State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 29, 2024

Allie Jackman, Project Manager, Principal Electric Utility Engineer
City of Santa Clara
881 Martin Avenue
Santa Clara, CA 95050
AJackman@SantaClaraCA.gov

Subject: NRS-KRS 115 kV Transmission Line, Draft Initial Study/Mitigated Negative Declaration, SCH No. 2024080009, City and County of Santa Clara

Dear Allie Jackman:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the City of Santa Clara (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1] CDFW is submitting comments on the draft IS/MND as a means to inform the City 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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may

[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.

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.

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

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 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 (MBTA).

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 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 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 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

Objective: Silicon Valley Power (SVP) is proposing to construct approximately 2.24 miles of a new 115 kilovolts (kV) transmission line (Project) within the City of Santa Clara limits in Santa Clara County, California. The proposed transmission line will begin at the SVP Northern Receiving Station (NRS), approximately 0.2 miles southeast of Levi's Stadium, and would travel south down Lafayette Street, Bassett Street and Duane Avenue to end at the SVP Kifer Receiving Station (KRS), approximately 0.1 miles northwest of the intersection of Lafayette Street and Central Expressway.

Two different Options have been proposed for the Project. Under Option 1, the entire Project would be overhead, with transmission lines on new poles. Under Option 2, the Project would be underground from the median of Lafayette Street near NRS to approximately 300 feet south of the intersection of Lafayette Street and Agnew Road, then overhead south of Agnew Road to KRS.

Location: The NRS is located south of the intersection of Bill Walsh Way and Stars and Stripes Drive, immediately adjacent to the southeast corner of Levi's Stadium. The KRS is located approximately 0.1 miles northwest of the intersection of Lafayette Street and Central Expressway in the City and County of Santa Clara, Citywide.

Timeframe: The construction phase is expected to take approximately 14 months for the overhead option and is anticipated to be completed by early 2028.

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.

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/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 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 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 Santa Clara County may require.

CDFW recommends that the California Natural Diversity Database (CNDDB), 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/CNDDB/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 CNDDB Field Survey Forms be completed and submitted to CNDDB to document survey results. Online forms can be obtained and submitted at: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data.

Please note that CDFW's CNDDB 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. 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: Nesting Bird Surveys

The Project includes removal of up to 3 trees and pruning of an additional 33 trees. In CNDDB, white-tailed kite (*Elanus leucurus*), and tricolored blackbird (*Agelaius tricolor*) have been seen within two miles of the Project and golden eagle within three miles of the Project. The draft IS/MND states that the Project has the potential to disturb special-status species and nesting habitat for birds and raptors. Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the MBTA is a violation of Fish and Game Code (§ 3503, 3503.5, 3513).

Impacts could occur through direct damage or mortality to birds and nests as well as potential electrocution. The draft IS/MND states that the Project is being designed with enough distance in between the conductor wires, so it will be in compliance with current Avian Power Line Interaction Committee (APLIC) guidelines (p. 4-3). Electric distribution lines are typically placed within the range of average bird flight level and are difficult for birds to see. Many birds, particularly raptors and waterbirds, seek out tall perches like distribution poles to hunt for food or perch and roost. Frequent use of poles increases the exposure to energized parts when flying on and off a pole. Nesting material may also cause an electrical connection, or the nest material could catch on fire, killing the bird and damaging the power structure.

Linear features such as generator-tie lines and interior and perimeter fences present collision hazard to birds, and electric lines represent a potential electrocution hazard. The IS/MND should include measures that require all powerlines to be placed underground, if feasible, and as noted in parts of “Option 2”.

Recommended Mitigation Measure 1: Nesting Bird Surveys

Amend MM BIO-4 to include the following considerations. 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.

Recommended Mitigation Measure 2: Avian Electrocution Assessment

The City shall investigate methods to prevent bird nesting and perching on transmission line infrastructure leading to potential electrocution through design changes or installation of deterrents to the greatest extent feasible. All aboveground lines should be fitted with bird flight diverters or visibility enhancement devices. When lines cannot be placed underground, appropriate avian protection designs should be employed. As a minimum requirement, the electrical line system should conform with the most current edition of the APLIC guidelines to prevent electrocutions. Resources may be found on the APLIC website at https://www.aplic.org/mission. CDFW staff are available to assist in determination of measures to protect avian species.

COMMENT 2: Bats

The Project includes removal of up to 3 trees and pruning of an additional 33 trees. 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 IS/MND should propose measures to conduct a bat habitat assessment of suitable bat roosting habitat.

Recommended Mitigation Measure 3: Survey Methodology Plan

Bats use a variety of materials for roosting including tree hollows, rock crevices, mines, caves, and man-made structures. A qualified bat biologist shall develop a survey methodology plan for CDFW review and approval. Historic and future survey data at this location shall be submitted to the CNDDB, https://wildlife.ca.gov/Data/CNDDB, CDFW's Report a Bat Colony page, https://wildlife.ca.gov/Conservation/Mammals/Bats/Report-Colony, and/or the North American Bat Monitoring Program, https://www.nabatmonitoring.org/. The survey plan shall include pre- and post-Project construction surveys to better understand the impacts of the Seismic Retrofit project on the colony. The qualified bat biologist shall review and consider survey protocols located at the North American Bat Monitoring Program's Collect Data page, https://www.nabatmonitoring.org/collect-data.

Recommended Mitigation Measure 4: Habitat Assessment and Tree Removal Plan

Within 14 days of the start of Project and tree removal activities, a qualified bat biologist shall assess all trees within the construction area to determine if they contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures). If any trees contain such habitat, bat presence shall be presumed. Trees containing bat roosting habitat shall be removed using the method described below during the following seasonal periods of bat activity:

Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until October 15 (before night temperatures fall below 45°F and rains begin):

On day one, in the afternoon and under the supervision of a qualified biologist, chainsaws shall only be used to remove tree limbs that do not contain suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures). The next day, the rest of the tree shall be removed.

If trees containing bat habitat cannot be removed during the above seasonal periods of bat activity, a qualified bat biologist shall survey the trees to determine if the tree contains a maternity colony or winter torpor bats. If the qualified biologist cannot make this determination with certainty, the presence of maternity colonies or winter torpor bats shall be assumed, and removal of the tree shall be delayed until the seasonal periods of bat activity specified above. If the biologist determines bats are present but a maternity colony or winter torpor bats are absent, then the tree may be removed outside of the above periods of seasonal bat activity using the above two-step tree removal process. If the qualified biologist determines that bats are absent, then the tree may be removed without bat seasonality or method restrictions.

Recommended Mitigation Measure 5: Compensatory Mitigation Plan

The IS/MND shall include appropriate and feasible compensatory mitigation for any loss of bat habitat including any impacts to the maternity, roosting, and/or hibernating habitat documented during bat protocol-level surveys. If the Project is expected to result in any loss of such bat habitat types, the mitigation and monitoring plan (Mitigation Measure 7 Mitigation and Monitoring Plan) shall include a biologically appropriate mitigation proposal to fully offset the loss of bat habitat.

COMMENT 3: Crotch's bumble bee

Crotch's bumble bee (*Bombus crotchii*) are candidate species under CESA (CEQA Guidelines, §15380, subds. (c)(1)). Crotch's bumble bee occurrences have been documented within the vicinity of the Project area and historic observations occur elsewhere in Santa Clara County (CDFW 2023). The Project location is within the Crotch's bumble bee range (https://wildlife.ca.gov/Conservation/CESA) and ruderal grassland within and adjacent to the Project area may contain potential habitat for Crotch's bumble bee.

The Project includes construction of foundations, underground duct banks, transport and installation and removal of poles, and substations that would create ground disturbances and that may occur within ruderal grass and herbaceous vegetation 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 6: 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).

Recommended Mitigation Measure 7: Herbicide Application

To minimize impacts to bumble bees, avoid the bloom periods for herbicide application and mowing activities. If this is not possible, CDFW recommends that the Project obtain take authorization under an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Recommended Mitigation Measure 8: 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 4: Western Burrowing Owl

Burrowing owl 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 Santa Clara County. Known populations of burrowing owl occur within and adjacent to the Project area, including Levi's Stadium, and other suitable habitat.

The Project includes construction of foundations, underground duct banks, transport and installation and removal of poles, and substations that would create ground disturbances and that may occur within ruderal grass and herbaceous vegetation that may be potential burrowing owl habitat. 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.

Recommended Mitigation Measure 9: Habitat Assessment and Surveys

The IS/MND 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.

Recommended Mitigation Measure 10: Burrowing Owl Avoidance

The IS/MND should state that if burrowing owls are detected during surveys within or near the Project area, a protective buffer in which construction activities will be avoided will be established. Appropriate buffers typically have a 50 to 500-meter radius and vary depending on the level of disturbance and timing of construction. If the burrowing owls show signs of distress (e.g., defensive vocalizations and/or flying away from the nest), the buffer distance should be increased.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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 CNDDB. The CNDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 IS/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 or Jason Faridi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@wildlife.ca.gov.

Sincerely,

Signed by:
Greg Martinelli for
7E1D27B5645E452...
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. 2024080009)
Craig Weightman, Bay Delta Region – 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.

ATTACHMENT 1: Special-Status Species

Species	Status
Fish and Invertebrates	
Crotch's bumble bee (*Bombus crotchii*)	State candidate (SC)
Birds	
Alameda song sparrow (*Melospiza melodia pusillula*)	Species of Special Concern (SSC)
Cooper's hawk (*Accipiter cooperii*)	State Watch List
burrowing owl (*Athene cunicularia*)	SSC
golden eagle (*Aquila chrysaetos*)	State Fully Protected (FP)
northern harrier (*Circus hudsonius*)	SSC
tricolored blackbird (*Agelaius tricolor*)	State Listed - Threatened, SSC
white-tailed kite (*Elanus leucurus*)	FP
Mammals	
pallid bat (*Antrozous pallidus*)	SSC
San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*)	SSC
Townsend's big-eared bat (*Corynorhinus townsendii*)	SSC
Reptiles and Amphibians	
western pond turtle (*Emys marmorata*)	Proposed Federally Listed - Threatened, SSC
Plants	
Congdon's tarplant (*Centromadia parryi ssp. congdonii*)	S2, 1B.1