



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 20, 2025

Cort Hitchens, Planner III
 City of San José
 200 E. Santa Clara Street, 3rd Floor
 San José, CA 95113
Cort.Hitchens@sanjoseca.gov

Subject: Electronic Signs on City-owned Properties Project-West Mission Street and Mabury Road Billboards Sites, Initial Study/Mitigated Negative Declaration, SCH No. 2025020244, City of San José, Santa Clara County

Dear Cort Hitchens:

The California Department of Fish and Wildlife (CDFW) received a Initial Study/Mitigated Negative Declaration (IS/MND) from the City of San José (City) for the Electronic Signs on City-owned Properties Project-West Mission Street and Mabury Road Billboards Sites (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 as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed 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.

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.

Cort Hitchens, Planner III
 City of San José
 March 20, 2025
 Page 2

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

Project activities described in the IS/MND should be designed to completely avoid any fully protected species (Fish & Game Code § 3511 and 4700) 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 are provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515); or
- 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).

PROJECT DESCRIPTION SUMMARY

Proponent: City of San José

Objective: The objective of the Project is to install two roadside digital billboards and remove 11 existing billboards in the City of San José. The proposed billboards would be back-to-back designs with north- and south-facing displays. Operation hours of both signs would be 6:00 a.m. to midnight; the signs would operate 7 days per week.

The proposed billboards would be approximately 45 feet in height. The billboard faces proposed for the West Mission Street project site would be 14 feet by 48 feet (height by width) and the billboard faces proposed for the Mabury Road project site would be 17

Cort Hitchens, Planner III
 City of San José
 March 20, 2025
 Page 3

feet by 58 feet (height by width). The billboard frames would be equipped with upper and lower rear catwalks measuring approximately 2.5 feet wide and extending along the length of the back of the billboards.

Construction activities are expected to take place Monday through Friday and to occur in one phase, beginning with site preparation, followed by excavation, trenching, billboard installation, and coating. The construction staging areas would be located within the Project sites and construction personnel would park on-site at each location. A hole approximately 6 feet in diameter (approximately 28.25 square feet) would be excavated on each site to a depth of approximately 40 feet to facilitate the installation of each billboard. Billboard removal would not result in change to impervious surfaces at the removal sites, as no excavation would be performed.

Location: The West Mission Street billboard is bound by State Route 87 on the west, West Mission Street on the north, North San Pedro Street on the east, and West Taylor Street on the south in the City of San Jose, Santa Clara County (County). The coordinates for the approximate center of the Project are 37°20'53.8"N latitude 121°54'20.6"W longitude (WGS 84). The Assessor's Parcel Number is 259-04-019.

The Mabury Road billboard is bound by Coyote Creek on the west, Mabury Road on the north, Bay Area Rapid Transit (BART) rail spur lines on the east, and US-101 on the south in the City of San Jose, Santa Clara County (County). The coordinates for the approximate center of the Project are 37°21'35.0"N latitude 121°52'22.1"W longitude (WGS 84). The Assessor's Parcel Number is 254-01-004.

Timeframe: The year in which construction or removal will occur is not noted in the IS/MND. Construction of the billboards is anticipated to occur over a period of approximately two weeks per billboard. Billboard removal would take a total of one day per billboard.

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. Editorial comments or other suggestions may also be included to improve the document.

I. Environmental Setting and Related Impact Shortcoming

COMMENT 1: Project Setting

Issue: The IS/MND describes the removal of 11 existing billboards within the City of San José (page 1), as part of the proposed Project, but does not provide a detailed description of the existing environment at those locations. Without a clear understanding of the environmental setting and biological baseline conditions, it is not possible to determine potentially significant impacts the Project could have on the environment.

Specific impacts, why they would occur, and evidence they would be significant: Without a clear understanding of the environmental setting and biological baseline conditions of all aspects of the Project, it is challenging for CDFW to provide sufficient review of the IS/MND, assess all potential impacts of the Project, and provide adequate mitigation measures to offset the impacts.

Recommendations: CDFW recommends that, at minimum, the environmental setting be revised in a recirculated IS/MND to include a description of the 11 existing billboard locations on-site conditions with existing habitat types mapped within the Project Footprint. This should include, but is not limited to, discussion of special-status species which may be present, a description of the Project site's proximity to

Cort Hitchens, Planner III
 City of San José
 March 20, 2025
 Page 4

any sensitive natural communities, a description of the vegetation, and a description of the Project site's proximity to aquatic habitats, such as wetlands, vernal pools, breeding ponds, and/or waters of the U.S. or State.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

And,

Would the Project interfere substantially with movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede use of native wildlife nursery sites?

COMMENT 2: Artificial Light Impact

Issue: The Mabury Road project site does not contain any sensitive natural communities, it is adjacent to the Coyote Creek, whose vegetative edge is located approximately 150 feet from the proposed billboard location. Figure 8b (page 51) and Figure 9 (page 85) of the IS/MND show that the boundary of illuminance would generate light and direct it towards the Coyote Creek corridor, with the light footprint extending over the Coyote Creek corridor. CNDDDB identifies the adjacent Coyote Creek corridor as a Goodding's willow – red willow riparian woodland and forest (Cal Code 61.216.00, Rank Global 4/State 3). Natural Communities with ranks of 1-3 are considered Sensitive.

While it is noted in the IS/MND that the elevated upland transitional woodland located immediately adjacent to the proposed parcel serves as a topographic barrier from Project activities adversely affecting the creek (page 79), the Mabury Road billboard will be 45 feet in height which may allow light to go over the barrier into the Coyote Creek corridor. Figure 7b (page 47) of the IS/MND shows areas along the elevated upland with low tree density, which may allow light to enter Coyote Creek. Additionally, special-status species including birds, fish, mammals, and reptiles have been documented utilizing (BIOS 2025) Coyote Creek and the associated riparian area around the location where the Mabury Road project is.

Artificial light pollution has the potential to significantly and adversely affect wildlife species and the habitat that supports them, including sensitive natural communities, and can serve as an impediment to wildlife movement and connectivity. For this reason, the lighting from the Mabury Road billboard could have a significant impact on the Coyote Creek riparian zone and associated wildlife species.

Specific impacts, why they would occur, and evidence they would be significant: Light pollution has broadly become a significant environmental hazard to various biological resources. Unlike the natural brightness created by the monthly cycle of the moon, the permanent and continuously powered lighting fixtures create an unnatural light regime that produces a constant light output. Continuous light output for 365 days a year can also have cumulatively significant impacts on fish and wildlife populations.

Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

For nocturnally migrating birds, direct mortality as a result of collisions with anthropogenic structures due to attraction to light (Gauthreaux, 2006) is another

Cort Hitchens, Planner III
 City of San José
 March 20, 2025
 Page 5

direct effect of artificial light pollution. There are also more subtle effects, such as disrupted orientation (Poot et al. 2008) and changes in habitat selection (McLaren et al. 2018).

Specifically for fish, artificial lighting can suppress the immune system of fish resulting in increased pathogen and parasite infections (Leonardi and Klempau 2003, Navara and Nelson 2007). Artificial lighting can disrupt feeding patterns of juvenile salmon (Valdimarsson et al. 1997). Artificial night lighting has also been found to impact juvenile salmonid overwintering success by delaying the emergence of salmonids from benthic refugia and reducing their ability to feed during the winter (Contor and Griffith 1995). Salmonids also use changes in ambient light to guide their migration patterns, which can be disrupted by artificial lighting (Grau et al. 1981).

Based on the foregoing, impacts to sensitive natural communities and native resident or migratory fish or wildlife species must be considered and evaluated under CEQA (CCR: Title 14, Div. 6, Chap. 3, Appendix G).

Recommendation: CDFW recommends the IS/MND analyze feasible relocation or redesign of Project infrastructure that would avoid or reduce the Project's significant impacts to California sensitive natural communities and native resident or migratory fish or wildlife species. Relocation or redesign options may include moving the Mabury Road billboard further from Coyote Creek or adjusting the Mabury Road billboard display away from Coyote Creek so that the boundary of illuminance does not enter Coyote Creek or associated riparian corridor.

Recommended Mitigation Measures: To reduce potential impacts to California sensitive natural communities and native resident or migratory fish or wildlife species to less-than-significant, CDFW recommends replacing MM BIO-2 with the mitigation measures below for the Mabury Road project where the billboard is facing Coyote Creek.

Mitigation Measure BIO 2.1 (Light Output Analysis): CDFW recommends the IS/MND provide an evaluation of changes to lighting use at the Mabury Road project site to assess potential impacts to biological resources such as birds, fish, mammals, and reptiles and their habitats in the vicinity of the Mabury Road project site. As part of this evaluation, the Lead Agency should prepare Isolux Diagrams that note current light levels present during pre-Project conditions and the predicted Project light levels that will be created upon completion of the Project. If an increase in light output from current levels to the projected future levels is evident additional avoidance, minimization or mitigation shall be developed in coordination with the natural resource agencies to offset indirect impacts to species that reside in California sensitive natural communities. Within 60 days of Project completion the Lead Agency shall conduct a ground survey that compares projected future light levels with actual light levels achieved upon completion of the Project through comparison of Isolux diagrams. If an increase from the projected levels to the actual levels is discovered additional avoidance, minimization or mitigation measures may also be required in coordination with the natural resource agencies.

Mitigation Measure BIO 2.2 (Luminance level): During the night hours, which commence no later than one hour after sunset, luminance levels from the Mabury Road billboard facing the Coyote Creek corridor shall not exceed the maximum values provided in the Table below as outlined in the International Dark-Sky Association Guidance for Electronic Message Centers (EMCs) (see online at <https://darksky.org/resources/guides-and-how-tos/electronic-billboards/>):

Cort Hitchens, Planner III
 City of San José
 March 20, 2025
 Page 6

Lighting Zone	Nighttime Maximum Luminance (cd/m ²)
<p>LZ0: No ambient lighting Areas where the natural environment will be seriously and adversely affected by lighting, and in which human activity is subordinate in importance to nature. This is the recommended default zone for undeveloped rural areas, including wilderness areas, parks and preserves</p>	0
<p>LZ1: Low ambient lighting Areas where lighting might adversely affect flora and fauna or disturb the character of the area. The vision of human residents and users is adapted to low light levels. This is the recommended default zone for rural and low-density residential areas.</p>	20
<p>LZ2: Moderate ambient lighting Areas of human activity where the vision of human residents and users is adapted to moderate light levels. This is the recommended default zone for light-commercial business districts and high-density or mixed-use residential districts.</p>	40
<p>LZ3: Moderately high ambient lighting Areas of human activity where the vision of human residents and users is adapted to moderately high light levels. This is the recommended default zones for business districts in large cities.</p>	80
<p>LZ4: High ambient lighting Areas of human activity where the vision of human residents and users is adapted to high light levels. Most cities do not have areas that meet this criterion. This is not a default zone.</p>	160

Mitigation Measure BIO 2.3 (Curfew): The Mabury Road billboard facing the Coyote Creek corridor shall be switched off completely after 11:00 p.m. and shall remain off until one hour before sunrise as outlined in the International Dark-Sky Association Guidance for Electronic Message Centers (EMCs) (see online at <https://darksky.org/resources/guides-and-how-tos/electronic-billboards/>).

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>.

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


Cort Hitchens, Planner III
City of San José
March 20, 2025
Page 7

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 Melony Wood, Environmental Scientist at (707) 428-2002 or Melony.Wood@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

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

cc: Office of Planning and Research, State Clearinghouse, (SCH No. 2025020244)
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov
Jason Faridi, CDFW Bay Delta Region – Jason.Faridi@wildlife.ca.gov

REFERENCES

- Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.
- California Department of Fish and Wildlife (CDFW). 2025. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed March 3, 2025.
- Contor R. and J.S. Griffith. 1995. Nocturnal emergence of juvenile rainbow trout from winter concealment relative to light intensity. *Hydrobiologia* Vol. 299: 179-18.
- Gauthreaux Jr., S.A., and C.G. Belser. 2006. Effects of artificial night lighting on migrating birds. In *Ecological Consequences of Artificial Night Lighting*, edited by C. Rich and T. Longcore, pp. 67-93. Washington D.C.: Island Press
- Grau, E. G., W. W. Dickhoff, R. S. Nishioka, H. A. Bern, and L. C. Folmar. 1981. Lunar phasing of the thyroxine surge preparatory to seaward migration of salmonid fish. *Science* 211:607–609.
- Leonardi, M. O., and A. E. Klempau. 2003. Artificial photoperiod influence on the immune system of juvenile rainbow trout (*Oncorhynchus mykiss*) in the Southern Hemisphere. *Aquaculture* 221:581–591.
- Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.
- McLaren, et. al. 2018. Artificial light at night confounds broad-scale habitat use by migrating birds.
- Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.
- Navara, K. J., and R. J. Nelson. 2007. The dark side of light at night: Physiological, epidemiological, and ecological consequences. *Journal of Pineal Research* 43:215–224.

Cort Hitchens, Planner III
City of San José
March 20, 2025
Page 8

Poot, H., B. J. Ens, H. de Vries, M. A. H. Donners, M. R. Wernand, and J. M. Marquenie. 2008. Green light for nocturnally migrating birds. *Ecology and Society* 13(2): 47.

Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127. Elsevier Ltd.

Valdimarsson, S. K., N. B. Metcalfe, J. E. Thorpe, and F. A. Huntingford. 1997. Seasonal changes in sheltering: Effect of light and temperature on diel activity in juvenile salmon. *Animal Behaviour* 54:1405–1412.

Cort Hitchens, Planner III
 City of San José
 March 20, 2025
 Page 9

ATTACHMENT 1: Special-Status Species

Species	Status
Birds	
Cooper's hawk (<i>Accipiter cooperii</i>)	State Watch List (SWL)
yellow warbler (<i>Setophaga petechia</i>)	SSC
Fish	
chinook salmon - Central Valley fall / late fall-run ESU (<i>Oncorhynchus tshawytscha</i> pop. 13)	SSC
steelhead - central California coast DPS (<i>Oncorhynchus mykiss irideus</i> pop. 8)	FT (Federally Threatened), SSC
Mammals	
pallid bat (<i>Antrozous pallidus</i>)	SSC
western red bat (<i>Lasiurus frantzii</i>)	SSC
Reptiles	
San Francisco gartersnake (<i>Thamnophis sirtalis tetrataenia</i>)	Federal Endangered (FE), State Endangered (SE), State Fully Protected (FP)
western pond turtle (<i>Actinemys marmorata</i>)	Proposed FT, SSC