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GAVIN NEWSOM, Governor  
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July 15, 2019

Governor's Office of Planning & Research

**JULY 18 2019**

**STATE CLEARINGHOUSE**

Rich Deal, Principal Engineer  
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**Subject: Fort Ord Regional Trail and Greenway (Project)  
NOTICE OF PREPARATION (NOP)  
SCH No.: 2019060053**

Dear Mr. Deal:

The California Department of Fish and Wildlife (CDFW) received an NOP for the Project from the Transportation Agency for Monterey County (TAMC) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 exercise of our own regulatory authority under the Fish and Game Code. Although the comment period for your request has passed, CDFW respectfully requests that the following comments be considered.

**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 the trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically

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<sup>1</sup> 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.

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. For example, 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.), related authorization as provided by the Fish and Game Code will be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

**Water Pollution:** Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into “Waters of the State” any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers (USACE) also have jurisdiction regarding discharge and pollution to Waters of the State.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Transportation Agency for Monterey County (TAMC).

**Objective:** The proposed Fort Ord Regional Trail & Greenway (FORTAG) consists primarily of an approximately 27-mile long new paved trail. The goal of the Project is to provide a connection between residential areas, schools, workplaces, regional parks, and City services. In addition to the 27-mile proposed alignment, several optional alignments, totaling 11.6-miles, are also being considered. It will connect the former Fort Ord, Monterey Peninsula, Cal State University Monterey Bay (CSUMB), and the Salinas Valley communities and serve as an artery for non-vehicular travel for commuting and recreational activities. It will also connect to the existing Monterey Bay

Scenic Coastal Trail, under the jurisdiction of State Parks. The FORTAG Project will connect with the Monterey Bay Coastal Recreational Trail at several locations on the coastal side of State Route 1 (SR 1), but there would be no improvements to the coastal trail as part of the proposed project. The FORTAG trail will primarily consist of three loops – a northern, central, and southern loop that roughly encircle the City of Marina, the CSUMB campus, and the City of Seaside; respectively.

The proposed trail alignment will cross public roadways in several locations. Most of these crossings will consist of at-grade crossings. In some areas, several design options are being considered for each crossing including: an undercrossing or roundabout at the intersection of 2<sup>nd</sup> Avenue and 8<sup>th</sup> Street along the northern end of the central loop; and an undercrossing, roundabout, or at-grade crossing at SR 218 near Frog Street and at 1<sup>st</sup> Street/Divarty Street, both generally west of the CSUMB campus. At 9<sup>th</sup> Street the trail will utilize an existing SR 1 freeway overcrossing; at 1<sup>st</sup> Street/Divarty Street the trail will utilize an existing SR 1 undercrossing. An undercrossing is also proposed beneath General Jim Moore Boulevard north of SR 218/Canyon Del Rey Boulevard. An undercrossing is proposed to cross Reservation Road at Inter Garrison Road. A new traffic signal is proposed on Del Monte Avenue between English Avenue and State Route 218 (SR 218) to connect the FORTAG trail to the Monterey Bay Scenic Coastal Trail. The proposed Project includes two new bicycle/pedestrian bridges: one over Blanco Road, between the Marina Airport and Salinas River; and one over Imjin Road between Imjin Parkway and 8th Street. At-grade street crossings may modify roadway and lane alignments and construct medians, curb extensions, warning devices, traffic control devices, and changes to signing and striping that enhance bike and pedestrian crossing safety.

The FORTAG trail will accommodate pedestrians and bicyclists, and equestrians in some segments. The majority of the trail will consist of a 12-foot wide paved path with an unpaved two-foot-wide shoulder on both sides. Approximately 2,000 feet of the trail will be on existing paved roadways in two locations: in Del Rey Oaks on Angelus Way between Rosita Road and Del Rey Gardens; and on Beach Road between Del Monte Boulevard and De Forest Road in Marina. In the Frog Pond area of Del Rey Oaks, the proposed trail width will be reduced to 8-feet, and decomposed granite will be used in lieu of pavement. Where space allows, the trail will be surrounded by an open space buffer (greenway) on both sides. Portions of the greenway will support unpaved paths for use by hikers, mountain bikers, equestrians, and naturalists. Fencing will be added only where necessary to separate trail users from conflicting vehicle traffic or from equestrian use on the greenway. Fencing may also be used to protect habitats with sensitive species or to channelize bike riders and pedestrians in locations where the trail is adjacent to private property and access control is required. Retaining walls may be needed to retain slopes at certain locations. Trail lighting is anticipated to be used at conflict points with vehicular travel, such as street crossings, and at locations where lighting would aid crime prevention. In open space areas, trail lighting is intended to be at levels that respect wildlife and the natural setting.

**Location:** Northwestern Monterey County, on the inland side of SR 1. The FORTAG trail will traverse the cities of Monterey, Del Rey Oaks, Seaside, and Marina, as well as unincorporated Monterey County and areas under the jurisdiction of CSUMB, the Fort Ord Reuse Authority, the Army, Caltrans, and the Monterey Peninsula Regional Parks District.

On the north side of South Boundary Road, the trail will extend east to Rancho Saucito in Monterey and link to bike facilities in the Ryan Ranch Business Park. The proposed trail alignment also includes several spurs (included in the 27-mile length) that extend from the three loops to connect with existing bicycle/pedestrian infrastructure. Prominent spurs are intended to connect neighborhoods to the trail at Broadway Avenue/General Jim Moore Boulevard, and Kimball Avenue/General Jim Moore Boulevard in Seaside; Plumas Avenue and Carlton Drive in Seaside and Del Rey Oaks. The preferred alignment will also connect to the planned North Fremont Street bicycle and pedestrian improvements in Monterey. Optional alignments may also be pursued as a substitute for the preferred alignment in those locations.

**Timeframe:** Unspecified.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist TAMC 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 aerial imagery, species occurrence records, and the land cover types that intersect and comprise the project alignment, the Project area is known to and/or has high potential to support numerous special-status species, including CESA-listed species (CDFW 2019, CNPS 2019, UC Davis 2018). Therefore, the Project has the potential to significantly impact these species. Specifically, CDFW is concerned about potential of the Project to significantly impact the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened, federally endangered, and California Rare Plant Ranked (CRPR) 1B.2 Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*), the State endangered and CRPR 1B.1 seaside bird's-beak (*Cordylanthus rigidus* ssp. *littoralis*), the federally threatened and State Species of Special Concern California red-legged frog (*Rana draytonii*); the State Species of Special Concern northern California legless lizard (*Anniella pulchra*), coast horned lizard (*Phrynosoma blainvillii*), western pond turtle (*Emys marmorata*), burrowing owl (*Athene cunicularia*), and American badger (*Taxidea taxus*); and numerous CRPR plant species including, but not limited to, the federally threatened and CRPR 1B.2 Monterey spineflower (*Chorizanthe pungens* var. *pungens*); the CRPR 1B.1 Eastwood's goldenbush (*Ericameria fasciculata*), Pajaro manzanita (*Arctostaphylos pajroensis*), pink Johnny-nip (*Castilleja ambigua* var. *insalutata*), Kellogg's horkelia (*Horkelia cuneata* var.

*sericea*), Monterey pine (*Pinus radiata*); and the CRPR 1B.2 Hickman's onion (*Allium hickmanii*), Hooker's manzanita (*Arctostaphylos hookeri* ssp. *hookeri*), Jolon clarkia (*Clarkia jolonensis*), northern curly-leaved monardella (*Monardella sinuata* ssp. *nigrescens*), sand-loving wallflower (*Erysimum ammophilum*), sandmat manzanita (*Arctostaphylos pumila*), and Toro manzanita (*Arctostaphylos montereyensis*). Many of these species occur in maritime chaparral, coastal scrub, coastal prairie, and grassland communities which are present within and adjacent to the Project area. In addition, the Salinas Rivers is adjacent to the Project area and is known to support breeding populations of California red-legged frogs (CDFW 2019). Other natural areas where the species mentioned above are known or likely to occur also lie adjacent to the Project area including the Fort Ord Natural Reserve, lands managed by the University of California Natural Reserve System, Fort Ord Dunes State Park, and the Frog Pond Wetland Preserve.

To evaluate impacts of the Project on these species, CDFW recommends that a qualified biologist conduct species-specific focused habitat assessments and, if suitable habitat is present, protocol-level surveys. CDFW further recommends that the results of these surveys be summarized and used to evaluate Project impacts and potential permitting needs in the Project's CEQA document. If results of these surveys indicate significant environmental impacts will occur as a result of Project implementation and cannot be mitigated to less than significant levels, a Mitigated Negative Declaration (MND) would not be appropriate. Further, when an MND is prepared, mitigation measures must be specific and clearly defined and cannot be deferred to a future time. The specifics of mitigation measures may be deferred, provided the lead agency commits to mitigation and establishes performance standards for implementation, when an Environmental Impact Report (EIR) is prepared. Regardless of whether an MND or EIR is prepared, the CEQA document must provide quantifiable and enforceable measures as needed that will reduce impacts to less than significant levels.

## **I. Environmental Setting and Related Impact**

**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 United States Fish and Wildlife Service (USFWS)?**

### **COMMENT 1: California tiger salamander (CTS)**

**Issue:** CTS are known to occur in the vicinity of the Project area (CDFW 2019). Review of aerial imagery indicates the presence of several wetland features in the Project's vicinity that have the potential to support breeding CTS. In addition, the Project area or its immediate surroundings may support small mammal burrows, a requisite upland habitat feature for CTS.

**Specific impact:** Without appropriate avoidance and minimization measures for CTS, potential significant impacts associated with the Project's construction include: burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals. In addition, depending on Project design, the Project has the potential to result in creation of barriers to dispersal.

**Evidence impact would be significant:** Up to 75% of historic CTS habitat has been lost to development (Shaffer et al. 2013). Loss, degradation, and fragmentation of habitat are among the primary threats to CTS (CDFW 2015, USFWS 2017a). The Project area is within the range of CTS and is both comprised of and bordered by suitable upland habitat. As a result, there is potential for CTS to occupy or colonize the Project area and for the Project to impact CTS.

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)**

To evaluate potential impacts to CTS associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

**Recommended Mitigation Measure 1: CTS Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of project implementation, to determine if the Project area or its vicinity contains suitable habitat for CTS.

**Recommended Mitigation Measure 2: Focused CTS Surveys**

If the Project area does contain suitable habitat for CTS, CDFW recommends that a qualified biologist evaluate potential Project-related impacts to CTS prior to ground-disturbing activities using the USFWS's "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (2003). CDFW advises that the survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS.

**Recommended Mitigation Measure 3: CTS Avoidance**

CDFW advises avoidance for CTS include a minimum 50-foot no disturbance buffer delineated around all small mammal burrows and a minimum 250-foot no disturbance buffer around potential breeding pools within and/or adjacent to the Project area. CDFW also recommends avoiding any impacts that could alter the

hydrology or result in sedimentation of breeding pools. If avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take.

#### **Recommended Mitigation Measure 4: CTS Take Authorization**

If through surveys it is determined that CTS are occupying the Project area and take cannot be avoided, take authorization may be warranted prior to initiating ground-disturbing activities. CDFW is aware that efforts are underway to finalize the Fort Ord Multi-Species Habitat Conservation Plan (HCP) and to secure companion acquisition of a state Incidental Take Permit (ITP) pursuant to Fish and Game Code Section 2081(b) for activities described in the HCP, including planning and construction of the FORTAG trail system. However, absent securing take coverage through these efforts, take authorization would need to occur through issuance of an ITP by CDFW to TAMC, pursuant to Fish and Game Code Section 2081(b) before Project ground or vegetation disturbing activities occur. Alternatively, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an ITP from CDFW at any time.

#### **COMMENT 2: Monterey gilia, Seaside bird's-beak, and CRPR plant species**

**Issue:** Monterey gilia and the CRPR plant species mentioned above are known to occur on and in the vicinity Project area (USFWS 2008, CDFW 2019). Lands designated for development that were transferred from the Department of the Army's former Fort Ord, as is the case with portions of the Project site, contain high quality habitat for the CESA-listed Monterey gilia (USFWS 2008). In addition, the sandy soils and maritime chaparral vegetation community present within portions of the Project area are suitable to support CESA-listed seaside bird's-beak (CDFW 2019, CNPS 2019, UC Davis 2018). The Project area also supports coastal scrub and coastal prairie communities, which have the potential to support numerous CRPR-species including, but not limited to, Monterey spineflower, Eastwood's goldenbush, Pajaro manzanita, pink Johnny-nip, Kellogg's horkelia, Monterey pine, Hickman's onion, Hooker's manzanita, Jolon clarkia, northern curly-leaved monardella, sand-loving wallflower, sandmat manzanita, and Toro manzanita. Therefore, grading and development associated with the Project have the potential to impact special-status plant species.

**Specific impact:** Without appropriate avoidance and minimization measures potential impacts to special-status plant species include inability to reproduce and direct mortality. Unauthorized take of species listed as threatened, endangered, or rare pursuant to CESA or the Native Plant Protection Act is a violation of Fish and Game Code.

**Evidence impact would be significant:** Monterey gilia, seaside bird's-beak, and many of the CRPR-listed plant species above are narrowly distributed endemic

species with specific habitat requirements. These species are threatened with habitat loss and habitat fragmentation resulting from development, vehicle and foot traffic, and non-native plant species (CNPS 2019), all of which may be unintended impacts of the Project. Therefore, impacts of the Project have the potential to significantly impact populations of the species mentioned above.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to special-status plants associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

#### **Recommended Mitigation Measure 5: Special-Status Plant Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of project implementation, to determine if the Project area or its vicinity contains suitable habitat for special-status plant species.

#### **Recommended Mitigation Measure 6: Focused Surveys**

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities" (CDFW 2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

#### **Recommended Mitigation Measure 7: Special-Status Plant Avoidance**

CDFW recommends special-status plant species be avoided whenever possible by delineation and observing a no-disturbance buffer of at least 50-feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

#### **Recommended Mitigation Measure 8: Special-Status Plant Take Authorization**

If a State-listed plant species is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW is aware that efforts are underway to finalize the Fort Ord HCP and to secure companion acquisition of an ITP pursuant to Fish and Game Code Section 2081(b) for activities described in the HCP. However; if take cannot be avoided, absent securing take

coverage through these efforts, take authorization would need to occur through issuance of an ITP by CDFW to TAMC, pursuant to comply with Fish and Game Code.

### **COMMENT 3: California Red-Legged Frog (CRLF)**

**Issue:** CRLF have been documented to occur within the Salinas River, which is immediately adjacent to a portion of the Project Area (CDFW 2019). CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in ephemeral waters (Thomson et al. 2016). Review of aerial imagery indicates the presence of several ponded wetland features within the vicinity of the Project Area that may be suitable to support CRLF. As a result, the Project has the potential to impact CRLF.

**Specific impact:** Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

**Evidence impact is potentially significant:** CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017b). All of these impacts have the potential to result from the Project. Therefore, Project activities have the potential to significantly impact CRLF.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to CRLF associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

#### **Recommended Mitigation Measure 9: CRLF Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its immediate vicinity contain suitable habitat for CRLF.

#### **Recommended Mitigation Measure 10: CRLF Surveys**

If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF within 48 hours prior to commencing work (two night

surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *“Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog”* (USFWS 2005) to determine if CRLF are within or adjacent to the Project area.

#### **Recommended Mitigation Measure 11: CRLF Avoidance**

If any CRLF are found during preconstruction surveys or at any time during construction, CDFW recommends that construction cease and that CDFW be contacted to discuss a relocation plan for CRLF with relocation conducted by a qualified biologist, holding a Scientific Collecting Permit for the species. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified biologist monitor construction activity daily for CRLF.

#### **COMMENT 4: Northern California Legless Lizard and Coast Horned Lizard**

**Issue:** Northern California legless lizards and coast horned lizards are known to occur in the vicinity of the Project area (CDFW 2019). Northern California legless lizards are fossorial and inhabit chaparral habitat with sandy or loose loamy soils (Thomson et al. 2016). Coast horned lizards occur in a wide variety of habitat types but require loose, fine soils for burrowing, open areas for thermoregulation, and shrub cover for refugia (Thomson et al. 2016). Review of aerial imagery and soil characteristics indicates that portions of the Project area are comprised of and surrounded by these requisite habitat features (CDFW 2019, UC Davis 2018).

**Specific impact:** Without appropriate avoidance and minimization measures for Northern California legless lizard and coast horned lizards, potentially significant impacts associated with ground disturbance include burrow abandonment, which may result in reduced health or vigor of eggs and/or young, and direct mortality.

**Evidence impact is potentially significant:** Habitat loss and fragmentation resulting from development is the primary threat to Northern California legless lizard and coast horned lizard (Thomson et al. 2016). The Project area is within the range of Northern California legless lizard and coast horned lizard and portions of it are comprised of and bordered by suitable habitat (i.e., chaparral with friable soils). As a result, ground-disturbing activities associated with development of the Project area have the potential to significantly impact local populations of this species.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to Northern California legless lizard associated with the Project, CDFW recommends conducting the following evaluation of the Project

area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

**Recommended Mitigation Measure 12: Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of project implementation, to determine if the Project area or its immediate vicinity contain suitable habitat for Northern California legless lizard.

**Recommended Mitigation Measure 13: Focused Surveys**

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for Northern California legless lizard and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

**Recommended Mitigation Measure 14: Avoidance**

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows.

**COMMENT 5: Western Pond Turtle (WPT)**

**Issue:** Portions of the Project area lie adjacent to the Salinas River, which may provide suitable aquatic habitat for WPT. Upland areas adjacent to the Salinas River may provide overwintering and nesting habitat for WPT, which are known to overwinter terrestrially, and which require loose soils and/or leaf litter (Thomson et al. 2016). In addition, several occurrence records of WPT are reported within the vicinity of the Project area (CDFW 2019). The presence of these requisite habitat features increases the likelihood of WPT occurrence and the potential for the Project to significantly impact the local WPT population.

**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potential significant impacts associated with development of the Project include nest abandonment, reduced reproductive success, reduced health and vigor of eggs and/or young, and direct mortality.

**Evidence impact would be significant:** WPT are capable of nesting up to 1600-feet away from waterbodies. Nesting occurs in spring or early summer and hatching occurs in fall. Hatchlings can remain in the nest throughout the first winter, emerging the following spring. In addition, WPT are slow to reach sexual maturity, which naturally reduces the number of WPT that are recruited into a population each year (Thomson et al. 2016). Threats to WPT include land use changes and habitat fragmentation associated with development, road mortality, as well as a decrease in

suitable upland nesting/overwintering habitat (Thomson et al. 2016), all of which are potential impacts of the Project. As a result, Project development has the potential to significantly impact the local population of WPT.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate the potential for the Project to impact WPT, CDFW recommends conducting the following evaluation of the Project area and including the following measures as conditions of approval in the Project's CEQA document.

**Recommended Mitigation Measure 15: Preconstruction Surveys**

CDFW recommends that a qualified wildlife biologist conduct focused surveys for WPT during the nesting season (March through August). If any nests are discovered, CDFW recommends that they remain undisturbed until the eggs have hatched, and the nestlings are capable of independent survival. In addition, CDFW recommends conducting pre-construction surveys for WPT immediately prior to initiation of construction activities.

**Recommended Mitigation Measure 16: Avoidance**

WPT detection during surveys warrants consultation with CDFW to discuss how to implement ground-disturbing activities and avoid take. However, CDFW recommends that if any WPT are discovered immediately prior to or during Project activities they be allowed to move out of the area on their own volition. If this is not feasible, CDFW recommends that a qualified biologist who holds a Scientific Collecting Permit for the species, capture and relocate the turtle(s) out of harm's way to the nearest suitable habitat immediately upstream or downstream from the Project Area.

**COMMENT 6: Burrowing Owl (BUOW)**

**Issue:** BUOW have been documented to occur in the vicinity of the Project area (CDFW 2019). Review of aerial imagery reveals that suitable habitat for BUOW is present both within and in the vicinity of the Project area. BUOW inhabit open, treeless areas containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover (Poulin et al. 2011). Habitat both within and bordering portions of the Project area, has the potential to support these habitat features. Therefore, there is potential for BUOW to occupy or colonize the Project area or its vicinity.

**Specific impact:** Potentially significant direct impacts associated with Project construction include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

**Evidence impact is potentially significant:** BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California (Gervais et al. 2008). Therefore, ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

**Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact)**

To evaluate potential impacts to BUOW associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

**Recommended Mitigation Measure 17: BUOW Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its vicinity contains suitable habitat for BUOW.

**Recommended Mitigation Measure 18: BUOW Surveys**

If suitable habitat for BUOW is present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's (CBOC) "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993) and CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable. In addition, CDFW advises that surveys include a 500-foot buffer around the Project area.

**Recommended Mitigation Measure 19: BUOW Avoidance**

Should a BUOW be detected, CDFW recommends no-disturbance buffers, as outlined in the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

\* meters (m)

**Recommended Mitigation Measure 20: BUOW Passive Relocation and Mitigation**

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. Since BUOW may attempt to colonize or re-colonize an area that will be impacted, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

**COMMENT 7: American Badger**

**Issue:** American badger have been documented to occur in the vicinity of the Project area (CDFW 2019). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et al 1990). The Project area may support these requisite habitat features. Therefore, the Project has the potential to impact American badger.

**Specific impact:** Without appropriate avoidance and minimization measures for American badger, potentially significant impacts associated with ground disturbance include direct mortality or natal den abandonment, which may result in reduced health or vigor of young.

**Evidence impact is potentially significant:** Habitat loss is a primary threat to American badger (Gittleman et al. 2001). The Project will involve construction of an approximately 27-mile long trail, resulting in a high degree of land conversion and potential habitat fragmentation. As a result, ground-disturbing activities have the potential to significantly impact local populations of American badger.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to American badger associated with the Project, CDFW recommends conducting the following evaluation of the Project area and including the following mitigation measures as conditions of Project approval in the Project's CEQA document.

**Recommended Mitigation Measure 21: American Badger Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its immediate vicinity contain suitable habitat for American badger.

**Recommended Mitigation Measure 22: American Badger Surveys**

If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badger and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

**Recommended Mitigation Measure 23: American Badger Avoidance**

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

**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 8: Lake and Streambed Alteration (LSA)**

**Issue:** Portions of the Project area are immediately adjacent to the Salinas River. Project activities conducted within the Salinas River are subject to CDFW's LSA regulatory authority, pursuant Fish and Game Code Section 1600 et seq.

**Specific impact:** Work within stream channels has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality.

**Evidence impact is potentially significant:**

Lake and Streambed Alteration

Activities within streams are subject to CDFW's LSA regulatory authority. Construction activities within stream features have the potential to impact

downstream waters. Streams function in the collection of water from rainfall, storage of various amounts of water and sediment, discharge of water as runoff and the transport of sediment, and they provide diverse sites and pathways in which chemical reactions take place and provide habitat for fish and wildlife species. Disruption of stream systems such as these can have significant physical, biological, and chemical impacts that can extend into the adjacent uplands adversely effecting not only the fish and wildlife species dependent on the stream itself, but also the flora and fauna dependent on the adjacent upland habitat for feeding, reproduction, and shelter.

#### Water Diversion

Water diversions can impact flow regimes. Prolonged low flows can cause streams to become degraded and cause channels to become disconnected from floodplains (Poff et al. 1997). This process decreases available habitat for aquatic species including fish that utilize floodplains for nursery grounds. Prolonged low flows can also increase mortality for species that rely on specific flow regimes, such as endangered salmonids (Moyle 2002). Amphibians can also be sensitive to decreased flows. Kupferberg et al. (2012) reported that low flows were strongly correlated with early life stage mortality and decreased adult densities of California red-legged frogs, a species of special concern in California, and one with potential to occur in the Project area. In addition, alterations to flows can affect the health of riparian vegetation, reducing habitat quality for wildlife species.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

##### **Recommended Mitigation Measure 24: Stream and Wetland Mapping, and LSA**

CDFW recommends that formal stream mapping and wetland delineation be conducted by a qualified biologist to determine the location and extent of streams (including any floodplain) and wetlands within and adjacent to the Project area. Please note that, while there is overlap, State and Federal definitions of wetlands as well as what activities require Notification pursuant to Fish and Game Code Section 1602 differ. Therefore, it is advised that the wetland delineation identify both State and Federal wetlands in the Project area as well as what activities may require Notification to comply with Fish and Game Code. Fish and Game Code Section 2785 (g) defines wetlands; further, Section 1600 et seq. applies to any area within the bed, channel, or bank of any river, stream, or lake. It is important to note that while accurate wetland delineations by qualified individuals have resulted in more rapid review and response from USACE and CDFW, substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW advises that site map(s) designating wetlands as well as the location of any activities that may affect a lake or stream be included with any Project site evaluations.

### **Recommended Mitigation Measure 25: Notification of Lake or Streambed Alteration**

Fish and Game Code Section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may: (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. For additional information on Notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

## **II. Editorial Comments and/or Suggestions**

**Nesting Birds:** CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the project's applicant is responsible for ensuring that implementation of the project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10-days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250-feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed

from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CTS, CRLF, Monterey gilia, and Monterey spineflower. Take under the federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS, in order to comply with ESA, is advised well in advance of any ground disturbing activities.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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 found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be emailed to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

If it is determined that the Project will impact fish and/or wildlife, an 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 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 Project to assist TAMC in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Should you have questions regarding this letter or for further coordination please contact Renée Robison, Environmental Scientist, at the address provided on this

Rich Deal  
Fort Ord Regional Trail and Greenway  
July 15, 2019  
Page 19

letterhead, by telephone at (559) 243-4014 extension 274, or by email at  
[Renee.Robison@wildlife.ca.gov](mailto:Renee.Robison@wildlife.ca.gov).

Sincerely,



 Julie A. Vance  
Regional Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento  
[State.Clearinghouse@opr.ca.gov](mailto:State.Clearinghouse@opr.ca.gov)

California Department of Fish and Wildlife:  
Jeff Cann, [jeff.cann@wildlife.ca.gov](mailto:jeff.cann@wildlife.ca.gov)

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