



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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June 7, 2024

Christopher Riordan, Senior Planner

City of Saratoga

13777 Fruitvale Avenue

Saratoga, CA 95070

Criordan@saratoga.ca.us

Subject: Masson Estates, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024050461, City of Saratoga, Santa Clara County

Dear Mr. Riordan:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) from the City of Saratoga (City) for the Masson Estates Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, we appreciate 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 the 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 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 over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed

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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Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

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). CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any Project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

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, does not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting rivers, 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.

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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 nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

Fully Protected Species

Several Fully Protected Species (Fish & G. Code § 3511 and 4700) have the potential to occur within or adjacent to the Project area, including, but not limited to: white-tailed kite (*Elanus leucurus*).

Project activities described in the draft EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research;

- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (See Fish & G. Code §2081.15.).

CDFW also recommends the draft EIR analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the City include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce indirect impacts to fully protected species. Project proponents should consult with CDFW early in the Project planning process.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Saratoga

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Objective: The proposed project would consist of the construction of 25 single-family homes and associated improvements totaling approximately 118,670 of gross building square feet on a 72.45-acre site. Development would be focused on the northern approximate 18-acre portion of the parcel (Development Area); the southern approximate 54-acre portion would remain undeveloped with the exception of an emergency access road. Tree removal and landscaping would be located in areas directly adjacent to the proposed residences, roadways, and stormwater detention ponds. A total of 367 trees are proposed for removal.

Location: Intersection of Pierce Road and Saratoga Heights Drive, City of Saratoga, Santa Clara County (County). The coordinates for the approximate center of the Project are 37°15'29.0"N latitude 122°03'26.0"W longitude (NAD 83 or WGS 84).

Timeframe: Not included in NOP.

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

Sufficient information regarding the environmental setting is necessary to understand any potentially significant impacts on the environment of the proposed Project (CEQA Guidelines, §§15063 & 15360). CDFW recommends that a full list or table is included in the updated Biological Resources Section of the draft EIR that notes species common name, scientific name, state and federal listing status (as applicable), habitat type preference and determination on presence, for all special-status species with the potential to occur within the Project area.

CDFW recommends 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 all rare, threatened, and endangered species (CEQA Guidelines, §15380). The draft 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 area (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.

CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence

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of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad (See *Data Use Guidelines* on the CDFW webpage <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>). Please review the webpage for information on how to access the database to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the Project. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, state and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations. Only with sufficient data and information can the City adequately assess which special-status species are likely to occur in the Project vicinity.

According to Biogeographic Information and Observation System (BIOS) records, the Project site contains positive detections of several special-status species and has the potential to support numerous special-status species and their associated habitat. Species with potential to occur on-site include but are not limited to those listed in Attachment 1.

IMPACT ANALYSIS AND MITIGATION MEASURES

The draft EIR should 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:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to 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, vegetation overhanging banks);

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- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The draft 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., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Mitigation Measures for Project Impacts to Biological Resources

The draft EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW also recommends the environmental documentation provide scientifically supported discussions regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

COMMENT 1: Bats (Biological Resources, page 15)

The Project includes the removal of 367 trees. In order to determine the extent to which impacts may occur to bats and determine where habitat loss may occur from the removal of trees, the draft EIR should propose measures to conduct a bat habitat assessment of suitable bat roosting habitat.

The habitat assessment shall include a visual inspection of features within the work area for potential roosting features including trees, crevices, portholes, expansion joints and hollow areas (bats need not be present). include a visual inspection of features within 200 feet of the work area for potential roosting features including trees, crevices, portholes, expansion joints and hollow areas (bats need not be present). The draft EIR

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should also include a section that discusses the results of the suitable habitat assessment and if any bats or signs of bats (feces or staining at entry/exit points) are discovered. The surveys should occur at least two seasons in advance of Project initiation. The draft EIR should include:

- **Bat Habitat Monitoring** by a qualified biologist of suitable habitat from March 1 to April 1 or August 31 to October 15 prior to construction activities. If the focused survey reveals the presence of roosting bats, then the appropriate exclusionary or avoidance measures will be implemented prior to construction during the period between March 1 to April 15 or August 31 to October 15.
- **Bat Project Avoidance:** If active bat roosts are observed during environmental assessments or during construction, at any time, all Project activities should stop until the qualified biologist develops a bat avoidance plan to be implemented at the Project site. The bat avoidance plan should utilize seasonal avoidance, phased construction as well as temporary and permanent bat housing structures developed in coordination with CDFW.

COMMENT 2: Nesting Birds

The Project includes the removal of 367 trees. In order to determine the extent to which impacts may occur to nesting birds and determine where habitat loss may occur from the removal of trees, the draft EIR should propose measures to conduct nesting bird surveys and develop buffers, as needed. CDFW encourages Project implementation outside of the bird nesting season, which extends from February through early September. However, if anthropogenic structure work activities, ground-disturbing or vegetation-disturbing activities must occur during the nesting season, the City is responsible for ensuring that implementation of the Project does not result in violation of the MBTA or Fish and Game Code.

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **Nesting Bird Surveys:** A qualified biologist should 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

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activities begin, CDFW recommends 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.

- **Nesting Bird Buffers:** 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.

COMMENT 3: Sensitive Natural Plant Communities

A total of 367 trees are proposed for removal. The NOP notes that removed trees would be replaced primarily by coast live oak (*Quercus agrifolia*) but may be replaced by western redbud (*Cercis occidentalis*). The Project will impact coast live oak woodland and forest. The coast live oak woodland and forest natural community (alliance code 71.060.00) includes nine associations that are designated as sensitive natural communities (rank G3S3 or rarer). The importance of oak woodlands is further supported through the Oak Woodlands Conservation Act (Fish & G. Code §1360–1372). A temporal loss also exists for regaining the specific habitat that oak trees provide such as trunk and branch cavities, downed woody debris, and snags.

To evaluate and avoid for potential impacts to sensitive natural plant communities, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project:

- **Natural Community Survey and Mapping:** Survey and mapping of natural communities should be conducted for all impact areas by a qualified biologist that has been trained in natural community identification. Natural communities should be identified to the alliance and association level, including oak woodland, scrub, and other communities within the Project area.
- **Compensatory Mitigation and Revegetation:** Compensatory mitigation for loss of sensitive natural communities (e.g., oak woodland and scrub) should be based on species and size of trees to be impacted and at a minimum 5:1 replacement ratio. Appropriate compensatory mitigation should be through preservation and protection in perpetuity of equal or higher quality habitat, or through creation, enhancement, and/or restoration. A mitigation and monitoring plan should be developed and include success criteria to be met at the end of the monitoring period. If success criteria are not met, the mitigation plan should include adaptive

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management actions along with additional years of monitoring as well as additional mitigation for the temporal loss.

COMMENT 4: Wildlife Movement and Connectivity

The Project is located at the eastern edge of core and patch habitat for movement of species across the Santa Cruz Mountain Range. Implementation of the proposed Project could prevent, decline, or otherwise alter use of existing wildlife movement corridors for a number of species. The Project area is an important linkage for badger, mountain lion, dusky-footed woodrat, long-eared Myotis, pallid bat, and white-tailed kite (BIOS Connectivity Modeling for the California Bay Area Linkage Network [ds854, ds864, ds863, ds879, ds865, ds860]). Maintaining connectivity through these linkages is critical to ensure current and future wildlife populations' abilities to move and adapt to a changing climate and habitat conditions.

CDFW recommends that on-site features that contribute to habitat connectivity should be evaluated and maintained. Aspects of the Project that could create physical barriers to wildlife movement, including direct or indirect Project-related activities, should be identified, and addressed in the draft EIR. CDFW recommends the Project avoid developing and encroaching onto wildlife corridors, essential connectivity blocks, critical wildlife passage areas, or potential linkage areas. Where not feasible, CDFW recommends mitigation for wildlife movement impacts, including, but not limited to a 1) wildlife movement study of existing use of wildlife corridors within the Project area before and after construction, 2) on-site or off-site compensatory mitigation, such as the development or enhancement of a local wildlife movement corridor.

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 field survey form can be filled out and submitted online 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would 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

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required in order for the underlying project approval to be operative, vested, and final. (See: Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Marcus Griswold, Senior Environmental Scientist (Specialist), at (707) 815-6451 or Marcus.Griswold@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species and Commercially/Recreationally Important Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024050461)
Craig Weightman, Bay Delta Region – Craig.Weightman@wildlife.ca.gov
Jason Faridi, Bay Delta Region – Jason.Faridi@wildlife.ca.gov

REFERENCES

California Department of Fish and Wildlife (CDFW). 2024. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed April 25, 2024.

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ATTACHMENT 1: Special-Status Species

Species	Status
Fish and Invertebrates	
Crotch's bumble bee (<i>Bombus crotchii</i>)	State candidate (SC)
Birds	
Cooper's hawk (<i>Accipiter cooperii</i>)	State Watch List
white-tailed kite (<i>Elanus leucurus</i>)	State Fully Protected (FP)
Mammals	
American badger (<i>Taxidea taxus</i>)	Species of Special Concern (SSC)
mountain lion (<i>Felis concolor</i>)	SC
pallid bat (<i>Antrozous pallidus</i>)	SSC
ringtail (<i>Bassariscus astutus raptor</i>)	FP
San Francisco dusky-footed woodrat (<i>Neotoma fuscipes annectens</i>)	SSC
Townsend's big-eared bat (<i>Corynorhinus townsendii</i>)	SSC
Reptiles and Amphibians	
California giant salamander (<i>Dicamptodon ensatus</i>)	SSC
California red-legged frog (<i>Rana draytonii</i>)	Federally listed as threatened (FT), SSC
Santa Cruz black salamander (<i>Aneides niger</i>)	SSC
western pond turtle (<i>Emys marmorata</i>)	Proposed FT, SSC
Plants	
arcuate bush-mallow (<i>Malacothamnus arcuatus</i>)	S3, 2B.2
Loma Prieta hoita (<i>Hoita strobilina</i>)	S2, 1B.1

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Species	Status
Santa Clara red ribbons (<i>Clarkia concinna</i> ssp. <i>automixa</i>)	S3, 4.3
woodland woollythreads (<i>Monolopia gracilens</i>)	S3, 1B.2