



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



May 24, 2023

Governor's Office of Planning & Research

**May 25 2023**

## STATE CLEARING HOUSE

Karen Minami  
City of Del Rey Oaks  
650 Canyon Del Rey Boulevard  
Del Rey Oaks, California 93940  
kminami@delreyoaks.org

**Subject: City of Del Rey Oaks Housing Element Update (Project)  
Notice of Preparation (NOP)  
SCH No.: 2023040680**

Dear Karen Minami:

The California Department of Fish and Wildlife (CDFW) received a NOP from the City of Del Rey Oaks for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

### CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

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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.

Karen Minami  
City of Del Rey Oaks  
May 24, 2023  
Page 2

projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

## PROJECT DESCRIPTION SUMMARY

**Proponent:** City of Del Rey Oaks

**Objective:** The Project addresses revisions identified by the Department of Housing and Community Development (HCD) Division of Housing Policy and Development. The City Council adopted a 5<sup>th</sup> Cycle Housing Element and certified an Initial Study/Negative Declaration on December 17, 2019. HCD's review letter indicated the Housing Element was not in compliance and required specific revisions for compliance. These items include revising Program A.1 and committing to rezone Sites 1 and 1a to allow uses, and adoption of an emergency shelter ordinance. The proposed Project includes changes to the General Plan Land Use Element and the City's zoning code necessary to implement these revisions to the 2019 Housing Element.

**Location:** The Project site is the City of Del Rey Oaks in Monterey County, California.

**Timeframe:** n/a

## COMMENTS AND RECOMMENDATIONS

**Special-Status Species** Due to the Project's close proximity to the Fort Ord area, there is the potential for the Project to impact State-listed species. Records from the California Natural Diversity Database (CNDDB) show that the following special-status species,

Karen Minami  
City of Del Rey Oaks  
May 24, 2023  
Page 3

including CESA-listed species (CDFW 2023) could be impacted: the State threatened, federally endangered and California Rare Plant Ranked (CRPR) 1B.2 Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*), and the State endangered and CRPR 1B.1 Seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*). CDFW recommends that survey-level protocols be conducted for these species as part of the biological technical studies prepared in support of the draft Environmental Impact Report (DEIR), with conclusions of those studies summarized therein and repeated as necessary prior to Project ground-disturbing activities. CDFW recommends that the Project site 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 Sensitive Natural Communities" (CDFG 2018). 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. If take could occur as a result of Project ground-disturbing activities, consultation with CDFW may be warranted. CDFW advises that the subsequent EIR include and address the above-mentioned species.

Given that the City of Del Rey Oaks is included in the Fort Ord Multi-Species Habitat Conservation Plan (HCP), it is important to note that only utilizing the avoidance and minimization measures and/or mitigation measures therein may not be adequate to avoid or reduce species impacts or comply with state laws. There is currently no Natural Communities Conservation Plan or CDFW-issued Incidental Take Permit for the HCP, therefore, any impacts to state-listed species will require a project 2081(b) Incidental Take Permit in compliance with the California Endangered Species Act.

### **Nesting birds**

CDFW encourages that Project ground-disturbing activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document. Depending on the results of that assessment, CDFW further recommends that the CEQA document for this Project include that a qualified wildlife biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct

Karen Minami  
City of Del Rey Oaks  
May 24, 2023  
Page 4

impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified wildlife biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**CNDDDB:** Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

**Project Alternatives Analysis:** CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analysis conducted in support of the project's CEQA document be used to develop and modify the project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project,

Karen Minami  
City of Del Rey Oaks  
May 24, 2023  
Page 5

even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

**Lake and Stream Alteration:** The Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires the project proponent to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SNRF, FYLF, and SNYLF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW is available to meet with you ahead of DEIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please contact Evelyn Barajas-Perez, Environmental Scientist, at the address provided on this letterhead, by telephone at (805) 503-5738, or by electronic mail at [Evelyn.Barajas-Perez@wildlife.ca.gov](mailto:Evelyn.Barajas-Perez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  


12950B95267A4F5...  
Krista Tomlinson for Julie A. Vance  
Regional Manager

Karen Minami  
City of Del Rey Oaks  
May 24, 2023  
Page 6

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United States Fish and Wildlife Service  
Patricia Cole; [patricia\\_cole@fws.gov](mailto:patricia_cole@fws.gov)

CDFW LSA/1600; [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov)

Karen Minami  
City of Del Rey Oaks  
May 24, 2023  
Page 7

## **LITERATURE CITED**

California Department of Fish and Wildlife (CDFW), 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife. March 20, 2018.

CDFW, 2023. Biogeographic Information and Observation System (BIOS).  
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed May 19, 2023.