



May 31, 2024

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Subject: Fiber-To-The-Premises Project, Mitigated Negative Declaration,
SCH No. 2024050007, City of Palo Alto, Santa Clara County

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) 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.

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

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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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.

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 (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.

Lake and Streambed Alteration

The Project has the potential to impact stream resources including mainstems, tributaries, drainages and floodplains associated with San Francisquito Creek, Matadero Creek, and Adobe Creek watersheds; ponds and lakes including Lagunita Reservoir on Stanford lands, Boronda Lake in Foothills Park, and Arastradero Lake and John Sobey Pond in the Pearson-Arastradero Preserve; and freshwater marsh with open water habitat in the Emily Renzel Marsh portion of the Baylands Preserve (p. 33) that may require notification to the LSA program.

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

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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. 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*), California least tern (*Sternula antillarum browni*), California black rail (*Laterallus jamaicensis coturniculus*), and California Ridgway's rail (*Rallus obsoletus obsoletus*).

Project activities described in the MND 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;
- They are a covered species whose conservation and management is provided for, in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515); and
- 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.).

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PROJECT DESCRIPTION SUMMARY

Proponent: City of Palo Alto, Planning and Development Department

Objective: The proposed project consists of the construction of a fiberoptic backbone and fiber to-the-premises (FTTP) infrastructure to provide communication services throughout the City of Palo Alto. The Project involves installing approximately 194 miles of fiberoptic cable, two local aggregation sites (one at an existing substation and one within an existing building), up to approximately 200 underground utility vaults and 147 aboveground utility cabinets, and connections directly to subscribers to the fiber service. Except for the local aggregation sites and connections to subscribers, the fiberoptic cables, vaults, and cabinets would be located within existing public rights-of-way or easements.

Location: Citywide, City of Palo Alto, Santa Clara County (County). The coordinates for the approximate center of the Project are 37°25'53.8"N latitude and 122°7'46.9"W longitude (NAD 83 or WGS 84). The Assessor's Parcel Numbers are Citywide, mostly in public right-of-way.

Timeframe: The MND includes a construction period of 2024 through 2030.

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.

I. 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)

COMMENT 1: Marsh and Shoreline Birds, (Biological Resources 4.a. p. 27)

Issue: The Project will result in impacts to marsh and shoreline habitats. A number of marsh bird species occur along the City shoreline, within and adjacent to the Project area. These include but are not limited to black skimmer (*Rynchops niger*), California least tern, California black rail, California Ridgway's rail, yellow rail (*Coturnicops noveboracensis*), Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), Alameda song sparrow (*Melospiza melodia pusillula*), and western snowy plover (*Charadrius nivosus nivosus*).

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The proposed Project includes construction, such as trenching, horizontal directional drilling, and excavation of vaults which may impact shoreline habitat along marshes. Any shoreline work has the potential to cause the take of state listed marsh and shoreline bird species.

Recommended Mitigation Measure 1: 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 MND to reduce impacts below a level of significance.

CDFW recommends updating or inclusion of the following avoidance and minimization measures in the Biological Resources Section of the MND for rail species to reduce impacts below a level of significance:

- If Project activities are within 200 feet of rail habitat during the nesting season (February 1 to August 31), then pre-construction call back rail surveys shall be required prior to initiation of Project activities;
- If rails are detected through surveys, then Project activities will not occur within 100 feet of an identified detection location. If the activity occurs where the Project site is across a major channel or slough from the Project site greater than 100 feet in distance the activity may continue. If bird activity is surveyed or discovered within the buffer limits immediate consultation with CDFW is required;
- If a rail is observed within the Project area at any time work shall be stopped immediately by a qualified biologist and the rail species will be allowed to leave the area on its own. If the rail species does not leave the area, then no work shall commence until CDFW has made a determination on how to proceed with work activities; and
- Daily monitoring surveys of Project sites shall occur for rail until the Project is complete. If an injured or dead rail is discovered at the Project sites, consultation with CDFW is required immediately.

COMMENT 2: Crotch's bumble bee, (Biological Resources 4.a. p. 27)

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). The MND 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

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grassland within and adjacent to the Project area may contain potential habitat for Crotch's bumble bee.

The Project includes construction, such as trenching and excavation of vaults that may occur within grassland 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.

Recommended Mitigation Measure 2: 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 for California Endangered Species Act (CESA) Candidate Bumble Bee Species* (<https://wildlife.ca.gov/Conservation/CESA>).

COMMENT 3: Special-Status Plant Species (Biological Resources 4.a. p. 28)

Issue: The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b). Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation.

Impacts to special-status plant species should be considered significant under CEQA unless they are clearly mitigated below a level of significance. CDFW considers plant communities, alliances, and associations with a statewide ranking of S1, S2, S3, and S4 as sensitive and declining at the local and regional level (Sawyer 2009).

Additionally, plants that have a California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) of 1A, 1B, 2A, and 2B are rare throughout their range, endemic to California, and are seriously or moderately threatened in California. All plants

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constituting CRPR 1A, 1B, 2A, and 2B are eligible for State listing. Impacts to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA, as they meet the definition of rare or endangered (CEQA Guidelines, § 15380). Please see CNPS, <https://www.cnps.org/rare-plants> (CNPS 2022) page for additional rank definitions.

The MND states that 23 rare special-status plants could potentially occur within the Project area and adjacent areas but does not name them, based on the 2016 Comprehensive Plan Update Environmental Impact Report for the City of Palo Alto. A desk review of general habitats for special-status plant potential occurrences is not sufficient to identify Project impacts or the significance of those impacts under CEQA. The Project spans into the Santa Cruz Mountains along Page Mill and Montebello Road and thus a number of rare plants could be impacted. In California Natural Diversity Database (CNDDDB) the following rare plant species are extant in the Project area: Choris' popcornflower (*Plagiobothrys chorisianus* var. *chorisianus*), Kings Mountain manzanita (*Arctostaphylos regismontana*), Santa Clara red ribbons (*Clarkia concinna* ssp. *automixa*), Santa Cruz clover (*Trifolium buckwestiorum*), arcuate bush-mallow (*Malacothamnus arcuatus*), chaparral ragwort (*Senecio aphanactis*), legenere (*Legenere limosa*), western leatherwood (*Dirca occidentalis*), white-flowered rein orchid (*Piperia candida*), woodland woollythreads (*Monolopia gracilens*).

Recommended Mitigation Measure 3: Protocol-level Surveys. Protocol-level floristic surveys should be conducted prior to Project implementation and, subsequently, prior to each Project component or phase that may result in direct impacts or indirect impacts (e.g., related to topography and wind, see Issue above) to special-status plants. Protocol-level surveys should occur when above ground plant material is evident and when identifying features, such as flowers and fruit, are identifiable. Multiple site visits during the survey season may be necessary to make observations during the appropriate phenological stage of all special-status plant species. *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW 2018) shall be used to develop appropriate protocol-level surveys.

Recommended Mitigation Measure 4: Buffers. To avoid indirect impacts, an appropriate buffer distance should be established between the special-status plant occurrence and the Project impact areas. Appropriate buffer distance should be based upon review of site-specific conditions (e.g. special-status plants located downstream or in lower elevational areas in relation to the impact location, special-status plants being down wind of earth moving activities, and other conditions).

Recommended Mitigation Measure 5: Compensatory Mitigation. A review of protocol-level survey results (Mitigation Measure 3 above) should be conducted to establish appropriate compensatory mitigation ratios specific to each special-status

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plant species. Compensatory mitigation ratios should be developed based on the biological factors specific to each species and should be sufficient to compensate for the loss of those species.

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. (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 MND 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.

Sincerely,

DocuSigned by:
Erin Chappell
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Regional Manager
Bay Delta Region

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

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024050007)
Craig Weightman, Bay Delta Region – Craig.Weightman@wildlife.ca.gov
Jason Faridi, Bay Delta Region – 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 May 16, 2024.

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ATTACHMNT 1: Special-Status Species

Species	Status
Fish and Invertebrates	
steelhead - central California coast DPS (<i>Oncorhynchus mykiss irideus</i>)	FT, SSC
longfin smelt (<i>Spirinchus thaleichthys</i>)	Proposed FT, ST
Crotch's bumble bee (<i>Bombus crotchii</i>)	SC
Birds	
saltmarsh common yellowthroat (<i>Geothlypis trichas sinuosa</i>)	SSC
Loggerhead shrike (<i>Lanius ludovicianus mearnsi</i>)	SSC
burrowing owl (<i>Athene cunicularia</i>)	SSC
Short-eared owl (<i>Asio flammeus</i>)	SSC
Long-eared owl (<i>Asio otus</i>)	SSC
Alameda song sparrow (<i>Melospiza melodia pusillula</i>)	SSC
American peregrine falcon (<i>Falco peregrinus anatum</i>)	Delisted
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
Yellow rail (<i>Coturnicops noveboracensis</i>)	SSC

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Species	Status
western snowy plover (<i>Charadrius nivosus nivosus</i>)	FT, SSC
Mammals	
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	SSC
pallid bat (<i>Antrozous pallidus</i>)	SSC
ringtail (<i>Bassariscus astutus raptor</i>)	FP
saltmarsh wandering shrew (<i>Sorex vagrans halicoetes</i>)	SSC
San Francisco dusky-footed woodrat (<i>Neotoma fuscipes annectens</i>)	SSC
salt-marsh harvest mouse (<i>Reithrodontomys raviventris</i>)	FE, FP
American badger (<i>Taxidea taxus</i>)	SSC
Reptiles and Amphibians	
western pond turtle (<i>Emys marmorata</i>)	Proposed FT, SSC
San Francisco garter snake (<i>Thamnophis sirtalis tetrataenia</i>)	FE, SE, FP
Foothill yellow-legged frog (<i>Rana boylei</i>)	FT, SE
California red-legged frog (<i>Rana draytonii</i>)	FT, SSC
California tiger salamander (<i>Ambystoma californiense</i>)	FT, ST
Plants	
Choris' popcornflower (<i>Plagiobothrys chorisianus</i> var. <i>chorisianus</i>)	S1, 1B.2
Kings Mountain manzanita (<i>Arctostaphylos regismontana</i>)	S2, 1B.2

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Species	Status
Santa Clara red ribbons (<i>Clarkia concinna</i> ssp. <i>automixa</i>)	S3, 4.3
Santa Cruz clover (<i>Trifolium buckwestiorum</i>)	S3, 1B.1
arcuate bush-mallow (<i>Malacothamnus arcuatus</i>)	S3, 2B.2
chaparral ragwort (<i>Senecio aphanactis</i>)	S3, 2B.2
legenere (<i>Legenere limosa</i>)	S2, 1B.1
western leatherwood (<i>Dirca occidentalis</i>)	S2, 1B.2
white-flowered rein orchid (<i>Piperia candida</i>)	S3, 1B.2
woodland woollythreads (<i>Monolopia gracilens</i>)	S3, 1B.2

FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; SC = State Candidate; SSC = state Species of Special Concern; ST = state listed as threatened under CESA