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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

January 31, 2023

**JAN 31 2023**

## **STATE CLEARING HOUSE**

Mr. Randall Adams  
Santa Cruz County, Planning Department  
701 Ocean Street, 4<sup>th</sup> Floor  
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Subject: Lakeview Estates Subdivision, Initial Study/Mitigated Negative Declaration,  
SCH No. 2022120531, Santa Cruz County

Dear Mr. Adams:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by Santa Cruz County (County) for the Lakeview Estates Subdivision (Project), located in Santa Cruz County, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the IS/MND to inform the County, 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 § 15386 for commenting on projects that could impact fish, plant, and wildlife resources (i.e., biological 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), the Lake and Streambed Alteration (LSA) Program, and 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 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 "take" 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, early consultation with CDFW is encouraged, as

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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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significant modification to the Project and mitigation measures may be required to 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 impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and 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 CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code, § 2080 et. seq.

### **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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are 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. **The Project has the potential to impact resources including mainstems, tributaries and floodplains associated with Stream 533.** Any impacts to the mainstems, tributaries and floodplains or associated riparian habitat would likely require an LSA Notification. CDFW, as a responsible agency under CEQA, will consider the IS/MND for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA as the responsible agency.

### **Raptors and Other Nesting Birds**

CDFW has authority 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 §§ 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Kamilah Deyn Dev. LLC and Eadie Consultants

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**Objective:** The Project consists of the subdivision of an existing 2.3-acre parcel into 7 single-family residential lots. Each homeowner would own the land of the house and yard, and the remaining land will be held in common by the Homeowners Association (HOA). Each house would have three to four bedrooms, ranging between 2,500 to 2,700 square feet. Grading would be required for the site including 1,500 cubic yards of cut and 1,000 cubic yards of fill. In total, new impervious surfaces such as building, asphalt, concrete, and pavers would cover 32,000 square feet. Storm water would be captured and treated on-site in an underground retention/detention chamber and released on-site via dispersion trench to vegetated areas on the eastern side of the property.

**Timeframe:** No timeframe listed in the IS/MND.

## **ENVIRONMENTAL SETTING AND LOCATION**

The Project is located on the southeast corner of Trembley Lane and Cunningham Way, in unincorporated Santa Cruz County, at APN 051-411-20. The property is located within single-family residential neighborhoods in the Watsonville area. County Stream 533 is located at a minimum 40 feet from the eastern property boundary. In addition, two wetland areas have been identified on the property. The first wetland is a seasonal hillside wetland feature that supports a small patch of native plants among non-native landscape. The second wetland is hydrologically connected to stream 533 and part of the larger riparian area. The development proposes to provide a 30-foot buffer around the first wetland and a 50-foot buffer, with a 10-foot development setback around the second. A coast live oak woodland (*Quercus agrifolia*) is located around the northern property boundary. The proposed development would remove one oak tree and plant nine new oak trees in the proposed oak woodland restoration areas on-site.

## **COMMENTS AND RECOMMENDATIONS**

CDFW commends the County for addressing, avoiding, and minimizing potentially significant impacts to the identified wetland areas on-site and associated Stream 533 riparian zone by establishing buffer zones from the proposed development and providing a riparian and wetland restoration plan.

In addition, CDFW offers the following comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

### **COMMENT 1: Fish and Wildlife Avoidance**

**Issue:** Project construction activities would take place in the vicinity of two wetlands identified on-site and associated riparian zone of Stream 533; however, the IS/MND does not include avoidance and minimization measures such as pre-construction surveys or biological monitoring to reduce potential impacts to fish and wildlife species.

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**Evidence the impact would be significant:** Wetlands and riparian zones provide habitat for numerous amphibian and riparian associated species. Native species that are within the range<sup>2</sup> of the Project such as California newt (*Taricha torosa*), Sierran tree frog (*Pseudacris sierra*), California toad (*Anaxyrus boreas halophilus*), and San Francisco dusky-footed woodrat (SFDFW) (*Neotoma fuscipes annectens*) (also listed as a CDFW species of special concern) could inhabit the wetland and surrounding areas on the property. Project activities such as grading, excavating, and vegetation removal could negatively impact these species if construction avoidance and minimization measures are not followed.

**Recommended Measure 1, On-site Biologist with Stop Work Authorization:** A qualified biologist shall be on-site to ensure all avoidance and minimization measures are implemented. The qualified biologist shall be knowledgeable and experienced in the biology and natural history of local fish and wildlife resources present at the Project site, and they shall have experience identifying, capturing, handling, and relocating the wildlife species. The qualified biologist shall be authorized to stop any Project activities if necessary to protect fish and wildlife resources. If a listed species<sup>3</sup> is encountered during a Project activity that could be harmed, the Project proponent shall suspend work and consult with CDFW.

**Recommended Measure 2, Terrestrial Wildlife Species Avoidance:** To avoid impact to any non-listed terrestrial wildlife species, a qualified biologist shall inspect the Project area prior to any Project activities. Any individuals found shall not be harassed and shall be allowed to leave the Project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the Project site of its own volition. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture.

**Recommended Measure 3, San Francisco Dusky-Footed Woodrat Pre-Construction Surveys and Avoidance:** A pre-construction survey for SFDFW shall be conducted by a qualified biologist within two weeks prior to Project activities. If an active SFDFW midden is found during surveys, the active midden site shall be designated as "Ecologically Sensitive Areas" (ESA) and protected during Project construction with establishment of flagging or a fence barrier surrounding the nest site. CDFW recommends that the minimum distance of 25 feet is used for the protective buffer protecting the nest. If a SFDFW midden(s) cannot be avoided, the Project proponent shall submit to CDFW a SFDFW Midden Relocation Plan for CDFW review, comment, and written approval prior to construction.

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<sup>2</sup> CDFW range map data: <https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range>

<sup>3</sup> A listed species means a candidate, threatened, or endangered species under CESA (Fish & G. Code, § 2050 et seq.) or a fully protected species identified in Fish and Game Code §§ 3511, 4700, 5050, and 5515.

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**Recommended Measure 4, Project Timing:** All work shall begin on or after June 1 and all work shall be completed by October 15 of each year. Project activities shall be restricted to dry weather during the work period. Project activities shall be timed with awareness of precipitation forecasts and potential increases in stream flow and amphibian activity. Project activities cease when the National Weather Service (NWS) 24-hour weather forecast indicates a 40 percent chance or higher of precipitation of at least 0.10-inch of precipitation. All necessary erosion control measures shall be implemented prior to the on-set of precipitation. Project activities halted due to precipitation may resume after a dry out period of 24-hours and when the NWS 24-hour weather forecast indicates less than a 40 percent chance of precipitation.

### **COMMENT 2: Artificial Lighting**

**Issue:** The IS/MND states that there would be an incremental increase in night lighting associated with the Project; however, the IS/MND does not give specifics on the type of night lighting to be used. An increase to the amount of artificial night lighting on the Project site which may significantly affect fish and wildlife resources associated with the wetland and riparian areas on-site.

**Evidence the impact would be significant:** Night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication such as bird song (Miller, 2006), determining when to begin foraging (Stone et al., 2009), behavior thermoregulation (Beiswenger, 1977), and migration (Longcore and Rich, 2004). In addition, artificial night lighting can disrupt predator-prey relationships and change community competition by favoring predators and reducing foraging time for prey (Longcore and Rich, 2004).

**Recommendations to minimize significant impacts:** CDFW recommends eliminating all non-essential artificial lighting. If artificial lighting is necessary, CDFW recommends avoiding or limiting the use of artificial lights during the hours of dawn and dusk, when many wildlife species are most active. CDFW also recommends that outdoor lighting be shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association standards at <http://darksky.org/>) and limited to warm light colors with an output temperature of 2700 kelvin or less.

### **COMMENT 3: Tree Removal**

**Issue:** The IS/MND states that one oak tree will be removed but does not include the diameter at breast height (dbh) of the tree planned for removal. This information is needed for CDFW to assess the impact of the activity to fish and wildlife resources and evaluate the proposed tree planting mitigation. Planted oak trees would take many years to get to a size that could provide the same ecological benefits that large mature

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trees provide. Removal of a large mature tree without adequate mitigation should be considered a substantial adverse change in the physical conditions within the area affected by the Project.

**Evidence the impact would be significant:** Oak woodlands provide food and habitat to a variety of wildlife including birds, insects, mammals, reptiles, amphibians, and native understory plants and support some of the richest species abundance in California (Zaveleta et al. 2007, CalPIF 2002). Large mature trees (e.g., native oak tree that is greater than 15 inches in diameter) are of particular importance due to increased biological values such as providing nesting bird habitat and bat roost habitat. Loss of large mature native oaks has the potential to result in significant impacts for these reasons.

**Recommendation:** CDFW recommends the updated IS/MND include the dbh size of the tree planned for removal. If the oak is a large mature tree, CDFW recommends the Project avoid its removal to the greatest extent feasible. Where large diameter tree removal is unavoidable, CDFW recommends Project mitigation include in-kind preservation of mature native trees.

## **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, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the 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 and Game 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**

Thank you for the opportunity to comment on the Project's IS/MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Serena Stumpf, Environmental Scientist, at (707) 337-1364 or

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[Serena.Stumpf@wildlife.ca.gov](mailto:Serena.Stumpf@wildlife.ca.gov); or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at [Wesley.Stokes@wildlife.ca.gov](mailto:Wesley.Stokes@wildlife.ca.gov).

Sincerely,

DocuSigned by:

*Erin Chappell*

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Erin Chappell  
Regional Manager  
Bay Delta Region

ec: State Clearinghouse # 2022120531

## REFERENCES

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