



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 8, 2019

Governor's Office of Planning & Research

AUG 09 2019

STATE CLEARINGHOUSE

Mr. Ken Strelor, Principal Planner
City of Oakley
3231 Main Street
Oakley, CA 94561
strelor@ci.oakley.ca.us

Subject: The Vines at Oakley (Subdivision 9507), Mitigated Negative Declaration, SCH #2019079061, City of Oakley, Contra Costa County

Dear Mr. Strelor:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the City of Oakley (City) for The Vines at Oakley (Project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND 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 Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting 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, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Oakley

Description and Location: The Project site is located at 2371 Oakley Road in the City of Oakley, Contra Costa County, California. The Project site is bounded by large-parcel residential uses to the west, Oakley Road to the north, an existing single-family neighborhood to the east, and Holly Oak Park and a single-family residential neighborhood to the south. The Project is proposing to rezone and subdivide the site to allow the development of 63 residential lots, streets, and a bioretention area.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below 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.

Swainson's Hawk (*Buteo swainsoni*)

CDFW recommends that a qualified biologist conduct surveys prior to any construction activities that may impact Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted: 1) within a minimum 0.25-mile radius of the Project area or a larger area if necessary to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology.

Migratory and Nesting Birds

Avoidance and minimization measure *MM BIO-2* (page 47) specifies a 300-foot non-disturbance radius around an active raptor nest and a 50-foot non-disturbance radius around an active migratory bird nest. Depending on the species, nest stage, and site conditions, 50 to 300 feet may not be sufficient to prevent disturbance-related nest failure. If nests are found in or near the Project area, CDFW can provide guidance on establishing appropriate buffers to minimize the potential for take and to reduce potential impacts to less-than-significant. As such, CDFW recommends *MM BIO-2* be revised to require nest buffer approval from the State's trustee for fish and wildlife (CDFW) **prior** to the start of Project construction.

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions

Mr. Ken Strelow
August 8, 2019
Page 3

into the final CEQA document for the Project. 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 Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or Jennifer.Rippert@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse