



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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February 18, 2025

Sarah Neuse, Senior Planner
City of Santa Cruz
809 Center Street
Santa Cruz, CA, 95060
SNeuse@santacruzca.gov

Subject: Santa Cruz Downtown Plan Expansion, Draft Subsequent Environmental Impact Report, SCH No. 2022090276, City and County of Santa Cruz

Dear Sarah Neuse:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Subsequent Environmental Impact Report (DSEIR) from the City of Santa Cruz (City) for the Santa Cruz Downtown Plan Expansion (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the DSEIR.

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 proposed, for example, the Project may be subject to CDFW's Lake and Streambed

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.

Sarah Neuse
City of Santa Cruz
February 18, 2025
Page 2

Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in “take” as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86.) CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any Project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

CEQA requires a mandatory finding of significance if a Project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the lead agency cannot approve a Project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports findings of overriding consideration for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration under CEQA, however, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, 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 is 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. **The Project site is adjacent to the San Lorenzo River. Any impacts to San Lorenzo River or associated riparian habitat would likely require an**

Sarah Neuse
City of Santa Cruz
February 18, 2025
Page 3

LSA Notification. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Santa Cruz

Objective: The Project would extend the City's existing Downtown Plan to facilitate redevelopment of the Project area in downtown Santa Cruz. The Project could incorporate the following: 1) a minimum of 1,800 housing units and 60,000 square feet of commercial area; 2) construction of a new 180,000-square-foot sports and entertainment arena; 3) increased building heights from the existing Downtown Plan; 4) circulation improvements including the closure of part of Spruce Street, creation of new civic spaces, relocation of a storm drain pump station, and other improvements; and 5) enhanced pedestrian connections between downtown and Main Beach. The Project would also include amendments to the City's General Plan 2030, the Local Coastal Program, the Beach and South of Laurel Comprehensive Area Plan, the San Lorenzo Urban River Plan, and the Municipal Code.

Location: The Project is located in downtown Santa Cruz and is bound by Laurel Street on the north, the San Lorenzo River on the east, Front Street on the south, and Center Street, Cedar Street, and neighborhoods west of Pacific Avenue on the west. The Project would cover approximately 29 acres. The Project is located in the coastal zone and the Project area currently consists of mixed development including commercial and residential.

Timeframe: A timeframe is not specified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Santa Cruz in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

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 1: Nesting Bird Survey

Sarah Neuse
City of Santa Cruz
February 18, 2025
Page 4

Biological Resources Section, Page 7-9

Issue: Mitigation measure 4.3-3 (Preconstruction Nesting Survey) is not sufficient to reduce potentially significant impacts to less-than-significant levels because survey dates do not encompass the full nesting bird season.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Mitigation Measure or Alternative and Related Impact Shortcoming)

Mitigation Measure 1: If Project grading or construction is scheduled to take place between February 1 – September 15, a preconstruction survey of the Project vicinity for nesting birds shall be conducted by a qualified biologist experienced with the nesting behavior of bird species of the region. The survey shall determine if active nests are present within the planned area of disturbance or within 250 feet for non-raptors and 1,000 feet for raptors. The survey shall be performed no more than 14 days prior to the commencement of construction activities, and a second focused survey shall be conducted within 48 hours prior to construction activities that would occur during the nesting/breeding season. If ground disturbance activities are delayed following a survey, then an additional preconstruction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If a lapse of Project-related activities of seven days or longer occurs, another focused survey will be conducted before Project activities can be reinitiated.

If an active bird nest is found within the survey radii, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. A protective buffer distance shall be established by a qualified biologist based on the site conditions such as whether the nest is in a line of sight of the construction and the sensitivity of the birds nesting. Typical protective buffers are as follows: 1) 1,000 feet for large raptors such as buteos, 2) 500 feet for smaller raptors such as accipiters, and 3) 250 feet for passerines. No Project personnel or equipment shall be allowed to enter the protective buffer until the qualified biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.

A qualified biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the nest site(s) shall be monitored by the biologist periodically to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased. The perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of grading in the nest-setback zone. The qualified

Sarah Neuse
City of Santa Cruz
February 18, 2025
Page 5

biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. All buffers shall be shown on all sets of construction drawings.

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. (See 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 DSEIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alexis Harrison, Environmental Scientist, at (707) 815-2779 or Alexis.Harrison@wildlife.ca.gov; or Wesley Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

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

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