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GAVIN NEWSOM, Governor
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October 28, 2022

Ms. Clara Stanger
City of Santa Cruz
809 Center Street, Room 101
Santa Cruz, CA 95060
cstanger@cityofsantacruz.com

Subject: 2035 North Pacific Avenue Office/Residential Building, Initial Study/Mitigated Negative Declaration, SCH No. 2021040297, City and County of Santa Cruz

Dear Ms. Stanger:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by the City of Santa Cruz (City) for the 2035 North Pacific Avenue Office/Residential Building (Recirculated) (Project), located in Santa Cruz County, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

CDFW is submitting comments on the IS/MND to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines § 15386 for commenting on projects that could impact fish, plant, and wildlife resources (i.e., 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) or Native Plant Protection Act (NPPA), 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.

REGULATORY AUTHORITY

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA or

[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.

NPPA, either during construction or over the life of the Project. If the Project will impact CESA or NPPA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and CEQA Guidelines §§ 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, § 2080 et. seq.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting rivers, lakes or streams and associated riparian habitat. Notification is required for any activity that may 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. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. CDFW, as a responsible agency under CEQA, will consider the IS/MND for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA as the responsible agency.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include §§ 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: 2035 North Pacific Avenue LLC

Objective: The Project would involve the construction of a 38,880-square-foot three-story, mixed-use building with 3,777 square feet of office space, 26 apartment units, and an underground parking garage. The Project would demolish the existing building and remove one non-native 28-inch diameter heritage tree in the genus *Liquidambar*. The site would require remediation due to the presence of hazardous materials from a former Pacific Gas and Electric Santa Cruz Manufactured Gas Plant. Soil remediation and removal would occur simultaneously with Project grading and excavation.

Timeframe: No timeframes listed in the IS/MND.

ENVIRONMENTAL SETTING AND LOCATION

The Project site is located at 2035 North Pacific Avenue, in the City of Santa Cruz, Assessor's Parcel Number 006-361-24. The 0.35-acre Project site is bordered by North Pacific Avenue on the east, commercial development on the north and south, and a steep slope on the west. The San Lorenzo River is approximately 700 feet northeast of the Project site. The Project site is developed with an existing 3,700-square-foot, single-story commercial building and parking lot. Special-status species with the potential to occur in or near the Project site include, but are not limited to, monarch butterfly (*Danaus plexippus*), a federal candidate for listing, pallid bat (*Antrozous pallidus*), listed as SSC, Townsend's big-eared bat (*Corynorhinus townsendii*), listed as SSC, and western bumble bee (*Bombus occidentalis*) a state candidate for listing. A candidate species is afforded the same protections as a CESA-listed threatened or endangered species (Fish and Game Code, § 2085).

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Bat Species of Special Concern

Issue: The Project has the potential to impact roosting pallid and Townsend's big-eared from heritage tree removal. The IS/MND does not require bat surveys prior to Project tree removal to avoid potentially significant impacts to these species.

Occurrences: The California Natural Diversity Database (CNDDB)[2] indicates occurrences of pallid bat and Townsend's big-eared bat within five miles of the Project

[2] Information about the CNDDB: https://wildlife.ca.gov/Data/CNDDB/About

site. CDFW wildlife range maps also show the Project site is within the range of these bat species.[3] Pallid and Townsend's big-eared bats are known to roost in tree bark, hollows, or foliage (Johnston 2004).

Evidence the impact would be significant: Mature trees scheduled for removal could provide suitable roosting habitat for SSC bats. These bats are experiencing population declines in California (Brylski et al. 1998). Bats are long-lived and have a low reproductive rate (Johnston 2004) therefore each mortality can have a protracted effect on the reproductive rate of the population. Removal of habitat could result in injury or mortality of these special-status bats, a potentially significant impact.

Recommended Mitigation Measure 1 (Roosting Bat Habitat Assessment and Surveys): Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. A qualified bat biologist shall have: 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, suitable canopy for foliage roosting species). If suitable habitat trees are found, or bats are observed, mitigation measure 2 below shall be implemented.

Recommended Mitigation Measure 2 (Roosting Bat Tree Protections): If the qualified biologist identifies potential bat habitat trees, then tree trimming and tree removal shall not proceed unless the following occurs: 1) a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establishes absence of roosting bats, or 2) tree trimming and tree removal occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, and tree removal occurs using the two-step removal process. Two-step tree removal shall be conducted over two consecutive days. The first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided. The second day the entire tree shall be removed.

In addition, a qualified biologist shall develop a bat roost habitat mitigation plan that identifies roost replacement options, including but not limited to bat boxes and tree planting, and submit the plan to CDFW for review and written approval, unless

[3] CDFW maintains range maps for all terrestrial wildlife species in California, available at https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range.

otherwise approved by CDFW. The bat roost habitat mitigation plan shall be implemented in the same year as the project impacts.

COMMENT 2: Monarch Overwintering

Issue: The IS/MND does not discuss potential impacts to potential monarch butterfly overwintering colonies or suitable overwintering habitat. The IS/MND states that there is a steep slope on the north and south of the property that extends off-site and the slope is covered "with various types of shrubs and trees" (IS/MND page 43). The IS/MND does not disclose the species of the trees and shrubs or if the vegetation will be impacted by development. CDFW is concerned about the loss of trees and host plants needed for to support the monarch butterfly life cycle. The loss of suitable overwintering habitat for monarchs will contribute to extirpation of western monarch populations. If projects will remove trees used by over-wintering monarchs, tree planting alone is unlikely to be sufficient to mitigate impacts to a less-than-significant level.

Occurrences: Known overwintering sites for monarch butterfly populations according to findings in Monarch Butterfly modeling from the CNDDB and the Western Monarch Count Organization show one overwintering site occurring within approximately 0.3 mile of the Project. The site is designated with the following ID 2997 (36.97953, -122.03556 (https://www.westernmonarchcount.org/find-an-overwintering-site-near-you/).

Evidence the impact would be significant: The data gathered from the Western Monarch Thanksgiving Count show that western overwintering monarchs are at an all-time critical low level and have significantly declined to approximately two percent of their numbers since 1997 (Xerces Society Western Monarch Thanksgiving Count, 2019). The decrease in Western Monarch butterflies may be due to the loss of overwintering habitat and loss of its host plant (milkweed) (Pelton et al. 2019). According to the Xerces Society, "Western monarchs use the same sites each year, even the same trees, and need intact overwintering habitat, which provides a very specific microclimate and protection from winter storms" (Xerces Society, 2020).

Recommendations: The IS/MND should incorporate protective measures for western monarch butterflies that includes protecting trees used for overwintering.

Recommended Measure 1: Protect, Manage, Enhance and Restore Monarch Butterfly Overwintering Sites: A qualified biologist shall conduct a Monarch feeding, breeding and/or over-wintering habitat assessment(s) and include the results of the assessment in the MND. If Monarch habitat occurs within the Project site, CDFW recommends some or a combination of the measures below for the Project.

Avoid the removal of trees or shrubs within ½ mile of overwintering groves, except for specific grove management purposes, and/or for human health and safety concerns.

The maintenance of trees and shrubs within a ½ mile of these sites provides a buffer to preserve the microclimate conditions of the winter habitat.

Conduct management activities such as tree trimming, mowing, burning and grazing in monarch overwintering habitat in coordination with a monarch biologist and outside of the estimated timeframe March 16-September 14 when monarchs are likely present.

Enhance native, insecticide-free nectar sources by planting fall/winter blooming forbs or shrubs within overwintering groves and within one mile of the groves (https://xerces.org/sites/default/files/publications/18-003_02_Monarch-NectarPlant-Lists-FS_web%20-%20Jessa%20Kay%20Cruz.pdf).

Avoid the use of pesticides within one mile of overwintering groves, particularly when monarchs may be present. If pesticides are used, then conduct applications from March 16-September 14, when possible. Avoid the use of neonicotinoids or other systemic insecticides, including coated seeds, any time of the year in monarch habitat due to their ecosystem persistence, systemic nature, and toxicity. Avoid the use of soil fumigants.

Consider non-chemical weed control techniques, when possible (https://www.cal-ipc.org/resources/library/publications/non-chem/). Remove tropical milkweed that is detected, and replace it with native, insecticide-free nectar plants suitable for the location (https://xerces.org/sites/default/files/publications/18-003_02_Monarch-NectarPlant-Lists-FS_web%20-%20Jessa%20Kay%20Cruz.pdf).

To assist in maintaining normal migration behavior, do not plant any type of milkweed within five miles of the coast from Mendocino County south through Santa Barbara County, and within one mile of the coast south of Santa Barbara County, unless the species of milkweed is native to the local area. Conduct grove monitoring for butterflies during the Western Monarch Counts each fall and winter. When possible, report when monarchs arrive and depart the groves each year (https://www.westernmonarchcount.org/).

COMMENT 3: Impervious surfaces

Issue: The Project could increase impervious surfaces at the Project site with the addition of parking lots and expansion of building surfaces. Impervious surfaces, stormwater systems, and storm drain outfalls, have the potential to significantly affect fish and wildlife resources by altering the hydrograph of natural streamflow patterns via concentrated run-off.

Evidence the impact would be significant: Urbanization (e.g., impervious surfaces, stormwater systems, storm drain outfalls) can modify natural streamflow patterns by increasing the magnitude and frequency of high flow events and storm flows (Hollis

1975, Konrad and Booth 2005).

Recommendations to minimize significant impacts: CDFW recommends storm runoff be dispersed rather than concentrated to a stormwater outfall or other receiving waters. CDFW recommends implementation of low impact development (LID) and the use of bioswales and bioretention features to intercept storm runoff. CDFW also recommends incorporating permeable surfaces throughout the Project to allow stormwater to percolate in the ground and prevent stream hydromodification (see https://www.usgs.gov/science/evaluating-potential-benefits-permeable-pavement-quantity-and-quality-stormwater-runoff?qt-science_center_objects=0#qt-science_center_objects.

COMMENT 4: Artificial Lighting

Issue: The IS/MND does not disclose information regarding the addition of artificial lighting to the site. With the construction of a new, multiuse building, the Project has the potential to increase the amount of artificial night lighting on the Project site which may significantly affect fish and wildlife resources.

Evidence the impact would be significant: Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication such as bird song (Miller, 2006), determining when to begin foraging (Stone et al., 2009), behavior thermoregulation (Beiswenger, 1977), and migration (Longcore and Rich, 2004).

Recommendations to minimize significant impacts: CDFW recommends eliminating all non-essential artificial lighting. If artificial lighting is necessary, CDFW recommends avoiding or limiting the use of artificial lights during the hours of dawn and dusk, when many wildlife species are most active. CDFW also recommends that outdoor lighting be shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at http://darksky.org/) and limited to warm light colors with an output temperature of 2700 kelvin or less.

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 the CNDDB. The CNNDB online field survey form and other methods for submitting data can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported

to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plantsand-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

Thank you for the opportunity to comment on the Project's IS/MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Serena Stumpf, Environmental Scientist, at (707) 337-1364 or Serena.Stumpf@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: State Clearinghouse # 2021040297

REFERENCES

Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. Ecology 58:98–108.

Brylski, Phillip V.; Collins, Paul W.; Peirson, Elizabeth D.; Rainey, William E.; and Kucera, Thomas E. 1998. Draft Terrestrial Mammals Species of Special Concern in California. Report submitted to California Department of Fish and Game, Sacramento, CA.

Hollis, G. 1975. The effect of urbanization on floods of different recurrence interval. Water Resources Research 11:431-435.

Johnston, D., Tartarian, G., and Poerson, E. 2004. California Bat Mitigation Techniques, Solutions, and Effectiveness. California Department of Transportation Office of Biological Studies and Technical Assistance. Sacramento, CA.

Konrad, C.P. and D.B. Booth. 2005. Hydrologic changes in urban streams and their ecological significance, paper presented at American Fisheries Society Symposium, American Fisheries Society

Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. Frontiers in Ecology and the Environment 2:191–198.

Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. The Condor 108:130–139.

Pelton, E.M., Schultz C.B., Jepsen S.J., Black S.H. and Crone E.E. 2019. Western Monarch Population Plummets: Status, Probable Causes, and Recommended Conservation Actions. Front. Ecol. Evol. 7:258. doi: 10.3389/fevo.2019.00258.

Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. Current Biology 19:1123–1127. Elsevier Ltd.

Xerces Society Western Monarch Thanksgiving Count (2019). Western Monarch Thanksgiving Count Data from 1997–2018. Available online at: www.westernmonarchcount.org

Xerces Society Website 2020. https://xerces.org/press/western-monarch-butterflypopulation-still-at-critical-level. Accessed February 5, 2021.