



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**



August 19, 2024

Daniel Sobczak, Associate Planner

City of Santa Clara

1500 Warburton Avenue

Santa Clara, CA 95050

[DSobczak@santaclaraca.gov](mailto:DSobczak@santaclaraca.gov)

Subject: 1231 Comstock Prime Data Center, Draft Initial Study/Mitigated Negative Declaration, SCH No. 2024070671, City and County of Santa Clara

Dear Mr.Sobczak:

The California Department of Fish and Wildlife (CDFW) received a Draft Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Santa Clara (Lead Agency) for the 1231 Comstock Prime Data Center 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 over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed

---

<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.

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 2

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.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

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

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

### **Lake and Streambed Alteration**

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

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 3

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.

Project activities described in the draft IS/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 (Fish & G. Code § 2081.15).

CDFW also recommends the draft IS/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 Lead Agency 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.

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 4

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Santa Clara

**Objective:** The purpose of the Project is to demolish an existing 24,278-square-foot, one-story, concrete and brick furniture store that was originally constructed on the site in 1974 and replace it with a new, four-story data center building with a surface parking lot. The new building will be approximately 109,520 square-feet.

**Location:** The project site is in the central part of the City of Santa Clara, just south of US Highway 101 (US-101) and east of the San Tomas Expressway. The coordinates for the approximate center of the Project are 37°22'29.8"N latitude 121°57'17.3"W longitude (NAD 83 or WGS 84). The Assessor's Parcel Number is 397-01-071.

**Timeframe:** Construction would be completed over approximately 24-36 months.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

## 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 draft IS/MND 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.

CDFW recommends the draft IS/MND 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 draft IS/MND 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 of Santa Clara may require.

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 5

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 United States Geologic Survey 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 [www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data](http://www.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 Lead Agency 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. 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 USFWS?**

### **COMMENT 1: Nesting Bird Surveys**

The Project site includes 25 trees that would be removed. The Project has the potential to disturb special-status species and nesting habitat for birds and raptors; however, the draft IS/MND does not state that baseline data will be collected if active nests are discovered.

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 6

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **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.
- **Nesting Bird Buffers:** CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival.

## **COMMENT 2: Bats**

The project site includes 25 trees that would be removed. The draft MND does not identify the potential impacts to bats. The Project has the potential to disturb bat habitat. In order to determine the extent to which impacts may occur to bats and determine where habitat loss may occur from the removal of trees, the draft IS/MND should propose measures to conduct a bat habitat assessment of suitable bat roosting habitat.

The habitat assessment shall include a visual inspection of features within the work area for potential roosting features including trees, crevices, and hollow areas (bats need not be present). The habitat assessment shall 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 draft IS/MND should also include a section that discusses the results of the 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 draft IS/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

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 7

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.

### **COMMENT 3: Crotch's bumble bee**

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). The draft IS/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 in Santa Clara 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 bee.

The Project includes areas 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.

To evaluate and avoid for potential impacts to bumble bees, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **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 bees feed. Further guidance on habitat surveys can be found within *Survey Considerations for California*

Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 8

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

- **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 (MOU) 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 nest 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.
- **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.

## 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.



Daniel Sobczak  
City of Santa Clara  
August 19, 2024  
Page 9

(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 draft IS/MND to assist the Lead Agency 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*  
B77E9A6211EF486  
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. 2024070671)  
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://www.wildlife.ca.gov/Data/BIOS>. Accessed July 15, 2024.

Daniel Sobczak  
 City of Santa Clara  
 August 19, 2024  
 Page 10

**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)
tricolored blackbird ( <i>Agelaius tricolor</i> )	SSC
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
western mastiff bat ( <i>Eumops perotis californicus</i> )	SSC
pallid bat ( <i>Antrozous pallidus</i> )	SSC
<b>Plants</b>	
Congdon's tarplant ( <i>Centromadia parryi</i> <i>ssp. congdonii</i> )	S2, 1B.1
Halls Mallow ( <i>Malacothamnus hallii</i> )	S2, 1B.2