



December 9, 2020

Governor's Office of Planning &amp; Research

**DEC 10 2020****STATE CLEARINGHOUSE**

Ms. Payal Bhagat  
City of Menlo Park  
701 Laurel Street  
Menlo Park, CA 94025  
[pbhagat@menlopark.org](mailto:pbhagat@menlopark.org)

Subject: Menlo Flats Project, Notice of Preparation, SCH No. 2020110243, City of Menlo Park, San Mateo County

Dear Ms. Bhagat:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Menlo Park for the Menlo Flats Project (Project) located in the City of Menlo Park, San Mateo County. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

**CDFW ROLE**

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological 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 LOCATION**

The Project is located within a 1.38-acre site, at 165 Jefferson Drive in the City of Menlo Park, San Mateo County. The Project site is bordered to the north by Synergy Badminton Club, to the east by two light industrial buildings, to the south by Jefferson Drive, and to the west by single-story light industrial buildings.

**PROJECT DESCRIPTION SUMMARY**

The proposed Project includes demolition of the existing office building and redevelopment of the Project site with an approximately 253,702 gross-square-foot, eight-story mixed use building. The proposed building would be a maximum height of 84 feet, 11 inches, and would front to Jefferson Drive. The proposed building would also

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include an at-grade, three-level, approximately 81,988 square-foot 176 space parking garage. Approximately 20,929 square feet of open space throughout the Project area is proposed.

## **ENVIRONMENTAL SETTING**

The state special-status species that have the potential to occur in or near the Project site, include, but are not limited to:

- Bat species
- Nesting birds

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the City of Menlo Park in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

### **COMMENT 1: Full Project description of Project features**

The CEQA Guidelines (§§15124 & 15378) require that the draft Environmental Impact Report (EIR) incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact.

To fully address the Project's impacts to fish and wildlife resources. Please include complete descriptions of the following features within the draft EIR, if applicable:

- Residential and commercial building heights and widths;
- Introduction of sources of light and glare into habitat areas;
- Stormwater or effluent drainage outlet systems
- Detailed description of proposed work (e.g., crossing improvements, repairs, etc.) at and within stream crossings; and
- Location, type, and height of all fencing.

### **COMMENT 2: Nesting Birds**

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through early-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or Fish and Game Codes.

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To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

### **Recommended Mitigation Measure 1: Nesting Bird Surveys**

CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every fourteen (14) days during Project activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

### **Recommended Mitigation Measure 2: Nesting Bird Buffers**

If continuous monitoring of identified nests by a qualified avian biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.

### **COMMENT 3: Bats**

Bat species may occur within and surrounding the Project site, including in existing buildings. 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). Several bat species are also considered Species of Special Concern (SOC). To evaluate and avoid potential impacts to bat species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

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### **Recommended Mitigation Measure 3: Bat Habitat Assessment**

To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at the site seven (7) days prior to the start of Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

### **Recommended Mitigation Measure 4: Bat Habitat Monitoring**

If any habitat features identified in the habitat assessment will be altered or disturbed by Project construction, the qualified bat biologist should monitor the feature daily to ensure bats are not disturbed, impacted, or fatalities are caused by the Project.

### **Recommended Mitigation Measure 5: Bat Project Avoidance**

If bat colonies are observed at the Project site, at any time, all Project activities should stop until the qualified bat biologist develops a bat avoidance plan to be implemented at the Project site. Once the plan is implemented, Project activities may recommence.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, & CEQA Guidelines section 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

### **Lake and Streambed Alteration Program**

Notification is required, pursuant to CDFW’s LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank

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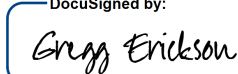
including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

### **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, section 711.4; Pub. Resources Code, section 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Stephanie Holstege, Environmental Scientist at (707) 210-5104 or [Stephanie.Holstege@wildlife.ca.gov](mailto:Stephanie.Holstege@wildlife.ca.gov); or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at [Wesley.Stokes@wildlife.ca.gov](mailto:Wesley.Stokes@wildlife.ca.gov).

Sincerely,

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

cc: State Clearinghouse #2020110243