



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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May 7, 2020

Governor's Office of Planning & Research

MAY 07 2020

STATE CLEARINGHOUSE

Mr. Toby Perry
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
tperry@ebparks.org

Subject: MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project, Initial Study/Mitigated Negative Declaration, SCH #2020049031, City of Oakland, Alameda County

Dear Mr. Perry:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the East Bay Regional Park District (EBRPD) for the MLK Regional Shoreline Bay Trail Gap (Doolittle Drive South) and Improvements Project (Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the IS/MND to inform the EBRPD, 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 permits issued under the California Endangered Species Act (CESA), the Lake or Streambed Alteration (LSA) Program, the Native Plant Protection Act, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit 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 Permit.

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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 Fish and Game Code section 2080.

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 Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: East Bay Regional Park District

Description and Location: EBRPD proposes to fill a gap in the San Francisco Bay Trail (Bay Trail) and make improvements within the existing Martin Luther King Jr. (MLK) Regional Shoreline. The Project site is located within a portion of the MLK Regional Shoreline, beginning from the south end of the MLK Shoreline Center at the existing boat launch and extending south approximately 4,000 feet to Swan Way (refer to Figure 1, Project Location). The new Bay Trail segment will be situated between Doolittle Drive and San Leandro Bay in the City of Oakland, Alameda County, California. Improvements will be made at the boat launch, boat launch parking area, and along the Bay Trail and shoreline. In addition, an existing boat ramp, and associated signage, along the shoreline will be removed.

The Project includes construction of approximately 2,300 linear feet of a new trail section of the Bay Trail to close the existing southern Bay Trail gap, as well as resurfacing and/or widening of approximately 1,600 feet of existing Bay Trail to the north and south of the gap segment.

The existing two-lane boat launch will be demolished and replaced with a concrete boat ramp and new floating docks. The floating docks will be lengthened by approximately 30 feet to allow for more boats to access the docks at one time.

In addition, approximately 1,450 linear feet of shoreline protection will be placed along the Bay Trail.

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COMMENTS AND RECOMMENDATIONS

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

Avoidance and Minimization Measures

Mitigation Measure BIO-2: Protect Nesting Birds

EBRPD is responsible for ensuring that the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes. In addition to removal of trees outside of the nesting season, surveying prior to construction, and providing an exclusion area around active nests, CDFW also recommends, once construction work begins, that the survey effort continue to ensure any nest starts established after the work commences are identified. 'Sufficient' in the context of this measure means any nest within an area that could potentially be affected by the Project. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. Identified active nests should be monitored for the first 24 hours prior to any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests should be monitored by the qualified biologist to detect any signs of disturbance and behavioral changes as a result of the Project. If signs of disturbance and behavioral changes are observed, the biologist should cease work causing that change and contact the CDFW representative for guidance.

For raptor nests, a biological monitor, experienced in raptor behavior and approved by CDFW, should be assigned to monitor the behavior of any raptors nesting within disturbance distance of the Project activities. Even within species, disturbance distances can vary according to time of year or geographical location. The biological monitor should have authority to order the cessation of all Project activities within disturbance distance of any raptor nest if the birds exhibit abnormal nesting behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Abnormal nesting behaviors which may cause reproductive harm include but are not limited to: defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, interrupted feeding patterns, and flying away from the nest. Project activities within line of sight of the nest should not resume until the biological monitor has consulted with CDFW and both the biological monitor and CDFW confirm that the bird's behavior has normalized, or the young have left the nest.

Activities within or adjacent to tidal marsh or suitable habitat for California Ridgway's rail (*Rallus longirostris obsoletus*) or California black rail (*Laterallus jamaicensis coturniculus*), which are both State Fully Protected Species (Fish and Game Code, section 3511), should be avoided during rail breeding season January 15 – August 31 for Ridgway's rail and February 1 – August 31 for California black rail.

Mitigation Measure BIO-3: Burrowing Owl

The IS/MND should evaluate the potential for burrowing owls (*Athene cunicularia*), a State Species of Special Concern, to be present within and adjacent to the Project area by documenting the extent of fossorial mammals that may provide burrows used by owls during the

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nesting and/or wintering seasons. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. If potential burrowing owl habitat is present, CDFW recommends that surveys be conducted following the methodology described in Appendix D: *Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation* (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

Burrowing owl surveys should be conducted by a qualified CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Additional surveys should be conducted during winter months to document presence of wintering owls. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

Please be advised that CDFW does not consider exclusion of burrowing owls or “passive relocation” as a “take” avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

The CEQA document for the Project should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. Although the Project is outside of the East Alameda County Conservation Strategy (EACCS), the EACCS’s Mitigation Guidance (p.3-66) for burrowing owl recommends mitigating the loss of habitat by protecting habitat in accordance with the mitigation guidelines outlined in Table 3-10 (BUOW-3) through acquiring parcels, through fee title purchase or conservation easement, where known nesting sites occur or where nesting sites have occurred in the previous three nesting seasons (BUOW-1 and BUOW-2).

Mitigation Measure BIO-4: Protect Salt Marsh Harvest Mouse

In addition to the exclusion fencing, CDFW recommends that an approved qualified biologist, familiar with salt marsh harvest mouse (*Reithrodontomys raviventris*), a State Fully Protected Species (Fish and Game Code section 4700) walk through and inspect suitable habitat prior to vegetation removal and search for signs of harvest mice or other sensitive wildlife and plants.

Following inspection, personnel, under the supervision of the qualified biologist, should disturb (e.g., flush) vegetation to force movement of salt marsh harvest mouse into adjacent marsh areas. The flushing of vegetation should first occur in the center of the site then progress toward the two sides away from the open water areas.

Immediately following vegetation flushing, personnel, under the supervision of the qualified biologist, should remove vegetation with hand tools (e.g. weed-eater, hoe, rake, trowel, shovel, grazing) so that vegetation is no taller than two inches. After vegetation removal, the mouse-

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proof barrier should be installed as described in the IS/MND. A qualified biologist should inspect the integrity of the exclusion fencing daily to ensure there are no gaps, tears or damage.

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 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

CDFW appreciates the opportunity to comment on the IS/MND to assist EBRPD in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at Brenda.Blinn@wildlife.ca.gov or (707) 944-5541.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse
Ryan Olah, U.S. Fish and Wildlife Service – ryan_olah@fws.gov