



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



September 14, 2021

Governor's Office of Planning & Research

September 15 2021

STATE CLEARINGHOUSE

Ms. Michelle King
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086
mking@sunnyvale.ca.gov

Subject: 2018-7715 Moffett Park Specific Plan Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2021080338, Santa Clara County

Dear Ms. King:

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 Sunnyvale (City) for the 2018-7715 Moffett Park Specific Plan Project (Project) 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 the California Environmental Quality Act (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 the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement 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 Sunnyvale

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.

Ms. Michelle King
City of Sunnyvale
September 14, 2021
Page 2

Objective: City of Sunnyvale adopted the Moffett Park Specific Plan (MPSP) in 2014 (and adopted amendments in 2006, 2009, 2011, 2013, and 2016). In comparison to the 2014 MPSP, with amendments, the proposed Project would result in a net increase of 20,000 residential units (residential uses were not included in the 2014 MPSP), 650,000 square feet of commercial, 10.0 million square feet of office/industrial, and 200,000 square feet of institutional uses (e.g., school, government, or public community facilities) within the 1,270-acre MPSP area.

Location: The Project area is located in the northernmost portion of the City of Sunnyvale. The Project area is generally bounded by State Route 237 to the south, Moffett Federal Airfield to the west, and San Francisco Bay and open grassland areas to the north.

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 include maps or discuss the specific locations where there would be a change in use, including the grassland areas in the northwest corner of the Project area. In review of Google Earth aeriels, the existing conditions in the northwest corner of the Project area, and areas just outside of the western and northern Project area borders, seem to consist of open land with ruderal grass and herbaceous vegetation. Please be advised that there are known western burrowing owl (*Athene cunicularia*, State Species of Special Concern) occurrences within and immediately adjacent to the Project site (CDFW 2021). The Project area, and grassland areas adjacent to the Project area, could potentially contain western burrowing owl foraging and/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 will conduct a literature search for burrowing owl occurrences within and adjacent to the Project area. The qualified biologist will conduct a habitat field assessment that includes all areas that could

Ms. Michelle King
City of Sunnyvale
September 14, 2021
Page 3

be directly or indirectly impacted by the Project and will include data such as vegetation type, vegetation structure and presence of burrows.

2. Burrowing Owl Surveys: If western burrowing owl habitat is present within, and surrounding, the Project area, the qualified biologist will 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 will follow protocol-level survey methodologies as described in the CDFW 2012 Staff Report.
3. Burrowing Owl Avoidance: A protective buffer in which construction activities would not occur should 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. Compensatory Mitigation: If permanent or temporary impacts of the proposed Project to burrowing owl foraging and/or nesting habitat cannot be completely avoided, measures to minimize the impacts of construction on the burrowing owl, and effective compensatory mitigation to offset habitat loss will be implemented. A mitigation plan will be prepared in consultation with CDFW.

Avian Nest Measures

The NOP does not describe potential impacts of the proposed Project on wetlands located in the northwest corner of the Project area. In review of the California Natural Diversity Database (CDFW 2021) and other sources, special-status avian species that may be present in wetlands within the Project area include the salt marsh common yellowthroat (*Geothlypis trichas sinuosa*), a State Species of Special Concern. In order to avoid significant impacts to avian species potentially nesting in various habitat types within or near the Project area, CDFW 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), a qualified biologist will 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

Ms. Michelle King
City of Sunnyvale
September 14, 2021
Page 4

feet for larger raptors such as buteos. Surveys will be conducted at the appropriate times of day and during appropriate nesting times.

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 will be established. The buffer will be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist will 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 will 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 will have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

Western Pond Turtle and Salt Marsh Harvest Mouse Measures

In review of the California Natural Diversity Database (CDFW 2021) and other sources, non-avian special-status species that may be present within the Project area include western pond turtle (WPT; *Emys marmorata*, State Species of Special Concern) which is known to occur immediately adjacent to the northern boundary of the Project area, and salt-marsh harvest mouse (SMHM; *Reithrodontomys raviventris*, State Endangered and Fully Protected, Federal Endangered) which is known to occur within 0.7 miles of the Project area of a wetland complex. CDFW recommends that the draft EIR include an analysis of the potential for WPT and SMHM to be present in wetland areas located within and surrounding the Project area.

If WPT may be present, the draft EIR should analyze how Project implementation may directly or indirectly impact WPT. The draft EIR should include measures to avoid, minimize, or mitigate for impacts to WPT to less-than-significant levels.

As a Fully Protected Species (Fish and Game Code section 4700), SMHM may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research. CDFW therefore recommends that the draft EIR include a complete habitat assessment for SMHM within the Project wetland area and include appropriate and effective avoidance measures in the draft EIR if SMHM could be impacted by Project activities.

Avian Collision with Buildings

In review of the NOP Figure 2 Vicinity Map, almost all of the Project area, except wetlands and grassland in the northwest corner as discussed above, consists of

Ms. Michelle King
City of Sunnyvale
September 14, 2021
Page 5

buildings and related hardscape (e.g., parking lots and streets). The NOP discusses a 10.85 million square-foot increase in the commercial, office, industrial, and institutional uses beyond what currently exists onsite. The NOP does not discuss if this expansion will occur with a change of use of the current building height levels, or with other design or planning changes.

If the proposed Project will include an increase in building height over existing conditions, there could potentially be an increase in the number or frequency of avian collisions with buildings. CDFW recommends that the draft EIR include building height and land use location alternatives that reduce environmental impacts such as locating tall buildings at a biologically appropriate distance away from wetlands or riparian areas. The draft EIR should analyze all potential impacts of increases in building height, types of materials used on the exterior façade of buildings, and changes in other design features on volant wildlife species, and include avoidance and minimization measures that reduce those impacts to a less-than-significant level.

Impacts to Riparian Habitat

The NOP, Figure 2 Vicinity Map, identifies three drainage channels within the Project area including the Lockheed Channel, West Channel, and East Channel. In review of Google Earth aeriels, there also seems to be a drainage channel in the northwest corner of the Project area and a drainage channel on the eastern border of the wetlands. In review of Google Earth aeriels, there are several bridges or culvert crossings over these drainage channels.

The NOP does not discuss if the proposed Project may result in impacts to these drainage channels. The NOP, page 7, describes *Probable Environmental Effects of the Project*, including transportation and necessary improvements to utility service systems (e.g., sewer, water, electricity). Implementation of projects such as bridge widening or replacement and replacing or installing new utility lines within the drainage channel area could result in impacts to riparian habitat, and fish and wildlife species.

If the Project could result in impacts to riparian areas, CDFW recommends the measures below be included in the draft EIR to potentially offset some of the foreseeable impacts.

1. Habitat Assessment: A qualified biologist will conduct a habitat assessment 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 the drainage channels located within the Project area (as listed above).
2. Wetland Delineation: A formal wetland delineation will 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

Ms. Michelle King
City of Sunnyvale
September 14, 2021
Page 6

overlap, State and federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602, differ, therefore, the delineation should identify both State and federal wetlands, as well as which activities may require Notification to comply with Fish and Game Code (§ 1602 and §2081(b)).

3. Notification of Lake or 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. Project activities in or around drainage channels and other waterbodies within the Project may require that the project proponent submit a notification of Lake and Streambed Alteration to CDFW. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

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.

Ms. Michelle King
City of Sunnyvale
September 14, 2021
Page 7

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:

Stephanie Fong

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Stephanie Fong
Acting Regional Manager
Bay Delta Region

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

LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed September 8, 2021.