



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

July 10, 2020

Jul 10 2020

STATE CLEARINGHOUSE

Ms. Dara O'Byrne
City of Oakland, Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612
dobyrne@oaklandca.gov

Subject: Viewcrest Townhouses Project, Notice of Preparation of a Draft
Environmental Impact Report, PLN18407-ER01, SCH 2020060362,
City of Oakland, Alameda County

Dear Ms. O'Byrne:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the Viewcrest Townhouses Project (Project) in the City of Oakland, Alameda County.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (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 permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained 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. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a 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.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the

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CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

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 [or Incidental Take Permit (ITP)] until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION AND LOCATION

The Project site is assigned Assessor's Parcel Number 37A-3151-2-5. It is located off of Campus Drive between Viewcrest Drive and Rockingham Court, in a single-family residential area on the eastern hillsides of the City of Oakland in Alameda County.

The proposed Project would develop 2.5 acres of the 20-acre Project site. The proposed Project is a Planned Unit Development and would substantially grade the 2.5-acre area for 19 residential townhouses and associated utilities and one access roadway meeting the City of Oakland's street standards. The townhouses would be built into the hillside and range from three to four levels with various designs. Access to the townhouses would occur via a new on-site roadway with a cul-de-sac accessed from Campus Drive. The remaining 17.5 acres would remain as open space to be potentially maintained by the future Homeowner's Association or an alternative mitigation entity, depending on the results of the EIR.

ENVIRONMENTAL SETTING

The Project site is a 20-acre parcel located on a sloped hillside and is currently undeveloped, covered in grassland and scrub habitat. It is bordered by Merritt Community College to the north across Campus Drive, single-family homes to the east along Campus Drive, condominiums of the Monte Vista Villas Homeowner's Association to the south, and single-family homes on Viewcrest Drive to the west.

The Project site is within the approximately 387-acre Chimes Creek watershed. The watershed is composed of variable clay loams, silty clay loams, and clay soil types of the Xerorthents group (BH, 2003). The upper Chimes Creek watershed is dominated by the Leona Quarry (est. 1900s) and contains steep (>30%) shallow soils that can

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produce high run-off to urban channels below. The lower Chimes Creek watershed consists of dense residential neighborhoods and highly impervious surface cover on gradual slopes (<30%) (Questa 2009).

According to the Creek and Watershed Map of Oakland (Sowers and Richard 2009) the headwaters of Chimes Creek historically originated at Viewcrest Drive, but have since been culverted and/or engineered although a portion of the historic channel on or near the Project site may remain.

COMMENTS

The NOP does not provide details on the footprint of the proposed Project, so CDFW recommends that the draft EIR analyze all potential impacts to sensitive habitat types (e.g. grassland, riparian, forested and brush) and special-status species that could be present at the Project site. Special-status species that are known to or suspected to occur at or near this site include but not limited to, the State and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*). If take of Alameda whipsnake cannot be completely avoided, CDFW recommends that the Project proponent obtain take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Section 2081(b).

Please be advised that the Fish and Game Commission recently accepted the mountain lion (*Felis concolor*) Central Coast North Evolutionarily Significant Unit as a State candidate for listing as threatened under CESA. CDFW recommends avoiding impacts to areas that provide habitat for mountain lion and other sensitive species.

Special-Status Plants

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities," which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

If a State-listed or state Rare¹ plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code, CESA and the Native Plant Protection Act.

¹ In this context, "Rare" means listed under the California Native Plant Protection Act.

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Trees are present within the Project boundary and in adjacent residential areas. Both native and non-native trees provide nesting habitat for birds. CDFW recommends that the following measures be included in the draft EIR:

1. **Nesting Bird Surveys:** If Project-related work is scheduled during the nesting season (typically February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), CDFW recommends that a qualified biologist conduct two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. Appropriate minimum survey radii surrounding the work area are typically, the following but may differ even within species: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; and iii) 1,000 feet for larger raptors such as buteos. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
2. **Active Nest Buffers:** If the qualified biologist documents active nests within the Project area or in nearby surrounding areas, an appropriate buffer between the nest and active construction should be established. The buffer should be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist should conduct baseline monitoring of the nest to characterize "normal" bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g. defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman should have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active.
3. **Hooded Lighting:** Project lighting to be installed should be hooded or shielded to direct light downwards and to minimize the spillage of light outwards into adjacent areas where trees are present.

CDFW recommends consulting with the U.S. Fish and Wildlife Service (USFWS) on potential impacts to federally listed species. Consultation with the USFWS in order to comply with the federal Endangered Species Act is advised well in advance of Project implementation.

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, §

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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

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #2020060362
Ryan Olah, U.S. Fish and Wildlife Service – Ryan.Olah@fws.gov

REFERENCES

Questa Engineering Corporation. 2009. Chimes Creek Bank Stabilization and Channel Restoration Feasibility Study, September 2009. Retrieved on June 25, 2020 from http://chimescreek.info/wst_page4.html#QuestaStudy9_2009

Sowers, J.M., and Richard, C.M., 2009, Creek & Watershed Map of Oakland & Berkeley (Fourth edition): Oakland Museum of California, Oakland, CA, 1:25,800 scale.