

State of California
Department of Fish and Wildlife



Memorandum

Date: April 22, 2022

To: Terry Ash
Department of General Services
c/o First Carbon Solutions
1350 Treat Boulevard, Suite 380
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Terry.Ash@dgs.ca.gov



DocuSigned by:

Erin Chappell

From: Erin Chappell, Regional Manager

California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Oak Hill Apartments Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2022030718, Marin County

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the Department of General Services (DGS) for the Oak Hill Apartments Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the NOP to inform DGS, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA 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 (NPPA), 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.

PROJECT DESCRIPTION AND LOCATION

The Project would develop up to 250 affordable housing apartment units on an undeveloped 8.3-acre site. The apartment units would be clustered into two podium style buildings up to five stories tall. The Project would include apartment amenities such as a two-story parking garage, fenced dog area, community garden, lawn, and play area. Approximately 1.6 acres of the Project site would be preserved as open

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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space. The Project is located approximately 0.33 miles west of the intersection of Sir Francis Drake Boulevard and Andersen Drive in the census-designated place of San Quentin, unincorporated Marin County. The Assessor's Parcel Number is 018-152-12 and the approximate Project centroid is Latitude 37.9456°N, Longitude 122.50084°W. The Project would be completed by fall 2025.

The CEQA Guidelines require that the draft EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description, as applicable:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development. Clarify if the land use designation for the proposed 1.6 acres to be preserved as open space would change the types of future activities allowed on the land compared to its existing designation.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, floodwalls or levees, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.
- Include the above information for any Project activities proposed on the 1.6 acres to be designated as open space.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take² of plants or animals listed under CESA or NPPA, either during construction or over the life of the Project. If the Project will impact CESA or NPPA listed species, including but not limited to those identified in **Attachment 1: Special-Status Species**, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to

² Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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obtain an ITP. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program.

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, & 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 Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires a Lake and Streambed Alteration (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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also subject to notification. **The Project site appears to overlap with a stream based on a review of the California Aquatic Resources Inventory (CARI) database³. Any impacts to this stream or any other streams would likely require an LSA Notification.** CDFW, as a responsible agency under CEQA, will consider the EIR for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as the responsible agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, including those listed in **Attachment 1**, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

ENVIRONMENTAL SETTING

The draft EIR should provide sufficient information regarding the environmental setting

³ For the CARI database see <https://www.sfei.org/cari>.

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(“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the draft EIR provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the Project area and surrounding lands, including but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The draft EIR should describe aquatic habitats, such as wetlands, vernal pools, and/or waters of the U.S. or State, and any sensitive natural communities⁴ or riparian habitat occurring on or adjacent to the Project site. Fully protected, threatened or endangered, and other special-status species and sensitive natural communities that are known to occur, or have the potential to occur in or near the Project area, include but are not limited to, those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources, such as aerial imagery; historical and recent survey data; field reconnaissance; scientific literature and reports; the U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System; findings from positive occurrence databases such as the California Natural Diversity Database (CNDDDB); CARI; and sensitive natural community information available on the Marin County Fine Scale Vegetation Map⁵. Based on the data and information from the habitat assessment, the draft EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols⁶ if available.

Botanical surveys⁷ for special-status plant species, including those with a California Rare Plant Rank⁸, must be conducted during the blooming period for all species potentially impacted by the Project within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrology, and require the identification of reference populations. More than one year of surveys may be necessary given environmental conditions.

⁴ For sensitive natural communities see <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities>

⁵ One Tam hosts the Marin Fine Scale Vegetation Web Map at <https://parksconservancy.maps.arcgis.com/apps/webappviewer/index.html?id=4ef2881436bc4365be881b17f69ab067>

⁶ Survey and monitoring protocols and guidelines are available at <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

⁷ Please refer to CDFW protocols for surveying and evaluating impacts to rare plants, and survey report requirements at <https://wildlife.ca.gov/Conservation/Plants>

⁸ <http://www.cnps.org/cnps/rareplants/inventory/>

IMPACT ANALYSIS AND MITIGATION MEASURES

The draft EIR should discuss all direct and indirect impacts (temporary and permanent), including reasonably foreseeable impacts, that may occur with implementation of the Project (CEQA Guidelines, §§ 15126, 15126.2, & 15358). This includes evaluating and describing impacts such as:

- Encroachments into riparian habitats, drainage ditches, wetlands, or other sensitive areas.
- Potential for impacts to special-status species or sensitive natural communities.
- Loss or modification of breeding, nesting, dispersal, and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, rock outcrops, overhanging banks).
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence.
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The draft EIR should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, § 15355). Although a project's impacts may be less than significant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of habitat for a special-status species, should be considered cumulatively considerable.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and mitigate potentially significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. Project-specific measures should be incorporated as enforceable Project conditions to reduce impacts to biological resources to less-than-significant levels.

Fully protected species such as those listed in **Attachment 1**, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Therefore, the draft EIR should include measures to ensure complete avoidance of these species.

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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 CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found 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://wildlife.ca.gov/Data/CNDDDB/Plantsand-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 & G. Code, § 711.4; Pub. Resources Code, § 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.

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist DGS in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Amanda Culpepper, Senior Environmental Scientist (Specialist), at (707) 428-2075 or Amanda.Culpepper@wildlife.ca.gov, or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Attachment 1: Special-Status Species

ec: State Clearinghouse (SCH No. 2022030718)

Lisa Davison, First Carbon Solutions, LDavison@fcs-intl.com

Attachment 1: Special-Status Species

Scientific Name	Common Name	Status
Birds		
<i>Rallus obsoletus obsoletus</i>	California Ridgway's rail (formerly California clapper rail)	SE, FE, FP
<i>Laterallus jamaicensis coturniculus</i>	California black rail	ST, FP
<i>Haliaeetus leucocephalus</i>	bald eagle	SE, FP, BGE
<i>Aquila chrysaetos</i>	golden eagle	FP, BGE
<i>Circus hudsonius</i>	northern harrier	SSC
<i>Asio Flammeus</i>	short-eared owl	SSC
<i>Geothlypis trichas sinuosa</i>	saltmarsh common yellowthroat	SSC
<i>Melospiza melodia samuelis</i>	San Pablo song sparrow	SSC
<i>Elanus leucurus</i>	white-tailed kite	FP
Fish		
<i>Spirinchus thaleichthys</i>	longfin smelt	ST, FC
<i>Oncorhynchus kisutch</i> pop. 4	Coho salmon south of Punta Gorda	SE, FE
<i>Oncorhynchus mykiss irideus</i> pop. 8	central California coast steelhead	FT
<i>Culpea pallasii</i>	Pacific herring	CRE
Amphibians		
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
<i>Rana boylei</i>	foothill yellow-legged frog, northwest/north coast clade	SSC
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
Mammals		

Scientific Name	Common Name	Status
<i>Reithrodontomys raviventris</i>	salt-marsh harvest mouse	SE, FE, FP
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
<i>Antrozous pallidus</i>	pallid bat	SSC
<i>Lasiurus blossevillii</i>	western red bat	SSC
Reptiles		
<i>Emys marmorata</i>	western pond turtle	SSC
Invertebrates		
<i>Danaus plexippus</i> pop. 1	monarch butterfly	FC, ICP ⁹
<i>Bombus caliginosus</i>	obscure bumble bee	ICP
<i>Bombus occidentalis</i>	western bumble bee	ICP
Plants		
<i>Castilleja affinis</i> var. <i>neglecta</i>	Tiburon paintbrush	ST, FE, CRPR ¹⁰ 1B.2
<i>Streptanthus glandulosus</i> ssp. <i>niger</i>	Tiburon jewelflower	SE, FE, CRPR 1B.1
<i>Pentachaeta bellidiflora</i>	White-rayed pentachaeta	SE, FE, CRPR 1B.1
<i>Hesperolinon congestum</i>	Marin western flax	ST, FT, CRPR 1B.1
<i>Trifolium amoenum</i>	two-fork clover	SE, CRPR 1B.1
<i>Amorpha californica</i> var. <i>napensis</i>	Napa false indigo	CRPR 1B.2
<i>Polygonum marinense</i>	Marin knotweed	CRPR 3.1

⁹ The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>

¹⁰ CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere while Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

Scientific Name	Common Name	Status
<i>Natural Communities (Alliances or Associations)¹¹</i>		
<i>Lupinus bicolor</i>	Bicolored lupine association	SNC
<i>Lasthenia californica</i> – <i>Plantago erecta</i> – <i>Hesperervax sparsiflora</i>	California goldfields – dwarf plantain – few flowered evax association	SNC
<i>Lotus humistratus</i> – <i>Plantago erecta</i> – <i>Lomatium</i> spp.	short-podded lotus – dwarf plantain – lomatium association	SNC
<i>Micropus californicus</i>	slender cottonweed association	SNC
<i>Vulpia microstachys</i> – <i>Plantago erecta</i> – <i>Calycadenia (truncata,</i> <i>multiglandulosa)</i>	small fescue – dwarf plantain – calycadenia association	SNC
<i>Nassella</i> spp. – <i>Melica</i> spp.	needle grass – melic grass grassland alliance	SNC
<i>Quercus agrifolia</i> – <i>Quercus kelloggii</i>	coast live oak – California black oak woodland association	SNC
<i>Quercus agrifolia</i> – <i>Arbutus menziesii</i> – <i>Umbellularia californica</i>	coast live oak – madrone – California bay forest association	SNC

FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; FC = candidate for federal listing under ESA; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; CE = candidate for state listing as threatened or endangered; FP = state fully protected under Fish and Game Code; SSC = state species of special concern; BGE = Bald and Golden Eagle Protection Act; ICP = state invertebrate of conservation priority; CRPR = California rare plant rank; SNC = sensitive natural community; CRE = commercially, recreationally, and ecologically valuable

¹¹ Vegetation Classification of Alliances and Associations in Marin County, California (2021)
https://www.cnps.org/wp-content/uploads/2021/09/marin_co_veg_classification-2021.pdf