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State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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November 7, 2025

Kavitha Kumar
City of Saratoga
13777 Fruitvale Avenue
Saratoga, CA 95070
KKumar@m-group.us

Subject: 18500 and 18520 Marshall Lane Townhome Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2025100481, City of Saratoga, Santa Clara County

Dear Mr. Kumar:

The California Department of Fish and Wildlife (CDFW) has reviewed the City of Saratoga (City) Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) for the 18500 and 18520 Marshall Lane Townhome Project (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 fish and wildlife resources of the State. Please be advised, by law, CDFW may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW is providing the City, as the lead agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

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

[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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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 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 for impacts that remain significant despite the implementation of all feasible mitigation. Findings of consideration 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

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

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: salt-marsh harvest mouse (*Reithrodontomys raviventris*), white-tailed kite (*Elanus leucurus*), golden eagle (*Aquila chrysaetos*), California least tern (*Sternula antillarum browni*), and California Ridgway's rail (*Rallus obsoletus obsoletus*).

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).

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Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (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 Lead Agency 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 AND LOCATION

Proponent: Marshall Lane Owner, LLC.

Location: The Project site is located at the cross streets of Marshall Lane and Quito Road in the City of Saratoga, Santa Clara County, California. Longitude 37°15'45.73"N, Latitude 121°59'38.61"W. Associate Parcel Numbers (APN) 397-02-110, and 397-02-111.

Project Description: The proposed project would consist of the construction of 132 3-story townhomes and related infrastructure, including new internal streets and driveways, parking, landscaping, bioretention and drainage features, and utility improvements on an approximately 9.84-acre project site.

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: demolition, grading, and vegetation removal.

Timeframe: TBD

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 information below.

- 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.

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- 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.

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

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the Project's, and its alternative's (if applicable), significant impacts on the environment (CEQA Guidelines, §§15125 & 15360). CDFW recommends that the CEQA document prepared for the Project 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, or endangered species (CEQA Guidelines, §15380). 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 the species listed in **Attachment A**.

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessment, the CEQA document can then 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://www.wildlife.ca.gov/Conservation/Survey-Protocol.

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

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IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (§15126.2) necessitate the draft EIR discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project. 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;
- 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, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence;
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features; and
- Impacts both from construction and operation of the Project.

The CEQA document also should 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 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 a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service, 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.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

CONCLUSION

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

If you have any questions, please contact Emily Galli, Environmental Scientist, at Emily.Galli@wildlife.ca.gov; or Jason Fairidi, Senior Environmental Scientist (Supervisory), at Jason.Faridi@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. 2025100481)
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov