

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE



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July 20, 2026

Adam Paszkowski, Planning Manager
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Subject: Morgan Hill Annexation and Urban Service Area Amendment Project, Draft Environmental Impact Report, SCH No. 2025101076, City of Morgan Hill, Santa Clara County

Dear Adam Paszkowski:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Morgan Hill (City) 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 proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed 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

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.

Adam Paszkowski, Planning Manager
City of Morgan Hill
July 20, 2026
Page 2

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 until it has considered the CEQA document 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 SUMMARY

Proponent: City of Morgan Hill

Objective: The proposed annexation and urban service area (USA) amendment sites are located within unincorporated Santa Clara County just outside of city limits and encompass four different areas: Rose Orchard Court annexation and USA amendment area (Assessor’s Parcel Number [APN] 773- 32-015 and 773-32-016); Butterfield Sports Park Expansion annexation and USA amendment area (817-06-001); Condit Sports Facilities Expansion Park annexation and USA amendment area (APNs 817-13-008 and 817-13-037); and APN 825-06-022 annexation and USA amendment parcel. The proposed project would consist of two annexations in which the sites described above would be grouped, referred to as the City Parks Annexations and the Rose Orchard Court Annexation.

Adam Paszkowski, Planning Manager
City of Morgan Hill
July 20, 2026
Page 3

Location: The Project is located across four different areas in the City of Morgan Hill in Santa Clara County. Assessor Parcel Numbers 773-32-015 and 773-32-016; 817-06-001;817-13-008 and 817-13-037; 825-06-022. GPS coordinates Rose Orchard: 37 07'52.33N; 121 40'39.01W Butterfield: 37 06'29.45N; 121 37'48.16W Condit: 37 07'33.95N; 121 37'30.38W.

Timeframe: TBD

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an EIR is appropriate for the Project.

COMMENT 1: Inadequate and Outdated Baseline Conditions for Special-Status Plant Species

Issue: The draft EIR does not establish complete biological baseline conditions for special-status plant species. The biological analysis relies heavily on desktop database queries and a single reconnaissance-level survey performed on September 30, 2025. As a result, the draft EIR lacks sufficient information to accurately determine if special-status plant species have potential to occur 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. The absence of current special-status plant 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 annual or cryptic plant species. Without seasonally appropriate surveys, the draft 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 floral species.

Recommendations: To address these deficiencies, the City should add the following mitigation measures to the draft EIR:

1. A qualified biologist with expertise in regional flora and fauna shall conduct protocol-level surveys for plant species with potential to be present in and around the Project area, consistent with CDFW and U.S. Fish and Wildlife Service 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 shall be conducted prior to each phase of ground-disturbing activities to ensure baseline conditions remain accurate.

COMMENT 2: Lake and Streambed Alteration Notification

Issue: The draft EIR notes that Project activities could impact Littles Llagas Creek. 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.

Adam Paszkowski, Planning Manager
City of Morgan Hill
July 20, 2026
Page 4

Recommendations: The City should 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>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

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

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed Emily Carlson, Environmental Scientist, at Emily.Carlson@wildlife.ca.gov; or Jason Faridi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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Regional Manager
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ec: Office of Land Use and Climate Innovation, State Clearinghouse (SCH No. 2025101076)
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Adam Paszkowski, Planning Manager
City of Morgan Hill
July 20, 2026
Page 5

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