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September 7, 2022

Bharat Singh, Principal Planner
County of Santa Clara
County Government Center
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Subject: County of Santa Clara 6th Cycle Housing Element Update & Stanford Community Plan Update, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022080196, Santa Clara County

Dear Bharat Singh:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) from the County of Santa Clara (County) for the County of Santa Clara 6th Cycle Housing Element Update & Stanford Community Plan Update (Project) pursuant 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.

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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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 proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority (Fish & G. Code, § 1600 et seq.).

PROJECT DESCRIPTION SUMMARY

Proponent: County of Santa Clara

Objective: The Programmatic EIR would update the Housing Element of the General Plan and implement zoning changes.

Location: Unincorporated portions of urban and rural Santa Clara 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 EIR is appropriate for the Project.

I. 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: Table 2 Housing Opportunity Sites Inventory

Issue: The NOP does not discuss the likelihood of presence of California Endangered Species Act (CESA) species, including California tiger salamander (CTS, *Ambystoma californiense*, Federal Threatened, State Threatened), within or near the Project area. The California Natural Diversity Database (CNDDDB) shows CTS occurrences approximately one mile to the east of the eastern Morgan Hill Project site and ponds (potential breeding habitat) are located near the CTS occurrences approximately one mile to the west of the Gilroy Project site (CDFW 2022).

Specific impact: Direct mortality of CTS by crushing of burrows during construction and loss of CTS habitat.

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Why impact would occur: Implementation of the Project could include construction of housing, parking lots, roads, and related structures.

Evidence impact would be significant: CTS is listed under CESA and the federal Endangered Species Act (CEQA Guidelines, §15380, subds. (c)(1) and (c)(2)). CTS are known to be able to travel 1.3 miles from upland habitat to breeding ponds (USFWS 2004).

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

Mitigation Measure #1: Santa Clara Valley Habitat Plan Compliance

CTS is a covered species under the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (SCVHP). For activities that can be covered by the SCVHP, the draft EIR should describe CTS habitat expected to be impacted within the Project area (based on land cover types described in the SCVHP). The draft EIR should analyze all potential impacts to CTS aquatic and terrestrial habitat and include SCVHP conditions to be followed for coverage of the Project under the SCVHP.

Mitigation Measure #2: Habitat Assessment

For Project activities that will not be covered by the SCVHP, a qualified biologist should conduct a habitat assessment in advance of Project implementation to determine if the Project site or surrounding lands contain suitable habitat for CTS. The habitat assessment should include both suitable aquatic and terrestrial habitat within a CTS dispersal distance of 1.3 miles from the Project site. The assessment should evaluate the potential for CTS to disperse into the Project area and presence of any partial or full barriers that may restrict or impede CTS movements.

Mitigation Measure #3: Take Authorization

If CTS may be present at a Project site within dispersal distance of a known or suitable breeding pond, and full avoidance of take is not feasible, the Project proponent should apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

COMMENT #2: Table 2 Housing Opportunity Sites Inventory

Issue: In review of Google Earth aerials, the Project area includes woodland habitat, grassland, parks and urban areas with trees and shrubs. However, the NOP does not discuss potential impacts to biological resources, such as nesting birds.

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

Why impact would occur: Construction may result in loss of nesting habitat. The Project may also include impacts such as noise, groundwork, and movement of workers adjacent to nesting habitat that 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 shall 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. Nest surveys shall include all potential nesting areas including, but not limited to, trees, shrubs, and grassland. 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 shall be conducted at the appropriate times of day and during appropriate nesting times.

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

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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 #3: Table 2 Housing Opportunity Sites Inventory

Issue: A drainage channel, a tributary to Llagas Creek, is present within and adjacent to the Gilroy Project area. However, the NOP does not discuss Project activities that may result in temporary and/or permanent impacts to the drainage channel.

Specific impact: Diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel; and deposition of debris, waste, sediment, or other materials.

Why impact would occur: Implementation of the Project could include construction of housing, parking lots, roads, utilities, and related infrastructure within or across the drainage channel. Construction adjacent to the drainage channel may result in direct and/or indirect impacts to the channel and alter hydrology through diversion of water.

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: Wetland Delineation

A formal wetland delineation should be conducted by a qualified biologist prior to Project construction to determine the 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 #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 may necessitate that the Project proponent submit an LSA Notification to CDFW. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

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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 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 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; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

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

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REFERENCES

California Department of Fish and Wildlife (CDFW). 2022. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed September 26, 2020.

U.S. Fish and Wildlife Service. 2004. Determination of threatened status for the California tiger salamander; and special rule exemption for existing routine ranching activities; Final Rule. Federal Register, Vol. 69:47212-47248.