If project activities occur outside these periods, the qualified bat biologist should monitor the roost prior to exclusion to confirm that it does not support a maternity colony or hibernaculum. If a maternity colony or hibernaculum is or may be present, the roost should be avoided until it is no longer active, or until the qualified bat biologist can confirm that no maternity colony or hibernaculum is present. CDFW does not support eviction of bats during the maternity or hibernation periods.

3. MM BIO-2c and MM BIO-2d require that pruning or removal of living trees or snags must occur after nights when low temperatures were 50°F or warmer, and when it is necessary to perform crown reduction on trees over 12 inches in diameter breast height or remove entire trees or branches over six inches in diameter, preliminary pruning of small branches will be performed the day before.

Tree trimming and/or removal: CDFW recommends that tree removal should be scheduled either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½ inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 prior to hibernation (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours). Removal of trees containing suitable bat habitat should be conducted under the supervision of a qualified bat biologist. Trees should be trimmed and/or removed in a two-phased removal system conducted over two consecutive days. The first day (in the afternoon), limbs and branches should be removed by a tree cutter using chainsaws only. Limbs with cavities, crevices or deep bark fissures should be avoided, and only branches or limbs without those features should be removed. On the second day, the entire tree should be removed. Project proponents should consult with a qualified bat biologist to determine suitable buffers around roost and/or hibernaculum sites. Buffers may vary depending on species and Project activity being performed.

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4. MM BIO-2e states that if MM BIO-2c and/or MM BIO-2d are not feasible to implement, then a qualified biologist will be required to conduct tree cavity surveys and humanely and passively evict roosting bats within 24 hours of vegetation management activities.

Bat exclusion from structures: To exclude bats from structures, CDFW recommends exclusion devices be installed on structures between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½ inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 prior to hibernation (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours) to prevent bats from accessing the structures. Actively used openings should have a one-way door installed to allow the bats to leave the roost, but not re-enter. After 7 to 10 days, the one-way doors should be removed and the opening blocked or sealed. The qualified biologist should monitor the roost prior to exclusion to confirm that it does not support a maternity colony. If a maternity colony is or may be present, the roost should be avoided until it is no longer active, or until the qualified biologist can confirm that no maternity colony is present. Because of the large variability in the way bats use structures, CDFW recommends that a plan on how to monitor and exclude bats be developed by a qualified biologist and submitted to CDFW for review and approval.

Swainson's Hawk (*Buteo swainsoni*) and Yolo Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP)

According to the California Natural Diversity Database, populations of Swainson's hawk occur within and adjacent to the Specific Plan area. The DEIR does not discuss the species except reference on page 4.3-13 in BIO-6 that applicable avoidance and minimization measures (AMMs) from the Yolo HCP/NCCP will be adopted by a future Project if surveys determine that the Project would result in adverse impacts to covered species in the HCP/NCCP. Considering that multiple populations of Swainson's hawk occur within the Specific Plan area, CDFW recommends describing the mitigation measures that will be provided for Swainson's hawk consistent with the AMMs in the Yolo HCP/NCCP as well as for any other potential covered species in the Yolo HCP/NCCP that have the potential to occur within the Specific Plan area.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, 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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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FILING FEES

The Project, as proposed, would have an effect on fish and wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the City of Davis and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code § 711.4; Pub. Resources Code, § 21089.)

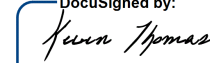
CONCLUSION

Pursuant to Public Resources Code sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the DEIR for the Downtown Davis Specific Plan and Form Based Code and recommends that the City of Davis address CDFW's comments and concerns in the forthcoming EIR. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this letter or wish to schedule a meeting and/or site visit, please contact Mary Xiong, Senior Environmental Scientist (Specialist) at (916) 212-3876 or Mary.Xiong@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kevin Thomas
Regional Manager

ec: Jennifer Garcia, Environmental Program Manager
Elizabeth Brusati, Senior Environmental Scientist (Acting Supervisory)
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Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

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Literature Cited

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Shaffer, J.A., Igl, L.D., Johnson, D.H., Sondreal, M.L., Goldade, C.M., Parkin, B.D., and Euliss, B.R., 2021, The effects of management practices on grassland birds—Lark Sparrow (*Chondestes grammacus*), chap. DD of Johnson, D.H., Igl, L.D., Shaffer, J.A., and DeLong, J.P., eds., The effects of management practices on grassland birds: U.S. Geological Survey Professional Paper 1842, 21 p., <https://doi.org/10.3133/pp1842DD>.