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October 28, 2022

Governor's Office of Planning & Research

OCT 31 2022

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STATE CLEARINGHOUSE

Subject: City of Palo Alto 2023-2031 Housing Element Update, Notice of Preparation of a Draft Supplemental Environmental Impact Report, SCH No. 2022090606, City of Palo Alto, Santa Clara County

Dear Tim Wong:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (DSEIR) from the City of Palo Alto (City) for the 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: City of Palo Alto

Objective: The Project is an update to the Housing Element to the City's Comprehensive Plan Land Use Element and Palo Alto Municipal Code and a supplement to the 2030 Comprehensive Plan Environmental Impact Report (EIR). The Project includes planning of construction of an additional 6,695 housing units.

Location: The City of Palo Alto boundaries.

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 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?

COMMENT #1: Potential Environmental Effects, page 2

Issue: State fully protected mammals and nesting birds may occur within the Project area. The DSEIR should discuss potential impacts to fully protected species or other nesting birds that could be present within the Project area. Within the EIR for the 2030 Comprehensive Plan, Table 4.3-4 Special-Status Wildlife Species with the potential to occur did not include some CESA-listed species that are also Fully Protected. Only those species not included as Fully Protected in the table are listed below:

- Salt-marsh harvest mouse (*Reithrodontomys raviventris*) - State Endangered and Fully Protected, Federal Endangered

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- 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
- 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 housing, roads, and related infrastructure. Implementation of 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

A qualified biologist shall conduct a habitat assessment prior to implementation of the Project to determine if the Project area or its vicinity contains suitable habitat for Fully Protected species or other nesting birds.

Mitigation Measure #2: Fully Protected Species Surveys

A focused survey for fully protected species using appropriate protocols shall be conducted by a qualified biologist at future 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 shall be conducted by a qualified biologist no more than seven days prior to the start of Project activity.

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Mitigation Measure #3: Avoidance

If Fully Protected species dens or nests are found or if an active bird nest is found within or adjacent to the Project site, a no-disturbance buffer shall be established and monitoring of the inhabited dens or active nests shall be conducted by a qualified biologist during all Project-related construction activities. The qualified biologist shall 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 shall 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 shall stop and the individual shall be allowed to leave the Project site through its own volition.

COMMENT #2: Potential Environmental Effects, page 2

Issue: State threatened or endangered fish and wildlife species may occur within the Project area. Within the 2030 Comprehensive Plan EIR, Table 4.3-4 Special-Status Wildlife Species with the potential to occur did not include some CESA species recently listed. These species may include, but are not limited to those listed below:

- Mountain lion (*Felis concolor*) - Central Coast North Evolutionarily Significant Unit - State Candidate Threatened
- Tricolored blackbird (*Agelaius tricolor*) - State Threatened

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 housing, roads, and related infrastructure 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 CESA and may also be designated as rare, threatened or endangered under §15380, subds. (c)(1) and (c)(2)).

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

Mitigation Measure #1: Habitat Assessment and Appropriate Project Design

A qualified biologist shall conduct a habitat assessment in advance of Project implementation, to determine if a future 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 shall 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, mitigation in the form of wildlife crossings suitable for each species that may be adversely affected shall be developed and implemented to offset the loss of movement corridors.

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

A qualified biologist shall conduct protocol-level surveys for State-listed wildlife species at future project sites prior to construction activities. 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 not feasible, CDFW strongly recommends that the project proponent apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

COMMENT #3: Potential Environmental Effects, page 2

Issue: Species of Special Concern (SSC) may occur within the Project area. Within the 2030 Comprehensive Plan EIR, Table 4.3-4 Special-Status Wildlife Species with the potential to occur did not include some SSC species that have the potential to occur within or distribute into the Project area. These species may include, but are not limited to:

- Townsend's big-eared bat (*Corynorhinus townsendii*) - SSC
- Western red bat (*Lasiurus blossevillii*) - SSC
- Olive-sided flycatcher (*Contopus cooperi*) - SSC
- California giant salamander (*Dicamptodon ensatus*) - SSC

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- Santa Cruz black salamander (*Aneides niger*) - SSC
- Red-bellied newt (*Taricha rivularis*) - SSC
- Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*) - SSC

Specific impact: Direct mortality through crushing of adults or young or individuals within burrows or nests, loss of burrows 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 housing, roads, and related infrastructure 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

A qualified biologist shall conduct protocol-level surveys for SSC at future project sites. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, a qualified biologist shall conduct focused surveys for SSC presence, nests, middens, eggs, or indicators of presence (e.g., bat guano and acoustic surveys).

Mitigation Measure #2: SSC Avoidance

If SSC wildlife species are found within or adjacent to the project site, the qualified biologist shall establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all project-related activities. The DSEIR shall include additional minimization and mitigation measures for each SCC that could be potentially impacted by project activities.

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COMMENT #4: Potential Environmental Effects, page 2

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:

- Woodland woollythreads (*Monolopia gracilens*) - California Rare Plant Rank 1B.2
- Western leatherwood (*Dirca occidentalis*) - California Rare Plant Rank 1B.2
- Congdon's tarplant (*Centromadia parryi ssp. congdonii*) - California Rare Plant Rank 1B.1
- Arcuate bush-mallow (*Malacothamnus arcuatus*) - 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 housing, roads, and related infrastructure

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

A qualified botanist shall conduct protocol-level surveys for special-status plant species on future project sites. 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 shall 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.

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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 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 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