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August 30, 2019

Governor's Office of Planning & Research

AUG 30 2019

STATE CLEARINGHOUSE

Mr. Sean Tully
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553

Subject: Conco Industrial Subdivision – County Files #SD17-9459 & #LP14-2046, Notice of Preparation and Intent to Adopt a Proposed Mitigation Negative Declaration, SCH #2019079103, Contra Costa County

Dear Mr. Tully:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) for the proposed Mitigated Negative Declaration (MND) for the Conco Industrial Subdivision Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines. In accordance with our mandates, CDFW is submitting comments on the NOP as a means to inform the County of Contra Costa (County), 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 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 a California Endangered Species Act (CESA) Incidental take Permit (ITP), a Lake and Streambed Alteration (LSA) Agreement, or 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 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 (Fish and Game Code, § 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, 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 potential 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 the 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 Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification (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, watercourse 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: Gonsalves and Santucci, Inc.

Location: The proposed Project is located along the western boundary of the Walnut Creek Channel, approximately 0.74 miles south of the Waterfront Road bridge crossing, and south and east of the Pacheco Creek channel, in unincorporated Martinez, Contra Costa County. Assessor's Parcel Numbers (APNs) 159-250-018, -019, -020, -021, -022.

Timeframe: Unknown

Description: The proposed Project is to subdivide a 66.57-acre portion of the Project site (APNs 159-250-018, -019) into six individual industrial lots. Included is a request for approval of a land use permit to allow the establishment of up to five contractor's yard uses, roadway and utility improvements impacting three additional parcels (APNs 159-250-020, -021, -022), and importation of up to 155,576+/- cubic yards of fill material, some of which is composed of lightweight confoam material. Lastly, the proposed Project also consists of the following secondary elements:

- Request for an exception from collect and convey requirements.
- Establishment of an office trailer, metal shop, and truck scale in the area of Lot 1.
- Establishment of a private roadway network consisting of paved roadways up to 24 feet in width with 4-foot gravel shoulders.
- Establishment of a private sewer facility consisting of grinder/ejector pumps, lift stations, wet wells, and force mains.
- Extension of existing sanitary sewer lines.

- Establishment of a 37-foot Private Access and Utility easement.
- Establishment of a 10-foot Private Sanitary Sewer easement.
- Establishment of a drainage easement ranging in width between 84 and 162 feet.
- Placement of pre-load fill material along the future alignment of the Walnut Creek levee. Relocation of the Walnut Creek levee will be completed as an element of the forthcoming Lower Walnut Creek Restoration Project and is not part of this Project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Comment 1: Notification under Fish and Game Code Section 1600 et. Seq. may be required.

Proposed activities described in the MND may be subject to Notification and CDFW may require an LSA Agreement, pursuant to Section 1600 et seq. of the Fish and Game Code. These activities include placement of fill material along the future alignment of the Walnut Creek levee, construction of infrastructure that directs water into or away from natural waterways, areas subject to flooding. Please submit Notification to CDFW at the Bay Delta Office listed above. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/Conservation/LSA>; or to request a notification package, contact the Bay Delta Regional Office at (707) 428-2002.

Comment 2: Impacts from Project phasing are not included in MND.

Proposed activities described may have additional impacts due to Project phasing over time and are not discussed or evaluated in the MND. Projects that include multiple phases with different sections or parcels built out at different time periods or phasing that includes whole-site grading with separate parcels developed at later dates have impacts over a period of longer than one year. This delay in full buildout allows wildlife to utilize resources that develop post-grading on vacant parcels. These resources include, but are not limited to, ruderal grassland and brush that provide nesting habitat for passerine birds, infrastructure installed but not utilized that provide burrowing habitat for ground squirrels, burrowing owls, and short-eared owls, and pooling of rainwater on parcels that provide temporary habitat for amphibians. CDFW is unable to analyze these impacts without inclusion of a description of the Project's timing and implementation in relation to site preparation, infrastructure installation, and complete buildout.

To correct this, please update the MND with a description of the Project's phasing and estimated timeframes from start of construction to complete buildout. If the Project's timeframe from start of construction to complete build out includes breaks in construction longer than 15 days or periods of inactivity that could allow establishment of habitat elements such as burrows and vegetation, then impacts to wildlife utilizing the parcels not built out must be included in the impacts analysis to ensure the Project mitigates impacts to less-than-significant. When and if such a delay occurs, and to ensure the Project is mitigating to less-than-significant, CDFW recommends revising the MND to include a mitigation measure that meets the following criteria: a qualified biologist shall conduct habitat assessment surveys to determine what wildlife are utilizing the vacant parcels, if

vacant parcels are being utilized avoidance and minimization measures (including the measures discussed in this letter) shall be used to prevent impacts and take, and if impacts and take are not fully avoidable, additional compensatory mitigation shall be discussed and agreed upon with CDFW's approval prior to the re-initiation of construction activities.

Comment 3: BIO-1 does not define floristic survey protocol.

Mitigation Measure BIO-1 does not include defined survey protocols for floristic surveys or require a qualified botanist to conduct the surveys.

To correct this, CDFW recommends Mitigation Measure BIO-1 be revised to include adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2009), including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols.

Comment 4: BIO-2 revisions needed to mitigate impacts to special-status plants to less-than-significant.

Mitigation Measure BIO-2 is limited to impacts to Soft bird's beak, or Soft salty bird's beak (*Chloropyron molle* ssp. *molle*), but this is only one of seven special-status plants identified as having potential to occur at the Project site. Mitigation Measure BIO-2 does not define avoidance measures in the event special-status plants are discovered or reduce impacts to a level of less-than-significant by identifying compensatory mitigation in the event impacts to special-status plants cannot be fully avoided.

To correct this, CDFW recommends Mitigation Measure BIO-2 be revised to include a statement of how impacts to special-status plants will be avoided in the event they are discovered in the Project area. If significant impacts to special-status plants are not fully avoidable, CDFW recommends Mitigation Measure BIO-2 be revised to require compensatory mitigation for impacts to special-status plant species at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts. CDFW also recommends inclusion of language defining the Project's obligation to obtain CESA-listed plant take coverage through an Incidental Take Permit (ITP) issued by CDFW when take of Soft salty bird's beak, Congdon's tarplant (*Centromadia parryi* ssp. *congdonii*), Bolander's water-hemlock (*Cicuta maculata* var. *bolanderi*), Suisun marsh aster (*Symphyotrichum lentum*), San Joaquin spearscale (*Extriplex joaquinana*), Saline clover (*Trifolium hydrophilum*), and Marin knotweed (*Polygonum marinense*) cannot be fully avoided.

Comment 5: BIO-3 revisions needed to mitigate impacts to Western pond turtle to less-than-significant.

Mitigation Measure BIO-3 does not include defined survey protocols for detecting Western pond turtle (*Emys marmorata*) adults or nests within habitat in the Project site or define the survey locations within the Project area where surveys shall occur. The Bay Area population of Western pond turtles has a very broad nesting period (typically April through August) with overwintering of some nests and emergence in March or April. Nests can be established up to 400 meters from the nearest watercourse in sandy substrate with upland grassland characteristics. Without a CDFW-approved survey protocol and a description of the habitat

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within the Project area being surveyed, CDFW is unable to evaluate if impacts to Western pond turtle are fully avoided.

To correct this, CDFW recommends Mitigation Measure BIO-3 be revised to include adherence to the U.S. Geological Survey (USGS) *Draft USGS Western Pond Turtle Visual Survey Protocol for the Southcoast Ecoregion* (2006) and to indicate either the specific locations within the Project site that will be surveyed for nests and the protocol that shall be used or indicate the entire Project site shall have nesting surveys conducted. CDFW also recommends Mitigation Measure BIO-3 be revised to require compensatory mitigation for impacts to Western pond turtle nesting habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts.

Additionally, CDFW recommends the MND be revised to include the following Western pond turtle nesting avoidance measure:

“Western Pond Turtle Exclusion and Avoidance - To avoid Western pond turtle (WPT) nest destruction, exclusion fencing shall be installed around each phase of the Project site and staging areas where Project activity will occur prior to the beginning of the Western pond turtle nesting season and start of construction for each phase of the Project. Installation of exclusion fencing shall be directed by the qualified biologist. Exclusion fencing shall be partially buried by at least six inches below grade and must be maintained for the duration of the Project. If an active turtle nest containing either hatchlings or eggs is found, CDFW shall be consulted to determine and implement the appropriate avoidance measures. This may include a “no disturbance” buffer around the nest site until the hatchlings have moved to a nearby aquatic site.”

Comment 6: BIO-5 revisions needed to mitigate impacts to Burrowing owls to a level of less-than-significant.

Mitigation Measure BIO-5 is limited to pre-construction surveys conducted according to CDFW'S *Staff Report on Burrowing Owl Mitigation* (2012) and avoidance measures determined by CDFW if and when burrowing owls (*Athene cunicularia*) are discovered at the Project site. Mitigation Measure BIO-5 does not define avoidance measures in the event burrowing owls are discovered or reduce impacts from permanent loss of burrowing owl nesting or foraging habitats to a level of less-than-significant as it does not offset those impacts with compensatory mitigation requirements. Burrowing owls are designated as a California Species of Special Concern, a designation used to describe at-risk taxa within the state that warrant proactive conservation to ensure the populations' persistence. The San Francisco Bay regional population of burrowing owls has seen alarming declines in the last two decades, and the loss of 66.57 acres of burrowing owl foraging and potential nesting habitat along the Walnut and Pacheco Creek corridors is a significant impact to this regional population that is unavoidable without compensatory mitigation.

To correct this, CDFW recommends Mitigation Measure BIO-5 be revised to include adherence to the mitigation strategies defined in the CDFW *Staff Report on Burrowing Owl Mitigation* (2012) in addition to adherence to the survey protocol. CDFW also recommends Mitigation Measure BIO-5 be revised to require compensatory mitigation for impacts to burrowing owl

foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts.

Comment 7: BIO-5 revisions needed to mitigate impacts to nesting birds to a level of less-than-significant.

Mitigation Measure BIO-5 is limited to a pre-construction survey for active nests utilizing the CDFW *Staff Report on Burrowing Owl Mitigation* (2012). This protocol is not appropriate for determining impacts to other migratory birds, or for determining presence within the Project area. Mitigation Measure BIO-5 does not include nesting survey protocol or avoidance measures for nesting birds other than burrowing owls that may be utilizing the Project site prior to start of Project activities, including Suisun song sparrow, saltmarsh common yellowthroat, and tricolored blackbird. Some of the migratory birds that utilize habitat present on the Project site are difficult to detect due to their cryptic nature. This warrants separate protocol for detection and avoidance measures if and when they are detected.

To correct this, CDFW recommends the MND be revised to include the following nesting bird assessment and avoidance measure:

“Nesting Bird Assessment and Avoidance - Prior to the initiation of Project activities, including ground disturbing activities scheduled to occur between February 15 and September 15, a qualified biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five (5) days prior to the initiation of work. Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site. The qualified biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the Project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight (48) hours prior to the initiation of the Project. If a lapse in Project activity of seven days (7) or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDFW.

If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the qualified biologist. Active nests within or adjacent to the Project site shall be monitored by the qualified biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to project activities. If nesting birds are showing signs of distress or disruptions to nesting, then that nest shall have the buffer immediately increased by the qualified biologist until no further interruptions to breeding behavior are detectable.”

Comment 8: MND revisions needed to fully avoid impacts to California black rail and California clapper rail.

Proposed activities described may impact California black rail (*Laterallus jamaicensis contorniculus*) and California clapper rail (*Rallus longirostris obsoletus*). California black rail and

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California clapper rail are Fully Protected species under State law and may not be taken or possessed at any time.

To correct this, CDFW recommends the MND be revised to include an analysis of the Project's potential impacts to the Fully Protected species. If impacts are identified, CDFW recommends the MND be revised to adhere to Fish and Game Code to fully avoid impacts to the species and to require immediate notification to CDFW if the species is detected during Project activities.

Comment 9: BIO-6 revisions needed to fully avoid impacts to salt marsh harvest mouse.

Mitigation Measure BIO-6 provides avoidance measures for salt marsh harvest mouse (*Reithrodontomys raviventris*) but does not include additional measures that would provide for full avoidance of impacts and take. Salt marsh harvest mouse is a Fully Protected species under State law and may not be taken or possessed at any time. Additionally, accurate field identification of salt marsh harvest mouse requires special expertise; therefore, any mouse detected during Project activities has the potential to be positively identified as *R. raviventris*.

To correct this, CDFW recommends Mitigation Measure BIO-6 be revised to include the following:

"Salt Marsh Harvest Mouse Avoidance - Knowledgeable and experienced biologists approved by CDFW and retained by the Project proponent as biological monitors, shall be present during all Project activities within or adjacent to areas of salt marsh harvest mouse (SMHM) habitat to help avoid mortality or injury to individual SMHM, and to minimize disturbance to the habitat. A biologist who holds or is named on a valid 10(a)(1)(A) Federal Scientific Collection permit issued by the U.S. Fish and Wildlife Service (USFWS) or who is specifically named in the USFWS Biological Opinion for the Project, shall be present on-site during construction within areas of SMHM habitat. Non-permitted biological monitors may be present to help monitor construction activities. All biological monitors shall provide quality control and quality assurance for implementation of the measures to avoid mortality or injury to SMHM. The biological monitors shall inspect each activity area daily immediately before activities begin and continually monitor in advance of the work crew. At any time that a SMHM is found in the work area, work shall cease until the animal moves out of the work area.

The Project proponent and its contractors and agents working in SMHM habitat shall provide biological monitors with the express authority to order any immediate changes in Project activities that are necessary to avert a risk of imminent mortality or injury to SMHM and to stop any activity that cannot be or has not been brought into immediate compliance. CDFW shall be notified the same day or within 24 hours of circumstances that led biological monitors to halt work or to otherwise avert threatened mortality or injury to SMHM.

Staging areas for equipment and material shall be outside the work area in a disturbed location devoid of vegetation away from any pickleweed habitat.

Exclusion fencing shall be erected around the work area prior to the start of construction activities. The work area shall be inspected for mice and any mice found shall be allowed to leave the area through one-way doors within the exclusion fencing. Exclusion fencing shall be made of material that does not allow a salt marsh harvest mouse to pass through or over

and shall be buried to a depth of six inches so that mice cannot crawl under the exclusion fencing. Supports for the exclusion fencing must be placed on the inside of the construction area so that mice are unable to climb up it to enter the work area. Prior to the start of daily activities during initial ground disturbance, the CDFW- and USFWS-approved biologist will inspect the salt marsh harvest mouse-proof boundary for holes or rips, and any found will be repaired immediately.

One biological monitor shall be present on a continuous basis for each of the following activities in SMHM habitat: Any earth moving activity, including but not limited to excavation, boring, drilling, or placement of fill; Movement of any equipment larger than a pickup truck.

A biological monitor shall inspect underneath any vehicle for SMHM that is parked for 30 minutes or more immediately prior to moving the vehicle.

The Project proponent, its contractors and agents, shall conduct an orientation program for all persons who will work in SMHM habitat. The program shall consist of a brief presentation from a permitted biologist, knowledgeable about the biology of the SMHM. The education program shall include a discussion of the biology of the SMHM, the habitat needs of the species, and the status under CESA and the Fish and Game Code. A fact sheet containing this information shall also be prepared and distributed. Upon completion of the orientation, employees shall sign a form stating that they attended the training. These forms shall be submitted to the CDFW within five days of the training.

Personnel who detect any mice on-site shall immediately report their finding to a biological monitor. The biological monitor shall determine if the reported mouse is a SMHM. If the biological monitor determines that the detected mouse is a SMHM, then work shall cease until the animal moves out of the work area.

If the Project proponent, or any of its employees, contractors or agents kills or injures an individual SMHM, or finds any such animal dead or injured, Project activities in the habitat area shall immediately cease and CDFW and USFWS shall be notified within 30 minutes of the discovery.

Any dead or injured animal shall be turned over to CDFW, USFWS, or its agent.

A written report detailing the date, time, location, and general circumstances under which a dead or injured individual SMHM was found shall be submitted to CDFW and USFWS no later than three business days following the incident.

All biological monitors shall be supplied with cellular phones for the purpose of efficient communication in SMHM habitat.”

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

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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#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: cnddb@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>.

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Ms. Jeanette Griffin, Environmental Scientist, at (209) 234-3447 or Jeanette.Griffin@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,


Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse