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April 29, 2024

Governor's Office of Planning & Research

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Apr 30 2024
STATE CLEARINGHOUSE

Subject: Ocean Beach Climate Change Adaptation Project, Draft Environmental Assessment, SCH No. 2020090171, City and County of San Francisco

Dear Ms. Caballero:

The California Department of Fish and Wildlife (CDFW) has received and reviewed the draft Environmental Assessment (EA) prepared by the National Park Service (NPS), Golden Gate National Recreation Area, for the Ocean Beach Climate Change Adaptation Project (Project), located in the City and County of San Francisco (City and County). The Project is also associated with an Environmental Impact Report (EIR) prepared by the City and County of San Francisco. CDFW previously provided comments on the Project on September 25, 2020, January 21, 2022, and October 4, 2022, associated with the Notice of Preparation (NOP) for the EIR, the draft EIR, and a supplemental technical memorandum (CDFW 2020, CDFW 2022a, CDFW 2022b). CDFW's previous review and recommendations were pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW submits these comments on the draft EA to inform NPS, as the National Environmental Policy Act (NEPA, 42 USC § 4321 et seq.) Lead Agency, of potentially significant impacts to biological resources associated with the Project, and to reiterate select comments from the CEQA process.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines, § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA,

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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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 these comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.). CDFW expects that it may need to exercise regulatory authority over the Project pursuant to Fish and Game Code. As proposed, for example, the Project may result in “take,” as defined by state law, of species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), such as bank swallow (*Riparia riparia*), and related authorization as provided by the Fish and Game Code will be required.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that 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, such as bank swallow or San Francisco lessingia (*Lessingia germanorum*), either during construction or over the life of the Project. “Take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86). If the Project will impact CESA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required to obtain an ITP. CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any such Project modifications and mitigation measures must be incorporated into the CEQA analysis, discussion, and mitigation monitoring and reporting program.

CEQA requires a mandatory finding of significance if a project is likely to substantially impact threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065). In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. On September 28, 2023, the City and County certified the Final EIR and adopted findings identifying significant and unavoidable impacts to biological resources, among other resource topics. FOC under CEQA, however, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take,

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possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: City and County of San Francisco in coordination with the San Francisco Public Utilities Commission (SFPUC).

Objective: The Project is a climate change adaptation and sea level rise resiliency project that addresses shoreline erosion, coastal storm and wave hazards, and sea level rise impacts to roadways and wastewater infrastructure. The Project cannot be implemented without issuance of an easement and Special Use Permit from the NPS. Project activities include (1) decommissioning the Great Highway between Sloat and Skyline Boulevards, (2) constructing a buried 3200-foot-long concrete wall, (3) removing pavement and debris from the beach and planting native vegetation, (4) constructing a multi-use trail and improving public beach access, and (5) providing long-term beach nourishment (sand replenishment).

Timeframe: The Project is expected to take four years to complete and beach nourishment would continue ad infinitum.

ENVIRONMENTAL SETTING AND LOCATION

The Project is located at Ocean Beach, including portions of North Ocean Beach, Middle Ocean Beach, and South Ocean Beach, in the City and County. The approximate Project centroid is 37.73455, -122.50715. The Project is located on existing paved roads, road shoulders, and parking lots as well as beach, bluff, dune, and nearshore Pacific Ocean habitat. Land uses surrounding the Project include single family housing with associated development, the San Francisco Zoo, golf courses, and recreational trails and beach access.

The Project site supports the sensitive natural community yellow sand verbena (*Abronia latifolia*)-beach burr (*Ambrosia chamissonis*) dune mat² as well as disturbed dune mat consisting mainly of invasive iceplant (*Carpobrotus edulis*) and other non-native species. In addition, the Project occurs in an area of marine biological significance in the

² Sensitive natural communities are endemic communities that have limited distribution and are more likely to be at risk from human activities. The *Abronia latifolia*-*Ambrosia chamissonis* dune mat alliance is state rarity ranked S3 and global rarity ranked G3, which CDFW considers a sensitive natural community (CDFW 2023).

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intertidal and subtidal zones and open ocean. Special-status species with the potential to occur at the Project location include, but are not limited to, bank swallow, state listed as threatened; San Francisco lessingia, state and federally listed endangered; burrowing owl (*Athene cunicularia*), California Species of Special Concern (SSC) and currently undergoing review for state candidacy; and longfin smelt (*Spirinchus thaleichthys*), state listed as threatened and federal candidate for listing. Several species with important commercial and recreational fisheries value also have the potential to occur at the Project location, including Dungeness crab (*Cancer magister*), Pacific herring (*Clupea pallasii*), rockfish (*Sebastes* spp.), California halibut (*Paralichthys californicus*), and surfperches (family Embiotocidae).

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Bank Swallow

Issue 1: The draft EA identifies that bank swallow, nests within the Project area at South Ocean Beach, as previously described in the Project EIR and CDFW's associated comment letters (draft EA, page 3-43; San Francisco Planning 2021; CDFW 2020; CDFW 2022a; CDFW 2022b). Significant coordination and consultation between CDFW, the Project proponents, and NPS has resulted in numerous resource protection measures intended to offset the permanent loss of bank swallow habitat. "However, these measures would not prevent or fully mitigate the impacts of bank swallow habitat removal within the South Ocean Beach project area" (draft EA, page 3-47). Similarly, the City and County found that Project impacts to bank swallow would be significant and unavoidable (San Francisco Planning 2021). CDFW considers these significant impacts to bank swallows would likely cause take and require a CESA ITP issued by CDFW. The measures as currently proposed would not provide in-perpetuity mitigation and in some cases do not provide enough detail for effective implementation and compliance monitoring.

Issue 2: The draft EA identifies that 500 linear feet of bank swallow nesting habitat would be impacted by the Project (draft EA, page 3-43). The draft EA also references the 2022 habitat assessment conducted by Environmental Science Associates that further quantifies the active, historic, and potential habitat at the Project location and in the nearby vicinity (Environmental Science Associates 2023). The draft EA does not, however, disclose the calculated areas of bank swallow habitat that would be impacted by the Project, nor the remaining habitat post Project. Without specifying the specific amounts in the context of remaining available habitat, it is difficult to assess the adequacy of the proposed resource protection measures.

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Evidence the Impact would be Significant: The bank swallow is listed as a threatened species under CESA. In 2016, Rosenberg et al. estimated a 95 percent reduction in the North American bank swallow population. The bank swallow population in California has seen a similar decline (BANS TAC 2013, Wright et al. 2014). In addition, most remnant bank swallow colonies in California occur in riverine systems; coastal colonies are rare (ibid.). The Project would remove bank swallow nesting habitat, reducing the carrying capacity of the bluffs to support bank swallow colonies, a significant impact. In addition, Project activities could result in take of bank swallow through crushing, injuring, or entombing individuals, or through nest abandonment and mortality of young. Any loss of habitat at this site could lead to extirpation of this small and unique population.

Recommendation 1: CDFW continues to strongly recommend the Project obtain a CESA ITP for bank swallows in advance of Project implementation.

Recommendation 2: CDFW recommends strengthening the proposed biological resource protection measures by including additional detail, lengthening the coverage period, and requiring additional actions, as further described for the individual measures below:

- M-BI-2b: Worker Environmental Awareness Program Training. This measure identifies that all construction personnel must attend an environmental training developed by a qualified biologist prior to beginning on-site work. However, the measure does not address the length of the Project or identify that environmental training should be maintained for personnel throughout the Project. This Project is projected to take four years to complete, and beach nourishment would continue ad infinitum. Therefore, CDFW recommends the training reoccurs annually for all construction personnel. In addition, the measure should clarify that any new construction personnel hired during the Project must attend the training prior to working at the Project site.
- M-BI-2c: Bank Swallow Signage and Protective Fencing. This measure requires educational signage and removable fencing to protect sensitive bank swallow nesting areas. The measure specifies that the Project proponent will cover one-time development and production of these materials. CDFW recommends the Project proponent cover costs for maintenance of signage and fencing material in perpetuity to better offset Project impacts.
- M-BI-2e: Bank Swallow Movement, Population Dynamics, and Coastal Habitat Use Research. This measure requires the Project proponent fund research into bank swallow movement and habitat use, culminating in a final, publicly available report. CDFW recommends the research should also, or alternately, be published in an open-access, peer-reviewed scientific journal such as the California Fish

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and Wildlife Journal (for more information, see <https://wildlife.ca.gov/Publications/Journal>). This will ensure the results are widely available to the scientific and conservation community.

- M-BI-2h: Bank Swallow Artificial Habitat Creation. This measure provides the best opportunity for in-kind mitigation of impacted bank swallow habitat. CDFW is highly encouraged by this effort. The measure requires a detailed feasibility study and pilot project addressing artificial habitat installation at the Project. The feasibility study would describe various artificial habitat creation concepts that could include “drilling artificial burrows into the bluff face, or installing wooden nest box “bank” habitats along the bluff top, among other concepts that have documented success supporting other nesting bank swallow populations...” CDFW recommends the feasibility study address the potential to include artificial burrows in the cementitious material on the bluff face or in other hardscaping associated with the Project as well. As artificial habitat is still experimental at this location, CDFW recommends the pilot project be extended to at least a ten-year period, rather than five years. In addition, the pilot project should include an adaptive management function. For example, if after the first three to five years artificial habitat is not being used by bank swallow, the pilot project should provide an opportunity to change tactics to improve suitability for bank swallow nesting. It is vital this effort is given the best opportunity to succeed, including by learning from any initial failures and improving the habitat accordingly. Lastly, the feasibility study should be completed and included as part of the draft EA for public review.

Recommendation 3: The draft EA should disclose the specific amount of Project impacts to bank swallow habitat, calculated at 522 square feet of active habitat or 27 percent of all active habitat associated with this colony and 899 square feet of historic habitat or 13 percent of all historic habitat at this colony (Environmental Science Associates 2023). The feasibility study and pilot project for artificial nest habitat identified in Measure M-BI-2h should address the amount of habitat that will be created in the context of the amount that will be removed.

COMMENT 2: San Francisco Lessingia

Issue: The draft EA states that the Project occurs “within suitable habitat for San Francisco lessingia and in the vicinity of documented occurrences” (draft EA page 3-25). Previous protocol-level special-status plant surveys were last conducted in 2019 and 2020 and the draft EA proposes to rely on generic pre-construction biological screening to avoid impacts to San Francisco lessingia during the Project (draft EA, Appendix B, Appendix E, and page 3-25). According to the U.S. Fish and Wildlife Service (USFWS) San Francisco lessingia is able to “spread vigorously under favorable climate conditions” and given some level of disturbance (USFWS 2003). Due to the age

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of the previous botanical surveys, it is possible that San Francisco lessingia may have spread into the Project footprint since it was last formally mapped. In addition, screening surveys may not be rigorous enough to detect and adequately protect this species. Therefore, the proposed measures may not adequately identify and avoid San Francisco lessingia during the Project.

Evidence the Impact Would be Significant: San Francisco lessingia is state and federally listed as endangered and is restricted to the highly urbanized San Francisco peninsula, most likely due to habitat loss and habitat alteration (USFWS 2003). The Project could result in take through crushing or burying individuals or the seedbank, or otherwise impact habitat through implementation of the Project.

Recommendation: CDFW recommends incorporating protocol level botanical surveys and appropriate avoidance, as further described below.

Recommended Resource Protection Measure BI-10: Special-status Plant Updated Surveys. A qualified botanist shall conduct surveys during the appropriate blooming period for San Francisco lessingia and all special-status plants that have the potential to occur on or adjacent to the Project area prior to the start of ground-disturbing activities and prepare a report documenting survey findings to be included in the EA. The qualified botanist shall be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols. Habitat adjacent to the Project area should be surveyed as the Project may have indirect impacts off-site as a result of changes to hydrological conditions or other indirect impacts. More than one year of surveys may be necessary. Surveys and reporting shall be conducted following CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*. Surveys shall be submitted to CDFW for review and written acceptance. If state or federally listed species such as San Francisco lessingia are observed, the Project shall fully avoid direct and indirect impacts to all individuals. If full avoidance is not possible, Project activities may not commence until the Permittee has consulted with CDFW and obtained a CESA ITP. Additional approval from the USFWS may be necessary pursuant to the federal Endangered Species Act (ESA).

COMMENT 3: Burrowing Owl

Issue: The draft EA identifies the Project as having suitable overwintering habitat for burrowing owl within human created burrow surrogates such as rubble piles and beneath existing staircases (draft EA, page 3-44 and Appendix E). Overwintering burrowing owl have been observed in the riprap revetment near the Oceanside Treatment Plant and underneath the staircase near Noriega Street (draft EA, San Francisco Planning 2021). The draft EA does not provide protective measures for overwintering owls and only describes avoidance of birds in the context of the nesting

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season and pre-construction nesting surveys (draft EA, page 3-47). Wintering owls rely on burrows or burrow surrogates for refuge. The Project could impact overwintering burrowing owl by directly removing or altering burrow surrogates or causing burrow abandonment, leading to potential injury or death of burrowing owls.

Evidence the Impact Would be Significant: Burrowing owl are a California SSC due to population decline and breeding range retraction. Recently, the California Fish and Game Commission has been petitioned to list populations of burrowing owl as endangered or threatened due to precipitous population declines and local extirpations of the species (Center for Biological Diversity et al. 2024). Burrows and burrow surrogates protect against predators and harsh weather conditions during the winter season.

Recommendation: CDFW recommends incorporating rigorous burrowing owl surveys prior to Project construction and avoiding existing overwintering burrow surrogates. Results of surveys should be included in the Project EA. In the event burrowing owl becomes a candidate CESA species or is listed as threatened or endangered, the Project proponent should consult with CDFW pursuant to CESA.

Recommended Resource Protection Measure B-11: Burrowing Owl Habitat Assessment, Surveys, and Avoidance. Prior to Project activities, a habitat assessment shall be performed following Appendix C: Habitat Assessment and Reporting Details of the CDFW *Staff Report on Burrowing Owl Mitigation* (CDFG 2012). The habitat assessment shall extend at least 492 feet (150 meters) from the Project area boundary or more where direct or indirect effects could potentially extend offsite (up to 500 meters or 1,640 feet) and include burrows and burrow surrogates. If the habitat assessment identifies potentially suitable burrowing owl habitat, then a qualified biologist shall conduct surveys following the CDFW 2012 Staff Report survey methodology. Surveys shall encompass the Project area and a sufficient buffer zone to detect owls nearby that may be impacted commensurate with the type of disturbance anticipated, as outlined in the CDFW 2012 Staff Report, and include burrow surrogates such as culverts, piles of concrete or rubble, and other non-natural features, in addition to burrows and mounds. Time lapses between surveys or Project activities shall trigger subsequent surveys, as determined by a qualified biologist, 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 Staff Report survey methodology resulting in detections. Detected burrowing owls shall be avoided pursuant to the buffer zone prescribed in the CDFW 2012 Staff Report, unless otherwise approved in writing by CDFW.

Please be advised that CDFW does not consider eviction of burrowing owl (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

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have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owl 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.

COMMENT 4: Project Description and Impacts to Marine Resources

Issue: The draft EA indicates that large sand placement beach nourishment activities would be subject to a separate NPS approval process and future NEPA review (draft EA, page 2-14). Therefore, the draft EA states that “no work would occur within the wetted waters of the Pacific Ocean” (draft EA, page 3-27). This approach differs from the Project description included in the EIR (San Francisco Planning 2021, see page 2-22). Specifically, large sand placements would rely on existing dredging of the San Francisco Harbor – Main Ship Channel conducted regularly by the U.S. Army Corps of Engineers (Corps). While the Corps would conduct the dredging regardless of this Project, the placement of the dredged material on South Ocean Beach would be a new activity tied directly to the Project (San Francisco Planning 2021; San Francisco Planning 2023). This would entail a tug and an approximately 28-inch-diameter flexible steel pipe to transport slurried sand between the dredge and South Ocean Beach. The dredge would anchor approximately 0.5 miles offshore and the slurry pipeline would run along the ocean bottom from the dredge to the beach. Furthermore, there is a potential need to pump water from the ocean to support slurry creation (San Francisco Planning 2023, see page 11.9-40). Pumping water from the ocean poses the risk of entrainment and/or impingement of listed species, such as longfin smelt, and other marine organisms.

The draft EA identifies that beach nourishment activities would be conducted in compliance with a future shoreline monitoring program prepared by the SFPUC in coordination with the California Coastal Commission and the NPS. The shoreline monitoring program “would likely identify performance objectives for the nourishment program, specify criteria against which performance would be evaluated, outline both qualitative and quantitative monitoring methods, and establish an implementation and reporting schedule” (draft EA, page 2-13). It is unclear to what extent the shoreline monitoring program would cover large sand placements or if it would include details on how large sand placement would be implemented.

Evidence the Impact Would be Significant: The draft EA does not cover aspects of the Project that would occur within the wetted waters of the Pacific Ocean and therefore does not address potentially significant impacts to marine resources. The Project has potential to impact marine resources by temporarily altering the seabed and risks entrainment or impingement of sensitive species, including longfin smelt, state listed as threatened and a federal candidate for listing. Finally, the draft EA is not clear about

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what would be covered by the shoreline monitoring program or how the program would incorporate avoidance, minimization, and mitigation measures identified in the draft EA.

Recommendation: CDFW recommends the draft EA incorporate the Project activities that would occur in the wetted waters of the Pacific Ocean, separate from the Corps dredging activity, in the same manner as the EIR. In addition, the draft EA should clearly identify potential impacts from those activities along with proposed avoidance, minimization, and mitigation measures. Furthermore, the draft EA should clarify that all sand placement activities will be incorporated in the future shoreline monitoring and adaptive management program. The draft EA should also confirm that the shoreline monitoring and adaptive management program will incorporate all relevant resource protection measures from the draft EA identified in Appendix B. Lastly, the draft EA should include consultation with CDFW in the development of this program as implementation has the potential to impact longfin smelt and an ITP may be warranted. CDFW staff is available to provide guidance on the ITP application process.

COMMENT 5: Coastal Development Permit

Issue: The Project is located within the Coastal Zone and is protected by the California Coastal Act. It is also within the City of San Francisco (City) Western Shoreline Area Plan, which is a portion of the City's certified local coastal program and guides land use planning within the Coastal Zone (San Francisco Planning 2021). The Project will require a Coastal Development Permit, which will ensure consistency with the Coastal Act and the City's Western Shoreline Area Plan. The draft EA identifies that the SFPUC has submitted a Coastal Development Permit application for the Project (draft EA, page 4-5). CDFW supports requirements under the Coastal Act to protect environmentally sensitive habitat areas (ESHA), including bank swallow nesting habitat (Pub. Resources Code, § 30240). ESHA is defined as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Pub. Resources Code, § 30107.5). In this case, bank swallow are a rare species, as previously described they are listed as threatened under CESA, and their preferred nesting habitat near the Project area consists of rare eroding coastal bluffs that are highly susceptible to human disturbance and degradation. The Project EIR identifies that Project construction could conflict with the Coastal Act's ESHA policy due to the permanent removal of bank swallow nesting habitat (San Francisco Planning 2021).

Recommendation: NPS should work closely with CDFW, the Project proponent, and the Coastal Commission during the Coastal Development Permit process to appropriately address the impact to bank swallow nesting habitat and ensure there are no conflicts with the draft EA Resource Protection Measures.

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ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

CONCLUSION

Thank you for the opportunity to comment on the Project's draft EA. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Amanda Culpepper, Senior Environmental Scientist (Specialist), at (707) 815-8555 or Amanda.Culpepper@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No 2020090171)
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