



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.dfg.ca.gov

EDMUND G. BROWN, Jr., Governor
JOHN McCAMMAN, Director



August 12, 2011

Mr. John Davidson
City of San Jose
Planning Department
200 East Santa Clara Street
San Jose, CA 95113-1905

Dear Mr. Davidson:

Subject: Envision San Jose 2040 General Plan Update, Draft Programmatic Environmental Impact Report, SCH #2009072096, City of San Jose, Santa Clara County

The Department of Fish and Game (DFG) has reviewed the draft Programmatic Environmental Impact Report (PEIR) for the City of San Jose (City) General Plan Update. We are providing the following comments:

Draft PEIR and Appendix E

A revised Final Programmatic Environmental Impact Report (PEIR) should discuss appropriate mitigation measures consistent with the California Environmental Quality Act (CEQA) Guidelines 15126.4 to compensate for impacts for those species or habitats where significant, or potentially significant, impacts are identified. The draft PEIR does not thoroughly discuss what DFG determines as impacts to rare and sensitive species and their habitats. The significant amount of material in draft PEIR Appendix E on rare and sensitive species should be incorporated as discussion within the Final PEIR and not in the Final PEIR Appendix E. The conclusions of this material should be discussed and summarized (CEQA, Guidelines 15147) to determine the impacts and the subsequent mitigation proposed. We recommend that the draft PEIR Chapter 3.5 be revised to include a discussion summary of each species and habitat as is identified in the Appendix E. In this regard, DFG remains available to work with the City in developing the Final PEIR.

Serpentine Habitat

Serpentine habitats are rare vegetative communities that can support a variety of associated rare plant and animal species. There are two primary types of impacts to serpentine habitats, direct and indirect. For direct impacts, the draft PEIR discusses thorough adequate avoidance and mitigation measures through draft PEIR Policies ER-2.4 and 2.7.

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Indirect impacts are not sufficiently addressed. For example, indirect impacts can occur as a result of atmospheric compounds, such as nitrogen compounds, being deposited on serpentine communities. The primary element of concern is nitrogen because it serves as a plant nutrient in nitrogen deficient serpentine areas. As a result of this additional nitrogen nutrient load, some plants which would not otherwise survive and spread on serpentine habitats, would be able to thrive, out competing the serpentine plant endemics.

The draft PEIR references the nitrogen deposition analysis done for the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP). This analysis estimates the current nitrogen deposition rate in Santa Clara County to be as much as 6 kilograms (kg) of nitrogen per hectare per year (N/ha/year), rising to 8 kg-N/ha/year in 2035 and almost 10 kg-N/ha/year in 2060. Using this progression, the draft PEIR uses an estimate of 8.25 kg-N/ha/year as the expected amount of deposition in 2040. The relative proportion of this material attributable to sources within the City is estimated to be 38% in 2035. The draft PEIR acknowledges that this is a potentially significant impact.

The City proposes to mitigate these impacts by finalizing the draft Santa Clara Valley Habitat Plan (SCVHP), a joint HCCP/NCCP, whereby implementing the area wide conservation strategy associated with the SCVHP draft PEIR Action ER-2.9. If the SCVHP is not adopted, the City would in turn develop a comparable plan which the City will implement draft PEIR Action ER-2.10. The City states that this action will occur only if City resources allow. The draft PEIR Impact BIO-2 states that, while it is the City's intention to address indirect impacts to serpentine habitats through implementation of either draft PEIR ER-2.9 or ER-2.10, no assurances will be provided that ensures that the City would be able to accomplish this level of mitigation.

DFG is concerned that this would cause the City to adopt a Findings of Overriding Consideration (CEQA Guidelines 15093) without also adopting all feasible measures to substantially lessen the significant impact. In order to determine that the mitigation measures were infeasible, the City would have to provide substantial evidence that specific economic, legal, social, technological, or other considerations would make it infeasible. The draft SCVHP identifies feasible mitigation that can be implemented.

Under CEQA, public agencies may not approve projects that result in significant impacts without first adopting feasible mitigation measures or alternatives that will substantially lessen or avoid such effects (PRC Section 21002). Likewise, a public agency may not move to utilize CEQA Guidelines 15093 without first considering and adopting all feasible measures to substantially lessen or avoid significant impacts. Using these standards, the City should propose an alternative course of action consistent with the draft SCVHP methods to ensure all feasible mitigation (other than draft PEIR Action ER-2.9 or ER 2.10) prior to pursuing Findings of Overriding Consideration for indirect impacts to serpentine habitats.

Burrowing Owl

The Final PEIR should both identify potential burrowing owl impacts and identify proposed proportional burrowing owl mitigations. DFG recommends that any mitigations be consistent with the draft Burrowing Owl Conservation Strategy developed for the SCVHP.

Nesting burrowing owls in the South Bay Area are in critical decline. In the early 1990s there were an estimated 150-170 breeding pairs in the San Francisco Bay Area. These numbers represented a 53% decline from the previous period of 1986 to 1990. In those estimates it was assumed that 75% of the burrowing owl population occurred in Santa Clara County and nearly all of those burrowing owls were congregated around the southern edge of the San Francisco Bay. Surveys in the early 1990s revealed that about a third (43 to 47 burrowing owl pairs) of Santa Clara County breeding pairs occurred inside what is now the draft SCVHP study area.

Currently, the largest burrowing owl colony in the Bay Area is at Norman Mineta International Airport, with considerably smaller colonies at Shoreline Park in Mountain View and the NASA Ames Research Facility Field in Sunnyvale. There are scattered burrowing owl pairs at other locations concentrated in the north San Jose and Alviso planning areas, and the species is at significant risk of extirpation in Santa Clara County. Accordingly, any impacts to burrowing owl burrows or burrowing owl foraging habitat occurring as a result of activities evaluated in the draft PEIR should be considered significant or potentially significant.

There should be a significant discussion of the burrowing owl current status, burrowing owl potential impacts and appropriate burrowing owl mitigations. The majority of burrowing owls in Santa Clara County are in areas under City jurisdiction and this area also has burrowing owl mitigation opportunities. The draft PEIR Chapter 3.5 should be amended to include significant discussion of current burrowing owl baseline in the region and particularly within those areas under City jurisdiction.

Coyote Valley Connectivity

The draft PEIR, acknowledges that Coyote Valley is an important cross-valley wildlife corridor situated between the Diablo Range and Santa Cruz Mountains. The draft PEIR recognizes that this is the remaining opportunity for connectivity between the San Francisco Bay and the Pajaro River area.

The draft PEIR notes that existing impediments, such as the median barrier on Monterey Highway, and future development, particularly along Bailey Avenue, combined with road widening and increased traffic will further degrade the ability of the area to provide for wildlife corridor connectivity. The draft PEIR concludes that this would be a substantial impact. DFG recommends that the City incorporate wildlife passage into the roadway design.

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City Trees

DFG recommends that the City include protective measures for nesting birds in maintenance or removal of urban and Heritage trees. Between February 1 and August 31, birds can be found nesting in urban trees. Removal or trimming of trees during this period could result in destruction of active nests (Fish and Game Code, sections 3503 and 3503.5). A qualified biologist should survey tree(s) for active nests prior to work occurring and, if nesting is documented, observe the nest until the young have fledged or are no longer dependent on the nest site, after which the tree work would proceed.

We commend the City for including a policy to prohibit planting of London Plane trees in the Coyote planning area so to avoid hybridization with native Western Sycamore trees. DFG recommends that the City encourage, as much as possible, landscaping with native trees and shrubbery within the urban city setting. Also, making use of native plants will reduce the need for watering.

DFG appreciates the opportunity to comment on the draft PEIR and we are available to work with the City to revise the draft PEIR. If you have any questions or comments please contact Mr. Dave Johnston, Environmental Scientist, at (831) 464-6870; or Mr. Liam Davis, Senior Environmental Scientist, at (707) 944-5529.

Sincerely,

Handwritten signature in blue ink that reads "Carl Wilcox For".

Carl Wilcox
Regional Manager
Bay Delta Region

cc: State Clearinghouse

U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825
Attn: Ryan Olah, Cori Mustin, Joseph Terry

Ken Schreiber
County of Santa Clara
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110