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Governor's Office of Planning & Research

JAN 16 2020

STATE CLEARINGHOUSE

Mr. David Keyon
City of San Jose, Planning Division
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Subject: Amendment to Norman Y. Mineta San Jose International Airport Master Plan, Draft Environmental Impact Report, SCH #2018122051, Santa Clara County

Dear Mr. Keyon:

The California Department of Fish and Wildlife (CDFW) received the draft Environmental Impact Report (draft EIR) from the City of San Jose (City) for the Amendment to Norman Y. Mineta San Jose International Airport Master Plan (San Jose Airport or Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ The deadline to submit comments on the draft EIR was January 13, 2020, but has been extended to January 17, 2020.

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 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 and Game Code, §§ 711.7, subd. (a) and 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 considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Jose

Objective: The Project includes construction of buildings, parking lot structures, paved taxiways, and other facilities within the San Jose Airport.

Location: 1701 Airport Boulevard, San Jose, Santa Clara County, CA 95110. The Airport is generally bounded by U.S. 101 to the north, the Guadalupe River and State Route 87 to the east, Interstate 880 to the south, and Coleman Avenue and De la Cruz Boulevard to the west.

BACKGROUND

Western burrowing owls (*Athene cunicularia*) are a State Species of Special Concern. Burrowing owl populations have been greatly reduced or extirpated from most of the San Francisco Bay Area and along the California coast to Los Angeles and there have been overall declines in the number of nesting pairs in Santa Clara County as a whole.

In the past, the San Jose Airport was a key nesting area for burrowing owls in San Jose that was central to maintaining the regional population (draft EIR, Appendix E Biological Resources Report, page 82). However, there has been an overall gradual decline in burrowing owl abundance at the Airport since approximately 2002 (draft EIR, Figure 4.2-2 Summary of Burrowing Owl Monitoring Results at the Airport 1997-2018) and nesting abundance from 2016-2018 was the lowest during all years monitored (draft EIR, 4.4.1.2 Existing Conditions, page 111).

The Project is a continuation and expansion of an existing project that had previous CEQA environmental review. In 1980, a Master Plan was developed for the San Jose Airport. In 1997, an EIR for San Jose International Airport Master Plan Update (1997 EIR, SCH #95073066) was prepared, which included an impact analysis for the construction of buildings, parking lots, paved taxiways, and other facilities within the San Jose Airport. Appendix 3.8.B of the 1997 EIR, the Burrowing Owl Management Plan (BOMP), included measures for management of burrowing owls on the airfield (i.e. passive relocation within Runway Safety Areas) and established Burrowing Owl Management Areas within the airfield where burrowing owls would not be passively relocated (i.e. ruderal grassland areas not designated as Runway Safety Areas).

Overall, the draft EIR states that the proposed Project impacts exacerbate regional declines and impacts are significant under CEQA (draft EIR, 4.4.2.1 Impacts on Special-Status or Protected Species, page 126).

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.

4.4.2.1 Impacts on Special-Status or Protected Species, Impacts to the Burrowing Owl, Mitigation Measure BIO-4.1 Provide Compensatory Mitigation for Permanent Impacts on Burrowing Owl Nesting Habitat, Page 127.

Approximately 277.4 acres of ruderal grassland habitat within the Airport (draft EIR Figure 4.1-1 Existing Biological Habitats) are potential burrowing owl nesting, roosting, or foraging habitat. The draft IER states that the Project will permanently impact ruderal grassland through construction of hardscape (buildings, structures, paving with asphalt, or other facilities) including 32.4 acres of nesting/roosting habitat (24.4% of the existing nesting and roosting habitat at the airfield) and 2.1 acres of foraging habitat within the airfield (4.4.2.1 Impacts on Special-Status or Protected Species, page 124). There would also be 19.9 acres of permanent impacts to Burrowing Owl Management Areas (BOMA, 4.4.2.1 Impacts on Special Status or Protected Species, page 124).

The 2.1 acres of ruderal grass permanently impacted are considered to be foraging habitat because nesting has not occurred within these fields since 2012 (draft EIR, 4.4.2.1 Impacts on Special-Status or Protected Species, page 122). However, there has been nesting within these areas in the past (at a minimum in 1994 and 2012) and, thus, these areas serve as nesting sites in the future. The draft EIR stated that there are little, if any, California ground squirrel (*Otospermophilus beecheyi*) burrows within these infields (4.4.1.2 Existing Conditions, page 111). There has been past and ongoing ground squirrel control and closing of burrows throughout the airfield (see additional information below) that may have contributed to lack of burrowing owl nesting within these 2.1 acres.

Draft EIR Appendix E Biological Resources Report (6.6 Impact due to Conflicts with an Adopted Habitat Conservation Plan) states that the Project conflicts with the goals of the Santa Clara Valley Habitat Plan Habitat Conservation Plan/Natural Community Conservation Plan (Habitat Plan), and the Project will hinder conservation efforts undertaken by the Santa Clara Valley Habitat Agency (Habitat Agency). The draft EIR proposes to provide compensatory mitigation for the permanent impacts to 32.4 acres of nesting/roosting habitat through payment of burrowing owl fees to the Habitat Agency through the Habitat Agency's Voluntary Fee Payments Policy (Voluntary Fees). This Voluntary Fee payment will also reduce the conflict with the Habitat Plan to less-than-significant levels (draft EIR Appendix E Biological Resources Report (6.6 Impact due to Conflicts with an Adopted Habitat Conservation Plan)). The Habitat Agency may then use the Voluntary Fees for burrowing owl management agreements, burrowing owl habitat management and monitoring, as well as burrowing owl habitat restoration and land acquisition.

To reduce impacts to less-than-significant levels, CDFW recommends the three following mitigation measures be included in the EIR:

1. Evaluation of Alternatives to Avoid or Reduce Permanent Impacts: The City should analyze reasonable Project alternatives that reduce or avoid the area (e.g. acres) of burrowing owl nesting, roosting, and foraging habitat. Alternatives that completely avoid or greatly reduce permanent impacts to burrowing owl habitat should be chosen for implementation.
2. Payment of Voluntary Fees at 3:1 for Nesting/Roosting Habitat and BOMA: Payment of Voluntary Fees per acre should be calculated and include the 32.4 acres of nesting/roosting habitat plus the 19.9 acres of BOMA permanently impacted, at a 3:1 ratio (area of mitigation: area impacted), totaling 156.9 acres.

3. Analysis of Potential Nesting/Roosting Habitat within Infields E13 through E19 and Payment of Voluntary Fees: An analysis should be conducted to determine the reason why burrows are not present within infields E13 through E19. If California ground squirrel burrow closures conducted by the City are the primary reason for burrows not being present for use by burrowing owl than the permanent loss of this habitat should be mitigated at a 3:1 ratio (area of mitigation: area impacted).

4.4.2.1 Impacts on Special-Status or Protected Species, Impacts to the Burrowing Owl, Mitigation Measure BIO-4.2 Update and Implement the BOMP, Pages 127 - 130.

This Mitigation Measure describes updates to be made to the BOMP and continued implementation of the plan. The BOMP includes construction measures to minimize impacts to burrowing owls due to disturbance, passive relocation of burrowing owls from construction areas and Runway Safety Areas (burrows are subsequently excavated and closed), providing artificial burrows with BOMAs at a 2:1 ratio (number of artificial burrows: number of burrows impacted), and delineation of BOMA where burrowing owls are not passively relocated. The BOMP also includes monitoring and reporting regarding the population of burrowing owls within the San Jose Airport. The draft EIR does not include any discussion within the BOMP as to actions to implement should the population of burrowing owls at the San Jose Airport decline even further.

The Burrowing Owl Monitoring and Management 2013 Annual Report (2013 Report) describes the inclusion of the VOR (very high frequency omni-directional range) Site into the BOMA. The VOR Site is a 23.6-acre area where VOR facilities are present, as well as surrounding ruderal grassland (draft EIR, Figure 4.1-1 Existing Biological Habitats and 4.4.1.2 Existing Conditions, page 106) that is potential burrowing owl nesting, roosting, and foraging habitat.

In 2012, 8.9 acres of the VOR Site was converted to a BOMA in order to accommodate the need for artificial burrow installment (2013 Report, page 10 and 4.4.2.1 Impacts on Special-Status or Protected Species, page 124). There have been 99 artificial burrows installed within the VOR Site BOMA (draft EIR, 4.4.1.2 Existing Conditions, page 115). The 2013 Report shows a map of the artificial burrows installed in a very dense configuration (Artificial Burrow Locations, page 20).

Burrowing owls have not been known to be present within the VOR Site since 2014 (draft EIR, 4.4.1.2 Existing Conditions, page 115). The VOR Site is not frequently mowed and in January 2019, the vegetation within the BOMA was several feet tall (draft EIR, 4.4.1.2 Existing Conditions, page 115). Artificial burrows within the VOR Site have not been regularly maintained and during January 2019, artificial burrows at the VOR site were found to be entirely or partially blocked by vegetation and dirt, making them inaccessible to owls (draft EIR, 4.4.1.2 Existing Conditions, page 115). California ground squirrel burrows were not observed within the VOR Site during January 2019 (draft EIR, Appendix E Biological Resources Report, Table 3. Special-Status Animal Species, Their Status, and Potential Occurrence in the Study Area, page 34).

The draft EIR (4.4.2.1 Impacts on Special-Status or Protected Species, Impacts to the Burrowing Owl, Mitigation Measure BIO-4.2, Pages 129) states that the number of burrows that are present within the San Jose Airport does not appear to limit the existing population of burrowing owls within the San Jose Airport; therefore, compensatory mitigation for the eviction of owls would be provided as described in MM BIO-4.1.

The intent of the BOMP is to continue maintenance of burrowing owl populations at the San Jose Airport (1997 EIR, 3.83. Mitigation Measure for Significant Biological Resources Impacts, page 3.8-31) and to provide a long-term maintenance of a stable burrowing owl population (1997 EIR, 3.8.1.4 "Special Status" Species, page 3.8-18). However, neither the 1997 EIR nor draft EIR include a discussion as to how this goal will be obtained.

To reduce impacts to less-than-significant levels, CDFW recommends the four following mitigation measures be included in the draft EIR:

1. Compensatory Mitigation for Permanent Loss of Burrows: Compensatory mitigation at a 3:1 ratio should be provided for burrowing owl-occupied burrows that are permanently removed. The City should investigate the potential for all grassland within the VOR Site to be designated as a BOMA. If mitigation areas within the San Jose Airport cannot be established (VOR Site), then the City could pay Voluntary Fees for the burrowing owl to the Habitat Agency as compensation for impacts.
2. Implementation of BOMP – Maintenance of VOR Site: Project mitigation includes continued implementation of the BOMP and should, thus, also include management within the VOR Site. A management plan should be developed for review and approval by CDFW. The management plan should include the following considerations: preclusion of California ground squirrel control, removal or relocation of existing artificial burrows to allow for appropriate spacing between burrows, repair or replacement of existing artificial burrows, use of the latest scientific techniques in artificial burrow design, ongoing maintenance of artificial burrows, and ongoing maintenance of vegetation (i.e. mowing) to promote use of burrowing owls for nesting and foraging while also leaving areas of tall vegetation to potentially increase prey availability.
3. Population Monitoring - Establish Success Criteria and Remediation Measures: The monitoring portion of the BOMP should be updated to include significance criteria for the burrowing owl population at the San Jose Airport. The BOMP should be updated to include actions that would be implemented if the burrowing owl population falls below this significance criteria. Monitoring reports should be sent to CDFW for review.
4. Update to the BOMP Document: In order to make avoidance, minimization, and mitigation measures clear and to ease in their implementation, the 1997 BOMP document should be updated to include all measures included within the draft EIR and any subsequent mitigation measures that may be included within the Final EIR. The updated BOMP should be an Appendix to the EIR.

BIOLOGICAL EXPERTISE SUPPORT AND AGENCY COORDINATION

CDFW highly recommends that the City work with CDFW to obtain guidance on all aspects of burrowing owl conservation and management, including development of recommended measures above.

The Habitat Agency, in the past, has participated in several meetings pertaining to burrowing owl management within the San Jose Airport. The Habitat Agency has informed CDFW that

they have a continued interest in providing assistance in implementation of burrowing owl conservation actions at the San Jose Airport. The Habitat Agency implements a burrowing owl conservation strategy as part of the Habitat Plan. The Habitat Agency uses permanent and temporary management agreements to protect, manage, and enhance the burrowing owl populations. These agreements are funded or have a cost share to augment actions already taking place for burrowing owl management

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 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. 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 fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the City of San Jose 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 Kristin.Garrison@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,



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