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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 9, 2020

Governor's Office of Planning & Research

**Oct 12 2020**

**STATE CLEARINGHOUSE**

Ms. Kimberly Brosseau  
County of Santa Clara  
Parks and Recreation Department  
298 Garden Hill Drive  
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[kimberly.brosseau@prk.sccgov.org](mailto:kimberly.brosseau@prk.sccgov.org)

Subject: Joseph D. Grant County Park Master Plan Amendment, Mitigated Negative Declaration, SCH No. 2020090249, Santa Clara County

Dear Ms. Brosseau:

The California Department of Fish and Wildlife (CDFW) received the Mitigated Negative Declaration (MND) from the County of Santa Clara (County) for the Joseph D. Grant County Park Master Plan Amendment (Project) pursuant 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 resources. 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 the exercise of its own regulatory authority under the Fish and Game Code.

**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 and Game Code, §§ 711.7, subd. (a) and 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, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on

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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.

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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. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish and Game Code, § 1600 et seq.). Likewise, 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 and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** County of Santa Clara

**Objective:** Within the 1,155-acre Sulphur Springs Ranch amendment area there will be construction of two new backpack campgrounds, including a vault-type toilet facility. The trail system will include approximately two miles of new trail, three miles of existing ranch roads repurposed as trails, and one mile of trail would be repurposed as an operations and maintenance access road. Trail construction includes bulldozing, brush clearing, construction of a bridge, and installment of ford crossings on drainages.

**Location:** Joseph D. Grant County Park is located eight miles west of the City of San José, Santa Clara County. The amendment area is located in the south eastern corner of the park. The approximate center of the amendment area is 37.324° N latitude and -122.641 W longitude (NAD 83 or WGS 84). The Assessor's Parcel Numbers are 627-06-002, 627-07-013, and 627-07-014.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below 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.

### **Section D Biological Resources, Impact Analysis, Special-Status Wildlife, page 37–40 and page 43**

The Special-Status Wildlife section of the MND, and referenced Appendix A - Biological Resources Supporting Information, contains some information regarding potential presence of special-status species and impact analysis. However, the information provided does not clearly describe the analysis per species, it does not describe the

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specific Project components that may impact those species, nor does it describe specific measures to reduce impacts to a less-than-significant level.

Appendix A - Biological Resources Supporting Information includes a California Natural Diversity Database search and reconnaissance survey, but only discusses types of natural communities present and generally states that special-status species could occur on-site. Table 3 Special-Status Wildlife Species Evaluated states the Potential to Occur (e.g. high, low, possible, not expected) for various special-status species, but does not provide information on the analysis conducted to come to those conclusions. CDFW recommends that the MND, for each species, provides information as to why each species may or may not be present within the amendment area and generally describe areas in which each species may be present (e.g. a special-status species may be present in Smith Creek where a bridge will be constructed). Additionally, this analysis should include all potentially present special-status and sensitive species, including bats.

The MND generally discusses that the Project will impact special-status species listed in Table 3, if those species are present. However, there is not specific information regarding how special-status species will be impacted. CDFW recommends that the MND, for each species, describe what Project components will impact each species and the nature of the impacts (e.g. a special-status species may be killed or injured through shrub clearing or bridge construction).

### **California Endangered Species Act**

Table 3 of the MND states that there is a high potential for occurrence of foothill yellow-legged frog (FYLF, *Rana boylei*, State Endangered) within the amendment area. In CDFW review of the California Natural Diversity Database (CNDDDB, CDFW 2020), a FLYF occurrence is located within and adjacent to Project work areas including the ephemeral Smith Creek, Hawk Creek, and Sulphur Creek. Measure BIO-2 states that an Incidental Take Permit (ITP) for FYLF will be obtained and that the County will follow measures within the ITP that result in take avoidance. However, if there are feasible measures that could fully avoid take of CESA listed species, an ITP would potentially not be required (upon CDFW review and concurrence).

Table 3 of the MND states that there is a low potential for California tiger salamander (CTS, *Ambystoma californiense*, Federal Threatened and State Threatened) to occur within the amendment area. However, there is no information provided that describes how this conclusion was surmised. In CDFW review of CNDDDB (CDFW 2020), several recent occurrences of CTS are located to the west of the amendment area, with the closest occurrence being approximately 0.5 miles from main the Project impact area. Also, in review of CNDDDB aeriels, CDFW observed several cattle stock ponds that

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surround the amendment area. It is CDFW's opinion that the amendment area could contain habitat suitable for CTS dispersal.

To reduce impacts to less-than-significant levels, CDFW recommends the measures below be included in the MND. These measures should be carried out for both FYLF and CTS, and any other CESA-listed wildlife species.

1. **Habitat Assessment and Appropriate Project Design:** A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity contains suitable habitat for CESA-listed wildlife species. If feasible, the Project or components should be relocated or designed to avoid CESA-listed wildlife species habitat.
2. **Protocol-level Surveys:** If habitat is present for CESA-listed wildlife species and the Project or components cannot be relocated or designed to avoid this habitat, the Project location should be surveyed for CESA-listed wildlife species by a qualified biologist following protocol-level surveys.
3. **Avoidance Measures:** If CESA-listed wildlife species are identified during surveys, specific measures for each Project component should be developed to fully avoid take of these species.
4. **Take Authorization:** If full take avoidance of CESA-listed wildlife species is not feasible, the County should apply to CDFW for take authorization through issuance of an ITP.

### **State Species of Special Concern**

Table 3 states that there is a high potential for occurrence for California red-legged frog (CRLF, *Rana draytonii*, Federally Threatened and State Species of Special Concern) within the amendment area. Table 3 states that there is a possible potential of occurrence for San Francisco dusky-footed woodrat (SFDWR, *Neotoma fuscipes annectens*, State Species of Special Concern) and western pond turtle (WPT, *Emmys marmorata*, State Species of Special Concern) within the amendment area.

Table 3 does not discuss potential occurrences of special-status and sensitive bat species. MND Section D Biological Resources, #2, states that construction of new trails and the bridge crossing may result in woodland and riparian tree and understory plant removal. Removal of trees could impact special-status and sensitive bat species that may roost in woodland and riparian habitats such as pallid bat (*Antrozous pallidus*, State Species of Special Concern), western red bat (*Lasiurus blossevillii*, State Species of Special Concern), and hoary bat (*Lasiurus cinereus*).

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To reduce impacts to less-than-significant levels, CDFW recommends the measures below be included in the MND. These measures should be carried out for CRLF, SFDWR, WPT, bats, and any other species of special concern.

1. **Focused Surveys:** The Project location and tree removal locations should be surveyed for Species of Special Concern and sensitive bat species by a qualified biologist following protocol-level surveys. In the absence of protocol-level surveys being performed, focused surveys for Species of Special Concern presence or indicators of presence (e.g. bat guano and acoustic surveys) should be conducted.
2. **Avoidance, Minimization, and Mitigation:** If Species of Special Concern and sensitive bat species are found within or adjacent to the Project site, the qualified biologist should establish a no-disturbance buffer appropriate for the species and conduct on-site monitoring during all Project-related activities. The MND should include additional minimization and mitigation measures for each species that could be potentially impacted by Project activities.

**Section D Biological Resources, Impact Analysis, page 40, page 43, and Measure BIO-6**

*Impacts to Riparian Habitat*

The amendment area contains ephemeral and intermittent creeks within and adjacent to Project impact areas including Smith Creek, Hawk Creek, Sulphur Creek, and unnamed tributaries to these creeks. MND Section D Biological Resources, #2, states that construction of new trails and the bridge crossing may result in woodland and riparian tree and understory plant removal. Rock fords may be installed within creeks and drainages. However, the specific creeks or drainages in which Project component construction impacts may occur is not discussed in the MND.

MND Section D Biological Resources #2 and Measure BIO-6 includes Project design and measures to avoid or minimize impacts streams to the maximum extent practicable. Section D Biological Resources, Impact Analysis, #2 states that prior to work in riparian areas, the Project would obtain coverage from CDFW. However, it is not clearly stated that a Lake and Streambed Alteration Agreement will be obtained. CDFW recommends that the MND, for each Project component, describe what type of impacts may occur (e.g. installation rock ford crossings within Hawk Creek or other drainages).

To reduce impacts to less-than-significant levels, CDFW recommends the measures below be included in the MND.

1. Habitat Assessment: A qualified biologist should conduct a habitat assessment in advance of Project implementation, to determine if the Project area or its

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immediate vicinity supports freshwater marsh, wetland, and/or riparian communities. This survey should include, but not be limited to ponds, Smith Creek, Hawk Creek, Sulphur Creek, and unnamed tributaries to these creeks.

2. Wetland Delineation: CDFW recommends a formal wetland delineation be conducted by a qualified biologist prior to Project construction to determine the location and extent of wetlands and riparian habitat present. Please note that, while there is overlap, State and federal definitions of wetlands, as well as which activities require Notification pursuant to Fish and Game Code § 1602, differ. Therefore, CDFW further recommends that the delineation identify both State and federal wetlands, as well as which activities may require Notification to comply with Fish and Game Code [§ 1602 and §2081(b)].
3. Notification of Lake and Streambed Alteration: Fish and Game Code §1602 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; (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. CDFW is required to comply with CEQA in the issuance of a Lake and Streambed Alteration Agreement. For additional information, please see <https://www.wildlife.ca.gov/Conservation/LSA>.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base 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 CNDDDB. The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

## **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). 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.

## **CONCLUSION**

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

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Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at [Kristin.Garrison@wildlife.ca.gov](mailto:Kristin.Garrison@wildlife.ca.gov); or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at [Brenda.Blinn@wildlife.ca.gov](mailto:Brenda.Blinn@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse  
Primavera Parker, CDFW Region 4 – [Primavera.Parker@wildlife.ca.gov](mailto:Primavera.Parker@wildlife.ca.gov)

#### LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2020. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed October 2, 2020.