

STATE OF CALIFORNIA  
DEPARTMENT OF FISH AND WILDLIFE



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September 14, 2026

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**Subject: De Anza College 2021-2026 Facilities Master Plan and Measure G Master Projects List, Mitigated Negative Declaration, SCH 2026080394, Santa Clara County**

Dear Ms. Sciacchitano:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Foothill-De Anza Community College District (District) for the De Anza College 2021-2026 Facilities Master Plan and Measure G Master Projects List (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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**

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<sup>1</sup> 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.

Roseanne Sciacchitano, Capital Construction Program Director  
Foothill–De Anza Community College District  
September 14, 2026  
Page 2

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 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 a Lake or Streambed Alteration (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 (MBTA).

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** Foothill-De Anza Community College District

**Objective:** The 2021-2026 Facilities Master Plan and Master Projects List serve as a guide for ongoing development and renovation of the 112-acre De Anza College campus. It includes construction of a new Creative Arts Building, either construction of a new Services for Students Building or renovations to existing spaces, various demolitions, renovations and replacements of multiple facilities, enhanced technology upgrades, updated utility infrastructure, and improved multi-modal circulation in and around campus. The maximum

Roseanne Sciacchitano, Capital Construction Program Director  
Foothill–De Anza Community College District  
September 14, 2026  
Page 3

proposed demolition is 86,000 square feet and the maximum proposed new construction is 50,000 square feet.

**Location:** The Project is located in the City of Cupertino in Santa Clara County, at the cross streets of Stevens Creek Boulevard, South Stelling Road; McClellan Road, Campus Drive. GPS coordinates 37°19'9"N, Longitude: 122°2'40.9"W. Associated Parcel Number (APN) 359-01-002 and 359-01-004.

**Timeframe:** 2021-2026

**COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the District 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 a biological resources, CDFW concludes that an MND is appropriate for the Project.

**COMMENT 1: Migratory Birds and Nesting Raptors**

**Issue:** The MND acknowledges there is foraging bird habitat and potential nesting habitat on the Project site that may be impacted by Project disturbance. The MND indicates site disturbance may occur during the nesting bird season (February 1 through August 31). Minimization Measure BIO-1 specifies a qualified biologist shall conduct a pre-construction nesting bird survey no more than fourteen (14) days of initiation of work “within 50 feet of the construction zone (250 feet for raptors). If active nests are found within the survey area, clearing and construction within 50 feet (100 feet for raptors) a suitable avoidance buffer will be determined by the qualified biologist based on species, location, and planned construction activity. CDFW has additional recommendations related to qualified biologist authority and bird and raptor behavior, as the MND allows construction activities to occur with undefined nest buffers. This is not biologically protective and risks nest abandonment, reduced productivity, and unlawful “take” under California Fish & Game Code and the federal MBTA.

**Evidence that the impact would be significant:** Bird and Raptor species 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 feet (Richardson and Miller 1997). CDFW emphasizes that most birds and all raptors are protected under state law (Fish & Game 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 District should revise the MND's mitigation measure BIO-1 to read as follows:

Mitigation Measure BIO-1: Pre-Construction Nesting Bird Surveys. When any individual project within the scope of the De Anza College 2021-2026 Facilities Master Plan and Measure G Master Projects List is undertaken, no earlier than 14 days and no later than 20 days prior to commencement of construction activities the removal of any trees that would occur during the nesting/breeding season of native bird species potentially nesting on the site (February 1 through August 31), a field survey would shall be conducted by a qualified biologist to determine if active nests of special-status birds or common bird species protected by the federal MBTA and/or the California Fish and Game Code, are present in the construction

Roseanne Sciacchitano, Capital Construction Program Director  
Foothill–De Anza Community College District  
September 14, 2026  
Page 4

zone or within 150 feet of the construction zone (500 feet for raptors). If active nests are found within the survey area, a suitable avoidance buffer will be determined by the qualified biologist based on species, location, and planned construction activity, as approved in consultation with CDFW. These nests shall be avoided until the chicks have fledged and the nests are no longer active as determined by the qualified biologist.

**COMMENT 2: Bats**

**Issue:** Mitigation Measure BIO-2 is not adequately protective to prevent potential impacts to bats resulting from tree removal and structural disturbance associated with the Project.

**Evidence of Impacts:** Bats are a sensitive species that rely on a variety of roosting features, including large trees with cavities or exfoliating bark, crevices in bridges and buildings, and other structural voids. Many bat species exhibit strong seasonal variation in roost use, shifting between maternity roosts, day roosts, night roosts, and hibernacula depending on time of year. Removal or disturbance of roosting habitat during critical life stages, such as maternity season, can result in direct mortality, abandonment of young, or long-term population declines (Kunz and Lumsden 2003; Cryan and Barclay 2009). Maternity colonies, which are typically present during late spring and summer, are especially vulnerable because females give birth to non-volant young that cannot escape disturbance or habitat removal (Kunz and Fenton 2005). Disturbance of maternity roosts is widely recognized as a significant impact because reproductive success in bats is low, with most species producing only one pup per year.

**Recommendations:** CDFW recommends Mitigation Measure BIO-2 read as follows:

Mitigation Measure BIO-2: Pre-construction Survey for Roosting Bats. When any individual project within the scope of the De Anza College 2021-2026 Facilities Master Plan and Measure G Master Projects List is undertaken, a pre-construction bat survey shall be performed by a qualified biologist (i.e., a biologist with several years' experience performing roosting bat surveys, capable of identifying signs of roosting such as urine stains and guano piles) no earlier than 14 days prior to the onset of construction to determine if roosting bats or maternity colonies exist in or within 150 feet of the development footprint. If roosting bats are detected, the qualified biologist shall consult with the CDFW to identify appropriate measures to avoid/minimize impacts to the species, which can include approval to passively exclude any bats found on the project site during the non-roosting season. If a maternity roost is identified on the project site, an appropriate buffer (at least 150 feet) in which no construction activity may occur shall be determined by the qualified biologist and the roost shall be avoided until the young have fledged.

**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

Roseanne Sciacchitano, Capital Construction Program Director  
Foothill–De Anza Community College District  
September 14, 2026  
Page 5

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 MND to assist the District 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](mailto:Emily.Carlson@wildlife.ca.gov); or Jason Faridi, Senior Environmental Scientist (Supervisory), [Jason.Faridi@wildlife.ca.gov](mailto:Jason.Faridi@wildlife.ca.gov).

Sincerely,

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*Erin Chappell*  
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Bay Delta Region

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Office of Land Use and Climate Innovation, State Clearinghouse (SCH No. 2026080394)

REFERENCES

California Department of Fish and Wildlife (CDFW). 2019. *Fish and Game Code §§3503, 3503.5, 3513 – Protection of Birds and Raptors*. Sacramento, CA.

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