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STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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July 17, 2026

Daniel Sobczack, City Planner
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
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Subject: 400 Saratoga Pruneridge Apartments, Draft Environmental Impact Report, SCH No. 2025050498, City and County of Santa Clara

Dear Mr. Sobczack:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Santa Clara (City) for the 400 Saratoga Pruneridge Apartments (Project) pursuant 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 as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed 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.

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

[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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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.

California Environmental Quality Act
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.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, 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 CEQA document 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 nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

PROJECT DESCRIPTION SUMMARY

Proponent: City of Santa Clara

Objective: The proposed Project would divide the existing Project site into three parcels and proposes residential development on the southwestern parcel (3.66 acres), a 1.77-acre public park, and the golf course on the remaining 25.54 acres. While the golf course would be reconfigured, no changes are proposed to the existing 6.4-acre portion of the golf course parcel that consists of the driving range, clubhouse, and surface parking lot.

Location: The Project is located citywide at the crossroads of Pruneridge Avenue and Saratoga Avenue in the City of Santa Clara in Santa Clara County. GPS coordinates 37°19'51.7"N, Longitude: 121°57'52.9"W.

Timeframe: 36 months

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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. Editorial comments or other suggestions may also be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

COMMENT 1: Migratory Birds and Nesting Raptors

Issue: The draft EIR acknowledges there is foraging bird habitat and potential nesting habitat on the Project site that may be impacted by Project disturbance. The draft EIR indicates site disturbance may occur during the nesting bird season (February 1 through August 31). Avoidance and minimization measure MM BIO-1.1 specifies a qualified ornithologist conduct pre-construction nesting bird surveys "no more than 14 days prior to the initiation of grading, tree removal, or other demolition or construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August)." MM BIO-1.1 also says "if an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction free buffer zone to be established around the nest". The draft EIR does not prescribe a survey radii or provide an active nest buffer. This is not biologically protective and risks nest abandonment, reduced productivity, and unlawful "take" under California Fish & Game Code and the MBTA.

Evidence that the impact would be significant: Bird and Raptor species are highly sensitive to human disturbance during courtship, incubation, and fledging. Repeated flushes and noise/activity near nests are linked to lower nesting success. Spatial and temporal buffers are necessary to prevent disturbance, and effective distances vary by species and site conditions, often exceeding a few hundred feet (ft.) (Richardson and Miller 1997). CDFW emphasizes that most birds and all raptors are protected under state law (Fish & Game Code §§3503, 3503.5, 3513) and inadequate buffers that cause nest failure or harassment would constitute a significant impact and potential violation (CDFW 2019). Additional raptor research underscores that buffer-setting should account for species traits and local visibility/line-of-sight; conservative distances and seasonal restrictions reduce disturbance risk (White et al. 2022).

Recommendations: The City should revise MM BIO-1.1 to include species-specific, seasonally appropriate, and enforceable measures, including:

1. **Minimum no-disturbance buffers:** Passerine bird species should generally have a nesting buffer of 50-150 ft. (species dependent), and general raptors should have a buffer of greater than or equal to 500 ft. with direct line-of-sight, which may only be reduced with screening and qualified biologist approval (Richardson and Miller 1997). For species like Swainson's hawk (*Buteo swainsoni*), there should be at least a 0.5-mile buffer until fledging is confirmed by a qualified biologist (CDFW 2000). No work shall occur in the nesting buffer until the nest has fledged.

2. **Surveys & timing:** A qualified biologist shall conduct nesting bird and raptor surveys within at least 1,000 ft. of disturbance footprint before any work during nesting season. If there is a lapse in Project activities of more than five days, new nesting bird surveys shall be performed.

3. **Seasonal work windows:** Tree removal and high-noise activities shall be performed outside the nesting season where feasible; if not feasible, no work buffers shall be

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established for active nest and daily monitoring by a qualified biologist shall be conducted (Richardson and Miller 1997).

4. **Regulatory coordination:** CDFW shall be consulted when an active nest buffer is proposed to be reduced.

COMMENT 2: Bats

Issue: The draft EIR does not adequately assess or disclose potential impacts to bats resulting from tree removal and structural disturbance associated with the Project. While the Project proposes removal of 209 trees and disturbance to features that may provide suitable roosting habitat, the draft EIR lacks a comprehensive bat habitat assessment to address potential impacts. Bat surveys should occur at least two seasons in advance of Project initiation. As a result, the draft EIR minimizes the potential for significant impacts to bats and does not demonstrate that impacts would be reduced to less than significant.

Evidence of Impacts: Bats are a sensitive species that rely on a variety of roosting features, including large trees with cavities or exfoliating bark, crevices in bridges and buildings, and other structural voids. Many bat species exhibit strong seasonal variation in roost use, shifting between maternity roosts, day roosts, night roosts, and hibernacula depending on time of year. Removal or disturbance of roosting habitat during critical life stages, such as maternity season, can result in direct mortality, abandonment of young, or long-term population declines (Kunz and Lumsden 2003; Cryan and Barclay 2009).

Scientific literature demonstrates that single-season or last-minute surveys are inadequate to characterize bat use of a site. Bat occupancy can vary substantially between spring, summer, and fall, and absence during a short survey window does not indicate absence during other biologically important periods (Weller 2007). Maternity colonies, which are typically present during late spring and summer, are especially vulnerable because females give birth to non-volant young that cannot escape disturbance or habitat removal (Kunz and Fenton 2005). Disturbance of maternity roosts is widely recognized as a significant impact because reproductive success in bats is low, with most species producing only one pup per year.

Recommendations: The draft EIR should include the following avoidance and minimization measure:

1. Multi-Season Bat Surveys: Focused bat surveys of suitable habitat shall be conducted by a qualified biologist shall be conducted at least two seasons prior to Project initiation, as follows:

- Spring/early summer (March 1–April 15) to identify maternity roost establishment
- Late summer/fall (August 31–October 15) to document late-season roost use and migration-related activity

2. 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.

3. 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.

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COMMENT 3: Exterior Windows

Issue: The glass used for exterior building windows could result in bird collisions, which can cause bird injury and mortality.

Evidence the impact would be significant: Birds, typically, do not see clear or reflective glass, and can collide with glass (e.g., windows) that reflect surrounding landscape and/or habitat features (Klem and Saenger 2013). When birds collide with glass, they can be injured or killed. In the United States, the estimated annual bird mortality is between 365-988 million birds (Loss et al. 2014).

Recommendations to minimize significant impacts: CDFW recommends incorporating visual signals or cues to exterior windows to prevent bird collisions. Visual signals or cues include, but are not limited to, patterns to break up reflective areas, external window films and coverings, ultraviolet patterned glass, and screens. For best practices on how to reduce bird collisions with windows, please go to the U.S. Fish and Wildlife Service's website for Buildings and Glass (https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds/collisions/buildings-and-glass.php).

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 (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/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 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 comment on the draft EIR to assist the City in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed Emily Carlson, Environmental Scientist, at Emily.Carlson@wildlife.ca.gov; or Jason Faridi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
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ec: Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov
Office of Land Use and Climate Innovation, State Clearinghouse (SCH No. 2025050498)

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REFERENCES

California Department of Fish and Wildlife (CDFW). 2019. *Fish and Game Code §§3503, 3503.5, 3513 – Protection of Birds and Raptors.* Sacramento, CA.

California Natural Resources Agency. 2023. *California Environmental Quality Act statutes and guidelines*. California Natural Resources Agency, Sacramento, California.

Cryan, P. M., and R. M. R. Barclay. 2009. Causes of bat fatalities at wind turbines: hypotheses and predictions. *Journal of Mammalogy* 90(6): 1330–1340.

Klem, D. and P. G. Saenger. 2013. Evaluating the Effectiveness of Select Visual Signals to Prevent Bird-window Collisions. The Wilson Journal of Ornithology 125(2):406-411.

Kunz, T. H., and M. B. Fenton (eds.). 2005. *Bat Ecology.* University of Chicago Press, Chicago, Illinois.

Kunz, T. H., and L. F. Lumsden. 2003. Ecology of cavity and foliage roosting bats. In: Kunz, T. H., and M. B. Fenton (eds.), *Bat Ecology*, pp. 3–89. University of Chicago Press, Chicago, Illinois.

Loss, S.R., T. Will, S.S. Loss, and P.P. Marra. 2014. Bird-building collisions in the United States: estimates of annual mortality and species vulnerability. Condor 116: 8-23.

Richardson, C. T., and C. K. Miller. 1997. Recommendations for protecting raptors from human disturbance: a review. *Wildlife Society Bulletin* 25(3): 634–638.

Weller, T. J. 2007. Using occupancy estimation to assess the effectiveness of a regional multiple-species conservation plan: bats in coastal southern California. *Journal of Wildlife Management* 71(2): 364–374.

White, C. M., F. S. L. Williamson, and R. P. Line. 2022. Spatial buffers and disturbance thresholds for nesting raptors: a review and synthesis. *Journal of Raptor Research* 56(2): 123–135.