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February 6, 2020

Governor's Office of Planning & Research

FEB 06 2020

STATE CLEARINGHOUSE

Ms. Vanessa Garrett, Deputy City Engineer
City of Rohnert Park Development Services
130 Avram Avenue, 2nd Floor
Rohnert Park, CA 94928
Email: VMarin@rpcity.org

Subject: Copeland Creek Trail to Crane Creek Regional Park Project, Mitigated Negative Declaration, SCH #2020019029, City of Rohnert Park, Sonoma County

Dear Ms. Garrett:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of Rohnert Park (City) for the Copeland Creek Trail to Crane Creek Regional Park Project (project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND to inform the City, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained 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. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a 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 ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources

Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for project activities affecting 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, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Rohnert Park

Objective: Create trail access to Crane Creek Regional Park. The trail would be approximately 1.5 miles long and 10 feet wide, and would be used by an estimated 25,000 people annually.

Location: The project is located in Sonoma County and starts at the existing Copeland Creek Trail east end on the Sonoma State University Campus at the intersection of Petaluma Hill Road and Laurel Drive (38.341397, -122.666758) in the City of Rohnert Park and ends at Crane Creek Regional Park (38.344051, -122.644380) at 5000 Pressley Road in the City of Santa Rosa. The project is predominantly on APN 047-132-038.

Timeframe: Construction is anticipated to take approximately 11 months over a 2-year timeframe and be completed in 2021.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations 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. Based on the project's avoidance of significant impacts on biological resources, in part through implementation of CDFW's below recommendations, CDFW concludes that an MND is appropriate for the project.

Environmental Setting

MANDATORY FINDINGS OF SIGNIFICANCE Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?

Comment 1: MND Page 45 and Appendix B (and Sub-Appendix E)

Issue: The MND indicates that California tiger salamander (CTS; *Ambystoma californiense*), a state and federally listed species, is not expected to occur on the project site due to the following reasons: there are no suitable breeding sites within 1.2 miles of it, sampling efforts in 1994-2003 in the vicinity of the site were negative, the nearest occurrence is 1.8 miles away, and the site is located outside of the U.S. Fish and Wildlife Service (USFWS) Recovery Plan area for the species. However, the MND states that the project site and Study Area include nonnative grasslands with small mammal burrows and wetland habitat potentially suitable to support dispersing, aestivating, and breeding CTS. The MND Sub-Appendix E describes a seasonal wetland swale within the Study Area that may hold ponded water into the summer months, indicating a suitable hydroperiod for breeding. According to Sub-Appendix E, there are ponds within 1.3 miles of the site (the dispersal distance of CTS) that hold water into summer months indicating a suitable hydroperiod for breeding, and the above described 1994-2003 negative survey information is outdated and it's unclear if the surveys followed CDFW and USFWS accepted protocols.

Therefore, the MND does not adequately support its conclusion that the project would result in no impacts to CTS, a state threatened and federally endangered species. Impacts to CTS are prohibited without take authorization from CDFW and USFWS.

Specific impacts and why they would occur: Based on habitat within dispersal distance and suitable habitat within the Study Area, the project may result in CTS injury or mortality by crushing, killing, or injuring individuals from vehicles, equipment, and workers during construction, transport of supplies and workers, and on-site storage of construction materials and equipment. CTS could be killed or injured during earth-moving activities such as grading and trenching. CTS may also be entombed in burrows or other suitable refugia during excavation, grading, or fill activities, or become trapped in trenches and pipes. CTS could desiccate during dispersal movements due to loss of burrows or other refugia. The project may also result in the permanent loss of a minimum of 1.8 acres of CTS upland habitat. Additional habitat loss may occur as the MND does not clearly quantify impacts to undeveloped land potentially supporting CTS.

Evidence impact would be significant: The CTS Sonoma County distinct population segment qualifies an endangered and threatened animal under CEQA because it is listed as threatened and endangered under CESA and the federal Endangered Species Act. [CEQA Guidelines, § 15380, subd. (c)(1)]. CTS is endemic to California and numerous populations have been extirpated. Upland habitat destruction from urban and agriculture uses are indicated as a major cause of population decline, which is also attributed to breeding habitat destruction, habitat fragmentation, effects of introduced non-native species, and artificial migration barriers (CDFG 2009). Based on the foregoing, Project impacts would potentially substantially reduce the number or restrict the range of CTS. Therefore, project impacts to CTS would be potentially significant.

Recommended Mitigation Measure 1: CTS habitat assessment, surveys, and CDFW and USFWS take authorization

To reduce impacts to less-than-significant, CDFW recommends that the City require a thorough analysis of the potential for CTS and its habitat within the project site including an

evaluation and mapping of all potential breeding habitat within 1.3 miles of the project site for suitability based primarily on hydroperiod sufficiency and any barriers. Additionally, impacts should include all ground disturbing activities in square feet or acreage of disturbance, including but not limited to temporary work areas, staging areas, and access routes. Alternatively, to show absence of CTS on-site, CDFW requires two-year surveys for CTS pursuant to the *Interim Guidance on Site Assessments and Field Surveys for Determining Presence or a Negative Finding of Tiger Salamander* (USFWS and CDFG 2003, see: <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281282-amphibians>), including pre-survey consultation with CDFW and USFWS.

If suitable breeding habitat occurs within 1.3 miles of the site or CTS are detected during the above described surveys, CDFW recommends that the MND:

- identify potentially significant impacts to CTS described above and include avoidance, minimization, and mitigation measures, such as: implementing seasonal work restrictions, pre-construction surveys by a qualified biologist, biological monitoring, and permanent protection and perpetual management of compensatory habitat.
- require the project to obtain take authorization from CDFW and USFWS. CDFW Bay Delta Region staff is available to provide guidance on the ITP application process.

Comment 2: MND Page 45 and Appendix B (and Sub-Appendix E)

The MND draws similar conclusions for California red-legged frog (CRLF, *Rana draytonii*) as it does for CTS, described in Comment 1 above. CRLF is a federally threatened species and California Species of Special Concern, and take is prohibited without authorization from USFWS. California Natural Diversity Database (CNDDB) documents a CRLF occurrence approximately two miles east of the project site. As with CTS, the project site and Study Area may provide suitable upland and breeding habitat for the CRLF. According to the MND Sub-Appendix E, the site supports small mammal burrows which may provide upland refugia for the species. The wetland swale in the Study Area may hold water into the summer indicating a suitable breeding hydroperiod, and some ponds within one mile of the project site may be inundated into the summer months indicating suitable breeding habitat within the dispersal distance of the species. Sub-Appendix E concludes that CRLF may occur on-site but are unlikely. However, the MND does not support this conclusion. Therefore, CDFW concludes that CRLF may occur in the project area and impacts would be potentially significant.

Recommended Mitigation Measure 2: CRLF habitat assessment, surveys, USFWS take authorization

CDFW's recommendations for CRLF are the same as CTS above; however, take authorization from CDFW is not required as the species is not state listed.

Comment 3: MND Page 45 and Appendix B (and Sub-Appendix E)

Issue: The MND indicates that Copeland Creek habitat in the project site is unsuitable to support foothill yellow-legged frog (FYLF, *Rana boylei*), currently a state candidate species. However, there is a 2002 CNDDB occurrence record of the species overlapping with the west

end of the project site within Copeland Creek and a 2017 record approximately one mile west of the project site within the creek where juveniles were detected in the summer (July). There are also several CNDDDB occurrences of FYLF upstream up the project site. The species may occur in pooled or moist areas within the creek during summer months. Different life stages of FYLF use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about FYLF terrestrial movements and the species may travel farther from streams. The species also occur in swales or other moist area in the project site outside of Copeland Creek. CDFW concludes that FYLF likely occurs in the project site and may be impacted by the project.

Therefore, the MND does not adequately support its conclusion that the project would avoid impacts to FYLF. During the candidacy period, FYLF are protected under the CESA. If action is taken to remove them from candidacy before the project occurs, FYLF will remain a California Special of Special Concern.

Specific impacts and why they would occur: The project may result in FYLF injury or mortality by crushing, killing, or injuring individuals from vehicles, equipment, and workers during project construction. The project may also result in habitat loss or degradation.

Evidence impact would be significant: FYLF may be considered a rare species under CEQA (CEQA Guidelines, § 15380) because the species is nearly endemic to California and has been extirpated from a large portion of its historical range, and individual population sizes have declined (Thompson et al. 2016). Additionally, Thompson et al. (2016) designated the species as a Priority 1 species due to the magnitude of threats it is facing. FYLF is currently a state candidate species.

Based on the foregoing, project impacts would potentially substantially reduce the number and/or restrict the range of FYLF. Therefore, Project impacts to FYLF would be potentially significant.

Recommended Mitigation Measure 3: FYLF avoidance assessment and plan or CDFW take authorization

A qualified FYLF biologist shall assess the project site, project activities, and habitat conditions to determine if FYLF avoidance is feasible and develop an avoidance plan for CDFW review. The assessment shall cover the entire project site including Copeland Creek and other aquatic features. The avoidance plan shall include but not be limited to pre-construction surveys by a qualified biologist, boot sterilization, on-site biological monitoring, a worker education program, and an exclusionary fencing plan if warranted.

If avoidance is likely infeasible and FYLF are listed as a candidate species, the MND should state that the project shall seek take authorization from CDFW prior to project construction.

The MND should state that if the species is no longer a candidate species, an avoidance and minimization plan shall still be developed and provided to CDFW for review. The plan shall include the items listed above in addition a relocation plan for FYLF.

Mitigation Measures

Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

Comment 4: Pages 45, 46, and 53

Issue: The project site includes nonnative grassland habitat that is suitable to support foraging, overwintering, and nesting burrowing owls (*Athene cunicularia*), a California Species of Special Concern, which is also protected under Fish and Game Code and the federal Migratory Bird Treaty Act (MBTA). The MND indicates that burrowing owls were observed using burrows on the project site in November 2017 (CDFW requests that this information be submitted electronically to CNDDDB at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>). CNDDDB also documents a 2002 burrowing owl occurrence approximately 1,500 feet north of the west end of the project site. The MND requires surveys for burrowing owl; however, they would not follow CDFW accepted protocols, and the MND does not require habitat compensation.

Therefore, the MND does not ensure impacts to burrowing owl are reduced to less-than-significant. Take of burrowing owl is prohibited by Fish and Game Code sections 3503.5 and 3513, and the MBTA.

Specific impacts and why they would occur: The project may result in burrowing owl nest abandonment, loss of young, reduced health and vigor of owlets, or injury or mortality of adults from ground disturbance, and audio and visual disturbances, caused by vehicles, equipment, and workers during construction. The project may also result in the temporary or permanent loss of breeding, overwintering, or foraging habitat.

Evidence impact would be significant: Burrowing owl is a California Species of Special Concern due to population decline and breeding range retraction. Breeding owls are likely extirpated from Sonoma County (Burridge 1995); however, breeding owls could be rediscovered and there have been efforts to promote their recolonization within the county. Based on the foregoing, project impacts would potentially substantially adversely affect burrowing owl. Therefore, project impacts to burrowing owl would be potentially significant.

Recommended Mitigation Measure 4A: Burrowing owl surveys

CDFW recommends that a qualified biologist conduct surveys following the CDFW 2012 *Staff Report on Burrowing Owl Mitigation* survey methodology (see <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). Surveys shall encompass the project area and a sufficient buffer zone to detect owls nearby that may be impacted. Time lapses between surveys or project activities shall trigger subsequent

surveys including but not limited to a final survey within 24 hours prior to ground disturbance. The qualified biologist shall have a minimum of two years of experience implementing the CDFW 2012 survey methodology resulting in detections. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report and any eviction plan shall be subject to CDFW review.

Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a "take" avoidance, minimization, or mitigation measure. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls are dependent on burrows at all times of the year for survival or reproduction; therefore, eviction from nesting, roosting, overwintering, and satellite burrows or other sheltering features may lead to indirect impacts or "take" which is prohibited under Fish and Game Code section 3503.5. All possible avoidance and minimization measures shall be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid "take." For exclusion of non-breeding owls, a Burrowing Owl Exclusion Plan following the CDFW *Staff Report on Burrowing Owl Mitigation Appendix E* shall be submitted to CDFW for review, and CDFW's recommendations shall be implemented as feasible, as determined by the lead agency.

Recommended Mitigation Measure 4B: Burrowing owl breeding habitat

The CDFW *Staff Report on Burrowing Owl Mitigation* states, "*current scientific literature supports the conclusion that mitigation for permanent habitat loss necessitates replacement with an equivalent or greater habitat area for breeding, foraging, wintering, dispersal...*"

Therefore, temporary or permanent loss of a nest site (i.e., burrow or other structure used by burrowing owls for breeding) within the last three years shall be mitigated by permanent preservation of two known nest sites with sufficient foraging habitat to support the nests. Permanent nest preservation shall include purchasing burrowing owl breeding credits from a CDFW-approved conservation bank, or permanently protecting nest sites and foraging habitat through placement of a conservation easement and implementing and funding in perpetuity a long-term management plan. Preserved nests must be located within Sonoma County. Nests preserved outside of this area shall be mitigated at a 3:1 ratio and located as near as feasible to the project impact site. Preserved nests and sufficient foraging habitat must be reviewed and accepted by CDFW in writing. Prior to preserving habitat, the project shall coordinate with the county in which the habitat is located to ensure the preservation is consistent with the county's habitat preservation programs, if any. Nest preservation shall be completed before project construction begins.

Recommended Mitigation Measure 4C: Burrowing owl foraging or overwintering habitat

Permanent loss of foraging or temporary to permanent loss of overwintering habitat shall be mitigated by permanent preservation of foraging or overwintering habitat, as applicable, at a 1:1 ratio. Permanent habitat preservation shall include purchasing foraging habitat credits from a CDFW-approved conservation bank, or permanently protecting foraging habitat through placement of a conservation easement and implementing and funding in perpetuity

a long-term management plan. Preserved overwintering habitat must contain suitable burrows for overwintering and must be reviewed and accepted by CDFW in writing. Preserved habitat must be within an area that would likely be utilized by burrowing owls based on documented occurrences of the species. Preserved habitat must be located within Sonoma County. Habitat preserved outside of this area shall be mitigated at a 2:1 ratio and located as near as feasible to the project impact site. Prior to preserving habitat, the project shall coordinate with the county in which the habitat is located to ensure the preservation is consistent with the county's habitat preservation programs, if any. Overwintering habitat preservation shall be completed before project construction begins. Foraging habitat preservation shall occur before project construction begins or within 18 months of the start of project construction if a security, for example an irrevocable letter of credit, is provided to the lead agency covering habitat preservation costs.

Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or USFWS?

Comment 5: MND Pages 48, 54, and 55, and Appendix B (and Sub-Appendix B)

The MND Mitigation Measure BIO-7 requires notification to CDFW pursuant to Fish and Game Code section 1602 for project impacts to Copeland Creek; however, based on aerial imagery it appears that other drainage features anticipated to be impacted by the project may be also be subject to the same notification requirement. Impacts to other drainage features are described in the MND including installing a trail span over the drainage or depositing fill into it.

Recommended Mitigation Measure 5: Stream evaluation and notification to CDFW

All natural and artificial drainages including swales, such as Seasonal Swale ID-01 on Sub-Appendix B Figure 4-4, be further evaluated for stream characteristics and connectivity to other streams. If stream characteristics and connectivity are present, the MND shall require notification to CDFW as described above. For any removal of riparian vegetation, the MND shall require restoration of another portion of the stream on-site and/or a nearby stream off-site within the same watershed. Tree restoration ratios shall be based on the size of each tree removed and the lost canopy cover. Therefore, loss of larger trees shall require a higher ratio of plantings. The farther the restoration or enhancement is from the project area the greater the mitigation ratio may be. The Notification to CDFW would address and reduce impacts to the stream and any associated riparian habitat, and CDFW may issue an LSA Agreement (see <https://www.wildlife.ca.gov/Conservation/LSA>). The LSA Agreement would rely on the MND for CEQA compliance. If the stream(s) were to be impacted, the LSA Agreement would require a restoration and enhancement plan approved by CDFW.

FILING FEES

The project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 fee

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

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the project. CDFW appreciates the opportunity to comment on the MND to assist the City in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Specialist), at (707) 428-2092 or Melanie.Day@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at Karen.Weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2020019029)

California Department of Fish and Wildlife
Craig Weightman, Bay Delta Region, Napa
Karen Weiss, Bay Delta Region, Fairfield
Melanie Day, Bay Delta Region, Fairfield

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