

# Comments and Responses on the Draft Initial Study- Negative Declaration

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This section includes comments received during public circulation of the Draft Initial Study- Negative Declaration (IS-ND) prepared for the Climate Action Playbook Update/Game Plan 2028 and CEQA GHG Emissions Thresholds (proposed plan or plan). The California Environmental Quality Act (CEQA) Guidelines Section 15074(b) states that prior to approving a project, the lead agency must consider the proposed IS-ND together with any comments received during the public review process.

The Draft IS-ND was circulated for a 30-day public review period that began on April 9, 2024 and ended on May 8, 2024. The City received one comment letter on the Draft IS-ND. Each separate issue raised by the commenter, if more than one, has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response 1.1, for example, indicates that the response is for the first issue raised in comment Letter, Individual 1).

Where a comment resulted in a change to the Draft IS-ND text, a notation is made in the response indicating that the text is revised. Changes in text are signified by ~~strikeout font~~ where text was removed and by underlined font where text was added. These changes in text are noted in the Final IS-ND. The comment letter and responses follow.



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Letter 1

May 6, 2024

Madeline Khair, Environmental Programs Manager  
City of Sunnyvale  
456 W Olive Avenue  
Sunnyvale, CA 94086  
[MKhair@sunnyvale.ca.gov](mailto:MKhair@sunnyvale.ca.gov)

Subject: Sunnyvale Climate Action Playbook Update/Game Plan 2028 and CEQA  
GHG Emissions Thresholds, Initial Study/Negative Declaration,  
SCH No. 2024040387, City of Sunnyvale, Santa Clara County

Dear Ms. Khair:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Negative Declaration (IS/ND) from the City of Sunnyvale (City) for the Sunnyvale Climate Action Playbook Update/Game Plan 2028 and CEQA GHG Emissions Thresholds (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW is submitting comments on the draft IS/ND as a means to inform the City of Sunnyvale as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

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.

1.1

<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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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 over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW’s Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project 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.

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1.1 cont.

## **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.

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CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. € & 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 (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, does not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

1.2

### **Lake and Streambed Alteration**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting rivers, 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

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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. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification.

### **Migratory Birds and Raptors**

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **Fully Protected Species**

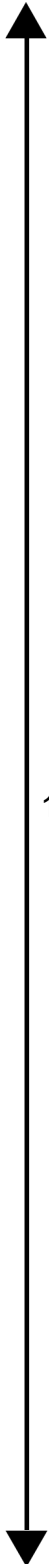
Several Fully Protected Species (Fish & G. Code § 3511 and 4700) have the potential to occur within or adjacent to the Project area, including, but not limited to: salt-marsh harvest mouse (*Reithrodontomys raviventris*), white-tailed kite (*Elanus leucurus*), golden eagle (*Aquila chrysaetos*), California least tern (*Sternula antillarum browni*), and California Ridgway's rail (*Rallus obsoletus obsoletus*).

Project activities described in the IS/ND should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research;

- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management are provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15).



1.2 cont.

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CDFW also recommends the IS/ND analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the City include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species. Project proponents should consult with CDFW early in the Project planning process.

1.2 cont.

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Sunnyvale

**Objective:** The objective of the Project is to achieve the 2030 GHG emissions target for the City of Sunnyvale. Primary Project activities include; the City has developed 19 strategies related clean electricity, building decarbonization, transportation decarbonization and sustainable land use planning, solid waste and water use reductions, community engagement, and climate adaptation.

1.3

**Location:** Sunnyvale, Santa Clara County (County), Citywide

**Timeframe:** The plan will be implemented over the next 21 years.

## 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.

1.4

The IS/ND should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The IS/ND relies on General Plan policies and on requirements that subsequent Projects, if necessary, obtain appropriate permits but does not sufficiently describe how these policies will reduce impacts to less-than-significant.

## ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project (CEQA Guidelines, §§15063 & 15360). CDFW recommends that a full list or table is included in the updated Biological Resources Section of the IS/ND that notes species common name, scientific name, state and federal listing status (as applicable), habitat type preference and determination on presence, for all special-status species with the potential to occur within the Project area.

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CDFW recommends the IS/ND provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380). The IS/ND should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project area (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City or County may require.

CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine U.S. Geologic Survey (USGS) 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (See *Data Use Guidelines* on the Department webpage <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations. Only with sufficient data and information can the City adequately assess which special-status species are likely to occur in the Project vicinity.

According to Biogeographic Information and Observation System (BIOS) records, the Project site contains positive detections of several special-status species and has the potential to support numerous special-status species and their associated habitat. Species with potential to occur on-site include but are not limited to those listed in Attachment 1.

## **I. Project Description and Related Impact Shortcoming**

**COMMENT 1: Subsequent Project Review, (Biological Resources 4.a. p. 42)**

1.5 cont.

1.6

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The IS/ND identifies that “implementation of the following Sunnyvale Playbook Update/ Game Plan 2028 Plays may promote infrastructure development and redevelopment and may result in impacts to species through construction activities.” (4.a. p. 42). It is not clear what level of environmental review future Projects would receive. The IS/ND does not include a checklist for subsequent project review, nor adequate description of how the City’s policies would mitigate any potential impacts of the Project. While the Project has a necessarily broad scope, CDFW recommends providing as much information related to anticipated future activities as possible. CDFW recognizes that, pursuant to CEQA Guidelines section 15152, subdivision (c), if a Lead Agency is using the tiering process in connection with large-scale planning approval, the development of detailed, site-specific information may not be feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand.

The CEQA Guidelines section 15168, subdivision (c)(4) states, “Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope.”

1.6 cont.

**Recommended Mitigation Measure 1: Subsequent Project CEQA Evaluation.** The IS/ND should include a procedure or checklist for evaluating subsequent Project impacts on biological resources to determine if the impacts are within the scope of the IS/ND or if an additional environmental document is warranted. Future analysis shall include all special-status species and sensitive habitats including, but not limited to, species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, section 15380. The checklist shall be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the IS/ND conclusion. For subsequent Project activities that may affect sensitive biological resources, a site-specific analysis shall be prepared by a professional biologist experienced with the applicable species and habitat to provide the necessary supporting information.

## II. Environmental Setting 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 U.S. Fish and Wildlife Service (USFWS)?**

1.7

**COMMENT 2: Nesting Bird Surveys, (Biological Resources 4.a. p. 42)**

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The draft IS/ND states that the Project has the potential to disturb special-status species and nesting habitat for birds and raptors; however, the draft IS/ND does not state that baseline data will be collected if active nests are discovered.

**Recommended Mitigation Measure 2: 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 professional biologist experienced with the applicable species and habitat shall conduct 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. 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.

1.7 cont.

**COMMENT 3: Marsh and Shoreline Birds, (Biological Resources 4.a. p. 42)**

The IS/ND does not state potential impacts to shoreline and marsh birds from the Project. A number of marsh bird species occur along Sunnyvale's shoreline and throughout the Don Edwards San Francisco Bay National Wildlife Refuge. These include but are not limited to black skimmer (*Rynchops niger*), California least tern, California black rail, California Ridgway's rail, and western snowy plover (*Charadrius nivosus nivosus*). The IS/ND includes actions to advance shoreline protection projects and restore and expand salt marshes and natural waterways. Any in-water and shoreline work has the potential to cause the take of state listed marsh and shoreline bird species.

1.8

**Recommended Mitigation Measure 3: Surveys.** CDFW recommends the Project include a measure for marsh bird surveys following the 2017 Site-Specific Protocol for Monitoring Marsh Birds (<https://ecos.fws.gov/ServCat/Reference/Profile/68062>). CDFW recommends inclusion of avoidance and minimization measures in the Biological Resources Section of the IS/ND to reduce impacts below a level of significance.

**COMMENT 4: State Listed Fish Species, (Table 2, item 6.2, page 17)**

The IS/ND does not include potential impacts to state listed fish species known to be present in the Project area, including steelhead (*Oncorhynchus mykiss irideus*) - Central California Coast Distinct Population Segment (DPS) and longfin smelt (*Spirinchus thaleichthys*) along Sunnyvale's shoreline and throughout the Don Edwards San Francisco Bay National Wildlife Refuge. The IS/ND includes actions to advance shoreline protection projects and restore and expand salt marshes and natural

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waterways. Any in-water work has the potential to cause the take of state listed fish species.

**Recommended Mitigation Measure 4: Construction Activities and Work Windows.**

The IS/ND should include mitigation measures to avoid potential impacts to aquatic species for construction methods such as pile driving and dredging. In-water construction shall only occur during the CDFW approved work window of June 1 through November 30. A vibratory pile driver shall be used to the maximum extent possible. If an impact hammer is to be considered for construction, the City shall consult with CDFW regarding a CESA ITP for potential impacts to state listed species such as longfin smelt and Chinook salmon (*Oncorhynchus tshawytscha*). See also Recommended Mitigation Measure 9.

1.9 cont.

**COMMENT 5: Crotch's bumble bee, (Biological Resources 4.a. p. 42)**

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). The IS/ND does not address whether the proposed Project could result in impacts to Crotch's bumble bee. Crotch's bumble bee occurrences have been documented within the vicinity of the Project area and historic observations occur elsewhere in the County (CDFW 2023). The Project location is within the Crotch's bumble bee range (<https://wildlife.ca.gov/Conservation/CESA>) and grassland within and adjacent to the Project area may contain potential habitat for Crotch's bumble bees.

The Project includes strategies such as solar arrays and solar battery storage projects that may occur within ruderal grass and herbaceous vegetation and that may be potential Crotch's bumble bee nesting and foraging habitat. Potential impacts include direct mortality through crushing or filling of active bee colonies and hibernating bee cavities, reduced reproductive success, loss of suitable breeding and foraging habitats, loss of native vegetation that may support essential foraging habitat.

1.10

**Recommended Mitigation Measure 5: Habitat Assessment.** A habitat assessment shall be conducted by a qualified entomologist knowledgeable with the life history and ecological requirements of Crotch's bumble bee. The habitat assessment shall include all suitable nesting, overwintering, and foraging habitats within the Project area and surrounding areas. Potential nest habitat (February through October) could include that of other *Bombus* species such as bare ground, thatched grasses, abandoned rodent burrows or bird nests, brush piles, rock piles, and fallen logs. Overwintering habitat (November through January) could include that of other *Bombus* species such as soft and disturbed soil or under leaf litter or other debris. The habitat assessment shall be conducted during peak bloom period for floral resources on which Crotch's bumble bee feed. Further guidance on habitat surveys can be found within *Survey Considerations*

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for California Endangered Species Act (CESA) Candidate Bumble Bee Species (<https://wildlife.ca.gov/Conservation/CESA>).

1.10 cont.

**COMMENT 6: Western Burrowing Owl (Biological Resources 4.a. p. 42)**

Burrowing owl (*Athene cunicularia*) is designated by CDFW as a California Species of Special Concern (SSC) due to population decline and breeding range retraction. The species has also experienced a severe population decline in the County. The IS/ND notes ruderal infill lots could support burrowing owl but does not discuss potential impacts. Known populations of burrowing owl occur within and adjacent to the Project area, including Moffett Federal Airfield, the Golf Club at Moffett Field, Sunnyvale Baylands County Park, the grasslands along the City of Sunnyvale Water Pollution Control Plant, and other suitable habitat.

The Project includes strategies such as solar arrays and solar battery storage projects that may occur within ruderal grass and herbaceous vegetation that may be potential burrowing owl habitat. The Project also includes shoreline protection strategies which could impact grassland habitat along the shoreline, currently utilized by burrowing owl. Direct mortality could occur through crushing of adults or young within burrows, loss of nesting burrows, loss of nesting habitat, loss of foraging habitat resulting in reduced nesting success (loss or reduced health or vigor of eggs or young), nest abandonment, and reduced frequency or duration of care for young resulting in reduced health or vigor of young.

1.11

**Recommended Mitigation Measure 6: Habitat Assessment and Surveys.** The IS/ND should include a thorough habitat assessment of potential burrowing owl habitat within and adjacent to the Project area. A professional biologist experienced with burrowing owl and their habitat should conduct a field assessment that includes all areas that could be directly or indirectly impacted by the Project and include data such as vegetation type, vegetation structure and presence of burrows. 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>.

**Would the Project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? 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?**

1.12

**COMMENT 7: Permits for Stream, Wetland, and Other Waters Impacts, Impacts to Sensitive Natural Communities, Riparian Habitat, Wetlands, Lake and Streambed**

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**Alteration Notification and Clean Water Act compliance (Biological Resources 4.c, p. 43-44)**

The IS/ND identifies that future development under the Project may be subject to the Clean Water Act and the Porter-Cologne Water Quality Control Act, but not Fish and Game Code section 1600 et seq. (p. 43). The IS/ND does not provide certainty that such impacts would comply with Fish and Game Code section 1600 et seq., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, as the IS/ND does not include a mitigation measure requiring that development under the Project apply for CDFW, Regional Water Quality Control Board (RWQCB), or U.S. Army Corps of Engineers (USACE) Permits, nor does it contain a mitigation measure requiring compliance with the terms of these permits, if issued.

Development facilitated by the Project may result in impacts to streams and riparian habitats, such as Stevens Creek, Calabazas Creek, and Moffett Channel (p. 44). When riparian habitat is substantially altered, riparian functions become impaired, thereby likely substantially adversely impacting aquatic and terrestrial species. The IS/ND does not provide certainty that impacts to riparian habitats, sensitive natural communities, wetlands, and waters of the State would be reduced to less-than-significant. Without specific mitigation measures containing performance standards CDFW considers impacts to these resources as potentially significant (CEQA Guidelines, §§ 15065, 15380).

To reduce potential impacts to streams, wetlands, and other waters to less-than-significant and comply with Fish and Game Code section 1600 et seq., the Porter-Cologne Water Quality Control Act, and the Clean Water Act, CDFW recommends including the mitigation measure below in the IS/ND.

**Recommended Mitigation Measure 7: Stream and Wetland Mitigation and Resource Agency Permits.** The Project shall be designed to minimize fill of jurisdictional waters. If impacts to any streams cannot be avoided, then prior to the impacts the Project shall submit an LSA notification to CDFW and comply with the LSA Agreement, if issued. Additionally, if impacts to any streams, wetlands, or other waters cannot be avoided, the Project shall obtain authorization from the RWQCB and USACE pursuant to the Porter-Cologne Water Quality Control Act and Clean Water Act sections 401 and 404, as applicable. Impacts to waters, wetlands, and riparian habitat subject to the permitting authority of CDFW, the RWQCB, or the USACE shall be mitigated by providing restoration at a minimum 3:1 restoration to impact ratio in area for permanent impacts and 1:1 ratio for temporary impacts, unless otherwise approved in writing by CDFW or otherwise required by the RWQCB or USACE. A Habitat Mitigation and Monitoring Plan shall be prepared and implemented for the proposed mitigation. The Project shall obtain written approval of this plan from CDFW, the RWQCB, or the USACE as applicable prior to any disturbance of stream or riparian habitat, wetlands, or other waters.

1.12 cont.

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**Recommended Mitigation Measure 8: LSA Notification and other Resource Agency Permits.** The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (EPIMS, see: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and USACE pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.



1.12 cont.

**Recommended Mitigation Measure 9: Habitat Restoration and Compensation.** The Project shall implement restoration on-site or off-site to mitigate temporary or permanent impacts to sensitive natural communities, riparian habitat, and wetlands at a minimum 1:1 (restore on-site temporary impacts) or 3:1 (permanent impacts) mitigation to impact ratio for acres and linear feet of impacts, or habitat compensation including permanent protection of habitat at the same ratio through a conservation easement and preparing and funding implementation of a long-term management plan, unless otherwise approved in writing by CDFW.

### III. Editorial Comments and/or Suggestions

CDFW appreciates the inclusion of strategies to restore and enhance marshes along the shoreline of the City to improve climate resilience and habitat for fish and wildlife. CDFW additionally appreciates the inclusion and proposed implementation of an Urban Forest Management Plan that will result in increased canopy cover within the Project area.

1.13

### 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>.

1.14

### 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. (See: Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

↑ 1.15 cont.

## CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Marcus Griswold, Senior Environmental Scientist (Specialist), at (707) 815-6451 or [Marcus.Griswold@wildlife.ca.gov](mailto:Marcus.Griswold@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

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Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1: Special-Status Species and Commercially/Recreationally Important Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024040387)  
Craig Weightman, CDFW Bay Delta Region – [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)  
Jason Faridi, CDFW Bay Delta Region – [Jason.Faridi@wildlife.ca.gov](mailto:Jason.Faridi@wildlife.ca.gov)

## REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. Biogeographic Information and Observation System (BIOS). <https://wildlife.ca.gov/Data/BIOS>. Accessed April 25, 2024.

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### ATTACHMENT 1: Special-Status Species

Species	Status
steelhead - central California coast DPS ( <i>Oncorhynchus mykiss irideus</i> )	Federally Threatened (FT), State SSC
longfin smelt ( <i>Spirinchus thaleichthys</i> )	Proposed FT, State Threatened (ST)
San Francisco dusky-footed woodrat ( <i>Neotoma fuscipes annectens</i> )	SSC
salt-marsh harvest mouse ( <i>Reithrodontomys raviventris</i> )	Federal Endangered (FE), State Fully Protected (FP)
Bryant's savannah sparrow ( <i>Passerculus sandwichensis alaudinus</i> )	SSC
saltmarsh common yellowthroat ( <i>Geothlypis trichas sinuosa</i> )	SSC
burrowing owl ( <i>Athene cunicularia</i> )	SSC
Alameda song sparrow ( <i>Melospiza melodia pusillula</i> )	SSC
grasshopper sparrow ( <i>Ammodramus savannarum</i> )	SSC
tricolored blackbird ( <i>Agelaius tricolor</i> )	ST, SSC
white-tailed kite ( <i>Elanus leucurus</i> )	FP
golden eagle ( <i>Aquila chrysaetos</i> )	FP
northern harrier ( <i>Circus hudsonius</i> )	SSC
black skimmer ( <i>Rynchops niger</i> )	SSC
California least tern ( <i>Sternula antillarum browni</i> )	FE, FP
California Ridgway's rail ( <i>Rallus obsoletus obsoletus</i> )	FE, SE, FP
California black rail ( <i>Laterallus jamaicensis coturniculus</i> )	ST, SSC
western snowy plover ( <i>Charadrius nivosus nivosus</i> )	FT, SSC
western mastiff bat ( <i>Eumops perotis californicus</i> )	SSC
Townsend's big-eared bat ( <i>Corynorhinus townsendii</i> )	SSC

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western pond turtle ( <i>Emys marmorata</i> )	Proposed FT, SSC
Crotch's bumble bee ( <i>Bombus crotchii</i> )	State candidate (SC)

## Letter 1

**COMMENTER:** Erin Chappell, Regional Manager Bay Delta Region, California Department of Fish and Wildlife (CDFW)

**DATE:** May 6, 2024

### Response 1.1

The commenter describes CDFW's role as a Trustee and Responsible Agency. The commenter states that their comments have been prepared pursuant to the CDFW's authority as a Trustee Agency under Fish and Game Code Section 711.7a and 1802, Public Resources Code (PRC) Section 21070, and CEQA Guidelines Sections 15386(a) and as a Responsible Agency under PRC Section 21069 and CEQA Guidelines Section 15381. The commenter also states that CDFW may need to exercise regulatory authority as the proposed plan may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority or result in "take." The commenter states that CDFW recommends the project obtain appropriate authorization under the Fish and Game Code.

This comment is noted, and specific concerns raised by the commenter are addressed below. No further response is required.

### Response 1.2

The commenter provides an overview of regulatory requirements related to biological resources, including the California Endangered Species Act (CESA), LSA, Fish and Game Code Sections 3503, 3511, and 4700, and Migratory Bird Treaty Act.

This comment is noted, and specific concerns raised by the commenter are addressed below. No further response is required.

### Response 1.3

The commenter describes the proposed plan, location, and objectives as outlined in the IS-ND.

This comment is noted, and specific concerns raised by the commenter are addressed below. No further response is required.

### Response 1.4

The commenter provides an introduction to their more detailed comments. The commenter states the IS-ND should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant. The commenter also states the IS-ND relies on General Plan policies and on requirements that subsequent projects obtain appropriate permits but does not sufficiently describe how these policies will reduce impacts to less-than-significant.

The thresholds of significance for each resource topic are listed at the beginning of each section of the IS-ND. Section 4, *Biological Resources*, of the IS-ND includes six thresholds of significance, labeled a. through f. As a policy document that does not include any specific planned projects, the potential for significant impacts for each of these thresholds was assessed based on the potential for the plan to result in future physical changes to the environment at a programmatic level. The comment regarding references to compliance with the General Plan and permitting requirements is



an introduction to the commenter's later comments, and specific concerns raised by the commenter are addressed below.

### Response 1.5

The commenter recommends that the IS-ND include a list of special status species and sensitive habitat with the potential to occur within the City.

Pages 42 and 43 of the Draft IS-ND note that there is the potential for protected species and sensitive habitat to occur within the City. These descriptions have been expanded upon in the Final IS-ND to detail the specific species and habitats that the commenter's later recommendations focus on, as follows.

Page 42:

Sunnyvale is a primarily urbanized community with limited habitat to support special-status species. However, ruderal infill lots could support burrowing owl, Crotch's bumble bee, and Congdon's tarplant. Shoreline areas and wetlands in Sunnyvale may support protected shore birds and fish species, such as black skimmer, California least tern, California black rail, California Ridgway's rail, western snowy plover, steelhead, and longfin smelt. These special status species are afforded protection under the federal Endangered Species Act, California Endangered Species Act, and/or California Fish and Game Code (CFGC). Additionally, urban parks, open space, and riparian areas could support nesting birds. Active nests of all migratory birds, including raptors, are protected by State and federal law. Migratory and nesting birds are protected by Sections 3503, 3503.5, and 3513 of the CFGC and the Migratory Bird Treaty Act (MBTA), and may utilize trees, landscaping, and structures throughout Sunnyvale for nesting habitat.

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Sunnyvale contains wetlands, streams, shoreline, riparian areas, and other sensitive habitat in the areas adjacent to the San Francisco Bay and Stevens Creek, Calabazas Creek, and Moffett Channel. Wetlands and other waters in Sunnyvale are protected by the federal Clean Water Act, the California Porter-Cologne Water Quality Control Act, and CFGC Section 1600 et seq., and are under the jurisdiction of the U.S. Army Corps of Engineers, the San Francisco Bay Regional Water Quality Control Board, and the California Department of Fish and Wildlife. Federal and State regulations require avoidance of impacts to the extent feasible, as well as compensation for unavoidable losses of jurisdictional wetlands and waters and sensitive natural communities and riparian habitat. SMC Chapter 12.60 requires compliance with the Clean Water Act and the Porter-Cologne Water Quality Control Act.

### Response 1.6

The commenter states that the IS-ND does not include a checklist for subsequent project review nor adequate description of how the City's policies would mitigate any potential impacts of the proposed plan. The commenter recommends that the IS-ND include a procedure or checklist for evaluating subsequent project impacts on biological resources.

As described throughout Section 2, *Biological Resources*, projects implemented in support of the proposed plan would be reviewed for consistency with and required to comply with federal and state regulations that protect biological resources, such as the federal Endangered Species Act, California Endangered Species Act, CFGC, Migratory Bird Treaty Act, and Clean Water Act. In addition, projects implemented in support of the proposed plan would also be reviewed for

consistency with local policies such as those contained in the City's General Plan. Specific policies and actions contained in the General Plan that provide for the protection of biological resources include the following:

- Policy LT-1.10: participate in federal, state, and regional programs and processes in order to protect the natural and human environment in Sunnyvale and the region.
  - Action LT-1.10a: Protect and preserve the diked wetland areas in the baylands to preserve or enhance flood protection.
  - Action LT-1.10e: Continue to evaluate and ensure mitigation of potential biological impacts of future development and redevelopment projects in a manner consistent with applicable local, state, and federal laws and regulations.
- Policy LT-2.3: Accelerate the planting of large canopy trees to increase tree coverage in Sunnyvale in order to add to the scenic beauty and walkability of the community; provide environmental benefits such as air quality improvements, wildlife habitat, and reduction of heat islands; and enhance the health, safety, and welfare of residents.
  - Action LT-2.3c: Evaluate increasing the level of required tree planting and canopy coverage for new developments and site renovation projects while preserving solar access for photovoltaic systems.
  - Action LT-2.3d: Require tree replacement for any project that results in tree removal, or in cases of constrained space, require payment of an in-lieu fee. Fee revenues shall support urban forestry programs.
- Policy LT-2.4: Maintain and regularly review and update regulations and practices for the planting, protection, removal, replacement, and long-term management of large trees on private property and city-owned golf courses and parks.
  - Action LT-2.4a: Strictly enforce Chapters 13.16 City Trees and 19.94 Tree Preservation to prevent the unauthorized removal, irreversible damage, and pruning of large protected trees.
- Policy LT-2.5: Recognize the value of protected trees and heritage landmark trees (as defined in city ordinances) to the legacy, character, and livability of the community by expanding the designation and protection of large signature and native trees on private property and in city parks.
  - Action LT-2.5c: Emphasize tree relocation, site redesign, or special construction provisions over removing and irreparably damaging healthy heritage landmark trees and protected trees. Consider more than the economic value of a tree.
- Policy LT-9.5: Maintain existing park and open space tree inventory through the replacement of trees with an equal or greater number of trees when trees are removed due to disease, park development or other reasons.
- Policy LT-9.19: Protect creeks and wetlands as important parts of the community's natural environment and open space and for their contribution to flood control.
  - Action LT-9.19a: Work with other agencies to maintain creeks and wetlands in their natural state.
  - Action LT-9.19c: Minimize or divert pollutants from draining into creeks and wetlands by enforcing best management practices during construction, site development, and ongoing operations.

- Policy LT-10.5: Engage in regional efforts to enhance and protect land uses near streams and to respond to sea level rise and climate change.
  - Action LT-10.5a: Maintain and regularly review and update a streamside development review and permitting process.
  - Action LT-10.5b: Apply development standards provided by the Santa Clara Valley Water District (SCVWD).
  - Action LT-10.5c :Conduct streamside development review as part of a building permit plan check process, design review, the miscellaneous plan permit, and/or the discretionary review process.
  - Action LT-10.5d: Minimize effects of development on natural streambeds.
  - Action LT-10.5e: When opportunities exist, remove existing structures adjacent to streams that impact the streambed.

The City also maintains Bird Safe Design Guidelines in reviewing the design of new structures in the city.<sup>1</sup> These policies are listed in Section 2, *Biological Resources*, and it is noted that future projects under the proposed plan would be required to comply with these policies. Projects would also be subject to environmental review under CEQA, and individual biological resources assessments and impact analyses may identify required plan- or project-specific mitigation measures where applicable, such as nesting bird and special status species surveys and habitat restoration, as recommended in subsequent comments made by the commenter. Therefore, implementation of the proposed plan will comply with the commenter’s suggestions for surveys and mitigation measures when applicable and warranted.

### **Response 1.7**

The commenter recommends a mitigation measure requiring nesting bird surveys prior to project construction activities if construction occurs within the nesting season.

Please refer to Response 1.6, which describes how the City will review and evaluate projects prior to approval which would include enforcing federal, state (including CDFW), and local regulations to minimize impacts to sensitive species including nesting birds when projects supporting the plan are proposed with the specific site location, size, and details of potential construction. Furthermore, completion of pre-construction nesting bird surveys is a standard practice for any project that disturbs vegetation in order to comply with the Migratory Bird Treaty Act and CDFW regulations. These surveys would be implemented as a regulatory requirement and mitigation is not required. Therefore, implementation of the proposed plan will comply with the commenter’s suggestions for nesting bird surveys when applicable and warranted.

### **Response 1.8**

The commenter states the IS-ND does not state potential impacts to shoreline and marsh birds from the plan, such as from projects that would restore and expand salt marshes. The commenter recommends inclusion of a mitigation measure that requires surveys for marsh birds.

The following information has been added to Page 42 of the IS-ND for clarification:

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<sup>1</sup> <https://www.sunnyvale.ca.gov/home/showpublisheddocument/1542/638273438333130000>

Shoreline areas and wetlands in Sunnyvale may support protected shore birds and fish species, such as black skimmer, California least tern, California black rail, California Ridgway's rail, western snowy plover, steelhead, and longfin smelt...

...However, implementation of the following Sunnyvale Playbook Update/Game Plan 2028 Plays may promote infrastructure development and redevelopment ~~and may~~ that have the potential to result in impacts to special status species through construction activities that could directly cause mortality or result in indirect impacts through loss of breeding, foraging, and nesting habitat. Nonetheless, as addressed below, with adherence to the requirements of federal Endangered Species Act, California Endangered Species Act, CFCG, SMC, and Sunnyvale General Plan policies and actions, construction impacts would be minimized.

Please refer to Response 1.6, which describes how the City will review and evaluate projects prior to approval which would include enforcing federal, state (including CDFW), and local regulations to minimize impacts to sensitive species including shore birds when projects supporting the plan are proposed with the specific site location, size, and details of potential construction. Therefore, implementation of the proposed plan will comply with the commenter's suggestions for surveys and mitigation measures when applicable and warranted.

### **Response 1.9**

The commenter states the IS-ND does not include potential impacts to state listed fish species from the plan, such as from projects that would restore and expand salt marshes. The commenter recommends inclusion of a mitigation measure that would limit in-water construction activities during the CDFW approved work window and use of vibratory pile drivers.

The following information has been added to Page 42 of the IS-ND:

Shoreline areas and wetlands in Sunnyvale may support protected shore birds and fish species, such as black skimmer, California least tern, California black rail, California Ridgway's rail, western snowy plover, steelhead, and longfin smelt...

...However, implementation of the following Sunnyvale Playbook Update/Game Plan 2028 Plays may promote infrastructure development and redevelopment ~~and may~~ that have the potential to result in impacts to special status species through construction activities that could directly cause mortality or result in indirect impacts through loss of breeding, foraging, and nesting habitat. Nonetheless, as addressed below, with adherence to the requirements of federal Endangered Species Act, California Endangered Species Act, CFCG, SMC, and Sunnyvale General Plan policies and actions, construction impacts would be minimized.

Please refer to Response 1.6, which describes how the City will review and evaluate projects prior to approval which would include enforcing federal, state (including CDFW), and local regulations to minimize impacts to sensitive species including state listed fish species when projects supporting the plan are proposed with the specific site location, size, and details of potential construction. Therefore, implementation of the proposed plan will comply with the commenter's suggestion for mitigation measures when applicable and warranted.

## Response 1.10

The commenter states the IS-ND does not address whether the proposed plan could result in impacts to Crotch's bumble bee, which has been documented to occur in the area. The commenter recommends a mitigation measure requiring habitat assessment for Crotch's bumble bee.

The following information has been added to Page 42 of the IS-ND for clarification:

Sunnyvale is a primarily urbanized community with limited habitat to support special-status species. However, ruderal infill lots could support burrowing owl, Crotch's bumble bee, and Congdon's tarplant...

...However, implementation of the following Sunnyvale Playbook Update/Game Plan 2028 Plays may promote infrastructure development and redevelopment ~~and may~~ that have the potential to result in impacts to special status species through construction activities that could directly cause mortality or result in indirect impacts through loss of breeding, foraging, and nesting habitat. Nonetheless, as addressed below, with adherence to the requirements of federal Endangered Species Act, California Endangered Species Act, CFCG, SMC, and Sunnyvale General Plan policies and actions, construction impacts would be minimized.

Please refer to Response 1.6, which describes how the City will review and evaluate projects prior to approval which would include enforcing federal, state (including CDFW), and local regulations to minimize impacts to special status species including Crotch's bumble bee when projects supporting the plan are proposed with the specific site location, size, and details of potential construction. Therefore, implementation of the proposed plan will comply with the commenter's suggestions for surveys and mitigation measures when applicable and warranted.

## Response 1.11

The commenter states the IS-ND does not address whether the proposed plan could result in impacts to burrowing owl. The commenter recommends a mitigation measure requiring habitat assessment and surveys for burrowing owl.

The following information has been added to Page 42 of the IS-ND for clarification:

Sunnyvale is a primarily urbanized community with limited habitat to support special-status species. However, ruderal infill lots could support burrowing owl, Crotch's bumble bee, and Congdon's tarplant...

...However, implementation of the following Sunnyvale Playbook Update/Game Plan 2028 Plays may promote infrastructure development and redevelopment ~~and may~~ that have the potential to result in impacts to special status species through construction activities that could directly cause mortality or result in indirect impacts through loss of breeding, foraging, and nesting habitat. Nonetheless, as addressed below, with adherence to the requirements of federal Endangered Species Act, California Endangered Species Act, CFCG, SMC, and Sunnyvale General Plan policies and actions, construction impacts would be minimized.

Please refer to Response 1.6, which describes how the City will review and evaluate projects prior to approval which would include enforcing federal, state (including CDFW), and local regulations to minimize impacts to special status species including burrowing owl when projects supporting the plan are proposed with the specific site location, size, and details of potential construction.

Therefore, implementation of the proposed plan will comply with the commenter's suggestions for surveys and mitigation measures when applicable and warranted.

### **Response 1.12**

The commenter states the IS-ND does not identify that future development under the plan may be subject to Fish and Game Code section 1600 et seq. The commenter also states the plan could result in impacts to streams and riparian habitat and recommends incorporation of mitigation measures requiring projects to obtain the appropriate CDFW, Regional Water Quality Control Board, and U.S. Army Corps of Engineers permits and provide habitat restoration and compensation as applicable.

The following information has been added to Page 44 of the IS-ND for clarification:

Any future Playbook Update/Game Plan 2028-related projects that could affect sensitive habitat, streams, or wetlands would be required to comply with the requirements of the California Porter-Cologne Water Quality Control Act, and CFGC Section 1600 et seq. Compliance with these regulations would include obtaining the appropriate CDFW, U.S. Army Corps of Engineers, and/or Regional Water Quality Control Board permits and complying with any avoidance, minimization, and habitat restoration measures required by the applicable agencies.

If future plan-related projects would involve activities within rivers, lakes, streams, or riparian habitat, the City would provide written notification to CDFW and any other applicable resource agencies and comply with all regulatory requirements.

### **Response 1.13**

The commenter state they appreciate the inclusion of strategies to restore and enhance marshes along the shoreline of the City and to implement an Urban Forest Management Plan that will result in increased canopy cover.

The commenter's editorial comments are noted and will be shared with City decision makers for their consideration.

### **Response 1.14**

The commenter states that the City should report any special status species and natural communities detected during project surveys to the California Natural Diversity Database.

This information is noted, and the City will comply with this requirement if special status species or natural communities are encountered.

### **Response 1.15**

The commenter states that payment of filing fees is required upon filing of the Notice of Determination for the IS-ND.

This information is noted, and the City will pay the applicable filing fees.

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