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January 14, 2026

Rebecca Bustos, Senior Planner
 City of Santa Clara
 1500 Warburton Avenue
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Subject: El Camino Real Specific Plan, Draft Environmental Impact Report,
 SCH No. 2025010508, Santa Clara County

Dear Ms. Bustos:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from the City of Santa Clara (City) for the El Camino Real Specific Plan (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

CDFW is submitting comments on the draft EIR to inform the City, 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 Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of

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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. Findings of consideration 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

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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 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 (MBTA).

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: City of Santa Clara

Objective: The City proposes a Specific Plan to transform the El Camino Real Focus Area from a series of automobile-oriented strip malls to a tree-lined, pedestrian and transit-oriented corridor with a mix of residential and retail uses. The purpose of the Specific Plan is to refine and implement the General Plan vision for the area by creating goals, policies, and design standards for future development within the Plan boundary. The Plan provides a comprehensive vision for the Plan area along with goals, policies, strategies and development standards to guide the Plan area's future growth in an equitable manner than benefits the community. Build out associated with the proposed Specific Plan over the next 20 to 30 years (2055) would include the development of 4,392 housing units, as well as a reduction of approximately 289,000 square feet (ft) of commercial space.

Location: GPS Latitude: 37°21'10.5"N, Longitude: 121°58'28.2"W; Cross streets of El Camino Real between Lafayette Street on the east and the City limits on the west in the City of Santa Clara, in the County of Santa Clara, California.

Timeframe: Through 2055

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-**

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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%20communities>), and any stream, riparian, or wetland set back distances the City 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 **Attachment A**.

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 (CNDDB). Only with sufficient data and information can the City 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;

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- 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;
- 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 City, 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.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources, including:

COMMENT 1: Migratory Birds and Nesting Raptors

Issue: The draft EIR acknowledges there is foraging bird habitat and potential nesting habitat on the Project site that may be impacted by Project disturbance. The draft EIR indicates site disturbance may occur during the nesting bird season (February 1 through August 31). Avoidance and minimization measure BIO-1 specifies a Qualified Biologist shall conduct a habitat assessment and pre-construction nesting bird and ground nesting species no more than fourteen (14) days prior to initiation of work and that "if an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, would determine the extent of a construction-free buffer zone to be established around the nest, typically 250 ft, to ensure that raptor or migratory bird nests would not be disturbed during project construction." CDFW has additional recommendations related to Qualified Biologist authority and raptor behavior, as the draft EIR allows construction and vegetation removal to occur with relatively small nest buffers for raptor bird species. These buffers are not biologically protective for many species and risk nest abandonment, reduced productivity, and unlawful "take" under California Fish & Game Code and the federal MBTA.

Evidence that the impact would be significant: Raptors are highly sensitive to human disturbance during courtship, incubation, and fledging. Repeated flushes and noise/activity near nests are linked to lower nesting success. Spatial and temporal buffers are necessary to prevent disturbance, and effective distances vary by species and site conditions, often exceeding a few hundred ft (Richardson and Miller 1997). CDFW emphasizes that all raptors are protected under state law (Fish & G Code §§3503, 3503.5, 3513) and inadequate buffers that cause nest failure or harassment would constitute a significant impact and potential violation (CDFW 2019). Additional raptor research underscores that buffer-setting should account for species traits and local visibility/line-of-sight; conservative distances and seasonal restrictions reduce disturbance risk (White et al. 2022).

Recommendations: The City should revise the draft EIR's mitigation to adopt species-specific, seasonally appropriate, and enforceable measures, including:

1. **Minimum no-disturbance buffers:** General raptors should have a buffer greater than or equal to 500 ft with direct line-of-sight, which may only be reduced with

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screening and Qualified Biologist approval (Richardson and Miller 1997). For species like Swainson's hawk (*Buteo swainsoni*), there should be at least a 0.5-mile buffer until fledging is confirmed by a Qualified Biologist (CDFW 2000);

2. **Protocol surveys & timing:** Conduct protocol-level raptor surveys within at least 1,000 ft of disturbance footprint before any work during nesting season;
3. **Seasonal work windows:** Schedule tree removal and high-noise activities outside the nesting season where feasible; if not feasible, implement full buffers and monitoring (Richardson and Miller 1997); and
4. **Regulatory coordination:** Consult with CDFW/USFWS when active raptor nests are within buffer zones.

COMMENT 2: Lacking Baseline Conditions

Issue: Section 3.4 of the draft EIR does not establish a comprehensive, site-specific biological baseline for the Project area's aquatic and riparian resources. Instead, it relies on broad descriptions of land use and generalized expectations of low biological value due to urbanization rather than detailed, field-verified characterization of existing conditions.

Evidence of Impacts: CEQA Guidelines § 15125(a) requires an EIR to describe existing physical environmental conditions "in the vicinity of the project...as they exist at the time the notice of preparation is published." This is the environmental setting that normally constitutes the baseline against which impacts are measured. A baseline provides sufficient information to support the impact analysis and allows the public and decision-makers to understand the project's effects. Without such a baseline, the impacts cannot be sufficiently quantified or evaluated. Without documented pre-project conditions, it is difficult to assess whether observed changes after the Project is completed are attributable to the Project itself or to pre-existing conditions. This concept underlies surveys and monitoring programs (USEPA 2015).

For example, without biological surveys provided to support claims of baseline conditions, the draft EIR states "the creek corridors have limited riparian habitat value." Contrary to assumptions that urbanized or degraded stream corridors lack biological value, research shows urban streams can still support diverse aquatic and terrestrial species, and provide ecological functions such as habitat provision, nutrient cycling, and connectivity (Ranta et al. 2021). Urban stream ecosystems can contribute to regional biodiversity and ecosystem services. Baseline habitat mapping, combined with species occurrence data from field surveys, allows for identification of critical features (e.g., riparian vegetation, special-status species habitat, connectivity corridors) and informs which species or might be vulnerable. Therefore, in urban landscapes, absent baseline

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data can potentially lead to false assumptions about value or absence of ecological resources (Li et al. 2019).

Without knowing the existing condition of streams, riparian corridors, and associated fish and wildlife resources, the draft EIR does not adequately determine how specific Project actions will alter habitat extent, quality, or function. Lacking baseline biological surveys, the EIR may assume little or no change where notable ecological functions currently exist.

Recommendations: CDFW recommends a qualified biologist with a relevant background and knowledge of biological and hydrological features in Santa Clara County delineate riparian vegetation, streams, and other aquatic features in the Project area. Additionally, the qualified biologist shall conduct biological field surveys and consult existing data (e.g., CNDDDB, USGS Maps, etc.) to generate a baseline for the Project area.

COMMENT 3: Light Pollution

Issue: The Project has potential to generate sources of light in urban areas near streams and wildlife connectivity corridors. This includes a potential increase in development intensity (height, density, mixed-use activity), expanded nighttime activity (commercial uses, residences, active transportation), and the addition or intensification of building-mounted lighting, street and pathway lighting, parking lot lighting, and security lighting. Artificial lighting and light pollution have the potential to cause significant impacts to rare, threatened, endangered, and nocturnal wildlife and migratory birds. Light pollution impacts can disrupt routine behavior of the species life cycle, degrade the quality of the environment utilized by said species and can substantially reduce the number of individuals.

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.

Recommendations: CDFW recommends the following set of criteria of types of lighting that may be used on-site:

- The EIR should include a robust analysis of potential impacts to special-status and listed species from lighting. Exclusion zones should incorporate lighting restrictions to avoid significant impacts to special-status and listed species;

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- Lighting should have maximum illumination levels near creeks and be turned off or dimmed during critical times of the year (e.g., migration) and during times of night that have the most significant impact on wildlife (i.e. dawn and dusk) (Gaston et al., 2012, 2013); and
- All lights should be disposed of properly, as many contain mercury and other toxins.

COMMENT 4: Program EIR Subsequent Project Review

The EIR is a Program EIR but does not include a checklist for subsequent Project review. While Program EIRs have a necessarily broad scope, CDFW recommends providing as much information related to anticipated future activities as possible. CDFW recognizes that, pursuant to CEQA Guidelines §15152, subdivision (c), if a Lead Agency is using the tiering process in connection with an EIR or large-scale planning approval, the development of detailed, site-specific information may not be feasible and can be deferred, in many instances, until such time as the Lead Agency prepares a future environmental document. This future environmental document would cover a Project of a more limited geographical scale and is appropriate if the deferred information does not prevent adequate identification of significant effects of the planning approval at hand. The CEQA Guidelines §15168, subdivision (c)(4) states, “Where the later activities involve site-specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR.” Based on CEQA Guidelines §15183.3 and associated Appendix N Checklist, and consistent with other program EIRs (e.g., California Vegetation Treatment Program Environmental Impact Report and associated checklist at <https://bof.fire.ca.gov/projects-and-programs/calvtp-homepage-and-storymap/#:~:text=The%20CalVTP%20Program%20Environmental%20Impact,with%20the%20CalVTP%20Program%20EIR> and <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fbof.fire.ca.gov%2Fmedia%2Fugbpmcuq%2Ftemplate-psa-checklist-508-compliant.dotx&wdOrigin=BROWSELINK>), CDFW recommends creating a procedure or checklist for evaluating subsequent Project impacts on biological resources to determine if they are within the scope of the Program EIR or if an additional environmental document is warranted. This checklist should be included as an attachment to the EIR. Future analysis should include all special-status species and sensitive habitat including, but not limited to species considered rare, threatened, or endangered species pursuant to CEQA Guidelines, §15380.

When used appropriately, the checklist should be accompanied by enough relevant information and reasonable inferences to support a “within the scope” of the EIR conclusion. For subsequent Project activities that may affect sensitive biological

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resources, a site-specific analysis should be prepared by a qualified biologist to provide the necessary supporting information. In addition, the checklist should cite the specific portions of the EIR, including page and section references, containing the analysis of the subsequent Project activities' significant effects and indicate whether it incorporates all applicable mitigation measures from the EIR.

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. 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. (See Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

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

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

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ec: Office of Land Use and Climate Innovation (SCH No. 2025010508)
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov

REFERENCES

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