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DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
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April 22, 2022

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Subject: Rural Zoning Ordinance Amendments, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022030776, Santa Clara County

Dear Michael Meehan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the County of Santa Clara (County) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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:** County of Santa Clara

**Objective:** The Project's objectives are to implement zoning changes to broaden the uses that are permitted ancillary to an agricultural operation, combine and streamline the regulation of agricultural use classifications, remove uses incompatible with the General Plan, establish an agricultural buffer for adjacent development, allow agrivoltaics in agricultural areas, establish standards for development in rural zoning districts, and streamline the regulation of Religious Institutions.

**Location:** Exclusive Agriculture, Agricultural Ranchlands, Hillsides, and Rural Residential zoning districts in the unincorporated portions of the County.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County 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 the potential for the Project to have a significant impact on biological resources CDFW concludes that an Environmental Impact Report is appropriate for the Project.

### **Project Description and Related Impact**

**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 U.S. Fish and Wildlife Service (USFWS)?**

**COMMENT #1:** Figure 1 Project Location - Rural Zoning Districts

**Issue:** In review of Google Earth, the northern end of the Project area within the southern San Francisco baylands consists of brackish marsh ponds, as well as the tidally-influenced reaches of Permanente Creek and Stevens Creek. Figure 1 designates this area as Rural Zoning District A, Exclusive Agriculture.

**Specific Impact:** Permanent or temporary loss of brackish marsh ponds, wetlands and stream habitat due to agricultural development.

**Why the impact would occur:** Implementation of the Project could result in agricultural development within brackish marsh ponds, wetlands and stream reaches.

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**Evidence impact would be significant:** Agricultural development would have a substantial adverse effect on sensitive natural communities such as brackish marsh, wetland and riparian habitat.

**Mitigation Measure #1:** Habitat Assessment

A qualified biologist should conduct a habitat assessment to determine habitat types within the unincorporated portion of the southern San Francisco baylands. This survey should include, but not be limited to, Permanente Creek, Stevens Creek, sloughs, ponds, and drainage channels.

**Mitigation Measure #2:** General Plan and Appropriate Zoning Review

The Santa Clara County General Plan 1995-2010 (General Plan), Land Use Area Designations map shows the area as being designated Other Public Open Lands. The DEIR should include an analysis of the change in the zoning to Exclusive Agriculture to determine consistency with the General Plan. A review of typical zoning and land use designations should be conducted to determine if an Exclusive Agriculture designation is appropriate for tidal slough and brackish wetland ponds.

**Mitigation Measure #3:** Minimization and Mitigation

If the brackish marsh and tidal slough areas are to be zoned as Exclusive Agriculture, a thorough analysis of impacts should be included in the DEIR. The DEIR should include minimization and compensatory mitigation measures for all temporary and permanent impacts to brackish marsh, stream and riparian habitats resulting from implementation of 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 USFWS?**

**COMMENT #2:** Biological Resources, page 3

**Issue:** State fully protected mammals and nesting birds may occur within the Project area. The NOP does not discuss potential impacts to fully protected species or other nesting birds that could be present within the Project area. The fully protected species potentially present may include, but are not limited to, those listed below:

- Ringtail (*Bassariscus astutus*) - State Fully Protected

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- Salt-marsh harvest mouse (*Reithrodontomys raviventris*) - State Endangered and Fully Protected, Federal Endangered
- California Ridgway's rail (*Rallus obsoletus obsoletus*) - State Endangered and Fully Protected, Federal Endangered
- California black rail (*Laterallus jamaicensis coturniculus*) - State Threatened and Fully Protected
- Bald eagle (*Haliaeetus leucocephalus*) - State Endangered and Fully Protected
- Golden eagle (*Aquila chrysaetos*) - State Fully Protected
- White-tailed kite (*Elanus leucurus*) - State Fully Protected
- American peregrine falcon (*Falco peregrinus anatum*) - State Fully Protected
- San Francisco gartersnake (*Thamnophis sirtalis tetrataenia*) - State Endangered and Fully Protected; Federal Endangered

**Specific Impact:** Direct mortality through crushing of adults or young or individuals within dens or nests, loss of dens or nests, capture, nest abandonment, loss of potential nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs or young).

**Why impact would occur:** Implementation of the Project could include construction of rural or hillside housing or other development, roads, and agriculture-related structures. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact denning, foraging and nesting.

**Evidence impact would be significant:** The species listed above are Fully Protected Species under California Fish and Game Code (§ 3511, § 4700 or § 5050). Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame birds 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:** Habitat Assessment

The DEIR should include results of a through habitat assessment conducted by a qualified biologist to determine if the Project site or its vicinity contains suitable habitat for fully protected species or other nesting birds.

**Mitigation Measure #2:** Fully Protected Species Surveys

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A focused survey for fully protected species using appropriate protocols should be conducted by qualified biologists at Project sites prior to any Project-related construction. If Project activities are to take place during the avian nesting season, an additional pre-Project activity survey for active nests should be conducted by a qualified biologist no more than seven days prior to the start of Project activity.

**Mitigation Measure #3: Avoidance**

If fully protected dens or nests are found or if an active bird nest is found within or adjacent to the Project site, a no-disturbance buffer should be established and monitoring of the active dens or nests should be conducted by a qualified biologist during all Project-related construction activities. The qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until denning/nesting has concluded or the eggs have hatched and young have fledged. If fully protected mammals or reptiles are found at a work site, work activities should stop and the individual should be allowed to leave the Project site through its own volition.

**COMMENT #3: Biological Resources, page 3**

**Issue:** State threatened or endangered fish and wildlife species may occur within the Project area. The NOP does not discuss potential impacts to State threatened or endangered species that could be present within the Project area. These species may include, but are not limited to:

- Mountain lion (*Felis concolor*) - Central Coast North Evolutionarily Significant Unit - State Candidate Threatened
- San Joaquin kit fox (*Vulpes macrotis mutica*) - State Threatened, Federal Endangered
- Least Bell's vireo (*Vireo bellii pusillus*) - State Endangered and Federal Endangered
- Tricolored blackbird (*Agelaius tricolor*) - State Threatened
- Alameda whipsnake (*Masticophis lateralis euryxanthus*) - State Threatened and Federal Threatened
- Foothill yellow-legged frog (*Rana boylei*) – State Endangered
- California tiger salamander (*Ambystoma californiense*) – Federal Threatened, State Threatened
- Longfin smelt (*Spirinchus thaleichthys*) - State Threatened, Federal Candidate for Endangered or Threatened

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**Specific impact:** Direct mortality through crushing of adults or young or individuals within dens, burrows, or nests, loss of dens, burrows, or nests, capture, nest abandonment, loss of potential breeding or nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs, larvae, or young), inadvertent entrapment or entrainment, impingement, lack of water resulting in reduced reproductive success or desiccation of eggs.

**Why impact would occur:** Implementation of the Project could include construction of rural or hillside housing or other development, roads, agriculture-related structures, and stream or lake water diversion. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact denning and nesting.

**Evidence impact would be significant:** Species above are listed under the California Endangered Species Act (CESA) and may also be designated as rare, threatened or endangered under §15380, subds. (c)(1) and (c)(2)).

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

**Mitigation Measure #1: Habitat Assessment and Appropriate Project Design**

A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for CESA-listed or candidate species. For species in which habitat corridors are crucial, such as for the mountain lion, the habitat assessment should include all denning and foraging habitat within an individual's range. If the Project may result in fragmentation of habitat, Project design should be altered to maintain sufficient movement corridors. If fragmentation cannot be avoided, the DEIR should include mitigation in the form of wildlife crossings suitable for each species that may be adversely affected.

**Mitigation Measure #2: State-listed Wildlife Species Focused Surveys**

The Project site should be surveyed for State-listed wildlife species prior to construction activities by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

**Mitigation Measure #3: State-listed Species Take Authorization**

If known or expected occurrences of State-listed wildlife species are present at a Project site or the species is identified during surveys and full avoidance of take is

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not feasible, the Project proponent should apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

**COMMENT #4:** Biological Resources, page 3

**Issue:** Species of Special Concern (SSC) may occur within the Project area. The NOP does not discuss potential impacts to SSC species that could be present within the Project area. These species may include, but are not limited to:

- American badger (*Taxidea taxus*) - SSC
- Salt-marsh wandering shrew (*Sorex vagrans halicoetes*) - SSC
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) - SSC
- Pallid bat (*Antrozous pallidus*) - SSC
- Townsend's big-eared bat (*Corynorhinus townsendii*) - SSC
- Western red bat (*Lasiurus blossevillii*) - SSC
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) - SSC
- Northern harrier (*Circus cyaneus*) - SSC
- Long-eared owl (*Asio otus*) - SSC
- Loggerhead shrike (*Lanius ludovicianus*) - SSC
- Olive-sided flycatcher (*Contopus cooperi*) - SSC
- Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*) - SSC
- Vaux's swift (*Chaetura vauxi*) - SSC
- Yellow warbler (*Setophaga petechial*) - SSC
- Alameda song sparrow (*Melospiza melodia pusillula*) - SSC
- Western burrowing owl (*Athene cunicularia*) - SSC
- Western pond turtle (*Emys marmorata*) - SSC
- Northern California legless lizard (*Anniella pulchra*) - SSC
- California red-legged frog (CRLF) (*Rana draytonii*) - Federally Threatened, SSC
- California giant salamander (*Dicamptodon ensatus*) - SSC
- Santa Cruz black salamander (*Aneides niger*) - SSC
- Red-bellied newt (*Taricha rivularis*) - SSC
- Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*) - SSC

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- Pacific lamprey (*Entosphenus tridentatus*) - SSC
- Sacramento hitch (*Lavinia exilicauda exilicauda*) - SSC
- San Joaquin roach (*Lavinia symmetricus symmetricus*) - SSC
- Riffle sculpin (*Cottus gulosus*) - SSC

**Specific impact:** Direct mortality through crushing of adults or young or individuals within dens, burrows, middens, or nests, loss of dens, burrows, middens, or nests, capture, nest abandonment, loss of potential breeding, roosting, or nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs, larvae, or young), inadvertent entrapment or entrainment, impingement, lack of water resulting in reduced reproductive success or desiccation of eggs.

**Why impact would occur:** Implementation of the Project could include construction of rural or hillside housing or other development, roads, agriculture-related structures, and stream or lake water diversion. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact denning and nesting.

**Evidence impact would be significant:** Species designated by CDFW as SSC are at conservation risk and may be experiencing serious population declines or range retractions. CRLF is considered a rare or threatened species under CEQA as it is listed in Title 50, Code of Federal Regulations Sections 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered (CEQA Guidelines, §15380 subds. (c)(2)).

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

**Mitigation Measure #1:** Focused Surveys for SSC

The Project site should be surveyed for SSC by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, focused surveys for SSC presence, nests, middens, eggs, or indicators of presence (e.g., bat guano and acoustic surveys) should be conducted.

**Mitigation Measure #2:** SSC Avoidance

If SSC wildlife species are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. The DEIR should

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include additional minimization and mitigation measures for each SCC that could be potentially impacted by Project activities.

**COMMENT #5:** Biological Resources, page 3

**Issue:** Rare plant species may occur within the Project area. The NOP does not discuss potential impacts to rare plant species that could be present within the Project area. These species may include, but are not limited to:

- Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) - Federal Endangered
- Loma Prieta hoita (*Hoita strobilina*) – California Rare Plant Rank 1B.1
- Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*) - California Rare Plant Rank 1B.1
- Bent-flowered fiddleneck (*Amsinckia lunaris*) - California Rare Plant Rank 1B.2
- Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*) - California Rare Plant Rank 1B.2
- Mt. Hamilton thistle (*Cirsium fontinale* var. *campylon*) - California Rare Plant Rank 1B.2
- Smooth lessingia (*Lessingia micradenia* var. *glabrata*) - California Rare Plant Rank 1B.2
- Woodland woollythreads (*Monolopia gracilens*) - California Rare Plant Rank 1B.2
- Western leatherwood (*Dirca occidentalis*) - California Rare Plant Rank 1B.2

**Specific impact:** Direct mortality or inability to reproduce.

**Why impact would occur:** Implementation of the Project could include construction of rural or hillside housing or other development, roads, agriculture-related structures, and stream or lake water diversion.

**Evidence impact would be significant:** Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species.

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

**Mitigation Measure #1:** Special-Status Plant Focused Surveys

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The Project site should be surveyed for special-status plant species by a qualified botanist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.

**Mitigation Measure #2: Special-Status Plant Avoidance**

Direct and indirect impacts to special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

**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 #6:** Biological Resources page 3 and Figure 1 Project Location - Rural Zoning Districts

**Issue:** The Project area has the potential to contain water features subject to CDFW's lake and streambed alteration authority, pursuant Fish and Game Code § 1600 et seq. Project implementation may result in temporary and/or permanent impacts to water features.

**Specific impact:** Work within freshwater marsh, wetland, lakes, streams and riparian habitat has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water features causing water pollution deleterious to fish and wildlife.

**Why impact would occur:** Implementation of the Project could include construction of rural or hillside housing or other development, roads, and agriculture-related structures that may impact streams or lakes. Residential and agricultural development may result in diversion of streams or lakes.

**Evidence impact is potentially significant:** Substantial diversion or obstruction of natural flow, change in stream bed or bank, or deposit of debris into streams without necessary permitting would be a violation under Fish and Game Code §1602.

**Recommended Potentially Feasible Mitigation Measures:**

**Mitigation Measure #1:** Habitat Assessment

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A qualified biologist should conduct a habitat assessment in advance of Project implementation 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, lakes, ponds, creeks, streams, and drainage channels.

**Mitigation Measure #2: Wetland Delineation**

A formal wetland delineation should be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands present within the Project area. Please note that, while there is 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 which activities may require Notification to comply with Fish and Game Code (§ 1602).

**Mitigation Measure #3: Notification of Lake and 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 may necessitate 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 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

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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 County 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 [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

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Erin Chappell  
Regional Manager  
Bay Delta Region

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