

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE



GAVIN NEWSOM, Governor
MEGHAN HERTEL, Director

Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
wildlife.ca.gov

October 22, 2026

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

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

Dear Kaitha Kumar:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (EIR) from the City of Saratoga (City) for the 18500 and 18520 Marshall Lane Townhome Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW previously submitted comments in response to the Notice of Preparation of a draft EIR.

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

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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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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Saratoga

Objective: The project consists of the construction of 132 3-story town homes 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.

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.

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Timeframe: TBD

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: Burrowing Owl

Issue: The Western burrowing owl (*Athene cunicularia*) is listed as a candidate endangered species under CESA. The draft EIR acknowledges there is moderate potential for burrowing owl presence in the Project area, as well as potential habitat on the Project site that may be impacted by Project disturbance. In MM BIO-1a, the draft EIR proposes non-disturbance buffers of 160 feet from active burrows during the non-breeding season and 300 feet from active burrows during the breeding season. However, the draft EIR does not demonstrate that the proposed burrowing owl avoidance buffers, disturbance minimization measures, and construction restrictions are sufficient to avoid significant direct, indirect, and cumulative impacts to burrowing owl occupancy, nesting success, foraging behavior, dispersal, and long-term habitat use. The draft EIR appears to rely on generalized avoidance buffers without providing substantial evidence demonstrating that the proposed setbacks are biologically protective under site-specific conditions.

The draft EIR also appears to assume that burrowing owl impacts can be reduced to less-than-significant levels through preconstruction surveys, monitoring, and buffer implementation without adequately analyzing whether the proposed buffer distances are consistent with current scientific literature, CDFW guidance, or the conditions present at the Project site.

Additionally, MM BIO-1a discusses options for burrowing owl relocation and exclusion. Exclusion by itself would not be considered take avoidance, minimization, or a mitigation method. Eviction of burrowing owl is a potentially significant impact under CEQA (CDFW Staff Report, 2012) and would require an ITP.

Evidence of Significant Impacts: Burrowing owl are a candidate species under CESA. They are highly sensitive to disturbance during both breeding and non-breeding periods, particularly in landscapes experiencing increasing urbanization and chronic human activity. The 2012 CDFW Staff Report on Burrowing Owl Mitigation states that disturbance buffers should be developed using site-specific monitoring and visibility analyses and acknowledges that generalized setback distances may not adequately protect owls under all conditions. The Staff Report further explains that ongoing site surveillance is necessary because burrowing owls may recolonize disturbed areas during project activities and that avoidance measures must ensure with a "high degree of certainty" that take does not occur.

CDFW's Staff Report identifies recommended setback distances derived from Scobie and Faminow (2000), including:

- 200 meters (approximately 656 feet) for low-disturbance activities during the nesting season;
- 500 meters (approximately 1,640 feet) for medium- and high-disturbance activities during nesting;
- 200–500-meter setbacks during portions of the nonbreeding season; and

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- A minimum 50–100-meter setback even during winter periods depending on disturbance intensity.

CDFW’s Staff Report further explains that exclusion and relocation techniques have uncertain long-term demographic consequences and that the fate of excluded owls “has not been systematically studied.” The Staff Report warns that exclusion from burrows may:

- Depress reproduction,
- Increase predation risk,
- Increase energetic costs,
- Increase competition for burrows, and
- Result in indirect take.

Scientific literature similarly demonstrates that nest destruction and displacement increase mortality and dispersal rates in burrowing owl (Catlin and Rosenberg 2006). Burrowing owl exhibit strong site fidelity, and reproductive success is closely linked to habitat stability and avoidance of disturbance (Catlin et al. 2005). Studies also indicate that breeding owls may alter behavior or abandon sites in response to nearby human activity, infrastructure development, and repeated disturbance events (Holroyd et al. 2001; Botelho 1996).

Recommendations: To avoid significant impacts to burrowing owl, the draft EIR should be revised to include the following:

1. Revise burrowing owl buffers to conform to the setback distances identified in the 2012 CDFW Burrowing Owl Staff Report and supporting literature, based on the proposed level of disturbance. Add consultation with CDFW about reducing the size of a buffer only if a qualified biologist obtains site-specific scientific evidence that demonstrates that smaller buffers are equally protective, based on site conditions and observed owl behaviors and additional appropriate minimization measures.
2. If burrowing owl and/or their habitat may be impacted, or eviction is proposed, require consultation with CDFW on compensatory mitigation an ITP.

COMMENT 2: Special-Status Plant Surveys

Issue: The draft EIR determined that there was low potential for special-status plant species on-site, but only a single reconnaissance-level biological survey was performed on October 9, 2025, and it did not occur during the appropriate blooming period. As a result, the draft EIR lacks sufficient information to accurately characterize existing biological conditions or to support impact significance determinations regarding potential impacts to special-status plant species.

Evidence of Significant Impacts: Because many species are cryptic or only seasonally detectable, their presence can be missed by a one-time, non-protocol survey, especially if conducted outside of the correct window. Inconsistent survey methodologies and the absence of County- or agency-level verification increase the risk that projects do not adequately account for impacts to sensitive biological resources. The draft EIR notes a majority of the site is classified as “wild oat-annual brome grassland” and it “appears” to have been subject to regular mowing and discing since agriculture operations ceased in the early 2000s. However, documentation supporting this claim was not provided. Numerous studies demonstrate that species presence and habitat use can vary substantially across seasons and years, particularly for cryptic plant species. Without multiple, seasonally appropriate surveys, the draft EIR may incorrectly assume species absence or underestimate habitat value, leading to flawed impact conclusions (Li et al. 2019; Ranta et al. 2021).

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Recommendations: To address these deficiencies, CDFW recommends the following:

1. A qualified biologist with expertise in regional flora and fauna conducts general and protocol-level surveys for species with potential to be present in and around the Project area, consistent with CDFW and U.S. Fish and Wildlife Service (USFWS) survey protocols during appropriate seasonal windows, including nocturnal and breeding-season surveys where relevant.
2. If project construction or occupancy could occur over multiple years or phases, updated biological surveys need to be conducted prior to each phase of ground-disturbing activities to ensure baseline conditions remain accurate.

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 USFWS'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 (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 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.

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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:

B77E9A6211EF486...
Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Land Use and Climate Innovation, State Clearinghouse (SCH No. 2025100481)
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov

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