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February 25, 2020

Governor's Office of Planning & Research

FEB 26 2020

STATE CLEARINGHOUSE

Mr. Stan Ketchum
General Plan Project Manager
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

Subject: City of Gilroy General Plan, Notice of Preparation of a Draft Environmental Impact Report, SCH #2015082014, City of Gilroy, Santa Clara County

Dear Mr. Ketchum:

The California Department of Fish and Wildlife (CDFW) received the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the City of Gilroy (City) for the City of Gilroy General Plan (Project, General Plan) 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 resources. 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 a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Gilroy

Objective: The General Plan will be used by the Gilroy City Council, Planning Commission, and City staff on a daily basis to make decisions with regards to land use, regulatory measures and administrative procedures. The General Plan includes the following elements: Land Use, Mobility, Economic Prosperity, 2015-2023 Housing Element (Adopted December 2014), Public

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.

Facilities and Services Element, Parks and Recreation Element, Natural and Cultural Resources Element, Potential Hazards Element, and Environmental Justice Element.

Location: City of Gilroy and related Planning Area/Sphere of Influence, Santa Clara County.

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.

Public Resources Code Section 15124 Project Description

NOP Figure 4, *Gilroy 2040 General Plan Land Use Diagram - Preferred Alternative*, shows Open Space within the Urban Growth Boundary. CDFW recommends that the draft EIR include information on specific land uses within areas designated as Open Space. This should include information pertaining to urban development and recreational use.

Public Resources Code Section 15125 Environmental Setting

NOP, page 15, describes the Natural and Cultural Resources Element of the General Plan. Within this paragraph, it states that grassland, oak woodland, and riparian corridors (e.g. Llagas Creek and Uvas Creek) make up much of the natural area found in and near Gilroy. Specific habitats are found within the Urban Growth Boundary such as Willow Riparian Forest and Scrub, Mixed Riparian and Woodland Forest, Mixed Oak Woodland and Forest, Valley Oak Woodland, Coast Live Oak Forest and Woodland, Blue Oak Woodland, Northern Coast Scrub/Diablan sage Scrub, Northern Mixed Chaparral/Chamise Chaparral, California Annual Grassland, Grain-Row Crop-Hay and Pasture-Disked/Short Term Fallowed, Ponds, Golf Courses/Urban Parks, and other habitats for fish and wildlife [Santa Clara Valley Habitat Agency (SCVHA) 2020].

To properly describe the environmental setting, CDFW recommends that the draft EIR include a description of all wildlife habitat to be impacted, including but limited to those indicated above.

Public Resources Code Section 15126, Consideration and Discussion of Environmental Impacts, Section 15126.2 Consideration and Discussion of Significant Environmental Impacts, Section 15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

NOP, page 18, includes a brief list of the subject matter to be included within the draft EIR analysis of Biological Resources.

CDFW is concerned regarding potential impacts to special-status species that may be present within the Project location, including, but not limited to, those listed below (CDFW 2020, SCVHA 2020).

- White-tailed kite (*Elanus leucurus*) – State Fully Protected
- Least Bell's vireo (*Vireo bellii pusillus*) – State Endangered (SE) and Federal Endangered (FE)
- California tiger salamander (*Ambystoma californiense*) – Federal Threatened (FT), State Threatened (ST)

- Tricolored blackbird (*Agelaius tricolor*) – ST
- Steelhead (*Oncorhynchus mykiss irideus* pop. 9) – South-central California Coast Distinct Population Segment – FT
- California red-legged frog (*Rana draytonii*) – FT, State Species of Special Concern (SSC)
- American badger (*Taxidea taxus*) – SSC
- California giant salamander (*Dicamptodon ensatus*) – SSC
- Pallid bat (*Antrozous pallidus*) – SSC
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) – SSC
- Santa Cruz black salamander (*Aneides niger*) – SSC
- Western burrowing owl (*Athene cunicularia*) – SSC
- Western pond turtle (*Emmys marmorata*) – SSC
- Loma Prieta hoita (*Hoita strobilina*) – California Rare Plant Rank 1B.1
- Santa Clara Valley dudleya (*Dudleya abramsii* ssp. *setchellii*) – California Rare Plant Rank 1B.1
- Smooth lessingia (*Lessingia micradenia* var. *glabrata*) – California Rare Plant Rank 1B.2

The City of Gilroy is a co-permittee of the Santa Clara Valley Habitat Plan Natural Community Conservation Plan/Habitat Conservation Plan (SCVHP). Some of the wildlife and plant species listed above, in addition to other species, are covered by the SCVHP. The entire Project area is located within the SCVHP permit area, however, portions of the Project area are described as being Rural Development Not Covered and Urban Development less than 2 acres not covered (SCVHA 2020) and some specific activities may not be covered by the SCVHP; therefore, CDFW recommends that the City and future Project proponents consult with the SCVHA which is the entity implementing the SCVHP.

Due to the limited information provided in the NOP, CDFW is providing the general comments below with regards to potential impacts of the Project to special-status species and mitigation measures to offset any unavoidable impacts.

State Fully Protected Species and Nesting Birds:

Issue: State fully protected raptor species and other nesting birds may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific Impacts: Without appropriate avoidance measures for nesting birds, potentially significant impacts associated with Project activities may include reduced reproductive success, reduced health and vigor, nest abandonment, loss of nest trees, and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact nesting birds.

Recommended Potentially Feasible Mitigation Measures:

1. Nesting Bird Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for nesting bird species.
2. Bird Nest Surveys: A focused survey using appropriate protocols should be conducted throughout the nesting season by qualified biologists at Project locations prior to Project implementation. If Project activities are to take place during the nesting season, an additional pre-Project activity survey for active nests should be conducted by a qualified biologist no more than seven days prior to the start of Project activity.
3. Nest Avoidance: If an active nest is found within or adjacent to the Project site, a no-disturbance buffer should be established and monitoring of the active nest should be conducted by a qualified biologist during all Project-related construction activities. The qualified biologist should increase the buffer if the birds are showing signs of unusual or distressed behavior such as defensive flights/vocalizations, standing up from a brooding position, or flying away from the nest. Buffers should be maintained until the eggs have hatched and young have fledged.

State Threatened or Endangered Wildlife Species:

Issue: State threatened or endangered wildlife species may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific impact: Potential impacts to State-listed wildlife species include the inability to reproduce, capture, burrow/den collapse, crushing as a result of burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, nest abandonment, loss of nest trees/breeding habitat, or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Unauthorized take of species listed as threatened or endangered pursuant to CESA is a violation of Fish and Game Code.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact State-listed wildlife species.

Recommended Potentially Feasible Mitigation Measures:

1. SCVHP Compliance: For activities that can be covered by the SCVHP, the draft EIR should describe habitats to be impacted within the Project location (habitats as described in the SCVHP). The draft EIR should analyze the potential impacts to these habitats and provide information on the SCVHP impact fees and mitigation measures that may be required.

2. State-listed Wildlife Species Focused Surveys: For activities that will not be covered by the SCVHP, the Project location should be surveyed for State-listed wildlife species by a qualified biologist following protocol-level surveys. Protocol-level surveys are intended to maximize detectability. In the absence of protocol-level surveys being performed, additional surveys may be necessary.
3. State-listed Species Take Authorization: If State-listed wildlife species are identified during surveys and full avoidance of take is not feasible, the Project proponents should apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

State Threatened, Endangered, or Rare Plant Species

Issue: State threatened, endangered or rare plant species may occur within the Project location. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific impact: Potential impacts to special-status plants include inability to reproduce and direct mortality. Unauthorized take of plant species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

Evidence impact would be significant: Special-status plants are typically narrowly distributed endemic species. These species are susceptible to habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and introduction of non-native plant species. There is a potential for the Project have significant impacts to these species and their populations.

Recommended Potentially Feasible Mitigation Measures:

1. SCVHP Compliance: For activities that can be covered by the SCVHP, the draft EIR should analyze habitats to be impacted within the Project location (habitats as described in the SCVHP). The draft EIR should analyze the potential impacts to these habitats and provide information on SCVHP impact fees and mitigation measures that may be required.
2. Special-Status Plant Focused Surveys: For activities that will not be covered by the SCVHP, the Project location should be surveyed for State-listed plant species by a qualified biologist following protocol-level surveys. Protocol-level surveys, which are intended to maximize detectability, may include identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period.
3. Special-Status Plant Avoidance: For activities that will not be covered by the SCVHP, special-status plant species should be avoided through delineation and establishment of a no-disturbance buffer of at least 50 feet from the outer edge of the plant population or specific habitat type required by special-status plant species.

4. Special-Status Plant Take Authorization: If State-listed plant species are identified during surveys and full avoidance of take is not feasible, take authorization through CDFW issuance of an ITP would be required.

State Species of Special Concern

Issue: Wildlife Species of Special Concern (SCC) may occur within the Project area. Without appropriate mitigation measures, the Project could potentially have a significant impact on these species.

Specific impact: Potential impacts to SCC wildlife species include inability to reproduce, capture, burrow/den collapse, crushing as a result of burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, nest abandonment, loss of nest/breeding habitat, or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality.

Evidence impact would be significant: The Project will or may include impacts such as noise, groundwork, and movement of workers that may occur in or directly adjacent to habitat and thus have the potential to significantly impact State-listed wildlife species.

Recommended Potentially Feasible Mitigation Measures:

1. SCVHP Compliance: For locations, activities, and species that can be covered by the SCVHP, the draft EIR should analyze habitats to be impacted within the Project location (habitats as described in the SCVHP). The draft EIR should analyze the potential impacts to these habitats and should discuss the potential SCVHP impact fees and potential SCVHP required wildlife surveys and other mitigation measures that may be required.
2. State Species of Special Concern Focused Surveys: For activities and species that will not be covered by the SCVHP, the Project area should be surveyed for SSC wildlife species by a qualified biologist. Focused surveys for burrowing owl nests in or near the Project location should occur during the breeding season and any nests found should remain undisturbed until the eggs have hatched and young have fledged.
3. State Species of Special Concern Avoidance: If SSC wildlife species are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. The draft EIR should include additional minimization and mitigation measures for each SCC wildlife species that could be potentially impacted by Project activities.

CDFW is concerned regarding potential impacts to lakes and streams within the Project location. Due to the limited information provided in the NOP, CDFW is providing comments below with regards to potential impacts and mitigation measures for lakes and streams.

Issue: The Project area has the potential to contain water features subject to CDFW's lake and streambed alteration authority, pursuant Fish and Game Code § 1600 et seq. There may be a potential for Project implementation to have temporary and permanent impacts to these features.

Specific impact: Work within freshwater marsh, wetland, and riparian features has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); and deposition of debris, waste, sediment, or other materials into water feature causing water pollution that is deleterious to fish and wildlife.

Evidence impact is potentially significant: The Project area has the potential to include features subject to CDFW's lake and streambed alteration regulatory authority. Construction activities within these features has the potential to impact downstream waters and to significantly impact the remaining acreage of freshwater marsh, wetland, and riparian communities.

Recommended Potentially Feasible Mitigation Measures:

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to, ponds, Uvas Creek, Llagas Creek, other creeks or streams, and drainages. For Project activities that can be covered by the SCVHP, habitat assessment should include identification and delineation of SCVHP stream buffers and setbacks.
2. Wetland Delineation: CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and Federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602, differ. Therefore, CDFW further recommends that the delineation identify both State and Federal wetlands as well as which activities may require Notification to comply with Fish and Game Code.
3. Notification of Lake or Streambed Alteration: Fish and Game Code §1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) on potential impacts to federally listed species. Consultation with the USFWS and NMFS in order to comply with the federal Endangered Species Act is advised well in advance of Project implementation.

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports 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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City of Gilroy in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or, Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory) at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed February 19 and February 20, 2020.

Santa Clara Valley Habitat Agency (SCVHA). 2020. Santa Clara Valley Habitat Agency Geobrowser. <http://www.hcpmaps.com/habitat/>. Accessed February 19 and February 20, 2020.