

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE



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October 8, 2026

Adam Paszkowski, Planning Manager
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13777 Fruitvale Avenue
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Adam.Paszkowski@morganhill.ca.gov

Subject: 15295 Monterey Road General Plan Amendment and Rezone Project, Mitigated Negative Declaration, SCH No. 2026090442, City of Morgan Hill, Santa Clara County

Dear Mr. Paszkowski:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Morgan Hill (City) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of the Draft Environmental Impact Report (EIR).

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

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.

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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 a 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 project would involve a General Plan Amendment (GPA) and Rezone (RZ) to modify the existing land use and zoning designations of the project site. The proposed GPA would change the General Plan land use designation from Commercial to Mixed Use Flex and the proposed RZ would change the zoning from General Commercial to Mixed Use Flex (MU-F). The project as proposed does not involve construction or other physical changes; the project applicant has only applied for the GPA and RZ and has not submitted an application for a specific project. The Draft Initial Study MND analyzes the

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environmental impacts of full potential buildout under the proposed MU-F designation, anticipating that a future project could be submitted under density bonus provisions for a density bonus of up to 100 percent, which could result in the construction of up to 240 residential units in buildings up to 70 feet or six stories tall.

Location: The Project site is located at the cross streets of Monterey Road and Watsonville Road in the City of Morgan Hill, Santa Clara County, California. Longitude 37°6'21.18"N, Latitude 121°37'59.45"W. Associate Parcel Number (APN) 779-04-072.

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: Lake and Streambed Alteration Notification

Issue: The MND notes that there are “vegetated swales” on the Project site that are “unlikely to qualify as jurisdictional wetlands or waters under the Clean Water Act (CWA); however, a formal aquatic resources delineation would be required to confirm the absence of jurisdictional wetlands.” 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: Because an aquatic resources delineation has not been performed and it has not been confirmed that these swales are not in fact tributaries, 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>.

COMMENT 2: 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 U.S. Fish and Wildlife Service’s website for Buildings and Glass (<https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds/collisions/buildings-and-glass.php>).

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ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 MND to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to 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:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

ec: Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov
Office of Land Use and Climate Innovation, State Clearinghouse (SCH No. 2026090442)

REFERENCES

Botelho, E. S. and P. C. Arrowood. 1996. Nesting Success of Western Burrowing Owls in Natural and Human-Altered Environments. Pages 61–68 in D. M. Bird, D. E. Varland, and J. J. Negro, editors, Raptors in Human Landscapes. Academic Press, San Diego, California.

California Natural Resources Agency. 2023. *California Environmental Quality Act statutes and guidelines*. California Natural Resources Agency, Sacramento, California.

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation. California Natural Resources Agency, Sacramento, California.

Catlin, D. H., D. K. Rosenberg, and K. L. Haley. 2005. The Effects of Nesting Success and Mate Fidelity on Breeding Dispersal in Burrowing Owls. *Canadian Journal of Zoology* 83(12):1574–1580.

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Catlin, D. H. and D. K. Rosenberg. 2006. Nest Destruction Associated with Mortality and Dispersal of Burrowing Owls in the Imperial Valley, California. *The Southwestern Naturalist* 51(3):406–409.

Holroyd, G. L., R. Rodríguez-Estrella, and S. R. Sheffield. 2001. Conservation of the Burrowing Owl in Western North America: Issues, Challenges, and Recommendations. *Journal of Raptor Research* 35(4):399–407.

Klem, D. and P. G. Saenger. 2013. Evaluating the Effectiveness of Select Visual Signals to Prevent Bird-window Collisions. *The Wilson Journal of Ornithology* 125(2):406-411.

Li, H., J. Peng, Y. Liu, and Y. Hu. 2019. Urbanization impact on landscape patterns and ecosystem services. *Ecological Indicators* 101: 1–9.

Loss, S.R., T. Will, S.S. Loss, and P.P. Marra. 2014. Bird-building collisions in the United States: estimates of annual mortality and species vulnerability. *Condor* 116: 8-23.