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GAVIN NEWSOM, Governor  
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October 28, 2022

Stephen Rose, Senior Planner  
 City of Campbell  
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Subject: Envision Campbell General Plan and Housing Element Update, Draft  
 Environmental Impact Report, SCH No. 2022030566, City of Campbell,  
 Santa Clara County

Dear Stephen Rose:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the City of Campbell (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

## CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority (Fish & G. Code, § 1600 et seq.).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** City of Campbell

**Objective:** Update the City General Plan, including land use map, goals, policies, and actions to guide future development through 2040.

**Location:** All areas within the City of Campbell, Santa Clara County, California.

## **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. Based on potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project. CDFW provided comments and recommendations on the Notice of Preparation for the proposed Project in a letter dated April 20, 2022. Some of the recommendations provided in CDFW's letter on the NOP were not incorporated in the DEIR; therefore, CDFW is further addressing those recommendations such as Comment #1 below which should be incorporated in the Final EIR.

### **I. Mitigation Measures and Impacts**

**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 #1:** Figure 5.0-1 Existing General Plan Land Use Map, Figure 2.0-2 Proposed Land Use Map, Impact 3.4-4 page 3.4-33

**Issue:** In review of Google Earth aeriels, the reaches of Los Gatos Creek located within the Project area support a contiguous riparian corridor with thick canopy cover. There is also a contiguous riparian corridor within the urban reaches upstream from the Project (Town of Los Gatos) and downstream from the Project (City of San Jose).

The Existing General Plan Land Use Map (Figure 5.0-1) clearly shows the furthest downstream reach of Los Gatos Creek in the Project area designated as Open Space. The Open Space designation, in summary, is designated for parks, groundwater recharge areas, creek corridors, and other areas where limited development, such park facilities, trails, and utilities, could occur. Exhibit 1 to this

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letter is Figure 5.0-1 with emphasis added to indicate the creek reach of concern. This Open Space designation is consistent with the proposed Project Open Space Element Policies and Actions that include preservation, protection, and enhancement of riparian areas (Policy 7.2, 7.5, 7.6 and Action 7.a, 7.h).

Impact 3.4-4, regarding movement of fish and wildlife species, page 3.4-33, states that "As shown in the proposed General Plan Land Use Map, Open Space land uses are found adjacent to and along the complete stretch of Los Gatos Creek." However, the Proposed Land Use Map (Figure 2.0-2) shows that the lowest downstream reach of Los Gatos Creek being designated as General Commercial. Exhibit 2 to this letter is Figure 2.0-2 with emphasis added to indicate the creek reach of concern. In CDFW review and comparison with aerial photographs, this General Commercial designation encompass the entire riparian corridor in this creek reach (Exhibit 3). General Commercial designation could include construction of buildings and high volumes of automobile or transit traffic. This General Commercial designation is not consistent with the proposed Project Open Space Element Policies and Actions that include preservation, protection, and enhancement of riparian areas (Policy 7.2, 7.5, 7.6 and Action 7.a, 7.h).

Additionally, the DEIR does not discuss mitigation measures to reduce the impact of development located adjacent to fish and wildlife riparian corridors.

**Why impact would occur:** The General Commercial physical change may include the construction of buildings, parking lots, and is expected to have high volumes of automobile or transit traffic. Several land use designations within the proposed Project are adjacent to riparian corridors (e.g., residential, commercial, industrial) and may include construction of buildings, parking lots, and transportation infrastructure.

**Specific impact:** Potential impacts due to a General Commercial use, as well as other land use designations (e.g., residential, commercial, industrial), within Los Gatos Creek may result in this reach not being usable or habitable by native fish and wildlife. These impacts may include loss of riparian vegetation, permanent relocation of the creek, permanent loss of natural bank, change in contour and gradient of bed and bank, full or partial blockage of natural flow, diversion of natural flow, and visual or noise disturbance (e.g., buildings or infrastructure in or adjacent to flight path, prevention or alteration of wildlife movement due to night lighting or vehicular and human movement).

**Evidence impact would be significant:** Habitat loss, fragmentation, and degradation resulting from land use changes or habitat conversion can alter the use and viability of fish and wildlife riparian movement corridors. Riparian corridors maintain connectivity for daily movement and migration, foraging, genetic interchange, and population movement in response to environmental change or

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natural disaster. The General Commercial designation may result in impacts that may potentially substantially reduce the abundance and diversity of fish and wildlife species within the riparian corridor. It is especially important to preserve riparian corridors that are surrounded by urban areas.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1:**

The Proposed Land Use Map (Figure 2.0-2) containing a General Commercial designation in the lowest downstream reach of Los Gatos Creek within the Project area should be changed back to the Open Space designation as in the Existing General Plan Land Use Map (Figure 5.0-1).

**Mitigation Measure #2:**

In areas adjacent to riparian corridors, the DEIR should include location alternatives for buildings, roads, and other permanent structures to avoid impacts to riparian habitat.

**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?**

**COMMENT #2:** 3.4.2 Regulatory Setting page 3.4-19, Impact 3.4-1 page 3.4-23

**Issue:** In review of Google Earth aerials, the Project area includes riparian habitat, parks, open fields, and urban areas with trees, shrubs, and grassland where birds could potentially nest. Impact 3.4-1 includes a list of significant impacts such as direct mortality due to removal of trees with active nests and abandoned eggs or young and subsequent nest failure. This list only discusses impacts to special status species. The Regulatory Setting, page 3.4-19, discusses California Fish and Game Code as only being applicable to predatory birds. However, Fish and Game Code 3503 and 3513 are applicable to all birds and birds listed within the Migratory Bird Treaty Act (see Evidence impact would be significant section below). Although the DEIR states that impacts to nesting birds could occur, specific mitigation measures to avoid take are not included.

**Why impact would occur:** The physical change in relation to the residential, commercial, and other land use designations may include the construction of buildings, parking lots, and other permanent structures. Construction may result in complete removal of nesting habitat. The Project may also include impacts such as

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noise, groundwork, and movement of workers adjacent to nesting habitat that may potentially significantly impact nesting birds.

**Specific impact:** Direct mortality, nest abandonment, reduced reproductive success, and loss or reduced health or vigor of eggs or young.

**Evidence impact would be significant:** Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame bird as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513). The measures proposed for sensitive and special-status species (Impact 3.4-1) include habitat protection in particular areas of the City, but do not address all Project impact areas and the mitigation measures do not specifically mitigate for take of nesting birds, eggs, and young under Fish and Game Code.

**Recommended Potentially Feasible Mitigation Measures to reduce impacts to less-than-significant:**

**Mitigation Measure #1: Nesting Bird Surveys**

If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist should conduct a minimum of 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. Surveys should be conducted in all potential bird-nesting locations including grasslands, shrubs, and trees. However, species-specific survey protocols may be available and should be followed. 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 should be conducted at the appropriate times of day and during appropriate nesting times.

**Mitigation Measure #2: Active Nest Buffers**

If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the

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nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.

## 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).

## CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

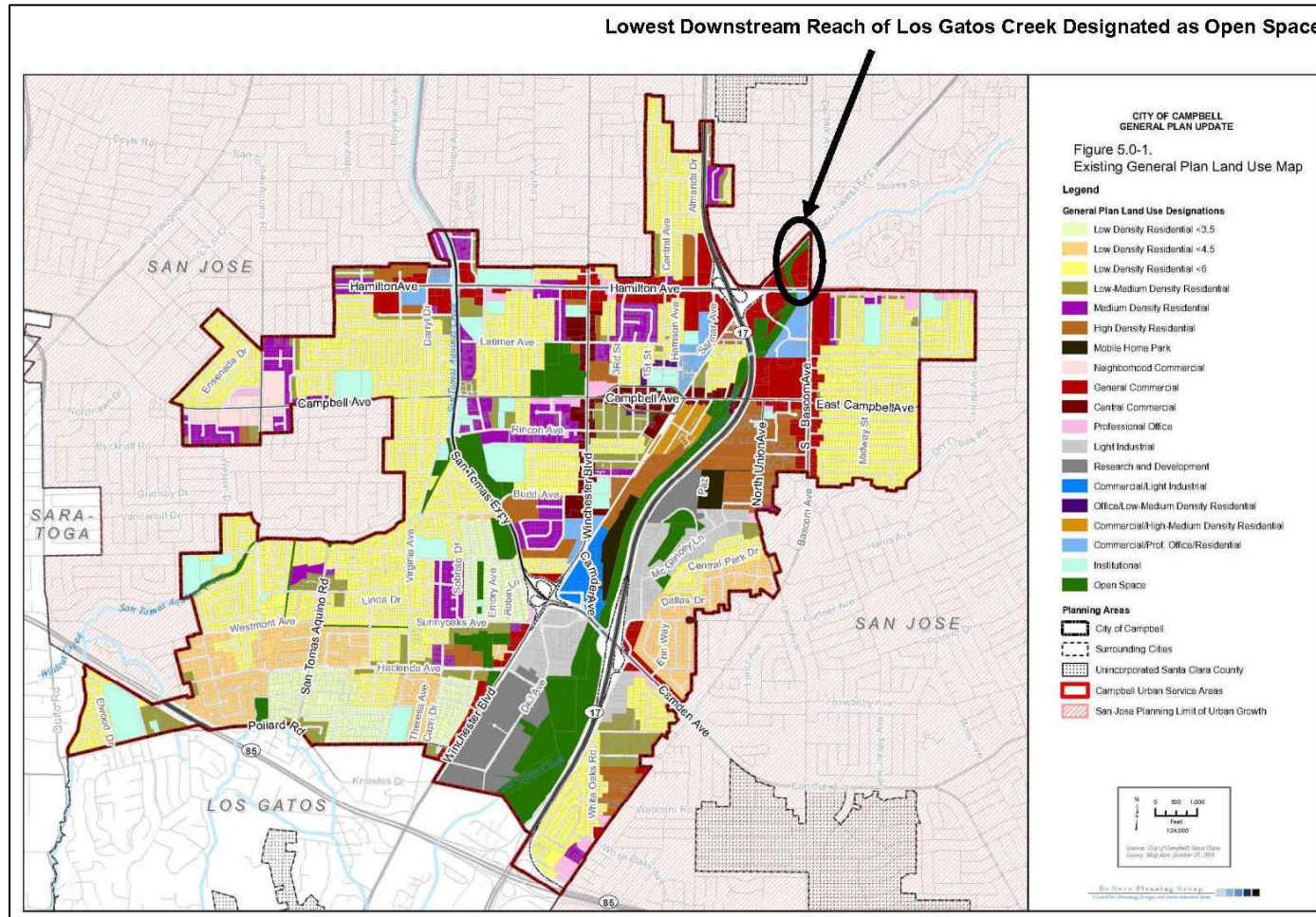
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*Erin Chappell*  
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Erin Chappell  
Regional Manager  
Bay Delta Region

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



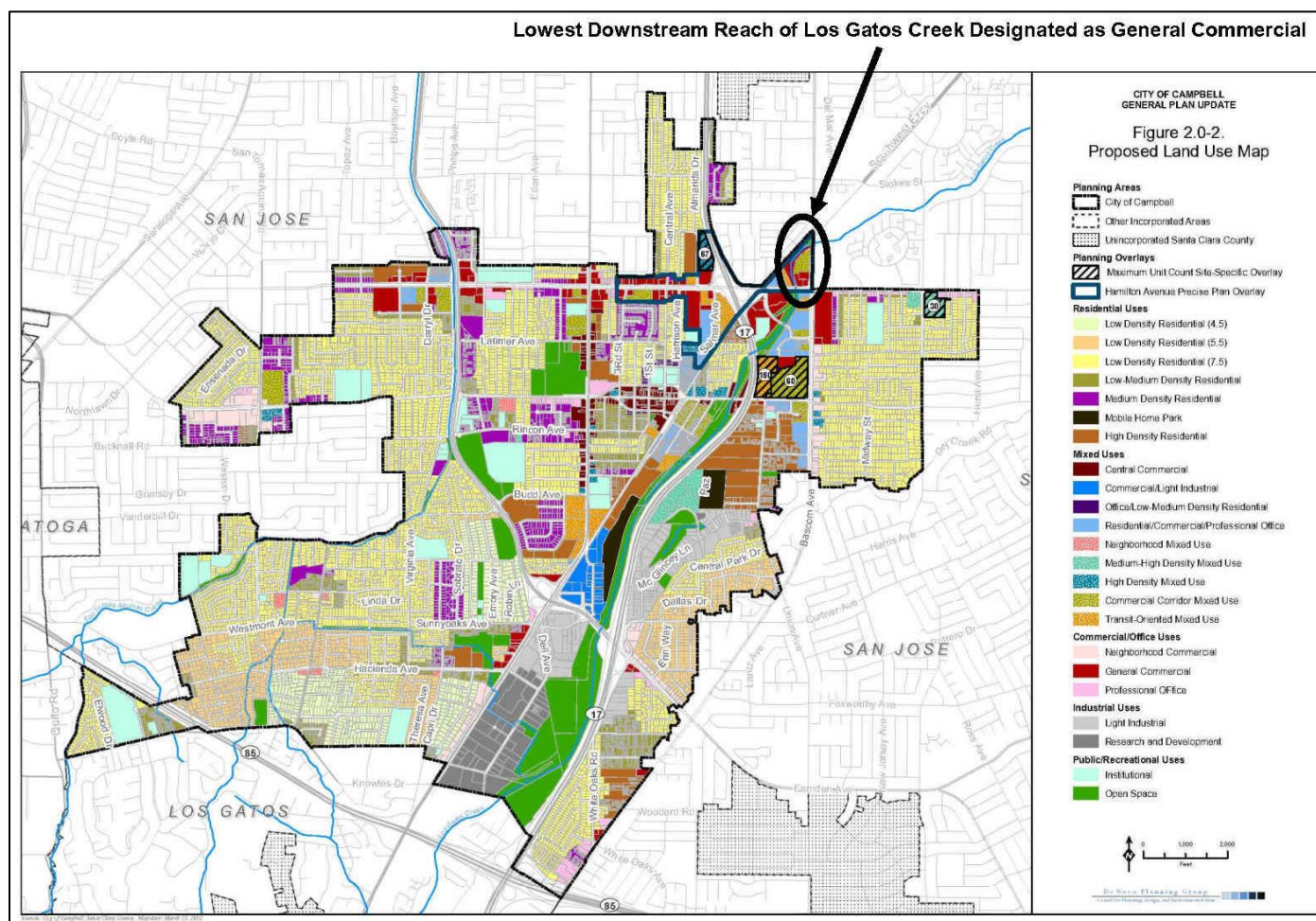
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Exhibit 1. Existing General Plan Land Use Map. Lowest downstream reach of Los Gatos Creek within Project area designated as Open Space (black circle, arrow, and text added as emphasis).



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Exhibit 2. Proposed Land Use Map. Lowest downstream reach of Los Gatos Creek within Project area designated as General Commercial (black circle, arrow, and text added as emphasis).





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Exhibit 3. Aerial photograph showing the lowest downstream reach of Los Gatos Creek within the Project area showing a wide riparian corridor with thick canopy cover (black circle, arrow, and text added as emphasis).

