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



June 7, 2024

Nimisha Agrawal  
City of Santa Clara, Planning Department  
1500 Warburton Avenue  
Santa Clara, CA 95050  
[NAgrawal@SantaClaraCA.gov](mailto:NAgrawal@SantaClaraCA.gov)

Subject: 5200 Patrick Henry Drive- Arista Office Development Project, Mitigated  
Negative Declaration, SCH No. 2024050479, City and County of Santa Clara

Dear Nimisha Agrawal:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Santa Clara (City) for the 5200 Patrick Henry Drive-Arista Office Development Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. The Project as proposed may result in "take" as defined by state law of any species

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<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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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.

### **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 (MBTA).

### **Fully Protected Species**

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: white-tailed kite (*Elanus leucurus*).

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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; or
- 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).

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.).

CDFW also recommends the MND 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.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Santa Clara Planning Department

**Objective:** The Project applicant proposes to demolish 31,118 square feet of the existing 144,390-square-foot building at 5200 Patrick Henry Drive. The Project applicant also proposes to remove the mechanical equipment from the roof, install new mechanical equipment on the screened roof and within a fenced enclosure, an addition of 7,534 square feet to the first floor, and interior renovations. The Project would result in a net decrease of 31,118 square feet of the total building area, resulting in an approximately 113,272 square foot building. Construction of the new office and engineering building and parking lot would require the removal of 125 trees on-site.

**Location:** 5200 Patrick Henry Drive- Arista Office Development Project, Santa Clara, CA 95054. The coordinates for the approximate center of the Project are 37°24'22.7"N latitude 121°58'59.3"W longitude (NAD 83 or WGS 84). The Assessor's Parcel Number is 104-50-011.

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**Timeframe:** Construction is scheduled to begin in January of 2024 and conclude in January 2025.

## **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. 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: Crotch's Bumble Bee (Biological Resources, page 45)**

Crotch's bumble bee (*Bombus crotchii*) is currently a Candidate Endangered species under CESA. Recent Crotch's bumble bee occurrences have been documented throughout Santa Clara County (CDFW 2024). Implementation of the Project includes construction of buildings and parking lots.

Direct mortality could occur 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.

Bumble bees are critically important because they pollinate a wide range of plants over the lifecycles of their colonies, which typically live longer than most native solitary bee species. Crotch's bumble bee are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). Unauthorized take of this species pursuant to CESA is a violation of California Fish and Game Code section 2080 et seq.

#### **Recommended Potentially Feasible Mitigation Measures to minimize significant impacts:**

The MND should be revised to include the following measures:

##### **Mitigation Measure 1: 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

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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>).

### **Mitigation Measure 2: Survey Plan**

If Crotch's bumble bee habitat is present within the Project area, a pre-construction survey plan shall be developed and be submitted to CDFW for review and approval. Surveys shall be conducted by a qualified entomologist familiar with the behavior and life history of Crotch's bumble bee. If CESA candidate bumble bees will be captured or handled, surveyors should obtain a 2081(a) Memorandum of Understanding from CDFW.

Surveys shall be conducted during the colony active period (i.e. April through August) and when floral resources are in peak bloom. Bumble bees move nests sites each year, therefore, surveys shall be conducted each year that Project work activities will occur. Further guidance on presence surveys can be found within *Survey Considerations for California Endangered Species Act (CESA) Candidate Bumble Bee Species* referenced above.

### **Mitigation Measure 3: Crotch's Bumble Bee Avoidance or Take Authorization**

If Crotch's bumble bee are detected during pre-construction surveys, a Crotch's bumble bee avoidance plan shall be developed and provided to CDFW for review prior to work activities involving ground disturbance or vegetation removal.

If full take avoidance is not feasible, CDFW strongly recommends that the Project proponent apply to CDFW for take authorization under an ITP.

### **COMMENT 2: Nesting Bird Surveys, (Biological Resources, page 45)**

The MND states that the Project has the potential to disturb special-status species and nesting habitat for birds and raptors. The MND includes BIO-MM-1: Nesting Bird Survey.

The Project includes the removal of 125 trees. Calabazas Creek, adjacent to the Project, is part of the Pacific Flyway. During winter migration a broader range of waterfowl species can be found in the creek. A number of birds of prey species also forage and breed in the corridor. The most common raptors observed along this stretch

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of Calabazas Creek include white-tailed kite (*Elanus leucurus*), northern harriers and red-tailed hawk (*Buteo jamaicensis*). Red-shouldered hawk (*Buteo lineatus*), Cooper's hawk (*Accipiter cooperii*) and American kestrel (*Falco sparverius*) also visit the corridor.

In order to determine the extent to which impacts may occur to nesting birds and determine where habitat loss may occur from the removal of trees, the MND should propose measures to conduct nesting bird surveys and develop buffers, as needed. CDFW encourages Project implementation outside of the bird nesting season, which extends from February through early September. However, if anthropogenic structure work activities, ground-disturbing or vegetation-disturbing activities must occur during the nesting season, the City is responsible for ensuring that implementation of the Project does not result in violation of the MBTA or Fish and Game Code.

**Recommended Potentially Feasible Mitigation Measures to minimize significant impacts:**

The MND should be revised to include the following measures:

**Mitigation Measure 4: Nesting Bird Surveys**

CDFW recommends BIO-MM-1 be modified to state. If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified ornithologist 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 time and cover a sufficient area around the Project site to identify nests and determine their status. Once Project activities begin, CDFW recommends having the qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures. A report indicating the result of the survey and any designated buffer zones shall be submitted to the satisfaction of the Planning Department prior to the start of construction.

**COMMENT 3: Bats, (Biological Resources, page 45)**

The Project includes the removal of 125 trees. In order to determine the extent to which impacts may occur to bats and determine where habitat loss may occur from the

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removal of trees, the MND should propose measures to conduct a bat habitat assessment of suitable bat roosting habitat.

**Recommended Potentially Feasible Mitigation Measures to minimize significant impacts:**

The MND should be revised to include the following measures:

**Mitigation Measure 5: Habitat Assessment**

The habitat assessment shall include a visual inspection of features within the work area for potential roosting features including trees, crevices, portholes, expansion joints and hollow areas (bats need not be present). include a visual inspection of features within 200 feet of the work area for potential roosting features including trees, crevices, and hollow areas (bats need not be present). The MND should also include a section that discusses the results of the suitable habitat assessment and if any bats or signs of bats (feces or staining at entry/exit points) are discovered. The surveys should occur at least two seasons in advance of Project initiation. The MND should include:

- Bat Habitat Monitoring by a qualified biologist of suitable habitat from March 1 to April 1 or August 31 to October 15 prior to construction activities. If the focused survey reveals the presence of roosting bats, then the appropriate exclusionary or avoidance measures will be implemented prior to construction during the period between March 1 to April 15 or August 31 to October 15.
- Bat Project Avoidance: If active bat roosts are observed during environmental assessments or during construction, at any time, all Project activities should stop until the qualified biologist develops a bat avoidance plan to be implemented at the Project site. The bat avoidance plan should utilize seasonal avoidance, phased construction as well as temporary and permanent bat housing structures developed in coordination with CDFW.

**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>.

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## 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](mailto:Marcus.Griswold@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

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Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024050479)  
Craig Weightman, CDFW Bay Delta Region – [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov)

## REFERENCES

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

City of Santa Clara. 2013. Creek Trail Network Expansion Feasibility Study. Creek Trail Network Expansion Master Plan | City of Santa Clara, <https://www.santaclaraca.gov/our-city/departments-g-z/public-works/engineering/traffic-engineering/santa-clara-creek-trail-master-plan>



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### ATTACHMENT 1: Special- Status Species

Species	Status
<b>Fish and Invertebrates</b>	
Crotch's bumble bee ( <i>Bombus crotchii</i> )	State candidate (SC)
<b>Birds</b>	
burrowing owl ( <i>Athene cunicularia</i> )	State Species of Special Concern (SSC)
Swainson's hawk ( <i>Buteo swainsoni</i> )	State Threatened (ST)
white-tailed kite ( <i>Elanus leucurus</i> )	State Fully Protected (FP)
<b>Mammals</b>	
San Francisco dusky-footed woodrat ( <i>Neotoma fuscipes annectens</i> )	SSC
Townsend's big-eared bat ( <i>Corynorhinus townsendii</i> )	SSC
<i>Yuma myotis</i>	Federally Threatened (FT), SSC
<b>Amphibians and Reptiles</b>	
western pond turtle ( <i>Emys marmorata</i> )	Proposed FT, SSC
<b>Plants</b>	
arcuate bush-mallow ( <i>Malacothamnus arcuatus</i> )	S3, 2B.2
Congdon's tarplant ( <i>Centromadia parryi</i> <i>ssp. congdonii</i> )	S2, 1B.1