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August 12, 2025

Farhad Mortazavi, Interim Community Development Director
City of Clayton Community Development Department
6000 Heritage Trail
Clayton, CA 94517
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Subject: Silver Oak Estates Project, Draft Environmental Impact Report,
SCH No. 2024040225, City of Clayton, Contra Costa County

Dear Farhad Mortazavi:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Clayton for the Silver Oak 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) and 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 as provided by the Fish and Game Code. As proposed, 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. (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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Clayton

Objective: The objective of the Project is to construct a new residential development within a project area of 13.96 acres. Primary Project activities include demolition of the existing residential structures and associated outbuildings, grading, and removal of approximately 145 trees, tree replacement planting, and revegetation. The activities will support the construction of 32 new single-family residential units on 8.03 acres of the 13.96-acre project site. Each single-family residential unit will be two or three stories and include a two- or three-car garage. The single-family residential units will consist of four models with four elevations that will range in size from 2,502 square feet to 3,524 square feet and will be located on individual lots that will range from 4,471 square feet to 10,095 square feet with an average lot size of 6,044 square feet. The proposed Project will have an overall density of 4.0 dwelling units per acre (du/ac). The Project will also include installation of utilities, internal roads, and 32 street parking spaces to accommodate the development. The proposed Project would also include six open space parcels totaling 8.21 acres to protect existing trees and the riparian area associated with Mount Diablo Creek. This land would be maintained by the Homeowner Association (HOA). The open space parcels would include two landscaped bioretention facilities, totaling 15,156 square feet and three large, landscaped areas that would act as self- treating areas that bypass the two bioretention facilities.

Location: City of Clayton, Contra Costa County, Oakhurst Drive at Yolanda Circle, 37°57'4.44"N, 121°56'46.56"W

Timeframe: The Project is anticipated to begin in 2026 and would take place over an approximately 36-month period.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Clayton in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below CDFW concludes that an EIR is appropriate for the Project.

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COMMENT 1: Storm Drains and Curbs that support Amphibian, Reptile and Small Mammal Escapement and Passage.

Issue: Mitigation Measure - BIO-1 Mitigation Measure BIO-1: California Red-Legged Frog (CRLF, *Rana draytonii*) and Foothill Yellow-Legged Frog (FYLF, *Rana boylei*), Page 4-14 from Initial Study and Page 2-7 from Draft EIR is not sufficient to reduce impacts to CRLF and FYLF to less-than-significant without addition of storm drains and curbs that support amphibian, reptile and small mammal escapement and passage.

Currently there are no plans to implement amphibian/reptile/small mammal friendly storm drains or curbs in the Project area which will result in significant impacts to local populations. Amphibian populations, including CRLF, FYLF, and California tiger salamander (CTS, *Ambystoma californiense*) continue to be threatened by habitat loss and fragmentation (Bebee and Griffiths, 2005). Human transportation infrastructure and housing developments create barriers for small animals, fragmenting their habitat and isolating populations. Dense networks of human infrastructure often cut breeding grounds off from uplands (McInroy and Rose, 2015). Amphibians migrating to breeding or hibernation sites may be forced to cross roads or other infrastructure where they are killed in large numbers (Fahrig et al, 1995) or follow curb lines and crawl over numerous roadside drains (Smith and Sutherland, 2014). Roadside storm drains themselves pose a significant threat to amphibians, reptiles and small mammals (Elmiger and Trocmé, 2007). During dry conditions the moisture of the inlet and catch basin attracts amphibians. Once they are in the drainage system the smooth walls prevent escape. They are then trapped and/or flushed further into the detention basin, pumping station, or sewage treatment plant where they usually are killed. Curbs themselves pose a barrier to amphibians and other small animal passage (Elmiger and Trocme, 2007; Langton and Clevenger, 2020). Curb, sidewalks and drainage systems are strong barriers that are difficult or impossible to overcome for small animals (invertebrates, amphibians, reptiles, small mammals) trying to cross the road and exit the roadway (Ratzel 1993). Even adult amphibians often follow the vertical structure instead of jumping over it (Ratzel 1993). Animals blocked from leaving the roadway are subject to traffic mortality, predators, climatic adversities, or must expend additional resources to find an exit far from the original destination.

Why impact would occur: Without the implementation of wildlife friendly storm drains and slanted curbs in strategic locations, the Project's road network and drainage infrastructure could pose as a nuisance attractant (when drainage infrastructure is wetted) and a lethal trap for listed and unlisted amphibian species, reptiles, and small mammals. Furthermore, traditional vertical curbs pose a barrier to movement of small animals during dispersal (Fahrig et al, 1995, Elmiger and Trocme, 2007; Langton and Clevenger, 2020) potentially exacerbating the problem if animals are able to leave the drain system to become entrapped in the road network.

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Evidence impact would be significant: The Project occurs along Mount Diablo Creek which has been designated by the U.S. Fish and Wildlife Service (USFWS), as providing CRLF dispersal habitat and serves as habitat for other non-listed amphibians and reptiles. Development of the outfall structure connected to Mount Diablo Creek and the associated drainage lines could pose as a nuisance attractant if wetted in otherwise dry conditions. This could lure amphibians, reptiles and small mammals into the drainage system where they could become trapped and perish. If small animals dispersing from Mount Diablo Creek are within the Projects housing development and encounter traditional vertical curbs this would also impede or disrupt movement.

Recommendation: The CEQA Lead Agency needs to incorporate the following measures to avoid, minimize, or mitigate the problem of small animals (including CRLF and FYLF) becoming entrapped and killed in storm drains through the implementation of wildlife friendly curb and storm drain designs and/or retrofits.

To reduce impacts to less-than-significant: The CEQA Lead Agency should incorporate the following feasible and enforceable measures to reduce impacts to less-than-significant. Additionally, the Project will be subject to CDFW's LSA 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 CESA (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

Measure 1: Roadside Curbs Design and Construction. Project proponent shall provide CDFW with draft design plans for curbs on all roads, sidewalks, and trails that will be installed as part of the implementation of this project at least 90 days prior to construction. Wherever possible, Project proponent shall minimize the use of curbs or elevated margins that may serve as hard borders or separations between natural habitat and anthropogenic infrastructure. Curbs shall be designed to allow for volitional passage of CRLF, FYLF, CTS and other small animals. CDFW acceptance of the roadside curb designs shall be required prior to Project construction. CDFW shall provide written response to the Project proponent within 30 calendar days of receipt of the curb designs. If no response is received from CDFW within 30 calendar days of submittal of the curb designs, the curb designs shall be considered as accepted by CDFW. Project proponent shall construct roadside curbs according to the designs accepted by CDFW. The curb designs shall include, at minimum, the following design components:

- 1.1 Curbs on the edge of any road, sidewalk or trail shall be slanted at no more than a 45-degree angle. Alternatively, slanted sections shall be provided at regular intervals of no more than 100 linear feet. Private driveways shall not serve as slanted sections unless they are flush with the street. Examples of

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curb designs may be found online at: <https://dot.ca.gov/-/media/dot-media/programs/design/documents/locked-2023-std-plans-dor-a11y.pdf>.

- 1.2** Curbs adjacent to storm drains shall be offset by a sufficient distance to allow volitional passage for CRLF, FYLF, and CTS around the storm drains.

Measure 2: Storm Water Infrastructure Designs and Construction. Project proponent shall ensure that storm water-related infrastructure (e.g., storm drains, storm drain grates, v-ditches, catchment basins and detention basins) are designed and constructed in a manner that minimizes and avoids take of CRLF, FYLF, and CTS to the maximum extent feasible. At least 90 days prior to construction, Project proponent shall submit design plans and obtain written acceptance from CDFW confirming that the infrastructure incorporates design elements to avoid and reduce impacts to CRLF, FYLF, CTS, and other small animals prior to installation of such infrastructure. CDFW shall provide written comments to Project proponent within 30 calendar days of receipt of the storm drain designs. If no response is received from CDFW within 30 calendar days of submittal of the storm drain designs, the storm drain designs shall be considered accepted by CDFW. Project proponent shall construct drop inlets or other storm drain infrastructure according to the designs accepted by CDFW.

- 2.1** Storm drain grates shall be offset from any adjacent curb by a distance that will allow for volitional passage of CRLF, FYLF, CTS, and other small animals to go around the grate, along the curb.
- 2.2** Openings in storm drain grates shall be no more than 16 millimeters (mm) in width and shall be oriented perpendicular to the adjacent curb or walkway.
- 2.3** V-ditches shall be designed so that their walls do not form an angle greater than 45 degrees with the substrate and shall have velocity breaks at regular intervals that will allow for refuge and volitional escape by CRLF, FYLF, CTS and other small animals. V-ditches shall not direct or lead small animals into hazardous or terminal (dead-end) areas.
- 2.4** Catchment basins shall be fitted with escape ramps or ladders that will allow small animals to volitionally escape. Ramps and/or ladders shall be placed along a wall of the catchment basin and must span the distance from the lowest point in the basin (sump pit) to the grate covering.
- 2.5** Escape ramps or ladders shall be fashioned from perforated metal sheeting covered with an open structured synthetic matting material that will allow for sufficient traction for CRLF, FYLF, CTS, and other small animals to volitionally escape from the catchment basin if entrained.

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- 2.6** Alternatively, catchment basins shall be designed to have walls that are slanted outward and the walls shall be covered with open structured synthetic matting material together with an escape ramp or ladder that allows for volitional escape of CRLF, FYLF, CTS, and other small animals.
- 2.7** Detention basins shall be designed with exclusion fencing to prevent access by CRLF, FYLF, CTS and other small animals. The exclusion fencing shall be solid or opaque for at least 15 vertical inches from where it meets the substrate, and may consist of plastic, metal or other impermeable material that serves to block sensory access by CRLF, FYLF, CTS and other small animals and reduce take that may arise from “pacing” or “giving up” behavior.
- 2.8** Vehicle entry/exit points of access to the detention basins shall have crossing structures installed (e.g., grated trenches) to prevent road mortality of CRLF, FYLF, CTS, and other small animals.
- 2.9** Detention basin outfall structures shall have one-way gates installed (e.g., flapper gates) or similar devices that will serve to prevent CRLF, FYLF, CTS, and other small animals from entering the basin via the structure.

COMMENT 2: Revegetation With Native Species to Benefit Wildlife

Issue: The following measures and conditions: Standard Condition BIO-1 Riparian Habitat, Page 2-28 Draft EIR, MM-BIO-4 Monarch Butterfly, Page 2-13 Draft EIR, Mitigation Measure BIO-6 Protected Trees Page 2-13 Draft EIR are not adequate to reduce impacts to Monarch butterflies and riparian dependent species to less-than-significant without a clear commitment to revegetation with native species to benefit wildlife. The Project, as designed, will remove 145 live trees and another 28 trees determined to be dead or dying from the Project area including the riparian zone. Riparian trees and vegetation, provide many essential benefits to stream and aquatic species habitat, including thermal protection, cover, and large woody debris (Moyle 2002, CDFW 2007). Development adjacent to or conversion of the riparian zone can result in fragmentation of riparian habitat and decreases in native species abundance and biodiversity (Davies et al. 2001, Hansen et al. 2005, CDFW 2007). Riparian buffers help keep pollutants from entering adjacent waters through a combination of processes including dilution, sequestration by plants and microbes, biodegradation, chemical degradation, volatilization, and entrapment within soil particles. Narrow riparian buffers are considerably less effective in minimizing the effects of adjacent development than wider buffers (Castelle et al. 1992, Brososke et al. 1997, Dong et al. 1998, Kiffney et al. 2003, Moore et al. 2005).

Mitigation proposed to offset tree impacts is described to follow the City of Clayton’s tree protection ordinance and replacement plantings will consist of trees native to the

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area and habitats present in the Project area. Furthermore, MM-BIO-4 Monarch Butterfly (Table 2-A Draft EIR) goes on to state, “*preserved lands shall be seeded with native forbs known to be nectar sources for the monarch butterfly and similarly, these species shall be incorporated into the projects landscape plan. And...The project applicant shall also endeavor to ensure, with the City’s cooperation, that the mitigation for impacts to protected trees also incidentally provides appropriate overwintering/roost habitat for monarch butterfly to the extent feasible.*” However, the Preliminary Tree Palette (Figure 3-10 Draft EIR) shows only one out six trees planned for planting is a native California tree species directly benefiting monarch butterflies (*Danaus Plexippus*). Furthermore, there is no information about the forbs and grasses species palette for all other plantings associated with the project, except the vague note (D. under General Notes Figure 3-10, Draft EIR) stating, ‘*plants will be planted appropriately based on their adaptability to the climate.*’ This is not consistent with the implementation of MM-BIO-4.

Specific impact: If non-native tree, forb and grass species are the dominant vegetation planted after Project implementation, then MM-BIO-4 would not reduce impacts to less-than-significant because adequate monarch butterfly overwintering/roost habitat is not provided.

To reduce impacts to less-than-significant: The CEQA Lead Agency need to ensure that the final landscape plan is primarily composed of native species known to benefit monarch butterflies and other native species.

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 California Natural Diversity Database (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 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.

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(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 Draft EIR to assist the City of Clayton in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Elijah Portugal, Senior Environmental Scientist, at (707) 428-2088 or Elijah.Portugal@wildlife.ca.gov; or Sara Kern, Senior Environmental Scientist (Supervisory) at (916) 531-4465 or Sara.Kern@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation (SCH No. 2024040225)

REFERENCES

- Beebee TJ, Griffiths RA. The amphibian decline crisis: a watershed for conservation biology. *Biological conservation*. 2005 Oct 1;125(3):271-85.
- Brososke, K.D., J. Chen, R.J. Naiman, and J.F. Franklin. 1997. Harvesting effects on microclimatic gradients from small streams to uplands in western Washington. *Ecological Applications* 7:1188-1200.
- Clevenger, A. P., & Huijser, M. P. (2011). *Wildlife crossing structure handbook: design and evaluation in North America* (No. FHWA-CFL-TD-11-003). United States. Federal Highway Administration. Central Federal Lands Highway Division.
- California Department of Fish and Wildlife [CDFW]. 2007. *California wildlife: conservation challenges*. California Department of Fish and Game, Sacramento, CA.
- Castelle, A.J., C. Conolly, M. Emers, E.D. Metz, S. Meyer, M. Witter, S. Mauermann, T. Erickson, and S.S. Cooke. 1992. *Wetlands buffers use and effectiveness*. Adolfson Associates, Inc., Shorelands and Coastal Zone Management Program, Washington Department of Ecology, Olympia, WA. Pub. No. 92-10.

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- Davies, K.F., C. Gascon, and C.R. Margules. 2001. Habitat fragmentation: consequences, management, and future research priorities. Pages 81-97 in: M.E. Soule and G. H. Orians, (eds.) *Conservation Biology: Research Priorities for the Next Decade*. Island Press, Washington, DC.
- Dong J., J. Chen, K.D. Brosfke, and R.J. Naiman. 1998. Modeling air temperature gradients across managed small streams in western Washington. *J. Environ. Manage.* 53: 309–321.
- Elmiger C, Trocmé M. *Developing Fauna-Friendly Transport Structures: Analysis of the Impact of Specific Road Engineering Structures on Wildlife Mortality and Mobility*. 2007.
- Fahrig L, Pedlar JH, Pope SE, Taylor PD, Wegner JF. Effect of road traffic on amphibian density. *Biological conservation*. 1995 Jan 1;73(3):177-82.
- Hansen, A. J., R. L. Knight, J. M. Marzluff, S. Powell, K. Brown, P. A. Gude, and K. Jones. 2005. Effects of exurban development on biodiversity patterns, mechanisms, and research needs. *Ecological Applications* 15:1893-1905.
- Kiffney, P.M., Richardson, J.S. and Bull, J.P. (2003), Responses of periphyton and insects to experimental manipulation of riparian buffer width along forest streams. *Journal of Applied Ecology*, 40: 1060-1076.
<https://doi.org/10.1111/j.1365-2664.2003.00855.x>
- Langton, T.E.S. and A.P. Clevenger. 2020. Measures to Reduce Road Impacts on Amphibians and Reptiles in California. *Best Management Practices and Technical Guidance*. Prepared by Western Transportation Institute for California Department of Transportation, Division of Research, Innovation and System Information.
- McInroy CL, Rose TA. Trialing amphibian ladders within roadside gullypots in Angus, Scotland: 2014 impact study. *Herpetological Bulletin*. 2015 Jun 1;132:15-9.
- Moore, R. D., D. L. Spittlehouse, and A. Story. 2005. Riparian microclimate and stream temperature response to forest harvesting: a review. *Journal of the American Water Resources Association* 41:813-834.
- Moyle P.B. 2002. *Inland fishes of California*. University of California Press. Berkeley, CA.
- Smith RK, Sutherland WJ. *Amphibian conservation: global evidence for the effects of interventions*. Pelagic Publishing Ltd; 2014 May 16.

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Ratzel M. Road drainage: Trap effect and defusing with special consideration of amphibians. District Office for Nature Conservation and Landscape Management; 1993.

Weber, D. 1998. Einzelidee 6.07 - Schräge Randsteine. Bundesamt für Umwelt, Bern. Schriftenreihe Umwelt Nr. 280.