



CAPITOL OFFICE
2401 Capitol Ave, Suite 301
Sacramento, CA 95816
Phone: (916) 758-6928
Fax: (510) 559-9605
www.vollmarconsulting.com

MEMORANDUM

To: Tammy Taylor, Marin County Planning Department

Date: 5/16/2022

From: Cassie Pinnell, VNLC; Richard Grassetto, Grassetto Environmental Consulting

No. Pages: 7

Subject: Response to CDFW Comments on the Gee Bridge Design and Review MND

Introduction

The Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Gee Bridge Project was circulated by the Marin County Planning Department for a 34-day review period, from February 10 to March 13, 2022. During that period, a single comment letter was received by the County – from the California Department of Fish and Wildlife (CDFW), dated March 17, 2022. The substantive comments presented in that letter are responded to below, and the CDFW comment letter is attached to this memo.

No revisions are required to the IS/MND text and no new significant impacts were identified that were not addressed in the Draft IS/MND. Pursuant to State CEQA Guidelines Section 15070, an IS/MND continues to be the appropriate CEQA document for the project, as no fair argument, based on substantial evidence in the record, was presented that the project may have a significant impact on the environment. Further, the IS/MND does not require re-circulation, per State CEQA Guidelines Section 15073.5, and only includes minor clarifications.

Responses to CDFW Comments

This memorandum is in response to the letter received from the California Department of Fish and Wildlife (CDFW) dated March 17, 2022 addressed to Mr. Immanuel Bereket in regards to a Mitigated Negative Declaration (MND) prepared by Grassetto Environmental Consulting for the Gee Bridge Design Review Project (the Project) located in Marin County.

The following responses are keyed to the comment letter provided by CDFW, and incorporate additional site information that was collected on April 7th, 2022 by VNLC staff ecologist Henry Hwang and further analysis conducted by VNLC Senior Ecologist Cassie Pinnell.

Response to Comment 1: Project Description Issues Related to Biological Resource Impacts

The CDFW letter recommends that the MND clarify the Project description to more accurately describe location of the bridge abutments in relation to the top-of-bank line. In order to clarify this, the top of bank boundaries for the north and south bank of the unnamed tributary to San

Antonio Creek were recorded using a sub-meter accurate Trimble GPS unit during the April 7th site visit. The bridge abutment on the southwest side of the unnamed tributary is located roughly 10 feet above the top-of-bank and the southeastern bridge abutment is located roughly 12.5 feet above the top-of-bank line. Both the southern bridge abutments lie in an upland area where the top of bank has been reduced or partially leveled along the road extension area (see Photo 1). This lowered area has a slope of approximately 20-30° whereas the surrounding portions of the bank appear to have a slope of approximately 50-60° (see Photo 2). The bank near the southern bridge abutments does not appear to be steeply incised and the soils are compact and vegetated with annual grasses and forbs. No signs of erosion were observed in this area. The bridge abutments on the south side of bank are an appropriate distance from the top-of-bank and likely pose little risk of erosion into the unnamed tributary.

The northwestern bridge abutment is located roughly 4.5 feet above the mapped top-of-bank line and the northeastern bridge abutment is located roughly 8 inches above the top-of-bank line (see Photo 3). The bridge abutments on the northern portion of the bank area also located in a partially leveled area along the proposed road extension where the slope of the bank is significantly more gradual than the surrounding portions of the bank (see Photo 4).

Response to Comment 2: Burrowing Owl

No sign of burrowing owl activity was documented anywhere within the boundaries of the property on which the Project occurs during neither the initial October survey, nor the follow-up April 7th survey. Suitable wintering and foraging habitat for burrowing owl may exist within a limited portion of the property in a grassland area south of the Project footprint. No large burrows were observed; the only burrows observed were too small (2-3 inches diameter) to be used by this species. The observed burrows are most likely utilized by California voles (*Microtus californicus*) and Botta's pocket gophers (*Thomomys bottae*). There are two raised rocky areas in the southern portion of the property that do not have enough soil to support deep enough burrows for burrowing owls. These areas are mostly vegetated with soft brome (*Bromus hordeaceus*) purple needlegrass (*Stipa pulchra*) and California poppy (*Eschscholzia californica*).

In addition, there were no burrow surrogates (pipes, culverts or concrete piles, or other structures) present that could be utilized for wintering habitat on the property, including none within the Project footprint. Though it is possible that potentially suitable habitat could occur on the neighboring properties within 500m of the property, these areas are not accessible now, nor would they be during pre-construction surveys. Although it is possible that burrowing mammals such as badgers could potentially create new burrowing owl habitat in a short period of time in the vicinity of the Project, the lack of existing habitat within the property and the small extent of the Project footprint suggest this is not likely, and therefore not expected to be a potentially significant impact.

In addition, the Nesting Bird Protection Measures required by the County for Outdoor Construction Measures (Municipal Code 22.20.040) are already adopted by the Project and include pre-construction surveys and nesting buffers, though these do not specifically call out nesting burrows, they will include surveys for potential nesting birds as follows:

Nesting Bird Protection Measures (excluding Northern Spotted Owl). For the purposes of protecting nesting birds, outdoor construction activity that involves tree removal, grading, or other site disturbances in an area where a biological assessment has identified a high probability of the presence of nesting birds are subject to the requirements enumerated below before and during site preparation and construction activities, unless separate project mitigation measures have been adopted that override these requirements.

1. Construction activities that may disturb birds shall be conducted outside the nesting season, which generally occurs between February 1 and August 15.

2. If commencing construction activities between August 16 and January 31 is infeasible and ground disturbance or tree removal needs to occur within the nesting season, a pre-construction nesting bird survey of the property shall be conducted by a qualified biologist. If no nesting birds are observed by the biologist, no further action is required, and construction activities shall occur within one week of the survey.

3. If active bird nests are observed during the pre-construction survey, a disturbance-free buffer zone shall be established around the nest tree(s) until the young have fledged, as determined by a qualified biologist.

4. To delineate the buffer zone around a nesting tree, orange construction fencing shall be placed at the specified radius from the base of the tree within which no machinery or workers shall intrude. After the fencing is in place, there will be no restrictions on grading or construction activities outside the prescribed buffer zones, but County staff during routine site inspections may verify that fencing remains in place.

5. Pre-construction surveys will be documented and provided to the County by the qualified biologist. If construction fencing is required, photographs of the fencing, directly after installation, will be submitted to the County.

Response to Comment 3: American Badger

No burrows suitable for the American badger were observed in the Project footprint or immediate adjacent areas during either the October 18, 2021, nor observed during the expanded site assessment (entire property) during the April 7, 2022 surveys. Suitable oak woodland and grassland habitat exists mainly in undeveloped oak woodlands and grasslands to the south, but outside of the Project footprint. The habitats to the north of the Project footprint are less likely to support American badger as they are largely developed with residences and landscaping and lack even small mammal burrows. Although it is unlikely, badgers could potentially inhabit the surrounding areas prior to Project activities. However, the proposed work is limited to an existing dirt road, and very small areas immediately adjacent to the existing roadway. Therefore, the proposed Project footprint not only lacks burrow complexes, but is also on already disturbed areas. The presence of this species within proximity to the footprint is unlikely and this Project is therefore expected to have a less-than-significant impact on this species.

Response to Comment 4: Western Pond Turtle

The unnamed tributary may provide dispersal habitat for western pond turtle (WPT), and provides the most likely occupied habitat within the property. Upland grassland and oak woodland habitats on the property may potentially be used for overwintering but it is unlikely there would be any conflicts with overwintering adult turtle during the proposed construction period of the Project in late summer to early fall. However, WPT nesting activity occurs from May to August and the grasslands in the vicinity could potentially be used as nesting habitat. Though the Project footprint is limited to an existing roadway, it is possible that a WPT could create a nest within the existing, compacted roadway, though it is unlikely given the potential for less disturbed areas in the vicinity. Since the Project footprint is small and disturbed, and the Project will occur at the tail end or outside of the WPT nesting season, this Project is expected to have a less-than-significant impact on this species.

Response to Comment 5: California Red-legged Frog

Sections of the stream do contain deep shaded pools (2') during the wet season, but not the section of the stream included in the Project footprint. Additionally, work will be conducted during the dry season. Likewise, sections of the stream do contain rocky cervices, undercut bands, and burrows within the channel that could provide potential sheltering and dispersal habitat for California red-legged frog (CRF), but these are outside the actual Project footprint.

The footprint itself includes an existing roadway, an existing stream crossing without topographic complexity, and therefore sheltering habitat within the footprint is very limited. Additionally, the footprint will not provide the moist or cool conditions supportive of this species during the work window specified in the Project description, nor will it be densely vegetated nor include rocky conditions. The likelihood that CRF would be sheltering within the footprint is unlikely since it is an existing crossing and driveway. Though it is possible that CRF could migrate through the footprint, it is unlikely due to the size of the footprint, poor quality of habitat within the footprint, timing of the work, duration of actual impact (a few trips lasting a few minutes by a single wheeled tractor), and limited impact to the actual stream itself, and therefore this Project is expected to have a less-than-significant impact on this species and the mitigation measures identified in the comment would not be required.

Response to Comment 6: Foothill Yellow-legged Frog

The stream is seasonal and has very low flow rates, and although it has some rocky habitat, it does not have a cobbly or gravelly substrate. The Project property is also in a more flat and open oak savanna/open grassland habitat setting, whereas this species is more commonly found in the more rugged and forested terrain of the surrounding hills. Though this species is known from the Region, the conditions of the site make it unlikely to be present and therefore this impact is expected to be less-than-significant.

Response to Comment 7: Bat Species of Special Concern and Roosting Bat Habitat

The Project is already incorporating the appropriate standards for avoidance of roosting and special status bats as described in the Marin County municipal code Article III, Chapter 22.20.040, section F, as follows:

Roosting Bat Protection Measures. *For the purposes of protecting roosting bats, outdoor construction activity that involves tree removal in an area where a biological assessment has identified a high probability of roosting bats on site are subject to the requirements enumerated below before and during site preparation and construction activities, unless separate project mitigation measures have been adopted that override these requirements. These standards apply only to tree removal that takes place during the nesting seasons of March 1 and April 15 or between September 1 and October 15.*

1. Trees identified as containing suitable roost habitat shall be removed using a two-step process if they are removed during the nesting season. Trees removed during the nesting season shall be felled the first day and left overnight before the felled trees are removed the following day or later.

2. A qualified biologist shall be responsible for overseeing the removal of trees that provide suitable bat habitat and will submit written confirmation to the County verifying that these measures have been undertaken.

Response to Comment 8: Nesting Birds

CDFW's jurisdiction is noted. In order to avoid impacts to active nest sites or other unauthorized take of birds, the Project is already incorporating Marin County uniformly applied standards for nesting birds found in Article III, Chapter 22.20.040, Section G (as listed above under Burrowing Owl, above), which requires pre-construction nest surveys for construction work undertaken during the nesting season and establishment of no-disturbance buffers around identified active nests. IS/MND Mitigation Measure BIO-1 also requires nesting bird surveys consistent with the County standards. Adherence to these requirements would avoid impacts to nesting birds.

Attachment 1: Site Photos



Photo 1. Southern side of footprint, existing roadway – compacted, previously disturbed, lacking habitat complexity, burrows or burrow surrogates (April 2022).



Photo 2. Southern side of footprint, existing crossing and less steep than other portions of the bank (April 2022).



Photo 3. Location of northwestern bridge abutment, existing roadway lacking complex habitat features (April 2022).



Photo 4. Northern end of bridge footprint, existing roadway (April 2022).

Attachment 2: California Department of Fish and Wildlife Comment Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 17, 2022

Mr. Immanuel Bereket
Marin County Community Development Agency Planning Division
3501 Civic Center Drive
San Rafael, CA 94903
envplanning@marincounty.org

Subject: Gee Bridge Design Review Project, Mitigated Negative Declaration,
SCH No. 2022020245, County of Marin

Dear Mr. Bereket:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the County of Marin (County) for the Gee Bridge Design Review Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA 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) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Timothy Gee

Objective: The Project would gravel and widen an existing 250-foot-long dirt access road and install a prefabricated, 12-foot-wide, 40-foot-long steel girder bridge over an unnamed tributary to San Antonio Creek. The Project would provide vehicular access to the southern portion of the property. Primary Project activities include grading,

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.

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 2

excavating, trenching, installing gravel, pouring concrete, installing a prefabricated bridge, and removing non-native ornamental trees.

Location: The Project is located at 135 Wilson Hill Road, approximately 5 miles west of the City of Petaluma, in unincorporated Marin County. The approximate centroid of the Project is Latitude 38.19056°N, Longitude 122.70937°W and the Assessor's Parcel Number is 106-170-022.

Timeframe: The Project would take 4 to 6 weeks and work is planned for summer 2022.

ENVIRONMENTAL SETTING

The Project area covers approximately 0.06 acres of existing dirt road and a lowwater crossing. The Project is adjacent to a landscaped residential area and valley oak (*Quercus lobata*) woodland; crosses an intermittent, unnamed tributary to San Antonio Creek; and includes and is adjacent to non-native annual grassland dominated by slender wild oat (*Avena barbata*), annual blue grass (*Poa annua*), rough dog's-tail (*Cynosurus echinatus*) and field bindweed (*Convolvulus arvensis*). The residential, landscaped portion of the property includes non-native ornamental trees such as Aleppo pine (*Pinus halepensis*), olive (*Olea europaea*), and cedar (*Cedrus* sp.). The surrounding area consists of rural residences, grassland, valley oak woodland, and riparian corridors. Another unnamed tributary to San Antonio Creek flows along the northern boundary of the property and will not be impacted by the Project. Special-status species with the potential to occur in or near the Project area include, but are not limited to, wintering burrowing owl (*Athene cunicularia*), a California Species of Special Concern (SSC); California red-legged frog (*Rana draytonii*), federally listed as threatened and SSC; western pond turtle (*Emys marmorata*), SSC; Northwest/North coast clade foothill yellow-legged frog (*Rana boylei*), SSC; pallid bat (*Antrozous pallidus*), SSC; western red bat (*Lasiurus blossevillii*), SSC; American badger (*Taxidea taxus*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

REGULATORY REQUIREMENTS

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. **The MND identifies that the Project would install a prefabricated bridge over an unnamed tributary to San Antonio Creek; this activity would require an LSA Notification as further described below.** In this case, CDFW would consider the CEQA document for the Project and may issue an LSA

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 3

Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as white-tailed kite, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those recommended by CDFW below, CDFW concludes that an MND is appropriate for the Project.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

Project Description and Related Impact Shortcoming

As noted above, the Project would install a new bridge over an unnamed tributary (MND page 3, Figures 2 and 3). Thank you for identifying that this activity falls under CDFW's LSA authority (MND page 25). CDFW recommends that the MND clarify the Project description, which identifies that the bridge abutments would be located "just outside of the top-of-bank" (MND page 6). However, the MND notes that the unnamed tributary is highly incised, and the bridge cross-section drawing shows abutments located on an apparently sloped bank (MND page 23 and Figure 3). Based on Figure 3, it appears the abutments should be moved an additional 10 to 20 feet upland outside of the top-of-bank and the bridge appropriately lengthened. This could reduce the potential for continued incision potentially threatening the bridge abutments. In addition, this would reduce the likelihood of erosion and better protect stream biological resources. The

1

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 4

MND identifies that “additional erosion protection along the creek bank, both upstream and downstream of the planned bridge, may be needed in the future to prevent damage to the bridge footings” (MND page 34). CDFW recommends avoiding this outcome by locating the bridge abutments farther from the channel, as stated above. In addition, bank stabilization activities would require LSA Notification. To comply with Fish and Game Code section 1600 et seq. and reduce impacts to stream and riparian habitat to less-than-significant, CDFW recommends that the MND incorporate the following mitigation measure.

①
(cont.)

Mitigation Measure BIO-2: Notification of Lake and Streambed Alteration

For Project activities that may substantially alter the bed, bank, or channel of the unnamed tributary, including but not limited to installation of the new bridge or bank stabilization activities, an LSA Notification shall be submitted to CDFW pursuant to Fish and Game Code section 1602 prior to Project construction. If CDFW determines that an LSA Agreement is warranted, the Project shall comply with all required measures in the LSA Agreement, including but not limited to requirements to mitigate impacts to the unnamed tributary and riparian habitat. Permanent impacts to the stream and associated riparian habitat shall be mitigated by restoration of riparian habitat at a 3:1 mitigation to impact ratio based on acreage and linear distance as close to the Project area as possible and within the same watershed and year as the impact. Temporary impacts shall be restored on-site in the same year as the 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 USFWS?

Environmental Setting and Related Impact Shortcoming

Burrowing Owl

②

The MND identifies that burrowing owl, an SSC, has the potential to occur in and near the Project (MND page 24 and Appendix A). The Project is within the winter range of burrowing owl and the grassland adjacent to the Project may provide suitable wintering and foraging habitat. There is a documented occurrence of burrowing owl approximately 1.7 miles north of the Project according to the California Natural Diversity Database (CNDDB). In addition, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the property is High and Medium Suitability for burrowing owls. The MND states that there is no habitat available within the Project footprint due to a lack of observed “large burrow complexes” (MND page 24). However, Project activities that occur within 500 meters (1,640 feet) of a burrow could impact wintering burrowing owls. In addition, burrowing owls may utilize burrow surrogates such as pipes and concrete

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 5

piles and are not limited to mammal burrows. Finally, as discussed further below, burrowing mammals may create burrow habitat in a single night (Ministry of Environment Ecosystems 2007 as cited in Brehme et al. 2015).

The Project could result in burrowing owl burrow abandonment, injury or mortality of adults, or loss of wintering owls. Burrowing owls are an SSC due to population decline and breeding range retraction. Based on the above, if wintering burrowing owl is present adjacent to the Project area, Project impacts to burrowing owl would be potentially significant. To reduce impacts to burrowing owl to less-than-significant CDFW recommends that the MND incorporate the following mitigation measures.

Mitigation Measure BIO-3A: 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*² (CDFW 2012 Staff Report). 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 off-site (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, or an eviction plan for non-nesting owls shall be prepared and subject to CDFW review.

Please be advised that CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a “take” avoidance, minimization, or mitigation measure for the reasons outlined below. Therefore, to mitigate the impacts of potentially evicting burrowing owls to less than significant, Mitigation Measure BIO-4B outlined below requires habitat compensation with the

②
(cont.)

² CDFW, then Department of Fish and Game, 2012.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 6

acreage amount identified in any eviction plan. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of excluded owls is unknown. Burrowing owls 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. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented to avoid “take.”

2

(cont.)

Mitigation Measure BIO-3B: Burrowing Owl Wintering Habitat Mitigation

If the Project would impact an occupied burrow (where a non-nesting wintering owl would be evicted as described above), the following habitat mitigation shall be implemented prior to Project construction and shall be included in the CDFW-reviewed eviction plan described above:

Impacts to each burrow site shall be mitigated by permanent preservation of two occupied burrow sites with appropriate foraging habitat within Marin County, unless otherwise approved in writing by CDFW, through a conservation easement and implementing and funding a long-term management plan in perpetuity.

The Project may implement alternative methods for preserving habitat with written acceptance from CDFW.

American Badger

3

The MND identifies that American badger, an SSC, has the potential to occur in and near the Project (MND page 24 and Appendix A). The Project is adjacent to grassland habitat and oak woodland habitat that may be suitable for American badger. The MND states that no habitat is present at the Project area due to a lack of observed burrows (MND page 24). However, badgers range throughout most of California and can dig burrows in a single night as described above; therefore, the species may occupy the Project area and adjacent habitat prior to Project construction. Additionally, the California Wildlife Habitat Relationships Predicted Habitat Suitability for the property is Medium Suitability.

The Project may result in injury or mortality to adult or young badgers, or burrow abandonment. Therefore, if American badger is present on or adjacent to the Project area, Project impacts to American badger would be potentially significant.

To reduce impacts to American badger to less-than-significant, CDFW recommends that the MND: (1) further analyze the potential for American badger to occur on and adjacent to the Project area, and (2) include mitigation measures to ensure impacts are

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 7

3
(cont.)

reduced to less-than-significant. These measures may include a qualified biologist surveying for the species including adjacent habitat prior to construction, avoiding occupied burrows including a sufficient buffer approved by CDFW, and preparing and implementing a CDFW-approved relocation plan if badgers are found on or adjacent to the Project area and cannot be avoided.

Western Pond Turtle

4

The MND states that the Project is within the range of western pond turtle and identifies that western pond turtles could use the unnamed tributary in the Project as dispersal habitat (MND page 24, Appendix A). The CNDDDB identifies occurrences of western pond turtle within five miles of the Project, with the closest occurrence approximately 1.4 miles to the east. Western pond turtles can move more than four miles up or down stream, therefore the Project area is within the mobility range of western pond turtle observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015). The Project would result in impacts adjacent to a stream. The Project could impact upland dispersal habitat, upland refugia, or nesting habitat for western pond turtle through grading activities, potentially injuring or killing western pond turtles. Based on the above, if western pond turtle is present in the Project area, Project impacts to western pond turtle would be potentially significant. To reduce potential impacts to western pond turtle to less-than-significant, CDFW recommends that the MND incorporate the following mitigation measure.

Mitigation Measure BIO-4: Western Pond Turtle Survey

For Project activities that occur within 500 feet of stream or wetland habitat, prior to ground-disturbing activities, a qualified biologist shall conduct a pre-construction survey within 48 hours prior to the start of Project activities, focusing on the presence of western pond turtle and their nests. If western pond turtles are discovered during the survey, Project activities shall not begin until CDFW has been consulted and approved in writing measures to avoid and minimize impacts to western pond turtle, and the measures have been implemented.

5

California Red-Legged Frog

The MND states that the Project is within the range of California red-legged frog and identifies that they could use the unnamed tributary in the Project as dispersal habitat (MND page 24, Appendix A). The nearest CNDDDB occurrence is approximately 1.4 miles east of the Project. California red-legged frogs require a variety of habitats, including aquatic breeding habitats and upland dispersal habitats. Breeding sites of the species are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons. Additionally,

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 8

California red-legged frogs frequently breed in artificial impoundments such as stock ponds (USFWS 2002). Breeding sites are generally found in deep, still, or slow-moving water (>2.5 feet) and can have a wide range of edge and emergent cover amounts. California red-legged frogs can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails (*Typha* sp.) or overhanging willows (*Salix* sp.), or can proliferate in ponds devoid of emergent vegetation (i.e., stock ponds). Based on aerial imagery, the Project is within 1.5 miles of at least seven stock ponds that could provide breeding habitat. California red-legged frog habitat includes nearly any area within one to two miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even man-made structures (i.e., culverts, livestock troughs, spring-boxes, and abandoned sheds) (USFWS 2017). Therefore, even if activities occur when the unnamed tributary is dry, California red-legged frogs could be present. California red-legged frog populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thompson et al. 2016). Habitat loss from growth of cities and suburbs, mining, overgrazing by cattle, 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 the species (Thompson et al. 2016; USFWS 2017).

5
(cont.)

The Project could injure or kill California red-legged frogs if they occur on-site. Therefore, if California red-legged frog is present in the Project area, Project impacts to California red-legged frog would be potentially significant. To reduce impacts to California red-legged frog to less-than-significant, CDFW recommends that the MND incorporate the following mitigation measure.

Mitigation Measure BIO-5: California Red-legged Frog Habitat Assessment and Surveys

Within 48 hours prior to the commencement of ground-disturbing activities, the Project area and nearby vicinity, including a minimum 500-foot radius surrounding the Project area, shall be assessed by a qualified biologist for the presence of California red-legged frog individuals and habitat features. Habitat features include both aquatic habitat such as plunge pools and ponds and terrestrial habitat such as burrows. The results of the habitat feature assessment shall be submitted to CDFW for written acceptance prior to starting Project activities. Habitat features shall be flagged for avoidance to the extent feasible. If California red-legged frogs are encountered during the assessment or Project activities, the Project shall not proceed or all work shall cease, and CDFW shall immediately be notified. Work shall not proceed until the frog, through its own volition, moves out of harm's way and CDFW has provided permission in writing to proceed with the Project. If California red-legged frog is encountered or the qualified biologist believes that California red-legged frog is likely to occur in the Project area, the Project shall consult with USFWS pursuant to the federal Endangered Species Act.

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 9

Foothill Yellow-Legged Frog

The MND identifies that the Northwest/North Coast clade of foothill yellow-legged frog has the potential to occur in and near the Project, and CNDDDB occurrences exist within five miles to the south and west of the Project. Different life stages of the species use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about foothill yellow-legged frog terrestrial movements and the species may travel farther from streams. The species also occur in swales or other moist areas.

The Northwest/North Coast genetic clade of foothill yellow-legged frog has been extirpated from much of the southern segment of its range in the San Francisco Bay Area and is at risk from urbanization, severe wildland fires, and climate change (*ibid.*). The Project may result in injury or mortality to foothill yellow-legged frog through crushing, killing, or injuring individuals from vehicles, equipment, and workers during Project activities. Therefore, if foothill yellow-legged frog is present in the Project area, Project impacts to foothill yellow-legged frog would be potentially significant. To reduce impacts to foothill yellow-legged frog to less-than-significant, CDFW recommends that the MND incorporate the below mitigation measure.

6

Mitigation Measure BIO-6: Foothill Yellow Legged Frog Surveys and Relocation

Within 48 hours prior to ground-disturbing activities, the Project area and nearby vicinity, including a minimum 500 feet upstream and downstream, shall be surveyed for foothill yellow-legged frogs by a qualified biologist, including searching cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If foothill yellow-legged frogs are encountered during the surveys or Project activities, the Project shall not proceed or all work shall cease until the frog, through its own volition, moves out of harm's way or CDFW has provided permission in writing to proceed with the Project. If foothill yellow-legged frog is found, the Permittee shall install exclusionary fencing around the work area to limit frogs entering this area, at the discretion of CDFW. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for foothill yellow-legged frog, with detections. If any foothill yellow-legged frogs are found, the biologist shall prepare an avoidance, minimization, and relocation plan and submit it to CDFW for written approval, and then implement the plan.

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 10

Bat Species of Special Concern and Roosting Bat Habitat

As identified above, the Project is within the range of SSC bat species including pallid bat and western red bat³. In addition, the California Wildlife Habitat Relationships model predicts medium suitability for pallid bat habitat at the Project site. Furthermore, the California Bay Area Linkage Network identifies the habitat surrounding the Project area as a core area for pallid bats capable of supporting at least 50 individuals and notes that these bats can use orchards, cropland, and vineyards for invertebrate foraging (Penrod et al. 2013). Two mature trees scheduled for removal could provide suitable roosting habitat for SSC bats. These bats are experiencing population declines in California (Brylski et al. 1998). Removal of habitat could result in injury or mortality of these special-status bats, a potentially significant impact. To reduce potential impacts to special-status bats to less-than-significant, CDFW recommends that the MND disclose the potential for these bats to occur in the Project area and incorporate the following mitigation measure.

Mitigation Measure BIO-7: Bat Tree Habitat Assessment and Surveys

7

Prior to any tree removal, a qualified biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities, crevices in wood and bark, exfoliating bark, and suitable canopy for foliage roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked and tree trimming or removal shall not proceed unless the following occurs: a) in trees with suitable habitat, presence of bats is presumed, or documented during the surveys described below, and removal using the two-step removal process detailed below occurs only during seasonal periods of bat activity, from approximately March 1 through April 15 and September 1 through October 15, or b) after a qualified biologist conducts night emergence surveys or completes visual examination of roost features that establish absence of roosting bats.

Two-step tree removal shall be conducted over two consecutive days, as follows: 1) the first day (in the afternoon), under the direct supervision and instruction by a qualified biologist with experience conducting two-step tree removal, limbs and branches shall be removed by a tree cutter using chainsaws only; limbs with cavities, crevices or deep bark fissures shall be avoided; and 2) the second day the entire tree shall be removed.

8

Would the Project Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

³ CDFW maintains range maps for all terrestrial wildlife species in California, available at <https://wildlife.ca.gov/Data/CWHR/Life-History-and-Range>.

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 11

Mitigation Measures and Related Impact Shortcoming

Nesting Birds

8
(cont.)

The MND identifies Mitigation Measure BIO-1 to avoid potentially significant impacts to nesting birds (MND page 26). This measure identifies that a 50-foot buffer would be provided for any active nests identified in the Project area. A 50-foot buffer may not be protective of all bird species, particularly raptors. CDFW recommends that Mitigation Measure BIO-1 be revised to require a qualified biologist to survey within a minimum of 500 feet from the Project area for nesting birds and implement a minimum 500-foot avoidance buffer or another buffer distance appropriate for the species and nest location. The buffer must protect the bird species' normal behavior and prevent nesting failure or abandonment from Project activities. In addition, if a period of more than seven days elapses between the survey date and start of or resuming Project activities, then an additional survey should be required.

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended mitigation measures, as applicable.

GENERAL SUGGESTIONS

9

CDFW recommends that the Geotechnical Investigation prepared by Bauer and Associates, Inc., dated May 8, 2020, and the Hydraulic Study prepared by CSW/Stuber-Stroeh Engineering Group, Inc., dated August 31, 2020, are made available for review as appendices to the MND.

ENVIRONMENTAL DATA

10

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 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 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

11

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 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).

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 12

CONCLUSION

CDFW appreciates the opportunity to comment on the MND 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. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or Amanda.Culpepper@wildlife.ca.gov, or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022020245)

Nicole Fairley, San Francisco Bay Regional Water Quality Control Board,
nicole.fairley@waterboards.ca.gov

REFERENCES

- Brehme, C.S.; Hathaway, S.A.; Booth, R.; Smith, B.H.; and Fisher, R.N. 2015. Research of American Badgers in Western San Diego County, 2014. Data Summary prepared for California Department of Fish and Wildlife and the San Diego Association of Governments. 24pp. (42pp. with Appendix).
- Brylski, Phillip V.; Collins, Paul W.; Peirson, Elizabeth D.; Rainey, William E.; and Kucera, Thomas E. 1998. Draft Terrestrial Mammals Species of Special Concern in California. Report submitted to California Department of Fish and Game, Sacramento, CA.
- Forster, Matthew L.; Jahner, Joshua P.; Casner, Kayce L.; Wilson, Joseph S.; and Shapiro, Arthur M. 2011. The race is not to the swift: Long-term data reveal pervasive declines in California's low-elevation butterfly fauna. *Ecology*: 92 (12): 2222-2235.
- Holland, Dan C. 1994. The western pond turtle: habitat and history. Unpublished final report, U. S. Dept. of Energy, Portland, Oregon.

Mr. Immanuel Bereket
County of Marin
March 17, 2022
Page 13

Penrod, K., Garding, P.E.; Paulman, C.; Beier, P.; Weiss, S.; Schaefer, N.; Branciforte, R.; and Gaffney, K. 2013. Critical Linkages: Bay Area & Beyond. Produced by Science & Collaboration for Connected Wildlands, Fair Oaks, CA in collaboration with the Bay Area Open Space Council's Conservation Lands Network.
http://www.scwildlands.org/reports/CriticalLinkages_BayAreaAndBeyond.pdf

Purcell, Kathryn L.; McGregor, Eric L.; Calderala, Kathryn. 2017. Effects of drought on western pond turtle survival and movement patterns. *Journal of Fish and Wildlife Management*. 8(1): 15-27.

Rosenburg, Kenneth V.; Dokter, Adriaan M.; Blancher, Peter J.; Sauer, John R.; Smith, Adam C.; Smith, Paul A.; Stanton, Jessica C.; Panjabi, Avirind; Helft, Laura; Parr, Michael; and Marra, Peter P. 2019. Decline of the North American Avifauna. *Science*: 120-124.

Thompson, R.C., A.N. Wright, and H.B. Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. University of California Press and California Department of Fish and Wildlife.

USFWS. 2002. Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon. viii and 173.

USFWS. 2017. Species Account for California Red-legged frog. December 2017. Sacramento, Ca.

Zaragoza, George; Rose, Jonathan P.; Purcell, Kathryn.; Todd, Brian. 2015. Terrestrial habitat use by western pond turtles (*Actinemys marmorata*) in the Sierra Foothills. *Journal of Herpetology*. 49(3): 437-441.