
Appendix A

Notice of Preparation/Scoping Comments



**NOTICE OF PREPARATION OF A
DRAFT ENVIRONMENTAL IMPACT REPORT
FOR THE RURAL ZONING ORDINANCE AMENDMENTS
PROJECT**

File Number: PLN20-15-CWP

The County of Santa Clara (“County”) will be the Lead Agency and will prepare a Draft Environmental Impact Report (DEIR) for the Rural Zoning Ordinance Amendments Project (“project”). This project may also include related amendments to the General Plan. The County requests your input on the scope and content of the environmental information to be included in the DEIR for the project. A brief description of the project, its location, and a summary of the potential environmental effects are provided below. Approval of the project will require actions by the County of Santa Clara, including the preparation and certification of a Final EIR and the adoption, by ordinance, of the zoning amendments by the Board of Supervisors.

A Public Scoping/Community Meeting to solicit comments for the Notice of Preparation will be held virtually via Zoom (<https://sccgov-org.zoom.us/j/99899797781>) on **April 7, 2022, beginning at 6:00pm**. The deadline for your response is April 20, 2022, at 6:00pm; however, an earlier response, if possible, would be appreciated. Please send your comments to:

County of Santa Clara Planning Office
Attention: **Michael Meehan, Principal Planner**
County Government Center
70 West Hedding, 7th Floor, East Wing, San Jose CA 95110
E-mail: michael.meehan@pln.sccgov.org

Prepared by:
Michael Meehan
Principal Planner

Signature

Date

Approved by:
Leza Mikhail
Planning Services Manager

Signature

Date

Introduction

As the lead agency, the County of Santa Clara (“County”) will analyze the potential environmental impacts associated with amendments to the Zoning Ordinance of the County of Santa Clara (“Zoning Ordinance”) pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.) and its implementing regulations, the CEQA Guidelines (14 Cal. Code Regs. Section 15000 et seq.). The proposed amendments would streamline permitting for certain rural compatible development, introduce objective development standards, and further implement existing County General Plan policies to prevent sprawl and preserve agricultural land.

Project Location

The proposed amendments would affect the following zoning districts in the unincorporated county: *Exclusive Agriculture, Agricultural Ranchlands, Hillsides, and Rural Residential*. The location of these rural zoning districts is shown in Figure 1.

Project Description

The proposed amendments to the Zoning Ordinance would apply to rural zoning districts (*Exclusive Agriculture, Agricultural Ranchlands, Hillsides, and Rural Residential*) within the unincorporated county. The objectives of these amendments are to:

- a) Replace existing provisions of the Zoning Ordinance addressing local-serving uses with objective development standards, to provide a more streamlined approach for development of rural compatible uses;
- b) Preserve rural areas by limiting the development of non-compatible uses; and
- c) Further the County’s General Plan policy goals for continued agricultural viability.

The proposed amendments to the Zoning Ordinance would update how development is regulated in rural zoning districts with three primary changes:

- a) Simplify and streamline the permit process for agriculture supportive uses.
 - Broaden the uses that are permitted ancillary to an agricultural operation.
 - Combine use classifications for *Agricultural Processing, Agricultural Sales, Agricultural Accessory Structures & Uses, Agriculturally Related Entertainment & Commercial Uses* and *Wineries* into a new use classification called *Agriculture Supportive Uses*.
 - Streamline the regulation of *Agriculture Supportive Uses* according to size, either *Limited* or *General*.
- b) Align development in agricultural areas with existing County land use policies.
 - Remove non-compatible uses in the *Exclusive Agriculture* zone that are inconsistent with the intent of General Plan policies.
 - Require that certain types of development be accessory to onsite agriculture.
 - Introduce an *Agricultural Buffer* requirement for new development on properties adjacent to farmland.
 - Allow *Agrivoltaics* in agricultural areas, which consists of active agricultural uses alongside commercial solar energy production.

- c) Replace “local-serving” provisions with objective development standards.
- Remove regulations related to “local-serving” uses in rural areas.
 - Introduce development standards, *Lot Coverage* and *Development Area*, which will regulate the size and scale of new development in rural zoning districts.
 - Streamline the regulation of *Religious Institutions* according to size, either *Limited* or *General*.

Required Project Approvals

In addition to certification of a Final EIR, the County Board of Supervisors must approve the proposed zoning amendments by ordinance.

Potential Environmental Effects of the Project

The proposed project would implement existing County General Plan policies to preserve agricultural land while streamlining the approval of smaller (“Limited”) agricultural supportive uses in the rural zoning districts.

Amendments to the Zoning Ordinance may have an effect on the environment by impacting the type and density/intensity of future development projects allowed under the Zoning Ordinance. The EIR will therefore consider the effects of this project on the following environmental resources:

- | | |
|-------------------------------------|-----------------------------|
| • Aesthetics | • Land use |
| • Agricultural resources (farmland) | • Mineral resources |
| • Air quality | • Noise |
| • Biological resources | • Population and housing |
| • Cultural resources | • Public services |
| • Energy conservation | • Recreation |
| • Geology and soils | • Transportation |
| • Greenhouse gas emissions | • Tribal cultural resources |
| • Hazards and hazardous materials | • Utilities |
| • Hydrology and water quality | • Wildfire |

The County welcomes all input on the scope and content of the EIR in response to this Notice of Preparation, and especially welcomes responses that will assist the County in:

- 1) Identifying potentially significant environmental impacts raised by the proposed modifications to the Zoning Ordinance;
- 2) Identifying and evaluating potential alternatives to the proposed project and mitigation measures that could avoid or reduce potentially significant impacts associated with the project.

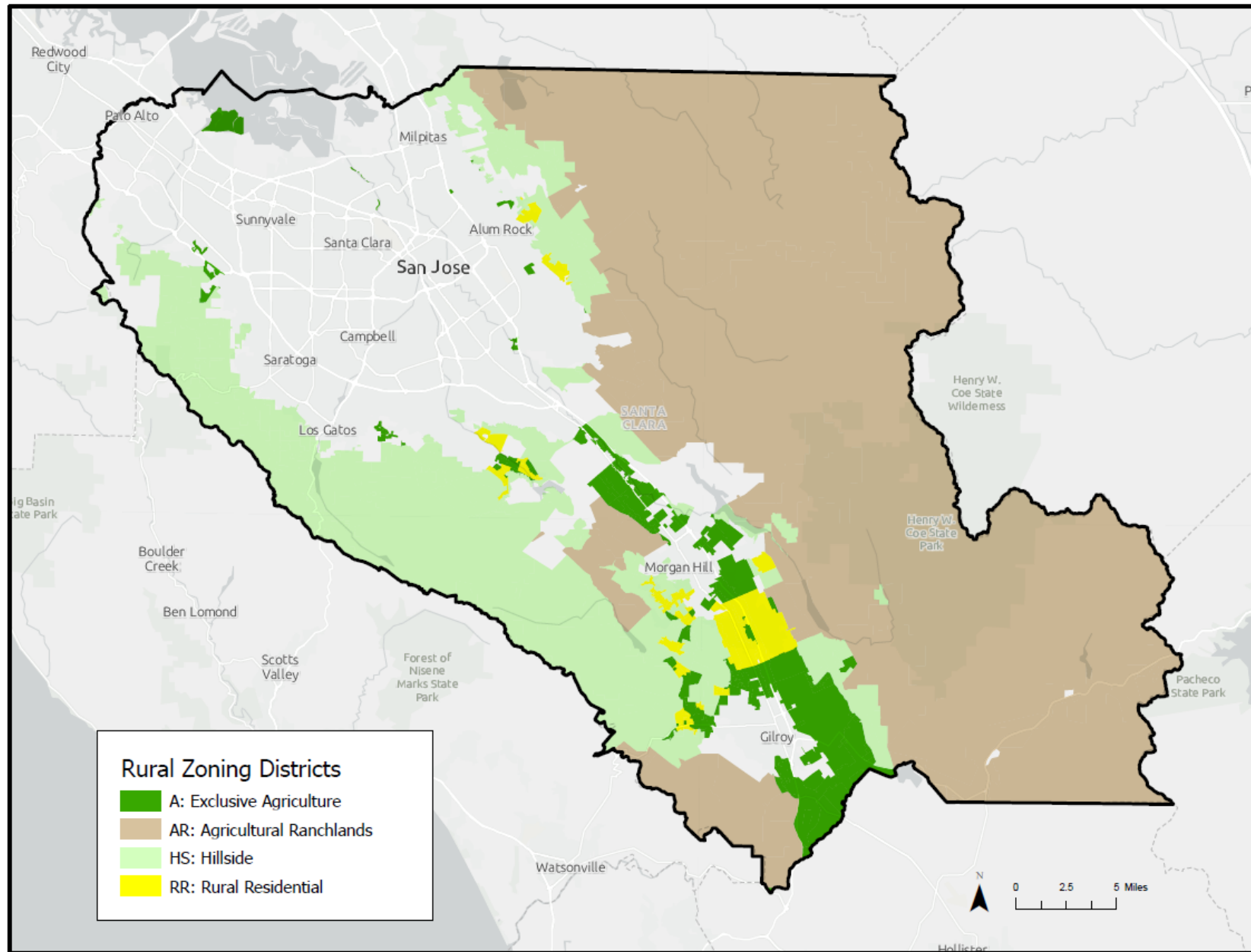


Figure 1
Project Location – Rural Zoning Districts



APRIL 5, 2022

VIA EMAIL: MICHAEL.MEEHAN@PLN.SCCGOV.ORG

County of Santa Clara Planning Office
Attention: Michael Meehan, Principal Planner
County Government Center
70 West Hedding, 7th Floor, East Wing
San Jose CA, 95110

Governor's Office of Planning & Research

Apr 07 2022

STATE CLEARINGHOUSE

Dear Mr. Meehan:

NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE RURAL ZONING ORDINANCE AMENDMENTS PROJECT, SCH#2022030776

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Notice of Preparation of a Draft Environmental Impact Report for the Rural Zoning Ordinance Amendments Project (Project). The Division monitors farmland conversion on a statewide basis, provides technical assistance regarding the Williamson Act, and administers various agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's potential impacts on agricultural land and resources.

Project Description

The proposed amendments to the Zoning Ordinance would apply to rural zoning districts (Exclusive Agriculture, Agricultural Ranch/ands, Hillsides, and Rural Residential) within the unincorporated county. The objectives of these amendments are to:

- a) Replace existing provisions of the Zoning Ordinance addressing local-serving uses with objective development standards, to provide a more streamlined approach for development of rural compatible uses;
- b) Preserve rural areas by limiting the development of non-compatible uses; and
- c) Further the County's General Plan policy goals for continued agricultural viability.

The proposed amendments to the Zoning Ordinance would update how development is regulated in rural zoning districts with three primary changes:

- a) Simplify and streamline the permit process for agriculture supportive uses.
 - Broaden the uses that are permitted ancillary to an agricultural operation.
 - Combine use classifications for Agricultural Processing, Agricultural Sales, Agricultural Accessory Structures & Uses, Agriculturally Related Entertainment &

Commercial Uses and Wineries into a new use classification called Agriculture Supportive Uses.

- Streamline the regulation of Agriculture Supportive Uses according to size, either Limited or General.

b) Align development in agricultural areas with existing County land use policies.

- Remove non-compatible uses in the Exclusive Agriculture zone that are inconsistent with the intent of General Plan policies.
- Require that certain types of development be accessory to onsite agriculture.
- Introduce an Agricultural Buffer requirement for new development on properties adjacent to farmland.
- Allow Agrivoltaics in agricultural areas, which consists of active agricultural uses alongside commercial solar energy production.

c) Replace "local-serving" provisions with objective development standards.

- Remove regulations related to "local-serving" uses in rural areas.
- Introduce development standards, Lot Coverage and Development Area, which will regulate the size and scale of new development in rural zoning districts.
- Streamline the regulation of Religious Institutions according to size, either Limited or General.

Department Comments

The conversion of agricultural land represents a permanent reduction and significant impact to California's agricultural land resources. CEQA requires that all feasible and reasonable mitigation be reviewed and applied to projects. Under CEQA, a lead agency should not approve a project if there are feasible alternatives or feasible mitigation measures available that would lessen the significant effects of the project.

All mitigation measures that are potentially feasible should be included in the project's environmental review. A measure brought to the attention of the lead agency should not be left out unless it is infeasible based on its elements.

Consistent with CEQA Guidelines, the Department recommends the County consider agricultural conservation easements, among other measures, as potential mitigation. (See Cal. Code Regs., tit. 14, § 15370 [mitigation includes "compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements."])

Mitigation through agricultural easements can take at least two forms: the outright purchase of easements or the donation of mitigation fees to a local, regional, or statewide organization or agency whose purpose includes the acquisition and

stewardship of agricultural easements. The conversion of agricultural land should be deemed an impact of at least regional significance. Hence, the search for replacement lands should not be limited strictly to lands within the project's surrounding area.

A helpful source for regional and statewide agricultural mitigation banks is the California Council of Land Trusts. They provide helpful insight into farmland mitigation policies and implementation strategies, including a guidebook with model policies and a model local ordinance. The guidebook can be found at:

[California Council of Land Trusts](#)

Of course, the use of conservation easements is only one form of mitigation that should be considered. Any other feasible mitigation measures should also be considered. Indeed, the recent judicial opinion in *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 ("KG Farms") holds that agricultural conservation easements on a 1 to 1 ratio are not alone sufficient to adequately mitigate a project's conversion of agricultural land. KG Farms does not stand for the proposition that agricultural conservation easements are irrelevant as mitigation. Rather, the holding suggests that to the extent they are considered, they may need to be applied at a greater than 1 to 1 ratio, or combined with other forms of mitigation (such as restoration of some land not currently used as farmland).

Conclusion

The Department recommends further discussion of the following issues:

- Type, amount, and location of farmland conversion resulting directly and indirectly from implementation of the proposed project.
- Impacts on any current and future agricultural operations in the vicinity, e.g., land-use conflicts, increases in land values and taxes, loss of agricultural support infrastructure such as processing facilities, etc.
- Incremental impacts leading to cumulative impacts on agricultural land. This would include impacts from the proposed project, as well as impacts from past, current, and likely future projects.
- Proposed mitigation measures for all impacted agricultural lands within the proposed project area.
- Projects compatibility with lands within an agricultural preserve and/or enrolled in a Williamson Act contract.
- If applicable, notification of Williamson Act contract non-renewal and/or cancellation.

Thank you for giving us the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report for the Rural Zoning Ordinance Amendments Project. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Associate Environmental Planner via email at Farl.Grundy@conservation.ca.gov.

Sincerely,

Monique Wilber

Monique Wilber

Conservation Program Support Supervisor



NATIVE AMERICAN HERITAGE COMMISSION

Governor's Office of Planning & Research

April 14, 2022

Apr 15 2022

Michael Meehan
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(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

Re: 2022030776, Rural Zoning Ordinance Amendments Project, Santa Clara County

Dear Mr. Meehan:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:

Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
- b. The lead agency contact information.
- c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).

- a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- a. Alternatives to the project.
- b. Recommended mitigation measures.
- c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- a. Type of environmental review necessary.
- b. Significance of the tribal cultural resources.
- c. Significance of the project's impacts on tribal cultural resources.
- d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
- b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.
3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Cody.Campagne@nahc.ca.gov.

Sincerely,

Cody Campagne

Cody Campagne
Cultural Resources Analyst

cc: State Clearinghouse



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
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 Fairfield, CA 94534
 (707) 428-2002
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 22, 2022

Michael Meehan, Principal Planner
 County of Santa Clara
 70 West Hedding, 7th Floor, East Wing
 San Jose CA 95110
michael.meehan@pln.sccgov.org

Subject: Rural Zoning Ordinance Amendments, Notice of Preparation of a Draft
 Environmental Impact Report, SCH No. 2022030776, Santa Clara County

Dear Michael Meehan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the County of Santa Clara (County) for the 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

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.

Michael Meehan, Principal Planner
County of Santa Clara
April 22, 2022
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proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.).

PROJECT DESCRIPTION SUMMARY

Proponent: County of Santa Clara

Objective: The Project's objectives are to implement zoning changes to broaden the uses that are permitted ancillary to an agricultural operation, combine and streamline the regulation of agricultural use classifications, remove uses incompatible with the General Plan, establish an agricultural buffer for adjacent development, allow agrivoltaics in agricultural areas, establish standards for development in rural zoning districts, and streamline the regulation of Religious Institutions.

Location: Exclusive Agriculture, Agricultural Ranchlands, Hillsides, and Rural Residential zoning districts in the unincorporated portions of the County.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County 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 the potential for the Project to have a significant impact on biological resources CDFW concludes that an Environmental Impact Report is appropriate for the Project.

Project Description and Related Impact

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 U.S. Fish and Wildlife Service (USFWS)?

COMMENT #1: Figure 1 Project Location - Rural Zoning Districts

Issue: In review of Google Earth, the northern end of the Project area within the southern San Francisco baylands consists of brackish marsh ponds, as well as the tidally-influenced reaches of Permanente Creek and Stevens Creek. Figure 1 designates this area as Rural Zoning District A, Exclusive Agriculture.

Specific Impact: Permanent or temporary loss of brackish marsh ponds, wetlands and stream habitat due to agricultural development.

Why the impact would occur: Implementation of the Project could result in agricultural development within brackish marsh ponds, wetlands and stream reaches.

Michael Meehan, Principal Planner
County of Santa Clara
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Evidence impact would be significant: Agricultural development would have a substantial adverse effect on sensitive natural communities such as brackish marsh, wetland and riparian habitat.

Mitigation Measure #1: Habitat Assessment

A qualified biologist should conduct a habitat assessment to determine habitat types within the unincorporated portion of the southern San Francisco baylands. This survey should include, but not be limited to, Permanente Creek, Stevens Creek, sloughs, ponds, and drainage channels.

Mitigation Measure #2: General Plan and Appropriate Zoning Review

The Santa Clara County General Plan 1995-2010 (General Plan), Land Use Area Designations map shows the area as being designated Other Public Open Lands. The DEIR should include an analysis of the change in the zoning to Exclusive Agriculture to determine consistency with the General Plan. A review of typical zoning and land use designations should be conducted to determine if an Exclusive Agriculture designation is appropriate for tidal slough and brackish wetland ponds.

Mitigation Measure #3: Minimization and Mitigation

If the brackish marsh and tidal slough areas are to be zoned as Exclusive Agriculture, a thorough analysis of impacts should be included in the DEIR. The DEIR should include minimization and compensatory mitigation measures for all temporary and permanent impacts to brackish marsh, stream and riparian habitats resulting from implementation of the Project.

Mitigation Measures and Impacts

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 USFWS?

COMMENT #2: Biological Resources, page 3

Issue: State fully protected mammals and nesting birds may occur within the Project area. The NOP does not discuss potential impacts to fully protected species or other nesting birds that could be present within the Project area. The fully protected species potentially present may include, but are not limited to, those listed below:

- Ringtail (*Bassariscus astutus*) - State Fully Protected

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- Salt-marsh harvest mouse (*Reithrodontomys raviventris*) - State Endangered and Fully Protected, Federal Endangered
- California Ridgway's rail (*Rallus obsoletus obsoletus*) - State Endangered and Fully Protected, Federal Endangered
- California black rail (*Laterallus jamaicensis coturniculus*) - State Threatened and Fully Protected
- Bald eagle (*Haliaeetus leucocephalus*) - State Endangered and Fully Protected
- Golden eagle (*Aquila chrysaetos*) - State Fully Protected
- White-tailed kite (*Elanus leucurus*) - State Fully Protected
- American peregrine falcon (*Falco peregrinus anatum*) - State Fully Protected
- San Francisco gartersnake (*Thamnophis sirtalis tetrataenia*) - State Endangered and Fully Protected; Federal Endangered

Specific Impact: Direct mortality through crushing of adults or young or individuals within dens or nests, loss of dens or nests, capture, nest abandonment, loss of potential nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs or young).

Why impact would occur: Implementation of the Project could include construction of rural or hillside housing or other development, roads, and agriculture-related structures. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact denning, foraging and nesting.

Evidence impact would be significant: The species listed above are Fully Protected Species under California Fish and Game Code (§ 3511, § 4700 or § 5050). Take of nesting birds, birds in the orders Falconiformes or Strigiformes, and migratory nongame birds as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, 3503.5, 3513).

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

Mitigation Measure #1: Habitat Assessment

The DEIR should include results of a through habitat assessment conducted by a qualified biologist to determine if the Project site or its vicinity contains suitable habitat for fully protected species or other nesting birds.

Mitigation Measure #2: Fully Protected Species Surveys

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A focused survey for fully protected species using appropriate protocols should be conducted by qualified biologists at Project sites prior to any Project-related construction. If Project activities are to take place during the avian 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.

Mitigation Measure #3: Avoidance

If fully protected dens or nests are found or if an active bird nest is found within or adjacent to the Project site, a no-disturbance buffer should be established and monitoring of the active dens or nests 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 denning/nesting has concluded or the eggs have hatched and young have fledged. If fully protected mammals or reptiles are found at a work site, work activities should stop and the individual should be allowed to leave the Project site through its own volition.

COMMENT #3: Biological Resources, page 3

Issue: State threatened or endangered fish and wildlife species may occur within the Project area. The NOP does not discuss potential impacts to State threatened or endangered species that could be present within the Project area. These species may include, but are not limited to:

- Mountain lion (*Felis concolor*) - Central Coast North Evolutionarily Significant Unit - State Candidate Threatened
- San Joaquin kit fox (*Vulpes macrotis mutica*) - State Threatened, Federal Endangered
- Least Bell's vireo (*Vireo bellii pusillus*) - State Endangered and Federal Endangered
- Tricolored blackbird (*Agelaius tricolor*) - State Threatened
- Alameda whipsnake (*Masticophis lateralis euryxanthus*) - State Threatened and Federal Threatened
- Foothill yellow-legged frog (*Rana boylei*) – State Endangered
- California tiger salamander (*Ambystoma californiense*) – Federal Threatened, State Threatened
- Longfin smelt (*Spirinchus thaleichthys*) - State Threatened, Federal Candidate for Endangered or Threatened

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Specific impact: Direct mortality through crushing of adults or young or individuals within dens, burrows, or nests, loss of dens, burrows, or nests, capture, nest abandonment, loss of potential breeding or nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs, larvae, or young), inadvertent entrapment or entrainment, impingement, lack of water resulting in reduced reproductive success or desiccation of eggs.

Why impact would occur: Implementation of the Project could include construction of rural or hillside housing or other development, roads, agriculture-related structures, and stream or lake water diversion. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact denning and nesting.

Evidence impact would be significant: Species above are listed under the California Endangered Species Act (CESA) and may also be designated as rare, threatened or endangered under §15380, subds. (c)(1) and (c)(2)).

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

Mitigation Measure #1: Habitat Assessment and Appropriate Project Design

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 CESA-listed or candidate species. For species in which habitat corridors are crucial, such as for the mountain lion, the habitat assessment should include all denning and foraging habitat within an individual's range. If the Project may result in fragmentation of habitat, Project design should be altered to maintain sufficient movement corridors. If fragmentation cannot be avoided, the DEIR should include mitigation in the form of wildlife crossings suitable for each species that may be adversely affected.

Mitigation Measure #2: State-listed Wildlife Species Focused Surveys

The Project site should be surveyed for State-listed wildlife species prior to construction activities 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.

Mitigation Measure #3: State-listed Species Take Authorization

If known or expected occurrences of State-listed wildlife species are present at a Project site or the species is identified during surveys and full avoidance of take is

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not feasible, the Project proponent should apply to CDFW for take authorization through issuance of an Incidental Take Permit (ITP).

COMMENT #4: Biological Resources, page 3

Issue: Species of Special Concern (SSC) may occur within the Project area. The NOP does not discuss potential impacts to SSC species that could be present within the Project area. These species may include, but are not limited to:

- American badger (*Taxidea taxus*) - SSC
- Salt-marsh wandering shrew (*Sorex vagrans halicoetes*) - SSC
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) - SSC
- Pallid bat (*Antrozous pallidus*) - SSC
- Townsend's big-eared bat (*Corynorhinus townsendii*) - SSC
- Western red bat (*Lasiurus blossevillei*) - SSC
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*) - SSC
- Northern harrier (*Circus cyaneus*) - SSC
- Long-eared owl (*Asio otus*) - SSC
- Loggerhead shrike (*Lanius ludovicianus*) - SSC
- Olive-sided flycatcher (*Contopus cooperi*) - SSC
- Bryant's savannah sparrow (*Passerculus sandwichensis alaudinus*) - SSC
- Vaux's swift (*Chaetura vauxi*) - SSC
- Yellow warbler (*Setophaga petechia*) - SSC
- Alameda song sparrow (*Melospiza melodia pusillula*) - SSC
- Western burrowing owl (*Athene cunicularia*) - SSC
- Western pond turtle (*Emys marmorata*) - SSC
- Northern California legless lizard (*Anniella pulchra*) - SSC
- California red-legged frog (CRLF) (*Rana draytonii*) - Federally Threatened, SSC
- California giant salamander (*Dicamptodon ensatus*) - SSC
- Santa Cruz black salamander (*Aneides niger*) - SSC
- Red-bellied newt (*Taricha rivularis*) - SSC
- Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*) - SSC

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- Pacific lamprey (*Entosphenus tridentatus*) - SSC
- Sacramento hitch (*Lavinia exilicauda exilicauda*) - SSC
- San Joaquin roach (*Lavinia symmetricus symmetricus*) - SSC
- Riffle sculpin (*Cottus gulosus*) - SSC

Specific impact: Direct mortality through crushing of adults or young or individuals within dens, burrows, middens, or nests, loss of dens, burrows, middens, or nests, capture, nest abandonment, loss of potential breeding, roosting, or nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs, larvae, or young), inadvertent entrapment or entrainment, impingement, lack of water resulting in reduced reproductive success or desiccation of eggs.

Why impact would occur: Implementation of the Project could include construction of rural or hillside housing or other development, roads, agriculture-related structures, and stream or lake water diversion. The Project would include impacts such as noise, groundwork, and movement of workers that would have the potential to significantly impact denning and nesting.

Evidence impact would be significant: Species designated by CDFW as SSC are at conservation risk and may be experiencing serious population declines or range retractions. CRLF is considered a rare or threatened species under CEQA as it is listed in Title 50, Code of Federal Regulations Sections 17.11 or 17.12 pursuant to the Federal Endangered Species Act as rare, threatened, or endangered (CEQA Guidelines, §15380 subds. (c)(2)).

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

Mitigation Measure #1: Focused Surveys for SSC

The Project site should be surveyed for SSC 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, focused surveys for SSC presence, nests, middens, eggs, or indicators of presence (e.g., bat guano and acoustic surveys) should be conducted.

Mitigation Measure #2: SSC 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 DEIR should

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include additional minimization and mitigation measures for each SCC that could be potentially impacted by Project activities.

COMMENT #5: Biological Resources, page 3

Issue: Rare plant species may occur within the Project area. The NOP does not discuss potential impacts to rare plant species that could be present within the Project area. These species may include, but are not limited to:

- Metcalf Canyon jewelflower (*Streptanthus albidus* ssp. *albidus*) - Federal Endangered
- 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
- Bent-flowered fiddleneck (*Amsinckia lunaris*) - California Rare Plant Rank 1B.2
- Most beautiful jewelflower (*Streptanthus albidus* ssp. *peramoenus*) - California Rare Plant Rank 1B.2
- Mt. Hamilton thistle (*Cirsium fontinale* var. *campylon*) - California Rare Plant Rank 1B.2
- Smooth lessingia (*Lessingia micradenia* var. *glabrata*) - California Rare Plant Rank 1B.2
- Woodland woollythreads (*Monolopia gracilens*) - California Rare Plant Rank 1B.2
- Western leatherwood (*Dirca occidentalis*) - California Rare Plant Rank 1B.2

Specific impact: Direct mortality or inability to reproduce.

Why impact would occur: Implementation of the Project could include construction of rural or hillside housing or other development, roads, agriculture-related structures, and stream or lake water diversion.

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.

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

Mitigation Measure #1: Special-Status Plant Focused Surveys

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The Project site should be surveyed for special-status plant species by a qualified botanist 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.

Mitigation Measure #2: Special-Status Plant Avoidance

Direct and indirect impacts to 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.

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?

COMMENT #6: Biological Resources page 3 and Figure 1 Project Location - Rural Zoning Districts

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. Project implementation may result in temporary and/or permanent impacts to water features.

Specific impact: Work within freshwater marsh, wetland, lakes, streams and riparian habitat 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 features causing water pollution deleterious to fish and wildlife.

Why impact would occur: Implementation of the Project could include construction of rural or hillside housing or other development, roads, and agriculture-related structures that may impact streams or lakes. Residential and agricultural development may result in diversion of streams or lakes.

Evidence impact is potentially significant: Substantial diversion or obstruction of natural flow, change in stream bed or bank, or deposit of debris into streams without necessary permitting would be a violation under Fish and Game Code §1602.

Recommended Potentially Feasible Mitigation Measures:

Mitigation Measure #1: Habitat Assessment

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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, lakes, ponds, creeks, streams, and drainage channels.

Mitigation Measure #2: Wetland Delineation

A formal wetland delineation should be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands present within the Project area. 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, the delineation should identify which activities may require Notification to comply with Fish and Game Code (§ 1602).

Mitigation Measure #3: Notification of Lake and 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. Project construction activities may necessitate that the Project proponent submit a Notification of Lake and Streambed Alteration to CDFW. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

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

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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 NOP to assist the County 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 Kristin.Garrison@wildlife.ca.gov; or Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell

Regional Manager
Bay Delta Region

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

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
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Governor's Office of Planning & Research

Apr 22 2022

April 26, 2022

STATE CLEARINGHOUSE

SCH #: 2022030776
GTS #: 04-SCL-2022-01042
GTS ID: 26013
Co/Rt/Pm: SCL/VAR/VAR

Michael Meehan, Principal Planner
County of Santa Clara
70 West Hedding, 7th Floor, East Wing
San Jose, CA 95110

Re: Rural Zoning Ordinance Amendments Notice of Preparation (NOP) for Draft Environmental Impact Report (DEIR)

Dear Michael Meehan:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Rural Zoning Ordinance Amendments Project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the March 2022 NOP.

Project Understanding

The County of Santa Clara is proposing amendments to the Zoning Ordinance which would apply to rural zoning districts within the unincorporated County. The objectives of the amendments are to: replace existing provisions of the Zoning Ordinance addressing local serving uses with objective development standards, to provide a more streamlined approach for development of rural compatible uses; preserve rural areas by limiting the development of non-compatible uses; and to further the County General Plan policy goals for continued agricultural viability.

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. For more information on how Caltrans assesses Transportation Impact Studies, please review Caltrans' Transportation Impact Study Guide ([link](#)).

Lead Agency

As the Lead Agency, the County of Santa Clara is responsible for all project mitigation, including any needed improvements to the State Transportation Network (STN). The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Equitable Access

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

Encroachment Permit

Please be advised that any permanent work or temporary traffic control that encroaches onto Caltrans' Right of Way (ROW) requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating Caltrans' ROW, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to D4Permits@dot.ca.gov.

Please note that Caltrans is in the process of implementing an online, automated, and milestone-based Caltrans Encroachment Permit System (CEPS) to replace the current permit application submittal process with a fully electronic system, including online payments. The new system is expected to be available during 2022. To obtain information about the most current encroachment permit process and to download the permit application, please visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

Michael Meehan, Principal Planner
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Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email LDR-D4@dot.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Mark Leong". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

April 26, 2022

Mr. Michael Meehan
Principal Planner
County of Santa Clara Planning Office
County Government Center
70 West Hedding, 7th Floor, East Wing
San Jose CA 95110
Michael.Meehan@pln.sccgov.org

Governor's Office of Planning & Research

Apr 27 2022

STATE CLEARINGHOUSE

NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT
FOR THE RURAL ZONING ORDINANCE AMENDMENTS PROJECT – DATED
MARCH 2022 (STATE CLEARINGHOUSE NUMBER: 2022030776)

Dear Mr. Meehan:

The Department of Toxic Substances Control (DTSC) received a Notice of Preparation of a Draft Environmental Impact Report (NOP of DEIR) for the Rural Zoning Ordinance Amendments Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, work in close proximity to mining or suspected mining or former mining activities, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the DEIR:

1. The DEIR should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The DEIR should also identify the mechanism(s) to initiate

any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.

2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the DEIR.
3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the DEIR. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 [Abandoned Mine Land Mines Preliminary Assessment Handbook](#).
4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 [Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers](#).
5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to [DTSC's 2001 Information Advisory Clean Imported Fill Material](#).
6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the DEIR. DTSC recommends the current and former agricultural lands be evaluated in

accordance with DTSC's 2008 [Interim Guidance for Sampling Agricultural Properties \(Third Revision\)](#).

DTSC appreciates the opportunity to comment on the DEIR. Should you need any assistance with an environmental investigation, please visit DTSC's [Site Mitigation and Restoration Program](#) page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at [DTSC's Brownfield website](#).

If you have any questions, please contact me at (916) 255-3582 or via email at Brian.McAloon@dtsc.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. McAloon', with a stylized, cursive script.

Brian McAloon
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov

