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Project No: 21-11879

Ranu Aggarwal, Contract Planner  
City of Hayward, Development Services Department  
777 B Street  
Hayward, California 94541  
Via email: ranu.aggarwal@hayward-ca.gov

**Subject: 3636 Enterprise Industrial Development Project, Hayward, California  
Peer Review of Biological Resources Analyses**

Dear Ms. Aggarwal:

This letter provides the results of Rincon Consultants, Inc.'s peer reviews of biological analyses for the 3636 Enterprise Industrial Development Project. Rincon conducted peer reviews of the *Biological Resources Assessment (BRA)* prepared by WRA, Inc. (WRA) in June 2020 and the biological constraints analysis (BCA), titled *3600 Enterprise Avenue, Hayward, Alameda County, California: Preliminary Wetlands and Special-Status Species Review*, prepared by Moore Biological Consultants on December 23, 2020. This peer review was completed as part of the environmental analysis being conducted in conformance with the California Environmental Quality Act (CEQA) by the City of Hayward. This review considers whether the biological resources technical studies prepared by the applicant's consultants are complete and adequate for the purposes of preparing an Initial Study-Mitigated Negative Declaration (IS-MND).

Rincon reviewed the BRA and BCA to ascertain the degree to which the evaluation considered existing information (e.g., literature, databases, and other resources), the accuracy of existing conditions documentation (e.g., vegetation communities, sensitive resources), adequacy of the special status habitat assessments, and completeness of the evaluation for all biological resource checklist items required by CEQA.

Overall, Rincon does not disagree with most of the conclusions of the reports; however, Rincon finds that with moderate revisions, the reports would be better suited for the purpose of preparing a legally defensible CEQA document. The proposed revisions are not expected to result in major changes to the conclusions but do require addressing CEQA questions that were omitted and editing of proposed mitigation measures to make them enforceable. However, addressing CEQA questions are not necessary within this report and will be addressed in the IS-MND. The revisions are proposed to bolster the defensibility of the conclusions and recommendations contained within the documents. Rincon's recommendations for revisions to the two reports are detailed as follows. Recommendations for revisions to the BRA are organized by BRA section while revisions to the BCA are detailed by section and page number.



## Biological Resources Assessment

The BRA (WRA 2020) was peer reviewed with respect to the following parameters:

- Adequate description of the proposed project and project site;
- Adequate description of the existing setting, including the location of known on-site resources and features, resources and features in the project vicinity, on-site and nearby sensitive resources, and applicable state, regional, and local regulations;
- Appropriate assumptions where project- and site-specific information is unavailable;
- Appropriate analytical methodology and significance thresholds for analyzing project impacts in conformance with CEQA, and current professional standards; and
- Results, determinations of significance, and adequacy of any avoidance, minimization and mitigation measures.

### *Summary*

The BRA described the project site as a 10.87-acre property in the City of Hayward surrounded by industrial development and undeveloped lots. No project description was provided and Rincon assumes that there was none available at the time the report was prepared. The BRA identified four “biological communities” on the project site: coyote brush scrub, non-native annual grassland, developed, and seasonal wetland. The BRA discussed sensitive habitats and potential special-status species that may be present on site. The BRA covered relevant environmental laws and regulations and their applicability to the project and to sensitive habitats and special-status species, including nesting birds. The BRA concluded that the project would result in potentially significant impacts to the following sensitive biological resources:

- Seasonal wetlands;
- Special-status plants (Alkali milk-vetch, Congdon’s tarplant, and Contra Costa goldfields);
- Nesting birds, including special status raptors (northern harrier and white-tailed kite); and
- Western snowy plover.

The BRA assessed impacts to salt marsh harvest mouse and California Ridgway’s rail as unlikely to occur.

The BRA included recommendations for avoidance and mitigation but did not present them as enforceable mitigation measures. Overall, Rincon does not disagree with most of the conclusions of the report; however, the BRA is only partially adequate for the purpose of preparing a legally defensible IS-MND. The BRA evaluated the presence or potential presence of sensitive habitats, special status species, jurisdictional waters, and nesting birds, but did not address the remaining biological resources CEQA checklist questions, including; 1) wildlife corridors and movement; 2) local policies or ordinances protecting biological resources; and 3) adopted habitat conservation plans. However, it is not essential that the BRA has evaluated these questions since they will be fully evaluated within the CEQA document itself.

### *Recommendations*

Rincon recommends the following revisions to ensure that the analysis is sufficient to support preparation of a legally defensible IS-MND:



**1. Section 2.0 Regulatory Background**

- a. This section did not include the City of Hayward General Plan in its discussion of local policies and ordinances. Rincon recommends adding background on relevant goals, such as Goal 1: Biological Resources, and discussing the plan in subsequent sections, if applicable.

**2. Section 4.0 Results**

- a. The land use surrounding the project site was described as “industrial development...as well as some undeveloped lots” but no further detail was given. Because analyses of potential for special-status species to occur (i.e., western snowy plover and California Ridgway’s rail) described the likelihood of certain species occurring adjacent to the site and being affected by indirect impacts from construction and development, Rincon recommends expanding the description of lands surrounding the project site so that subsequent analyses can be contextualized.
- b. This section should discuss wildlife movement, the Hayward General Plan, and relevant habitat conservation plans, as applicable, to inform or support an analysis of CEQA checklist questions d, e, and f.

**2. Section 4.1 Biological Communities**

- a. This section of the BRA identified biological communities observed within the project site and defined “developed” as a biological community. Developed areas, as defined in Section 4.1.1, consist of manmade infrastructure such as roads, buildings, and other structures. Rincon recommends redefining this “community” as a land cover type for clarity because developed areas do not include defining vegetation or function as a biological community.

**3. Section 4.1.2 Seasonal Wetland**

- a. This section discussed potential seasonal wetlands observed on site consisting of lower elevation depressions dominated by wetland vegetation, including alkali heath and saltgrass. The BRA defined seasonal wetlands as a sensitive community but did not provide adequate justification for this determination. CEQA Biological Resources checklist question c, regarding state or federally protected wetlands, was appropriately addressed when the seasonal wetlands were described as possibly jurisdictional. However, checklist question b, which asks if the proposed project will have adverse effects on sensitive natural communities, was not adequately discussed. Seasonal wetlands would be considered jurisdictional wetlands but are not necessarily a sensitive community. Seasonal wetlands or other areas of the site that contain at least a 30 percent relative cover of alkali heath, which may be co-dominant with salt grass, is an *alkali heath marsh* sensitive natural community (Sawyer et al. 2009; CDFW 2021). With a state rank of S3, this community is considered a sensitive natural community by CDFW, thus it qualifies for consideration under CEQA. Rincon recommends that this be made clear in the analysis so that impacts to both seasonal wetland and the sensitive natural community can be addressed and mitigation established in the IS-MND.

**4. Section 4.2.1 Special-Status Plants**

- a. This section states that “71 special-status plant species have been documented in a 5-mile radius of the Project Area (Figure 4 in Appendix A).” Per Figure 4, only 8 species have been documented within five miles of the project site. Rincon recommends revising this sentence to either state the correct number of species documented in a 5-mile radius or to indicate that the search area where 71 species were documented consisted of nine USGS 7.5 minute quads, as

indicated in Section 3.2.1. See recommendations (8) and (9) below for additional comments on presentation of database search results in Appendices A and C.

- b. This section considers three plant species with a moderate or high potential to occur. Congdon's tarplant has been assessed as having a high potential to occur; however, Rincon disagrees with this assessment and thinks this should be adjusted to a moderate potential to occur. Although an occurrence was recorded on the project site, it dates to over a decade prior, in 2009. While no protocol-level rare plant surveys have been conducted, three site visits (for the BRA, BCA, and Rincon's site visit in October 2021) were conducted during the blooming period for this species, and no Congdon's tarplant was observed. Furthermore, the site is frequently mowed, reducing the likelihood that this species is extant within the project site. Alkali milk-vetch and Contra Costa goldfields were both assessed as having a moderate potential to occur within the project site; however, Rincon believes these species have only a low potential to occur on the project site. The closest occurrence for both species is 0.8 miles to the north dating to 1959, in an area that is now currently developed. CNDDDB lists the alkali milk-vetch occurrence in this location as "possibly extirpated" and the two other occurrences within five miles are "extirpated." Contra Costa goldfields is "presumed extant" but is likely no longer in the now developed location unless suitable habitat was preserved. That said, it is the only occurrence for this species within a 5-mile radius, and no other nearby records occur. Rincon recommends adjusting potential to occur for these species to more accurately represent the database search and site visit results as well as the frequently disturbed conditions of the site.

#### **5. Section 4.2.2 Special-Status Wildlife**

- a. This section states that the salt marsh harvest mouse is unlikely to occur but in Section 5.3 it is recommended that mitigation measures be implemented to reduce impacts to the mouse if tall or dense vegetation becomes available within the project site. Due to the proximity of suitable wetland habitat immediately adjacent to the site to the south, and the likelihood that vegetation could be present within the site that mice would use if mowing does not occur at its southern edge, there is potential for impacts to this species during construction activities. Rincon does not typically include mitigation measures in CEQA documents for species that have low potential to occur. In this case, because mitigation is warranted to avoid potential impacts to salt marsh harvest mouse, which has the potential to move into the project site despite marginal habitat currently available, Rincon recommends adjusting the potential for this species to occur to moderate and including a mitigation measure, even if the listed species currently has low potential to occur.

#### **6. Section 5.1 Sensitive Biological Communities**

- a. This section recommends a delineation and permitting should unavoidable impacts to jurisdictional features occur but does not include enforceable mitigation measures. Rincon advises that the recommendations be reframed as specific and enforceable mitigation measures that will reduce impacts to sensitive natural communities as well as jurisdictional wetlands. In addition to conducting a jurisdictional delineation and obtaining appropriate regulatory permits, measures should require that a sensitive community restoration, enhancement and/or mitigation plan be developed to reduce project impacts to less than significant levels.

#### **7. Section 5.2 Special-Status Plant Species**

- a. This section recommends preconstruction rare plant surveys for the three special-status plant species determined to have moderate to high potential to occur within the project site. If plants

are found and impacts cannot be avoided, “mitigation measures may be required.” Rincon recommends that the recommendation be revised to include specific and enforceable mitigation measures that will reduce impacts to Congdon’s tarplant to less than significant levels. The mitigation measure(s) should specify timing of the rare plant preconstruction surveys, who will conduct the surveys, who will ensure that the surveys are conducted, a contingency plan for if plants are discovered. Habitat mitigation, if needed, can be included in a restoration, enhancement, and/or mitigation plan.

#### **8. Section 5.3 Special-Status Wildlife Species**

- a. This section does include recommendations that are closer to mitigation measures as compared to Sections 5.1 and 5.2; however, Rincon recommends that they be further revised to be specific and enforceable mitigation measures that will reduce impacts to special status wildlife to less than significant levels. The mitigation measure should specify timing of the recommended mitigation activities; who will conduct the activities; who will ensure that the activities are conducted; and what to do if wildlife is discovered.
- b. Light pollution is discussed as an impact in three of the subheadings in this section. Rincon recommends that a separate measure be drafted to address the effects of light pollution on wildlife.

#### **9. Appendix A – Figures 4 and 5**

- a. California Department of Fish and Wildlife has provided guidance, as of 2018, that public reports should not include CNDDDB figures that portray occurrence records at the scale presented in the BRA. Rincon recommends removing Figures 4 and 5 prior to this report being included as part of a public report, such as the project IS-MND.

#### **10. Appendix C – Potential for Special-Status Species to Occur**

- a. As discussed in BRA Section 3.2.1, a database search was conducted for known occurrences of special-status species in the USGS *San Leandro, California* 7.5-minute quadrangle and eight surrounding quadrangles. Rincon conducted an identical background database search and found discrepancies in search results as compared to the table presented in this appendix, indicating that incorrect quadrangles may have been mistakenly used for the database search. There were 18 special-status plant species not included in the table of this appendix and 14 plant species that were included but did not show up in the database search of the nine quadrangles centered at the project site. Six special-status animals with known occurrences in the nine quadrangles centered at the project site were not included in the table, while seven animal species were included in the table that did not show up in the database search. Rincon reviewed the species that were mistakenly included or excluded and determined that none of those species have potential to occur on or in the vicinity of the project site, thus this does not affect analysis in the BRA. However, Rincon recommends repeating the database search and updating the tables in Appendix C to ensure that all information in the BRA is correct.

## Biological Constraints Analysis

The BCA (Moore Biological Consultants 2020) was peer reviewed with respect to the following parameters:

- Adequate description of the proposed project and project site;



- Adequate description of the existing setting, including the location of known on-site resources and features, resources and features in the project vicinity, on-site and nearby sensitive resources, and applicable state, regional, and local regulations;
- Appropriate assumptions where project- and site-specific information is unavailable;
- Appropriate analytical methodology, modeling assumptions, and significance thresholds for analyzing project impacts in conformance with CEQA, and current professional standards; and
- Results, determinations of significance, and adequacy of any avoidance, minimization and mitigation measures.

### *Summary*

The BCA describes the project site as an open grassland with buildings, radio towers, ornamental trees, and four seasonal wetlands located at 3600 Enterprise Avenue in Hayward, which is actually the address of the adjacent property to the west. The BCA provides a thorough description of land use in the project vicinity. No project description is provided, although a site plan showing conceptual design for the project is included in BCA Attachment A. The BCA discussed jurisdictional waters and wetlands, special-status species that may be present on site, and the absence of designated critical habitat for federally-listed species. The BCA concluded that the following sensitive biological resources may be present within the project site:

- Seasonal wetlands;
- Special status plants (Cogdon's tarplant and Contra Costa goldfields);
- Nesting birds; and
- Salt marsh harvest mouse.

The BCA includes recommendations for required permits and preconstruction surveys but does not present the recommendations as enforceable mitigation measures. Overall, Rincon does not disagree with the majority of the conclusions of the report; however, the BCA is only partially adequate for the purpose of preparing a legally defensible IS-MND. The BCA's stated purpose is a preliminary evaluation of constraining biological resources on the site and, as such, it largely accomplishes its objective. The BCA evaluates the presence or potential presence of special status species, jurisdictional waters, and nesting birds, but does not address the remaining biological resources CEQA checklist questions, including: 1) sensitive natural communities; 2) local policies or ordinances protecting biological resources; and 3) adopted habitat conservation plans. However, it is not essential that the BCA has evaluated analysis since they will be fully evaluated within the CEQA document itself.

### *Recommendations*

Rincon recommends the following revisions to ensure that the analysis is sufficient to support preparation of a legally defensible IS-MND:

#### **1. Special-Status Species**

- a. At the top of page 8, the methods described to identify special-status species documented in the project vicinity consisted of "a search of CDFW's California Natural Diversity Database" but the report does not describe the radius or extent of the search. The industry standard is a 9-quadrangle database query, supplemented with a qualified biologist's expertise of species known to occur in a region. Rincon recommends specifying the parameters of the CDFW database to give context for the results described.

- b. On page 8, the BCA states that Contra Costa goldfields have the potential to occur on-site. As discussed in addressing BRA Section 4.2.1 above, Rincon does not agree that there is a high likelihood of this species being present in a site that is frequently mowed, as it has not been recorded in the area in over 50 years. Rincon recommends that if Contra Costa goldfields are included as a species with enough potential to occur on site that mitigation measures are required, greater justification is given as to reasons why it is likely to occur on the site.
- c. At the bottom of page 8, continuing onto page 9, CEQA checklist question d (wildlife corridors and movement) is obliquely addressed: "...it is considered unlikely that special-status wildlife species utilize habitats in the site on more than an occasional or transitory basis." Rincon recommends that the discussion be expanded to directly address the checklist question.

## 2. Summary

- a. On page 10, the need for a wetland delineation and obtaining permits for fill of jurisdictional delineation and for preconstruction rare plant botanical surveys is mentioned and a pre-construction nesting bird survey is recommended on page 11. Rincon recommends that these recommendations be revised as specific and enforceable mitigation measures that will reduce impacts to special-status biological resources to less than significant levels as described in items 5, 6, and 7 related to Section 5 of the BRA above.

## 3. Appendix C – CNDDDB Plant and Wildlife Exhibits

- a. California Department of Fish and Wildlife has provided guidance, as of 2018, that public reports should not include CNDDDB figures that portray occurrence records at the scale presented in the BCA. Rincon recommends removing the figures showing CNDDDB locations prior to this report being included as part of a public report, such as the project IS-MND.

## 4. Missing CEQA Checklist Items

The BCA focuses on identifying presence or potential presence for and analyzing potential impacts to special-status species, jurisdictional waters, and critical habitat. This information, once the above comments are addressed, would be sufficient to support a legally defensible IS-MND analysis for three of the six CEQA checklist items for biological resources. However, the BCA focuses on special-status species and sensitive natural communities/riparian habitat. The report does not address three remaining CEQA checklist items for biological resources, which focus on wildlife corridors and movement (although briefly addressed in the Special-Status Species section as discussed above), local policies or ordinances protecting biological resources, and adopted habitat conservation plans. Based on a desktop analysis conducted by Rincon as part of this peer review, Rincon would likely conclude that the proposed project would either pose no impacts or less than significant impacts, with or without mitigation, to resources covered under these three remaining items. However, Rincon will address these within the CEQA document itself.

## *Conclusions*

Aside from the likelihood of special status plants to occur, Rincon generally concurs with the findings of the BRA and BCA; however, we recommend that both the BRA and BCA be revised to address the recommendations listed above for clarity and consistency, to address all CEQA checklist questions, and to include enforceable mitigation measures. With these revisions the BRA and BCA would sufficiently support CEQA analysis. Revising the BRA and BCA would also be preferable because both documents will be included as appendices to the IS-MND, effectively making them a part of the CEQA documentation.



Sincerely,  
**Rincon Consultants, Inc.**

A handwritten signature in blue ink that reads "Anastasia G. Ennis".

Anastasia G. Ennis, M.S.  
Associate Biologist

A handwritten signature in blue ink that reads "Sherri Miller".

Sherri Miller, M.S.  
Principal Biologist

### References

- California Department of Fish and Wildlife (CDFW). 2021. California Natural Community List. August 2021. Periodic publication. 63 pp.
- Moore Biological Consultants. 2020. "3600 Enterprise Avenue," Hayward, Alameda County, California: *Preliminary Wetlands and Special-Status Species Review*. Galt, California. December 23.
- Sawyer, J.O., T. Keeler-Wolf, and J.M. Evens. 2009. A Manual of California Vegetation, Second Edition. California Native Plant Society, Sacramento, CA.
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