



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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December 22, 2023

Mr. Fahteen Khan
City of Menlo Park, Community Development Department
701 Laurel Street
Menlo Park, CA 94025
Fnkhan@menlopark.gov

Subject: 3705 Haven Avenue Project, Notice of Preparation of an Environmental Impact Report, SCH No. 2023120023, City of Menlo Park, San Mateo County

Dear Mr. Khan:

The California Department of Fish and Wildlife (CDFW) reviewed the City of Menlo Park's Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the City of Menlo Park (City) 3705 Haven Avenue Housing Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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). For purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting these comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to the Fish and Game Code. Likewise, to the extent the Project 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.

¹CEQA 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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PROJECT DESCRIPTION AND LOCATION

Proponent: 3705 Haven LLC

The Project site is approximately 0.66-acre at 3705 Haven Avenue and is currently developed with a one-story commercial building and parking lot. The Project site is located to the west of the intersection of Marsh Road/Bayfront Expressway (State Route 84) and Haven Avenue (APN 055-170-240).

The Project proposes the redevelopment of an existing parcel, to demolish the existing commercial building, and redevelop the Project site with an eight-story (approximately 93 feet tall), 99-unit residential apartment building with approximately 1,550 square feet of ground floor commercial space. Also, the Project includes a total of approximately 11,730 square feet of common open space and 4,670 square feet of publicly accessible outdoor space.

The Project also proposes changes to infrastructure including undergrounding of overhead electrical lines and new utility lateral connections, driveways, sidewalks, curbs, and gutters.

The Project includes the removal of 13 trees, three of which are heritage trees. The Project proposes to plant a total of 15 new trees (four silver linden, six African fern pine, and five Saratoga laurel trees) to compensate for the removal of the three heritage trees. In addition, the Project proposes 24 new trees would be located on the podium courtyard and rooftop deck.

The CEQA Guidelines (§§15124 & 15378) require that the draft EIR incorporate a full Project description, including reasonably foreseeable future phases of the Project, and that contains sufficient information to evaluate and review the Project's environmental impact. Please include a complete description of the following Project components in the Project description including, but not limited to, the below information.

- Land use changes resulting from, for example, rezoning certain areas;
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes;
- Area and plans for any proposed buildings/structures, ground-disturbing activities, fencing, paving, stationary machinery, landscaping, 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; and

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- Construction schedule, activities, equipment, and crew sizes.

ENVIRONMENTAL SETTING

Sufficient information for meaningful review regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project and any alternatives identified in the EIR (CEQA Guidelines, §§ 15125 & 15360). CDFW recommends the 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 all rare, threatened, and endangered species (CEQA Guidelines, §15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or state, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see:

<https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the [City or County] may require. Fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or have the potential to occur, in or near the Project site include, but are not limited to:

Common Name	Scientific Name	Status
salt-marsh harvest mouse	<i>Reithrodontomys raviventris</i>	FE, SE, SP
California least tern	<i>Sternula antillarum browni</i>	FE, SE, SP
California Ridgway's rail	<i>Rallus obsoletus obsoletus</i>	FE, SE, SP
Nesting birds Bats		
Notes: FE = listed as endangered under the federal Endangered Species Act; SE = listed as endangered under CESA; SP = state listed as fully protected.		

Habitat descriptions and species profiles included in the EIR should include robust information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System; California Aquatic Resources Inventory; and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Only with sufficient data and

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information from the habitat assessment can the City adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://wildlife.ca.gov/Conservation/Survey-Protocols>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), should also be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and include the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines necessitate the EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Potential for “take” of special-status species;
- Loss or modification of breeding, nesting, dispersal, and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g. snags, roosts);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence;
- Water quality impacts resulting from construction and operation of the Project;
- Impacts both from construction and operation of the Project; and
- Impacts to bed, channel, bank, and riparian habitat, and the direct and indirect effects to fish, wildlife, and their habitat.

The EIR should also identify existing and 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 each impact (CEQA Guidelines, § 15355). Although a project’s impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact (e.g.,

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reduction of available habitat for a listed species) should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

The CEQA Guidelines direct the City, as the Lead Agency, to consider and describe in the EIR all feasible mitigation measures to avoid and/or mitigate potentially significant impacts of the Project on the environment based on comprehensive analysis of the potential direct, indirect, and cumulative impacts of the Project. (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This should include discussion of take avoidance and minimization measures for special-status species, which should be developed in consultation with the USFWS, the National Marine Fisheries Service, and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species, such as California Ridgway's rail (*Rallus obsoletus obsoletus*), may not be taken or possessed at any time except in limited circumstances (Fish & G. Code, §§ 3511, 4700, 5050, & 5515). Therefore, the CEQA document should include measures to completely avoid take of fully protected species.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86). If the Project will impact CESA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. Issuance of an ITP is subject to CEQA and to facilitate permit issuance, any such Project modifications and mitigation measures must be incorporated into the EIR’s analysis, discussion, and 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, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

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Lake and Streambed Alteration Agreement

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 is 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. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory non-game bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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.

Issue: The Project includes the removal of 13 trees, three of which are heritage trees. The Project proposes to plant a total of 15 new trees (four silver linden, six African fern pine, and five Saratoga laurel trees) to compensate for the removal of the three heritage trees. In addition, the Project proposes 24 new trees would be located on the podium courtyard and rooftop deck.

Removal of heritage and other trees can cause impacts to roosting bats and nesting birds. Planting new trees as proposed may not be sufficient to offset impacts to wildlife resources.

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Bat species may also occur within and surrounding the Project site, including in existing buildings. Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). Several bat species are also considered Species of Special Concern.

Recommendations: CDFW recommends the Project avoid heritage tree removal to the greatest extent feasible. Where heritage tree removal is unavoidable, CDFW recommends Project mitigation focus on using native tree species such as regionally adapted native oak trees for replacements.

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through early-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the MBTA or Fish and Game Codes.

Evidence: The comprehensive ecological benefits associated with the healthy urban forests have been extensively documented (Tyrväinen, Pauleit, Seeland, & De Vries, 2005; Pawlak et al., 2023), so there is a strong scientific rationale for selecting native trees for and preserving the canopy cover of urban forests. Indigenous tree species within urban settings play a pivotal role in supporting local wildlife and fostering biodiversity (Burghardt et al., 2009). For instance, McPherson's study (1998) showed how Sacramento County's urban forest reduces greenhouse gas emissions and sequesters substantial amounts of carbon dioxide. Additionally, several scientific inquiries have emphasized the importance of native trees in urban forest inventories because they are critical habitat for of avian, bat, and insect populations (Wood and Esaian, 2020).

Urban development activities in California significantly contribute to the decline of native tree species, an overall reduction in urban tree cover, as well as an increase in non-native and invasive tree varieties (Pawlak et al., 2023). Although California's urban forests yield numerous ecological advantages, they predominantly feature non-native species potentially poorly suited for a changing climate (Conway and Vecht, 2015; Pawlak et al., 2023). In contrast, native species are often better adapted to local environmental conditions, necessitating less water and fewer pesticides to persist (Pawlak et al., 2023), native species selection is therefore critical to mitigate the loss of existing trees.

Species selection for urban forest cultivation involves multiple factors, encompassing site-specific conditions like soil quality, available space, and tree-specific attributes such as native status, susceptibility to pests, water needs, and the overall species diversity within the area (Conway and Vecht, 2015; Pawlak et al., 2023). A resilient urban forest is comprised of a diverse array of native tree species, serves as critical habitat for

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numerous birds, bats, and insects, encompassing both common and protected species (Burghardt et al., 2009; Ordóñez & Duinker, 2013). Choosing appropriate tree species becomes crucial to boost the presence of native species in urban forests to optimize ecosystem services and uphold regional ecological integrity (Ordóñez and Duinker, 2013). Numerous scientific studies provide evidence that native trees are often best species to propagate in the urban forest to support healthy regional ecosystems and local wildlife (Conway and Vecht, 2015; Pawlak et al., 2023):

- *Biodiversity Preservation*: Research often indicates that native trees support local biodiversity better than non-native species. Native trees have evolved within specific ecosystems, providing food, shelter, and support to a variety of native wildlife, such as insects, birds, and mammals;
- *Ecosystem Functioning*: Studies show that native trees contribute significantly to the overall health and functioning of ecosystems. They often have complex relationships with other species, including soil microbes, fungi, and other plants, which can be disrupted by introducing non-native species;
- *Resilience to Climate Change*: Native trees are generally better adapted to local environmental conditions, making them more resilient to climate change impacts like drought, extreme temperatures, and pests. They may require less water and fewer resources to thrive, reducing maintenance efforts;
- *Invasive Species Control*: Planting native trees helps to suppress the proliferation of invasive species that might outcompete or negatively impact native flora and fauna, thereby preserving the integrity of the ecosystem; and
- *Soil Health and Nutrient Cycling*: Native trees may have symbiotic relationships with soil microorganisms, aiding in nutrient cycling and maintaining soil health. Introducing non-native species can negatively impact overall soil quality and nutrient cycling.

Recommended Mitigation Measure 1: Nesting Bird Surveys

CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every fourteen (14) days during Project activities 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 by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends

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having the 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.

Recommended Mitigation Measure 2: Nesting Bird Buffers

If continuous monitoring of identified nests by a qualified avian 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 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 compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.

Recommended Mitigation Measure 3: Bat Habitat Assessment

To evaluate Project impacts to bats, a qualified bat biologist should conduct a habitat assessment for bats at the site seven (7) days prior to the start of Project activities. The habitat assessment shall include a visual inspection of features within 50 feet of the work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

Recommended Mitigation Measure 4: Bat Habitat Monitoring

If any habitat features identified in the habitat assessment will be altered or disturbed by Project construction, the qualified bat biologist should monitor the feature daily to ensure bats are not disturbed, impacted, or fatalities are caused by the Project.

Recommended Mitigation Measure 5: Bat Project Avoidance

If bat colonies are observed at the Project site, at any time, all Project activities should stop until the qualified bat biologist develops a bat avoidance plan to be implemented at the Project site. Once the plan is implemented, Project activities may recommence.

Recommended Mitigation Measure 6: Bat Roosting Structures

If active bat roosts or signs of bat presence are observed at the Project site within habitat or structures (i.e., trees or buildings) that will be impacted as a result of Project, permanent bat roosting structures shall be incorporated into the design of the Project in consultation with CDFW. Temporary structures shall also be installed to provide habitat

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from the timeframe to when the old structure is demolished, and the new structure is complete.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to prepare subsequent EIRs or to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subds. (d) & (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 here: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found here: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

CDFW anticipates that the proposed Project will have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to provide comments on the proposed Project to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Teichman, Environmental Scientist at (707) 210-5104 or Jason.Teichman@wildlife.ca.gov, or Wesley Stokes, Senior Environmental Scientist (Supervisory), at (707) 944-5554 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

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ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023120023)
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov

REFERENCES

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