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DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

December 22, 2020

**Dec 23 2020**

## STATE CLEARINGHOUSE

Mr. Albert Enault  
City of Vacaville  
650 Merchant Street  
Vacaville, CA 95688  
[albert.enault@cityofvacaville.com](mailto:albert.enault@cityofvacaville.com)

Subject: Oak Grove Apartments Project, Mitigated Negative Declaration, SCH No. 2020120091, City of Vacaville, Solano County

Dear Mr. Enault:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Vacaville (City) for the Oak Grove Apartments Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 Project.

### 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 permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, 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 Incidental Take Permit (ITP) 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 an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a

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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.

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mitigation monitoring and reporting program. If the Project will impact CESA listed species, such as Swainson's hawk (*Buteo swainsoni*), early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

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 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 CESA.

### **Lake and Streambed Alteration Agreement**

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 ITP) until it has complied with CEQA as a Responsible Agency.

### **Migratory Birds and Raptors**

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully Protected species, such as white-tailed kite (*Elanus leucurus*) may not be taken or possessed at any time (Fish and Game Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Eden Oak Grove, LLC

**Objective:** The Project will demolish an existing swim club and construct a 67-unit apartment complex consisting of two multi-story buildings and associated property

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management offices and services. Primary Project activities include demolition, grading, excavation, trenching, tree removal, and building construction.

**Location:** The Project is located at 475 West Monte Vista Avenue, immediately east of the cross section of West Monte Vista Ave and Orchard Avenue, in the City of Vacaville. The Project will occur on two parcels, a developed parcel with an existing swim club (Assessor's Parcel Number 0126-150-050) and an adjacent undeveloped parcel (Assessor's Parcel Number 0126-160-150). The approximate Project centroid is Latitude 38.35871°, Longitude -122.00397°.

**Timeframe:** The Project is anticipated to begin by October 2022 and be completed by December 2023.

## **ENVIRONMENTAL SETTING**

The Project area is 2.11 acres in a residential neighborhood in west Vacaville. The nearest watercourse, Alamo Creek, is approximately 0.25 miles west of the Project site. The Project area consists mainly of developed, disturbed, ruderal habitat, including ornamental trees; however, the MND identifies 0.6 acres of oak woodland in the undeveloped portion of the site (Appendix D, page 8). The oak woodland consists of valley oak (*Quercus lobata*), coast live oak (*Q. agrifolia*), and blue oak (*Q. douglasii*) with an understory of non-native grasses. Historical aerial imagery shows that this oak woodland has been present for over 15 years. Special-status species with the potential to occur in the Project area include, but are not limited to, Swainson's hawk, CESA listed as threatened; white-tailed kite, Fully Protected species; Townsend's big-eared bat (*Corynorhinus townsendii*), California Species of Special Concern (SSC), pallid bat (*Antrozous pallidus*), SSC; and western red bat (*Lasiurus blossevillii*), SSC.

## **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.

### **Environmental Setting and Related Impact Shortcoming**

**Special-status Bats:** The MND does not identify that potentially suitable special-status bat habitat occurs within the Project area (page 3-28 and Appendix D). Multiple mature trees and an older building slated for demolition could provide suitable roosting habitat for bats, including pallid bat, Townsend's big-eared bat, and western red bat. These bats are experiencing population declines in California (Brylski et al. 1998). Removal of habitat could result in injury or mortality of these special-status bats, a potentially significant impact. To reduce potential impacts to less-than-significant, CDFW

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recommends that the MND disclose the potential for these bats to occur in the Project area and incorporate the following mitigation measures:

*Mitigation Measure BIO-2: Roosting Bat Habitat Assessment and Surveys*

Buildings and trees shall be assessed for bat habitat and surveys shall be conducted by a qualified bat biologist several months prior to any building demolition or tree removal. A qualified bat biologist shall have 1) at least two years of experience conducting bat surveys that resulted in detections for relevant species, such as pallid bat, with verified project names, dates, and references, and 2) experience with relevant equipment used to conduct bat surveys. If bats are observed or potential bat habitat is identified, mitigation measures BIO-3 and BIO-4 shall be implemented.

*Mitigation Measure BIO-3: Roosting Bat Building Exclusion Plan*

Building demolition shall not occur if bats are found roosting within the building until proper eviction and exclusion plans have been approved by the City and implemented. The City shall seek CDFW's input on the exclusion plan. The plan shall 1) recognize maternity and winter roosting season as vulnerable seasons for bats, and require exclusion outside of these times, generally between March 1 and April 15 or September 1 and October 15, 2) identify suitable areas for excluded bats to disperse or require installation of appropriate dispersal habitat, such as artificial bat houses, prior to Project activities, and include an associated management and monitoring plan with implementation and funding, and 3) include a requirement that exclusion materials shall be re-evaluated for effectiveness by the qualified bat biologist up to two weeks prior to building demolition.

*Mitigation Measure BIO-4: Roosting Bat Protections-Trees*

Removal of potential bat roost trees shall occur between March 1 and April 15 or September 1 and October 15, and via a two-step method conducted over two consecutive days. On day one, create noise and vibration by cutting non-habitat branches and limbs from habitat trees using chainsaws only (no excavators or other heavy machinery). The noise and vibration disturbance, together with the visible alteration of the tree, is effective in causing bats that emerge nightly not to return to the roost that night. On day two, remove the remainder of the tree.

**White-tailed Kite:** The MND does not identify that potentially suitable habitat for white-tailed kite, a Fully Protected species, occurs within the Project area (page 3-28 and Appendix D). CDFW recommends revising the special-status species list to include this species.

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## Mitigation Measure and Related Impact Shortcoming

**Swainson's Hawk:** The MND identifies that Swainson's hawk, listed as threatened pursuant to CESA, may occur within the Project area and that suitable nesting trees exist on-site (page 3-28 and Appendix D page 12). In addition, there are California Natural Diversity Database (CNDDDB) occurrences of Swainson's hawk less than two miles southwest of the Project area and less than three miles to the east. The MND does not require Swainson's hawk protocol surveys prior to Project activities, relying instead on the pre-construction nesting bird surveys identified in Mitigation Measure BIO-1. Mitigation Measure BIO-1 does not provide adequate survey techniques to effectively identify nesting Swainson's hawk in and near the Project area.

The breeding population of Swainson's hawks in California is estimated to have declined by 91% since 1900 and the species continues to be threatened by on-going and cumulative loss of habitat (CDFW 2016). The proposed Mitigation Measure BIO-1 has a high probability of failing to detect nesting Swainson's hawks that could be disturbed by Project activities, leading to a potentially significant impact to Swainson's hawk through nest abandonment or reduced health and vigor of young. To reduce impacts to less-than-significant, CDFW recommends including the following mitigation measure:

### *Mitigation Measure BIO-5: Swainson's Hawk Surveys*

If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to Project commencement, a qualified biologist shall survey for Swainson's hawk according to the *Recommended timing and methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*<sup>2</sup>. Survey methods shall 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 shall be conducted: 1) within a minimum 0.25-mile radius of the Project area, and 2) for at least the two survey periods immediately prior to initiating project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.25-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist. For a reduced buffer, the Project shall consult with CDFW and provide rationale that considers visual and auditory disturbances. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to

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<sup>2</sup> Swainson's Hawk Technical Advisory Committee, 2000.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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CESA and obtain an ITP. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

**Oak Woodland:** The MND, Appendix D, identifies 0.6 acres of oak woodland on the Project site, composed of valley oak, coast live oak, and blue oak. However, the biological resources section of the MND identifies the oak woodland as “ruderal/disturbed” habitat and does not clearly identify this remnant patch of oak woodland (page 3-28). Half of the oak woodland, 0.3 acres, will be preserved on-site (Appendix D, page 17). Removal of 14 valley oak trees is determined to have a less than significant impact because “the Applicant intends to apply for a concession to tree replacement” (page 3-31). No specific mitigation measures have been identified.

CDFW considers valley oak woodland to be a sensitive natural community that provides valuable habitat for wildlife, including nesting birds (CDFW 2020). Only remnant patches of valley oak woodland remain in California (California Interagency Wildlife Task Group). When oak woodlands are removed, not only are the trees permanently lost, but the associated functions and habitat are lost as well (Dagit et al. 2015). Additionally, human activity and removal of habitat has contributed to the loss of a significant proportion of the total number of birds in the United States and Canada since the 1970s (Rosenburg et al. 2019). It is unclear to CDFW if the oaks are naturally occurring or planted, however, the Project area and vicinity was likely historically oak woodland savanna. Based on the above, removal of oaks could substantially adversely affect a sensitive natural community and nesting bird habitat, therefore, impacts would be potentially significant. To reduce impacts to less-than-significant, CDFW recommends including a discussion of valley oak woodland as a sensitive natural community in the MND and implementing the following mitigation measure:

*Mitigation Measure BIO-7: Oak Tree Replacement Plantings*

Oak trees that must be removed from the Project site shall be replaced at the following ratios:

- 4:1 for oaks between 5 and 10 inches diameter at breast height (DBH)
- 5:1 for oaks greater than 10 to 15 inches DBH
- 15:1 for oaks greater than 15 inches DBH

Replacement plantings shall occur as close to the Project site as possible and be maintained and monitored for a minimum of five years with an 85% survival rate at the end of five years. Annual monitoring reports shall be provided to the City. If tree plantings have not achieved at least an 85% survival rate after five years, new trees shall be planted and monitored for an additional five years to achieve the survival rate.

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Planted trees shall be irrigated for at least the first two years either via hand-watering or drip irrigation.

CDFW recommends that cages be placed around planted oaks to avoid deer browse and that weeding occur within and around caged oak trees, until the trees become well-established. Once the oaks become a sufficient size, the cages shall be removed.

## ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base 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, online field survey form, and contact information for CNDDDB staff can be found at the following link:  
<https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

## FILING FEES

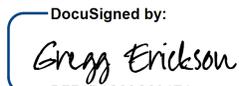
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game 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 Ms. Amanda Culpepper, Environmental Scientist, at [Amanda.Culpepper@wildlife.ca.gov](mailto:Amanda.Culpepper@wildlife.ca.gov); or Ms. Melanie Day, Acting Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Gregg Erickson  
Regional Manager  
Bay Delta Region

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cc: Office of Planning and Research, State Clearinghouse (SCH No. 2020120091)

## REFERENCES

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