



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



November 18, 2024

Cort Hitchens
City of San Jose
200 East Santa Clara Street, Third Floor
San Jose, CA 95113
Cort.Hitchens@sanjoseca.gov

Subject: Zanker Material Processing Facility Stormwater Basins Project, Mitigated Negative Declaration, SCH No. 2024100486, City of San Jose, Santa Clara County

Dear Cort Hitchens:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of a Mitigated Negative Declaration (MND) from the City of San Jose (City) for the Zanker Material Processing Facility Stormwater Basins Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California's fish and wildlife. Likewise, CDFW appreciates 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 & 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, 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 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

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.

Cort Hitchens
City of San Jose
November 18, 2024
Page 2

proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority (Fish & G. 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 & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a 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, either during construction or over the life of the Project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened, rare, or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's making or support of FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Fully protected species may not be taken or possessed at any time, except for necessary scientific research, including efforts for recovery. In the event a fully protected species is found within or adjacent to the Project site, CDFW recommends that a CDFW and U.S. Fish and Wildlife Service (USFWS)-approved biologist develops an appropriate no-disturbance buffer to be implemented. The agency approved biologist should also be present on-site during all Project activities to ensure that the fully protected species are not being impacted as a result of Project activities.

Specific types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code § 2081.15). Project proponents should consult with CDFW early in the Project planning process.

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.

Cort Hitchens
City of San Jose
November 18, 2024
Page 3

Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Zanker Road Resource Management, LLC

Objectives: The objective of the Project is to construct two separate, unlined stormwater basins to retain, treat and store stormwater runoff from the existing Zanker Material Processing Facility (ZMPF). Existing soil levees will be used to partially construct the new berms, with the remainder being constructed using 36,000 cubic yards (yd³) of outsourced clean fill. The northwestern basin would have a capacity of 8.4 acre feet (2.7 million gallons) and a footprint of approximately 1.55 acres. The southwestern basin would have a capacity of 21.9 acre-feet (7.1 million gallons) and a footprint of approximately 3.03 acres. Project construction would result in a total impact of 5.7 acres; 4.6 of which would represent the permanent footprint of the basins, and 1.1 of which would represent temporary impacts arising from staging and access.

Location: The Project is located at 675 Los Esteros Road in the City of San Jose, County of Santa Clara, California, on three parcels comprising approximately 75 acres (APNs 015-30-071, 015-30-105 and 015-30-106). The Project site is bordered by Don Edwards San Francisco Bay National Wildlife Refuge to the north and northwest, by Mallard Slough to the east, by Los Esteros Road to the south and southeast and existing wetland habitat to the southwest and west.

Timeframe: None given.

COMMENTS AND RECOMMENDATIONS

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

I. Project Description and Related Impact Shortcoming

COMMENT 1: Lack of Construction Schedule, Excavation Work and Vegetation Clearing

Cort Hitchens
City of San Jose
November 18, 2024
Page 4

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

And,

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or USFWS?

Section 3.2 - Proposed Project Construction, Page 12 of the Subsequent Initial Study

Issue: The MND does not include clear information or plans regarding the timing of construction, or where excavation work and vegetation clearing will occur. The MND states that the Project will occur in and adjacent to sensitive wetland and upland habitat known to support several special-status species, and could have potentially significant impacts if adequate avoidance and minimization measures are not undertaken. Project activities are expected to result in an estimated 1.05 acres of temporary impacts and 4.6 acres of permanent impacts to nesting and foraging for wildlife, due to staging, access and stormwater retention basin construction. In addition, construction equipment will move through sensitive habitat areas. These activities pose a risk of injury or loss of individual special-status species, or disruption of important nesting activity if careful construction restrictions are not imposed and observed. Of particular concern are potential impacts to plants and animals that are protected under CESA, or State fully protected species. These include, but are not limited to, the following: California Ridgway's rail (*Rallus obsoletus obsoletus*, formerly California clapper rail, hereafter California Ridgway's Rail), California black rail (*Laterallus jamaicensis coturniculus*), white-tailed kite (*Elanus leucurus*), burrowing owl (*Athene cunicularia*), salt marsh harvest mouse (*Reithrodontomys raviventris*), and salt marsh wandering shrew (*Sorex vagrans halicoetes*), among other special-status species.

Specific impact: Direct mortality through crushing of individual plants, adult, young or individual animals within nests, loss of nests, capture, nest abandonment, loss of potential nesting habitat, loss of potential foraging habitat resulting in reduced reproductive success (loss or reduced health or vigor of eggs or young), inadvertent entrapment or entrainment, impingement, modification to site hydrology resulting in reduced reproductive success or desiccation.

Why impact would occur: The Project will include impacts such as noise, artificial light, groundwork, and operation and movement of equipment and workers that

Cort Hitchens
City of San Jose
November 18, 2024
Page 5

would have the potential to disturb habitat used by special-status species for foraging, roosting, and nesting.

Evidence impact would be significant: The species listed above are a) fully protected species under California Fish and Game Code (§ 3511 or § 4700); b) listed as threatened, endangered, or candidate species under CESA and therefore are considered to be a threatened or endangered species pursuant to CEQA Guidelines section 15380; or c) both fully protected and CESA-listed. Therefore, if these species are impacted by the Project, the Project may result in a substantial reduction in the number of a threatened or endangered species, which is considered a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended mitigation measure: CDFW recommends the following be incorporated as mitigation measures either in a revised MND or required as conditions of approval in any permits the City issues or obtains for the Project:

1. The Project shall provide a clear, detailed description of the Project's proposed schedule. The schedule shall include, at minimum, protocol level surveys, pre-construction surveys, construction, winterization and post-project site management in a calendar format. The Project shall also provide a detailed impact map, preferably using an aerial-image based figure, which clearly depicts where all Project activities will occur, including, but not limited to, access, staging, excavation work and vegetation clearing, and indicating which impacts will be permanent and which will be temporary.
2. Based on the above Project information and plans, the Project shall prepare a habitat impact analysis including a narrative and aerial based figure outlining each vegetation community and sensitive natural community that will be impacted (see: Sensitive Natural Communities Online by Life Form, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>).
3. The Project shall mitigate the permanent loss of habitat for fully protected and CESA listed species, or any sensitive natural community, at a minimum 3:1 mitigation to impact ratio, including placing a conservation easement over occupied habitat, and funding, preparing and implementing an interim and long-term management plan.

COMMENT 2: Artificial Lighting

MANDATORY FINDING OF SIGNIFICANCE. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or USFWS?

Cort Hitchens
City of San Jose
November 18, 2024
Page 6

Issue: The MND does not describe how artificial light will be used before, during and after construction of the Project, and does not provide an analysis for how artificial light could impact fish or wildlife resources adjacent to the Project location. The MND should be revised to include an analysis of potential impacts from artificial light, and propose avoidance, minimization and/or mitigation measures that would reduce Project impacts from artificial light to a level less-than-significant.

Evidence the impact would be significant: Night lighting can disrupt the circadian rhythms of many wildlife species and have negative impacts on hormone levels and stress responses. Many species use photoperiod cues for communication (e.g., bird song; Miller 2006), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Aquatic species can also be affected; migration of salmonids can be slowed or halted by the presence of artificial lighting (Tabor et al. 2004, Nightingale et al. 2006). Phototaxis, a phenomenon which results in attraction and movement towards light, can disorient, entrap, and temporarily blind wildlife species that experience it (Longcore and Rich 2004).

Specifically for fish, artificial lighting can suppress the immune system of fish resulting in increased pathogen and parasite infections (Leonardi and Klempau 2003, Navara and Nelson 2007). Artificial lighting can also disrupt feeding patterns of juvenile salmon (Valdimarsson et al. 1997). Salmonids also use changes in ambient light to guide their migration patterns, which can be disrupted by artificial lighting (Grau et al. 1981). Artificial light may attract or make special-status species of mice or birds more visible to predators (e.g., raccoons, foxes, coyotes).

Recommended mitigation measures: CDFW recommends the following be incorporated as mitigation measures either in a revised MND or required as conditions of approval in any permits the City issues or obtains for the Project:

1. Require that the Project be designed in a manner that sites structures to eliminate all non-essential lighting, and avoid or limit the use of artificial light between the hours of dusk and dawn, as these windows of time are when many wildlife species are most active.
2. Require use of motion-activated lighting to decrease the amount of time artificial night lighting is used and decrease wildlife exposure to sources of artificial light.
3. Ensure that lighting for necessary activities such as security purposes is shielded, cast downward, and does not spill over onto other properties or upwards into the night sky (see the International Dark-Sky Association

Cort Hitchens
City of San Jose
November 18, 2024
Page 7

standards online at DarkSky International | Protecting the night skies for present and future generations, <https://darksky.org/>).

4. Use Light-Emitting Diode (LED) lighting with a correlated color temperature at or under 2,700 Kelvin or less that results in the output of a warm white color spectrum, properly dispose of hazardous waste, and recycle all lighting that contains toxic compounds with a qualified recycler.

II. Mitigation Measure and Related Impact Shortcoming

COMMENT 3: Special-Status Plants

MANDATORY FINDING OF SIGNIFICANCE. *Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?*

Issue: Mitigation Measure BIO-1.1 may not reduce impacts to a level of less-than-significant. The measure indicates that one focused survey will be conducted prior to ground-disturbing activities and that if no special-status plants are found, no mitigation will be required.

Evidence of Impact: Mitigation Measure BIO-1.1 states that the Project will adversely impact several special-status plant species including alkali milk-vetch (*Astragalus tener* var. *tener*), brittlescale, Congdon's tarplant (*Centromadia parryi* ssp. *Congdonii*), Hoover's button-celery (*Eryngium aristulatum* var. *hooveri*), San Joaquin spearscale (*Extriplex joaquinana*), Contra Costa goldfields (*Lasthenia conjugens*), prostrate vernal pool navarretia, California alkali grass (*Puccinellia simplex*) and saline clover (*Trifolium hydrophilum*). Most or all of these species are annuals. Adverse conditions from yearly weather patterns may prevent botanical field surveyors from determining presence or accurately identifying some special-status plants in the Project area if surveys are only conducted in one growing season. Failure to locate a known special-status plant occurrence during only one field season does not constitute evidence that the plant no longer occurs at a location, particularly if adverse conditions are present.

Recommendations: CDFW recommends that the MND be revised to indicate that either multi-year full floristic surveys encompassing a variety of rainfall patterns shall be conducted as prescribed in the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (available online at Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>), or presence will be assumed and take coverage sought via an ITP.

Cort Hitchens
City of San Jose
November 18, 2024
Page 8

COMMENT 4: California Ridgway's Rail and California Black Rail

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Issue: Mitigation Measure BIO-4.1 may not reduce impacts to rail species to a level of less-than-significant. The measure indicates that protocol level surveys will be conducted prior to ground-disturbing activities and that if no rail species are found, no mitigation will be required. Ridgway's and black rails are fully protected species under the Fish and Game Code section 3511; therefore, CDFW cannot issue a Project permit for their take. Complete avoidance measures must be incorporated into the Project to ensure full-take avoidance of the species.

Evidence of Impacts: California black rail populations have been documented as declining in California in recent decades primarily as a result of habitat loss and degradation, (Evens et al. 1991, Conway and Sulzman 2007). Black rail populations and their required habitat features are vulnerable to both human-caused and natural stressors.

Habitat removal, compacting, dewatering activities, and vegetation removal, could cause direct habitat loss which is a major factor in the decline of rails (Evens et al. 1991). Project activities near a wetland or water feature supporting these species would impact the quality of their habitat if dust, debris, petroleum, or other contaminants are discharged from the Project site into their habitat.

Vegetation clearing may impact rails where they require a dense cover of upland vegetation for protection from predators (Eddleman et al. 1994, Evens and Thorne 2015).

Disturbance to nesting rails, such as humans or pets intruding into the marsh, have been reported to cause rails to abandon nests or to try to defend nests, exposing eggs (Flores and Eddleman 1993). Intrusion can alter habitat and cause mortality through crushing of rails that generally freeze in place and are hesitant to flush (Evens and Thorne 2015).

Recommendations: To avoid impacts to California black rail and California Ridgway's rail, CDFW recommends that, in addition to the protocol level surveys proposed in the MND, activities within or adjacent to tidal marsh or suitable rail habitat, be avoided during rail breeding season, January 15 – August 31 for Ridgway's rail and February 1 – August 31 for California black rail.

If Project activities within 700 feet of habitat will be conducted during the nesting season (January 15 to August 31) multiple call-back surveys should be conducted

Cort Hitchens
City of San Jose
November 18, 2024
Page 9

between January and April, prior to initiation of any Project related activities. A minimum of four surveys two to three weeks apart should be performed. The listening stations should be established at 150-meter intervals along areas that will be affected by Project implementation.

If rail species are detected through surveys, then a no-work buffer shall be established, and Project activities shall not occur within 700 feet of an identified calling center. A qualified biologist shall be on-site at all times while Project activities are underway. If rail activity is discovered within the buffer limits, work shall halt and immediate consultation with CDFW shall be required. If rails are observed within the Project area at any time, work shall be immediately halted by a qualified biologist with stop-work authority, and the rail species allowed to leave the area on its own. If the rail species does not leave the area, CDFW shall be consulted, and no work shall resume until CDFW has made a determination on how to proceed with Project activities.

Daily pre-construction monitoring surveys of Project sites shall occur until the Project is complete. If an injured or dead rail is discovered at the Project site, Project activities shall immediately cease and CDFW immediately notified in writing.

COMMENT 5: Burrowing Owl

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Issue: Mitigation Measure BIO-5.1 may not reduce impacts to burrowing owl to less-than-significant. Burrowing owl recently became a candidate for listing under CESA as endangered in the Project area, and take is prohibited without a CESA authorization, typically an ITP. California Natural Diversity Database (CNDDDB) documents multiple occurrences of burrowing owl presence within 500 meters of the Project site, within the distance the species may be disturbed.

Recommended mitigation measures: A CDFW and USFWS-approved qualified biologist shall conduct protocol-level surveys in all suitable burrowing owl habitat within the Project area and surrounding areas up to 500 meters around the Project site (1,640 feet) where Project activities could adversely affect burrowing owl during both the nesting (February 1 to August 31) and overwintering seasons. Specific information on burrowing owl survey methods, buffer distances, and mitigation is provided in the CDFW Staff Report on Burrowing Owl Mitigation, dated March 7, 2012, and available online at Microsoft Word - BUOW Staff Report_final_030712 REV 1.doc, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>.

Cort Hitchens
City of San Jose
November 18, 2024
Page 10

If burrowing owl are detected during surveys within or near the Project area, a protective buffer in which construction activities will be avoided shall be established. Appropriate buffers typically have a 50- to 500-meter radius and vary depending on the level of disturbance and timing of construction as outlined in the above CDFW Staff Report on Burrowing Owl Mitigation. If burrowing owl show signs of distress (e.g., defensive vocalizations and/or flying away from the nest), the buffer distance shall be increased.

If take of burrowing owl cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP before Project activities commence. Take is likely to occur and the Project shall obtain an ITP if: 1) Burrowing owl surveys of the Project site detect burrowing owl occupancy of burrows or burrow surrogates, or 2) there is sign of burrowing owl occupancy on the Project site within the past three years and habitat has not had any substantial change that would make it no longer suitable within the past three years. Occupancy is defined to be a site that is assumed occupied if at least one burrowing owl has been observed occupying a burrow or burrow surrogate within the last three years. Occupancy of suitable burrowing owl habitat may also be indicated by burrowing owl sign including its molted feathers, cast pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site. If burrowing owl, or their burrows or burrow surrogates, are detected within 500 meters (1,640 feet) of the Project site during burrowing owl surveys, but not on the Project site, the Project shall consult with CDFW to determine if avoidance is feasible, or an ITP is warranted and shall obtain an ITP if deemed necessary by CDFW.

COMMENT 6: Salt Marsh Harvest Mouse

MANDATORY FINDING OF SIGNIFICANCE. Does the Project have potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Issue: Impacts to salt marsh habitat, including vegetation removal/disturbance, could cause take of salt marsh harvest mouse if the species is present during Project activities; and such take should be considered a significant impact under CEQA. Salt marsh harvest mouse is a fully protected species under the Fish and Game Code section 4700; therefore, CDFW cannot issue a Project permit for their take. Complete avoidance measures must be incorporated into the Project to ensure full take avoidance of the species.

Evidence of Impacts: Salt marsh harvest mice are endemic to the San Francisco Bay in salt marsh and brackish wetland habitats. The species has lost a significant amount of tidal marsh habitat in the last century as a result of filling and diking, changes in water salinity, invasive plant species, and pollution (Smith et al. 2014,

Cort Hitchens
City of San Jose
November 18, 2024
Page 11

USFWS 2010). The continued fragmentation and degradation of salt marsh and wetland habitat is also a concern for the species. As salt marsh harvest mice are restricted to salt marsh and wetland habitats, activities that compromise these habitats may negatively affect the species.

Vegetation removal may impact salt marsh harvest mice as they need non-submerged vegetation for cover from predators and utilize grasses, seeds, and other vegetation as a food source (Zeiner et al. 1990). Areas with non-submerged vegetation are particularly used during high tides (Smith et al. 2020). Additionally, vegetation clearing can cause fragmentation and create edge effects that permeate far beyond the Project site (Smith et al, 2020, USFWS 2010).

Recommendations: CDFW recommends that a qualified biologist familiar with salt marsh harvest mice conduct surveys in suitable habitat adjacent to the Project site, immediately prior to initiation of any Project related activities (e.g., vegetation removal, disturbance to vegetation) The qualified biologist should walk through and inspect suitable habitat and search for signs of harvest mouse or other sensitive wildlife and plants. If a salt marsh harvest mouse is discovered, no work shall occur within 150 meters of that location. Following inspection, and under the direct supervision of the qualified biologist, construction personnel should disturb (e.g., flush) vegetation to force movement of salt marsh harvest mice into adjacent marsh areas out of the work area. Immediately following vegetation flushing, personnel will remove vegetation with hand tools (e.g., weed-eater, hoe, rake, trowel, shovel, grazing) so that remaining vegetation is no taller than two inches. If string trimmers (weed whackers) are used, they shall be used to the minimum extent necessary and shall be used to reduce vegetation height by no more than six inches at a time, so that the qualified biologist can check for potential salt marsh harvest mouse nests. If a nest is discovered, all work shall stop immediately and CDFW consulted. Work shall not resume until CDFW has made a determination on how to proceed with Project activities.

COMMENT 7: Vague Language

The MND has several avoidance and mitigation measures that are not sufficiently descriptive or specific enough to be implemented. In several Mitigation Measures (e.g., MM BIO-3.2, MM BIO-4.1), two options for impact avoidance are provided, with the second option implemented if the first is found to be “infeasible.” No information is provided on how that determination would be made or if agency guidance would be sought. Wording such as “to the extent feasible”, “if required”, “if feasible”, and “all reasonable efforts”, is used in the mitigation measure portions of the MND, including survey protocols, avoidance actions proposed when special-status species are present, and when buffer distances are not able to be implemented consistently during Project activities.

Cort Hitchens
City of San Jose
November 18, 2024
Page 12

Evidence of impacts: The vague language used in the MND gives rise to uncertainty that can result in inadequate protection being provided to CESA listed and/or fully protected species.

Recommendations: To reduce impacts to special-status species as a result of Project related activities, CDFW recommends revising any minimization or mitigation measure to remove vague or ambiguous language such as that described above, and more clearly define action that will be taken to avoid, minimize or mitigate such impacts. CDFW cannot issue an ITP for fully protected species, impacts must be fully avoided. The MND should indicate that full avoidance will be implemented for all such species.

ENVIRONMENTAL DATA

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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (See Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)


CONCLUSION

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

If you have any questions regarding this letter, please contact Michelle Battaglia, Senior Environmental Scientist (Specialist), at (707) 339-6052 or Michelle.Battaglia@wildlife.ca.gov; or Jason Faridi, Senior Environmental Scientist (Supervisory), at (707) 339-0334 or Jason.Faridi@wildlife.ca.gov.

Cort Hitchens
City of San Jose
November 18, 2024
Page 13

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024100486)

REFERENCES

- Beiswenger, R. E. 1977. Diet patterns of aggregative behavior in tadpoles of *Bufo americanus*, in relation to light and temperature. *Ecology* 58:98–108.
- Conway, C. J., and C. Sulzman. 2007. *Status and habitat use of the California black rail in the southwestern USA*. *Wetlands* 27:987–998.
- Eddleman, W. R., R. E. Flores, and M. Legare. 1994. Black Rail (*Laterallus jamaicensis*). A. Poole and F. B. Gill, editors. *The Birds of North American Online*. Cornell Lab of Ornithology, Ithica, NY, USA. [Cornell Lab of Ornithology—Home | Birds, Cornell Lab of Ornithology](#)
- Evens, J. G., G. W. Page, S. A. Laymon, and R. W. Stallcup. 1991. *Distribution, relative abundance, and status of the California black rail in Western North America*. *The Condor* 93:952–966.
- Evens, J., and K. Thorne. 2015. Appendix 5.1- Case Study- California black rail (*Laterallus jamaicensis corturniculus*). In *Baylands Ecosystem Habitat Goals Science Update (2015)*, Science Foundation Chapter 5.
- Leonardi, M. O., and A. E. Klempau. 2003. Artificial photoperiod influence on the immune system of juvenile rainbow trout (*Oncorhynchus mykiss*) in the Southern Hemisphere. *Aquaculture* 221:581–591.
- Longcore, T., and C. Rich. 2004. Ecological light pollution - Review. *Frontiers in Ecology and the Environment* 2:191–198.
- Miller, M. W. 2006. Apparent effects of light pollution on singing behavior of American robins. *The Condor* 108:130–139.
- Navara, K. J., and R. J. Nelson. 2007. The dark side of light at night: Physiological, epidemiological, and ecological consequences. *Journal of Pineal Research* 43:215–224.

Cort Hitchens
City of San Jose
November 18, 2024
Page 14

- Smith, Katherine R., Laureen Barthman-Thompson, William R. Gould, Karen E. Mabry. Effects of Natural and Anthropogenic Change on Habitat Use and Movement of Endangered Salt Marsh Harvest Mice, PLOS ONE, Volume 9, Issue 10, 13 October, 2014, <https://doi.org/10.1371/journal.pone.0108739>
- Stone, E. L., G. Jones, and S. Harris. 2009. Street lighting disturbs commuting bats. *Current Biology* 19:1123–1127. Elsevier Ltd.
- Tabor, R. A., G. S. Brown, and V. T. Luiting. 2004. The effect of light intensity on sockeye salmon fry migratory behavior and predation by cottids in the Cedar River, Washington. *North American Journal of Fisheries Management* 24:128–145.
- Valdimarsson, S. K., N. B. Metcalfe, J. E. Thorpe, and F. A. Huntingford. 1997. Seasonal changes in sheltering: Effect of light and temperature on diel activity in juvenile salmon. *Animal Behaviour* 54:1405–1412.
- U.S. Fish and Wildlife Service [USFWS]. 2010. Salt marsh harvest mouse (*Reithrodontomys raviventris*) 5-year review: summary and evaluation. Sacramento Fish and Wildlife Office, USFWS, Sacramento, CA, USA
- Zeiner, D. C., W. F. Laudenslayer, Jr, K. E. Mayer, and M. White. 1990. California's Wildlife Volume I-III. California Department of Fish and Game, editor. Sacramento, CA, USA.