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From: Tran, Harvey@Wildlife
Sent: Friday, March 21, 2025 2:55 PM
To: tkuhn@elkgrovecity.org
Cc: Wildlife R2 CEQA; Jacks, Sandra@Wildlife; Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the MND for the Laguna Creek Inter-Regional Trail Crossing at State Route 99 Project (WTL016) (SCH No. 2025020580)

To Travis Kuhn:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Draft Initial Study/Mitigated Negative Declaration (MND) from the City of Elk Grove, for the Laguna Creek Inter-Regional Trail Crossing at State Route 99 Project (WTL016) (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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 may also act as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration agreement (LSAA) 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.

PROJECT DESCRIPTION SUMMARY

This proposed Project is located at an approximately 29.7-acre area located between the Sheldon Road/State Route (SR) 99 interchange to the north and the Bond Road/SR 99 interchange to the south. Location of the proposed SR 99 overcrossing is at SR 99 Post Mile 14.3/14.4. The proposed Project runs perpendicular to SR 99 and extends approximately 1,300 feet east of East Stockton Boulevard and approximately 550 feet west of West Stockton Boulevard. The Project would construct a pedestrian overcrossing spanning West Stockton Boulevard, SR 99, and East Stockton Boulevard, a multi-use trail east of the pedestrian overcrossing, and a pedestrian bridge spanning Whitehouse Creek. The Project is part of Laguna Creek Inter-Regional Trail Crossing which is part of a City network of multi-use trails

that provides users access to schools, employment, commercial centers, recreational amenities, and community facilities.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Elk Grove in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the following items be addressed in the draft CEQA document:

Comment 1: Section 1602: Streambed Alteration Agreement, page 42

The MND states that “under CFG Code 1602, public agencies are required to notify CDFW before undertaking any project that will divert, obstruct, or change the natural flow, bed, channel, or bank of any river, stream, or lake.” This definition of California Fish and Game Code (FGC) 1602 is incomplete as it is missing that last portion of the code which includes depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. This portion of the code may apply to activities outside the bed, channel, or bank of a waterway that have potential to result in materials entering the waterway.

To address this comment, CDFW recommends the relevant MND section be modified to include the full language of the FGC 1602.

Comment 2: Giant Garter Snake (GGS), page 60,

The MND states that the Project may affect, likely to adversely affect GGS due to permanent impacts to their habitat and that the Project proponent will undergo formal Section 7 consultation with USFWS in order to obtain a Biological Opinion which may require compensatory mitigation. However, the MND also states that the Project is not anticipated to have take of GGS under CESA, and therefore consultation with CDFW under Section 2081 is not warranted.

According to the Attachment H GGS Habitat Assessment by Eric Hansen on March 16, 2020, the habitat surrounding Laguna Creek within the Project Area was deemed suitable because it contained a combination of features capable of supporting a permanent population of GGS, including sufficient water during the active summer season to supply cover and food; emergent, herbaceous aquatic vegetation accompanied by vegetated banks to provide basking and foraging habitat; bankside burrows, holes and crevices to provide short-term aestivation sites; and upland habitat above the annual high-water mark to provide cover and refugia from floodwaters during the dormant winter season. Whitehouse Creek was deemed marginal habitat because it only possessed the water, vegetation, and refugia required to provide minimal coverage for dispersing snakes on a temporary basis. The Laguna Creek area has a known GGS population situated downstream of the Franklin Boulevard overcrossing. The current presence of GGS upstream of the Franklin Boulevard overcrossing is unknown as there are no recent California Natural Diversity Database (CNDDDB) occurrences. Past aerials of the area show that the water levels of Laguna Creek around the Franklin Boulevard overcrossing fluctuates with occurrences of low water levels in some years resulting in the ponding of water west of the Franklin Boulevard overcrossing and insufficient water upstream to allow GGS to move further east to the Project Area. Despite the potential movement barrier at the Franklin Boulevard overcrossing,

CDFW believes that there is still potential for GGS to be present in the Project Area during construction due to possible GGS movement upstream into the Project Area during years of higher water levels, suitable habitat present in the Project Area capable of supporting a permanent GGS population, the Project Area being in the current range of the species, and historic CNDDDB occurrences of GGS located just west of Project Area indicating past habitat usage of the area. Therefore, CDFW believes that there is potential for take under CESA for GGS.

To address this comment, CDFW recommends that the Project proponent consider obtaining an Incidental Take Permit (ITP) or a Consistency Determination (CD) for the Project to accompany the Biological Opinion and modifying the relevant MND section to reflect this consideration. Without obtaining an ITP or CD, Project proponent must comply with CESA and exercise full avoidance in every situation where GGS become present onsite during construction. Full avoidance would mean halting construction to allow the species to move out of harm's way on its own volition regardless of the time being lost or the cost to the Project.

Comment 3: Compensatory Mitigation for Laguna Creek, page 66

The MND states that compensatory mitigation required by permitting agencies (CDFW, USACE, RWQCB) for permanent impacts to Laguna Creek, Whitehouse Creek, and their associated habitats will be at a minimum of 2:1 ratio. Depending on the quality of habitat impacted, the quality of the compensatory mitigation and any temporal loss, 2:1 replacement for permanent impacts may still result in a net loss of habitat. Through the LSAA process, CDFW may require at least 3:1 mitigation depending on Project specific factors to ensure no net loss occurs. If mitigation is proposed through use of mitigation or conservation bank credits, credit purchases should be from a CDFW-approved mitigation bank with appropriate credit types available. Applicant may also propose alternative mitigation options for CDFW review and approval as part of the LSAA notification process, as appropriate.

To address this comment, CDFW recommends that the relevant MND section be modified to state that permanent impacts to habitats impacted by activities subject to 1602 notification would be mitigated at a minimum 3:1 ratio.

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 found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address:

CNDDDB@wildlife.ca.gov.

FILING FEES

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 in order 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.)

CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed Project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the MND for the Laguna Creek Inter-Regional Trail Crossing at State Route 99 Project (WTL016) to assist the City of Elk Grove in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this email or further coordination should be directed to Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@wildlife.ca.gov.

Thank you,

Harvey Tran

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