



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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Governor's Office of Planning & Research

Apr 07 2022

April 6, 2022

STATE CLEARINGHOUSE

Diana Pancholi, Senior Planner
City of Mountain View
500 Castro Street
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Subject: North Bayshore Master Plan Project, Notice of Preparation of a Subsequent Draft Environmental Impact Report, SCH No. 2022020712, City of Mountain View, Santa Clara County

Dear Diana Pancholi:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Subsequent Draft Environmental Impact Report (SDEIR) from the City of Mountain View (City) for the North Bayshore Master 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. 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 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 is charged by law to provide, 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.

CDFW is also submitting comments 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

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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proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.)

PROJECT DESCRIPTION SUMMARY

Proponent: City of Mountain View

Objective: The Project as proposed will change the North Bayshore Precise Plan (Plan) (SCH No. 2013082088) to include an above ground parking garage, 325 additional hotel rooms, 199,206 additional square feet of retail space, and 66,957 additional square feet of institutional/recreational space. This includes demolition of 68 of the 69 existing buildings at the Project site and construction of buildings 45 to 160 feet tall.

Location: The Project is generally located to the north of US 101, west of Stevens Creek, south of Charleston Road, and east of Alta Avenue. The coordinates for the approximate center of the two main areas of the Project are 37.430° N latitude and 122.100 W longitude in the southeast area of the Plan and 37.420° N latitude and 122.077 W longitude in the northwest end of the Plan (NAD 83 or WGS 84).

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. Based on potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

Mitigation Measures and Impacts

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

COMMENT #1:

Issue: The NOP does not discuss potential impacts of the Project to western burrowing owl (*Athene cunicularia*, State Species of Special Concern). In review of Google Earth arials, the Project site is adjacent to open land with ruderal grass and herbaceous vegetation. Ruderal grass and herbaceous vegetation are also located adjacent to, and along, the eastern border of the Project site. Please be advised that there are known western burrowing owl occurrences within 0.2 miles of the Project site (CDFW 2022). The adjacent grassland areas could potentially support western burrowing owl foraging and/or nesting habitat.

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Specific impact: Nest abandonment or reduced frequency or duration of care for young resulting in reduced health or vigor of young.

Why impact would occur: The proposed Project includes construction of buildings, and parking lots. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact nesting or overwintering owls.

Evidence impact would be significant: Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). Burrowing owl is designated by CDFW as a California Species of Special Concern due to population decline and breeding range retraction. The species has also experienced a severe population decline in Santa Clara County. Project impacts may result in take of burrowing owls, resulting in further species population decline and cumulative impacts resulting in the restriction in the range of the species.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:

Mitigation Measure #1: Habitat Assessment and Surveys

The SDEIR should include a thorough habitat assessment of potential burrowing owl habitat within and adjacent to the Project area. A qualified biologist should conduct a field assessment and include data such as vegetation type, vegetation structure and presence of burrows.

A qualified biologist should conduct protocol-level surveys in all suitable burrowing owl habitat adjacent to the Project where Project activities could adversely affect burrowing owls during both the nesting (February 1 to August 31) or overwintering season.

Specific information on habitat assessment, burrowing owl survey methods, buffer distances 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>.

Mitigation Measure #2: Burrowing Owl Avoidance

The SDEIR should state that if burrowing owls are detected during surveys within or near the Project area, a protective buffer in which construction activities will be avoided will 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

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the burrowing owls show signs of distress (e.g., defensive vocalizations and/or flying away from the nest), the buffer distance should be increased.

COMMENT #2: Biological Resources, page 2

Issue: The NOP states that trees will be removed from the Project site. The NOP does not discuss potential impacts to nesting birds.

Specific impact: Direct mortality, nest abandonment, reduced reproductive success, and loss or reduced health or vigor of eggs or young.

Why impact would occur: The Project proposes to remove trees from the Project site. The Project would also include impacts such as noise, groundwork, and movement of workers that may occur adjacent to habitat, including the riparian area commonly known as Charleston Slough, and may potentially significantly impact nesting birds.

Evidence impact would be significant: Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513).

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:

Mitigation Measure #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 should conduct a minimum of 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. However, species-specific survey protocols may be available and should be followed. 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 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times. Survey areas should include Project work areas near Charleston Slough.

Mitigation Measure #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

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

Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursery sites?

COMMENT #3:

Issue: The NOP, page 3, states that the height of buildings to be constructed within the Project area would be 45 to 160 feet tall. However, the NOP does not indicate the proposed height of buildings to be located adjacent to the riparian area commonly known as Charleston Slough. The tall buildings located near the Charleston Slough riparian area could result in avian collisions with the buildings.

Specific impact: Direct mortality or injury and potential inability to reproduce or reduced reproductive success due to injury.

Why impact would occur: The presence of buildings, including glass windows, close to the Charleston Slough riparian movement corridor may result in avian collision with the buildings.

Evidence impact would be significant: Project impacts may potentially substantially reduce the abundance and diversity of avian species within the Charleston Slough riparian corridor.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:

Mitigation Measure #1: Assessment of Building Height and Location

CDFW recommends that the SDEIR include building height and location alternatives that reduce environmental impacts such as locating tall buildings at a biologically appropriate distance away from the riparian area.

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Mitigation Measure #2: Building Design Assessment

The SDEIR should analyze all potential impacts on avian species resulting from building height, types of materials used on the exterior façade of buildings, and other design features, and include avoidance and minimization measures that reduce those impacts to a less-than-significant level.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT #4:

Issue: The NOP, Figure 3, shows that the Project site is located adjacent to the riparian area commonly known as Charleston Slough.

Specific impact: Potential for sediment and debris to enter the stream.

Why impact would occur: Construction adjacent to Charleston Slough could result in debris and sediment entering the stream.

Evidence impact would be significant: Deposit of debris into Charleston Slough would be a violation under Fish and Game Code §1602.

Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:

Mitigation Measure #1: Impact Analysis

The SDEIR should include an analysis to determine if building demolition and construction would result in debris entering Charleston Slough. The SDEIR should include building location alternatives to avoid impacts to aquatic resources and include avoidance, minimization, and/or mitigation measures to reduce the impacts to less than significant levels.

Mitigation Measure #2: 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 construction activities within or near Charleston Slough or any other waterbody within the Project area may require that the Project proponent submit a notification of Lake and Streambed Alteration to

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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 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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. 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. Payment of the environmental document filing 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

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Erin Chappell
Regional Manager
Bay Delta Region

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

REFERENCES

California Department of Fish and Wildlife (CDFW). 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 1, 2022.