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DEPARTMENT OF FISH AND WILDLIFE

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March 20, 2026

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**Subject: Bay Area Vipassana Center Project, Draft Environmental Impact Report, SCH No. 2024030083; Santa Clara County**

Dear Lara Tran:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from the County of Santa Clara (County) for the Bay Area Vipassana Center Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the draft EIR to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and G. Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

**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.) 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 over the Project pursuant to the Fish and Game Code. For example, the

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Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

A CESA Incidental Take Permit (ITP) must be obtained from CDFW if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, "take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish & G. Code, § 86.) CDFW's issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

### **California Environmental Quality Act**

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the lead agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the lead agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent's obligation to comply with the Fish and Game Code.

### **Lake and Streambed Alteration**

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement

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until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

### **Migratory Birds and Raptors**

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **PROJECT DESCRIPTION AND LOCATION SUMMARY**

**Proponent:** County of Santa Clara

**Objective:** The Project is a camp and retreat center for teaching and practicing Vipassana meditation. The Project proposes to construct 18 structures totaling 53,260 square feet, demolish an accessory structure (barn), and install on-site improvements including a new 97,000-gallon water tank, driveway, access road, parking lot, new landscaping, sewage collection lines, septic tanks, effluent collection lines, wastewater treatment system (circulating textile filter system), pressure delivery effluent pipelines, pump stations, and subsurface drip irrigation. The total footprint of the Project would be approximately 10 acres in clusters, mostly along the eastern half of the 54.59-acre site. Project construction would take 6 years (72 months) and would occur over five phases.

**Location:** GPS Latitude: 37°1'32.5"N, Longitude: 121°39'31.17"W; Cross streets of Redwood Retreat Road and El Matador Drive in the City of Gilroy, in the County of Santa Clara, California; Associated Parcel Number (APN) 756-30-024.

**Timeframe:** Approximately 72 months

## **ENVIRONMENTAL SETTING**

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the draft EIR (CEQA Guidelines, §§ 15125 & 15360). **CDFW recommends the draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, and endangered species (CEQA Guidelines, §15380).** The draft EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20co>

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[mmunities](#)), and any stream, riparian, or wetland set back distances the County may require. Fully protected, threatened or endangered, candidate, and other special-status species or sensitive natural communities that are known to occur, or have the potential to occur in or near the Project area include, but are not limited to: the species listed in the State and Federally Listed Endangered and Threatened Animals of California – February 2026 list at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109405&inline> or State and Federally Listed Endangered, Threatened, and Rare Plants of California – January 2026 at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109390&inline>.

Habitat descriptions and species profiles included in the draft EIR should include robust information from multiple sources: aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Only with sufficient data and information can the County adequately assess which special-status species are likely to occur in the Project vicinity.

**CDFW recommends surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available.** Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

## **IMPACT ANALYSIS AND MITIGATION MEASURES**

The CEQA Guidelines (§15126.2) necessitate the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Potential for impacts to fully protected and special-status species;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence;
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

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- Water quality impacts resulting from construction and operation of the Project;
- Impacts to the bed, channel, and bank, in the reservoirs and creeks downstream of the Project;
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Impacts both from construction and future operation of the Project.

The CEQA document also should identify existing and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to each impact (CEQA Guidelines, § 15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g., reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the County, as the lead agency, to consider and describe in the draft EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370.) This should include a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the USFWS, the National Marine Fisheries Service and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species may not be taken or possessed at any time except in limited circumstances (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Therefore, the draft EIR should include measures to completely avoid "take" of fully protected species.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations 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, including:

### **COMMENT 1: Inadequate and Outdated Baseline Conditions for Biological Resources**

**Issue:** The draft EIR does not establish complete and current biological baseline conditions for the Project area. The biological analysis relies heavily on desktop database queries and a single outdated (2021) reconnaissance-level general survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period. Assessments for rare

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plants may be considered valid for a period of up to three years, except when significant environmental changes occur, such as disturbance resulting from urbanization or wildfire. As a result, the draft EIR lacks sufficient information to accurately characterize existing biological conditions or to support impact significance determinations.

**Evidence of Significant Impacts:** Because many species are cryptic or only seasonally detectable, their presence can be missed by a one-time, non-protocol survey, especially if conducted outside of the correct window. Inconsistent survey methodologies and the absence of County- or agency-level verification increase the risk that projects do not adequately account for impacts to sensitive biological resources. CEQA Guidelines §15125(a) require an EIR to describe the environmental setting “as it exists at the time the notice of preparation is published,” and this description forms the baseline against which project impacts are measured. A legally adequate baseline must be based on current, site-specific information sufficient to inform both the impact analysis and the public’s understanding of the Project’s environmental consequences. Without a reliable baseline, an EIR cannot meaningfully evaluate whether a project would result in a substantial adverse change to biological resources (CEQA Guidelines §15126.2(a); Appendix G).

The absence of current baseline surveys is problematic where the Project proposes direct disturbance to streams, riparian habitat, and upland areas capable of supporting special-status species. Numerous studies demonstrate that species presence and habitat use can vary substantially across seasons and years, particularly for amphibians, bats, nesting birds, and annual or cryptic plant species. Without updated, seasonally-appropriate surveys, the EIR may incorrectly assume species absence or underestimate habitat value, leading to flawed impact conclusions (Li et al. 2019; Ranta et al. 2021). Without a current and complete biological baseline, the draft EIR risks underestimating impacts to biological resources and improperly deferring analysis to future permitting.

**Recommendations:** To address these deficiencies, CDFW recommends the following:

1. A qualified biologist with expertise in regional flora and fauna conduct protocol-level surveys for species with potential to be present in and around the Project area, consistent with CDFW and USFWS survey protocols during appropriate seasonal windows, including nocturnal and breeding-season surveys where relevant.
2. If Project construction or occupancy could occur over multiple years or phases, updated biological surveys need to be conducted prior to each phase of ground-disturbing activities to ensure baseline conditions remain accurate.
3. Update impact significance determinations and mitigation measures based on the results of current baseline surveys. If updated data reveal greater biological value or species presence, the draft EIR should revise conclusions and incorporate additional avoidance, minimization, or mitigation measures as necessary.

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4. Ensure that baseline conditions are established and disclosed in the draft EIR itself, rather than deferred to future permitting or construction-phase compliance.

## **COMMENT 2: Long-Term Lighting, Noise, and Human Disturbance Impacts**

**Issue:** The draft EIR identifies lighting and noise as potential impacts to biological resources but mostly evaluates these impacts primarily in the context of temporary construction activities. The analysis does not adequately consider the permanent, operational effects associated with the proposed commercial development, including continuous human presence, routine nighttime lighting, vehicular traffic, domestic noise, recreational activity, and long-term alteration of ambient sound and light conditions. The Project would likely introduce chronic sources of disturbance that would persist for the life of the development, fundamentally changing habitat conditions adjacent to riparian corridors and other sensitive biological areas. Even though construction of the Project is expected to take 6 years, the draft EIR does not establish biologically relevant thresholds, buffer-based protections, or operational restrictions to ensure that short-term and long-term lighting and noise impacts would not substantially degrade wildlife habitat or interfere with species movement, breeding, or foraging behavior.

**Evidence of Impacts:** Sensitive species, wildlife, and their habitats may be adversely affected by increased and artificial night lighting, even temporarily due to night construction activities. Light plays a vital role in ecosystems by functioning as both an energy and an information source (Gaston et al. 2012, 2013). The addition of artificial light into a landscape disrupts this role, altering the natural circadian, lunar, and seasonal cycles under which species have evolved. Artificial lights result in direct illumination, altering the natural patterns of light and dark, and sky glow (i.e., scattered light in the atmosphere), which can extend the ecological impacts of light far beyond the light source (Longcore and Rich 2004). On cloudy nights in urban areas, for example, the sky glow effect can be of an equivalent or greater magnitude than high-elevation summer moonlight (Kyba et al. 2013). The addition of artificial light into a landscape can impact a broad range of system processes, including:

- Activity patterns;
- Availability and detectability of food resources;
- Movement, navigation and migration;
- The timing of phenological events;
- Physiological functions;
- Foraging behavior and predator-prey interactions;
- Phototaxis (attraction and movement towards light);

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- Circadian rhythms (both physiological and behavioral); and
- Causing disorientation, entrapment, and temporary blindness.

Noise pollution can also trigger stress responses in wildlife, interfere with acoustic communication (particularly in birds and amphibians), and displace species from otherwise suitable habitat (Francis et al., 2012). Studies have shown that even chronic noise levels of 40–60 dBA can alter nesting success in birds and reduce habitat use by amphibians and mammals (Barber et al., 2010; Shannon et al., 2016). Despite these well-documented impacts, the draft EIR also does not clearly define riparian buffers as protection zones from light or noise. It also does not require mitigation for disturbance beyond generic equipment limitations. Without stronger design and timing standards, lighting and noise impacts will reduce the effectiveness of riparian setbacks and fragment wildlife corridors.

Under CEQA Guidelines § 15126.2(a), the EIR must analyze all significant environmental effects, including those that are indirect or cumulative. Furthermore, Appendix G of the CEQA Guidelines requires evaluation of whether a project would interfere with wildlife movement, nursery sites, or result in habitat degradation through indirect disturbance such as noise or light.

**Recommendations:** To adequately address long-term biological impacts associated with residential occupancy, the EIR should be revised to include the following measures:

1. Designate riparian setbacks as light and noise protection zones. No permanent or temporary lighting or noise-generating activity shall be permitted within 150 feet of perennial streams and 100 feet of intermittent streams unless expressly designed and mitigated for wildlife sensitivity;
2. Establish operational noise limits based on sensitive receptor criteria. Instead of a decibel threshold across the board, adopt biologically informed criteria such as 45 dBA max at the riparian buffer edge during nighttime hours. Nighttime equipment uses (e.g., generators, trimming machines) should be located as far as possible from aquatic or nesting habitats and use noise attenuation measures;
3. Adopt enforceable operational lighting standards for developed areas. Require fully shielded, downward-facing, warm-spectrum (less than 3000K) exterior lighting; prohibit decorative or landscape lighting adjacent to riparian areas; and limit lighting to motion-activated, security-only use during nighttime hours;
4. Restrict nighttime human activity near sensitive habitats. Prohibit nighttime recreational uses, amplified sound, or high-activity features (e.g., gathering areas) adjacent to riparian corridors or known sensitive species habitat;
5. Incorporate long-term monitoring and adaptive management. After the residential development is constructed, monitoring of light and noise conditions should be

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required adjacent to riparian areas, with enforceable corrective actions if thresholds are exceeded or wildlife use declines; and

6. If disturbance cannot be mitigated to less-than-significant levels, the draft EIR must acknowledge and disclose unavoidable impacts to biological resources and consider additional avoidance or project redesign.

### **COMMENT 3: Exterior Windows**

**Issue:** The glass used for exterior building windows could result in bird collisions, which can cause bird injury and mortality.

**Evidence the impact would be significant:** Birds, typically, do not see clear or reflective glass, and can collide with glass (e.g., windows) that reflect surrounding landscape and/or habitat features (Klem and Saenger 2013). When birds collide with glass, they can be injured or killed. In the United States, the estimated annual bird mortality is between 365-988 million birds (Loss et al. 2014).

**Recommendations to minimize significant impacts:** CDFW recommends incorporating visual signals or cues to exterior windows to prevent bird collisions. Visual signals or cues include, but are not limited to, patterns to break up reflective areas, external window films and coverings, ultraviolet patterned glass, and screens. For best practices on how to reduce bird collisions with windows, please go to the USFWS's website for Buildings and Glass (<https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds/collisions/buildings-and-glass.php>).

### **COMMENT 4: Lake and Streambed Alteration Notification**

**Issue:** The draft EIR notes that "the Project would avoid the jurisdictional aquatic habitat and no development would take place within 50 feet of the ephemeral creek." However, areas "50 feet from the ephemeral creek" could contain riparian habitat, which would likely fall under CDFW's jurisdiction. A jurisdictional delineation by a qualified professional of streams and riparian areas was not included with the draft EIR package. CDFW requires an LSA Agreement when a project activity may substantially adversely affect fish and wildlife resources. LSA Agreements provide actions to avoid and minimize adverse impacts and provide protections to California's fish and wildlife resources. It appears that CDFW does not currently have a record of LSA notification on file for this Project.

**Recommendations:** In order to properly assess biological and hydrological impacts, streams and riparian habitat should be delineated in relation to areas that the Project has the potential to impact. CDFW recommends the Applicant submit an LSA notification for the Project pursuant to Fish and Game Code section 1602 well in advance of Project construction. Additional information about the LSA notification process is described on CDFW's website at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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## 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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the County in identifying and mitigating Project impacts on biological resources. Please contact Emily Carlson, Environmental Scientist, at [Emily.Carlson@wildlife.ca.gov](mailto:Emily.Carlson@wildlife.ca.gov); or Jason Faridi, Senior Environmental Scientist (Supervisory, at [Jason.Faridi@wildlife.ca.gov](mailto:Jason.Faridi@wildlife.ca.gov) if you have questions.

Sincerely,

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