

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-016-02-A1**

Permittee: Sacramento County, City of Rancho Cordova, City of Galt, Sacramento County Water Authority, Capital SouthEast Connector Joint Powers Authority, South Sacramento Conservation Agency

Project: South Sacramento Habitat Conservation Plan

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the South Sacramento Habitat Conservation Plan (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Sacramento County, the City of Rancho Cordova, the City of Galt, the Capital SouthEast Connector Joint Powers Authority, and the South Sacramento Conservation Agency (Permittee's) to incidentally take California tiger salamander² designated as Threatened, (*Ambystoma californiense*), giant garter snake³ designated as Threatened (*Thamnophis gigas*), tricolored blackbird⁴ (*Agelaius tricolor*) designated as a Candidate species, Swainson's hawk⁵ designated as Threatened (*Buteo swainsoni*), slender Orcutt grass⁶ designated as Endangered (*Orcuttia tenuis*), Sacramento Orcutt grass⁷ designated as Endangered (*Orcuttia viscida*), and Boggs Lake hedge-hyssop (*Gratiola heterosepala*)⁸

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000. ¹ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(2)(D).

² See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(2)(D).

³ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(E).

⁴ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(5)(H).

⁵ See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(5)(A).

⁶ See Cal. Code Regs. tit. 14 § 670.2, subd. (a)(24)(E).

⁷ See Cal. Code Regs. tit. 14 § 670.2, subd. (a)(24)(E).

⁸ See Cal. Code Regs. tit. 14 § 670.2, subd. (a)(23)(A).

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designated as Endangered, hereafter, collectively referred to as Covered Species, during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.)

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, Sacramento County. (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) Sacramento County analyzed the environmental impacts associated with implementation of the Project in the South Sacramento Habitat Conservation Plan (SSHCP) final Environmental Impact Report, South Sacramento Habitat Conservation Plan EIR (EIR) (SCH No. 2008062030) and approved the Project on September 12, 2018. In so doing, Sacramento County imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

The Plan Area encompasses approximately 317,655 acres and is located in the southern portion of Sacramento County, which contains portions of unincorporated Sacramento County, Galt, and the southern half of Rancho Cordova (Plan Area). Parts of southern Sacramento County, including the community of Rancho Murrieta, the sovereign lands of the Miwok Tribe, and a majority of the Delta are not included within the Plan Area.

CDFW has initiated this first minor amendment to the ITP to update the procedures in the ITP, specifically in Condition of Approval 9.6 of the ITP which describes the approval process for entities proposed to hold conservation easements under the SSHCP and clarifies that all conservation easements will follow the template attached to the SSHCP as Appendix D.

The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site(s) will result in the permanent loss of 33,497 acres of modeled habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in Sacramento Counties EIR, CDFW has the responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to the amendment of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall

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within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the SSHCP EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by Sacramento County for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

FINDINGS:

CDFW has considered the EIR certified by Sacramento County as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by Sacramento County, along with the mitigation measures and Conditions of Approval set forth in CDFW's amended ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the amendment of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's amendment ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. If a Covered Activity includes ground disturbance within Covered Species modeled

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habitat, an approved biologist will be on site during the period of ground disturbance and may need to be on site during other construction activities depending on the Covered Species affected. After ground-disturbing project activities are complete, the approved biologist will train an individual to act as the on-site construction monitor for the remainder of construction, with the concurrence of the Permitting Agencies. The approved biologist and the on-site monitor will have oversight over implementation of Avoidance and Minimization Measures and will have the authority to stop activities if any of the requirements associated with those measures are not met. If the monitor requests that work be stopped, the Wildlife Agencies will be notified within one working day by email.

- B. During the ITP term, Permittees shall collect a Mitigation Fee from the Authorized Party, prior to the issuance or approval of any Development Project in the Plan Area. If no Covered Activity Authorization is required for a Covered Activity, the Fee shall be paid prior to initiation of vegetation- or ground-disturbing activities for said project.
- C. The Permittee shall preserve at least 34,495 acres of existing habitat and re-establish or establish at least 1,787 acres of habitat for a total Preserve System of 36,282 acres and provide for both the permanent protection and management of the 36,282 acres Covered Species habitat lands. All SSHCP Preserves will be preserved in perpetuity and would be acquired either as fee title or as conservation easements, although most of the SSHCP Preserve System will be established using conservation easements.
- D. The Jump-Start provision will ensure that there is enough preserve area and habitat benefits to fully offset the initial habitat loss and species take expected when the Plan is first implemented. The jump-start provision will apply to all SSHCP land cover types.
- E. Under the "Stay-Ahead" provision, the SSHCP Permittees will assure that the acreage of each SSHCP land cover-group preserved in the SSHCP Preserve System is always at least 2% ahead of the remaining acres of land cover-preservation still required to assemble the 36,282-acre SSHCP Preserve System. Before approving or authorizing a Covered Activity project, each SSHCP Permittee will verify that the acres of mitigation required to offset the effects of the project would not exceed the Stay Ahead provision (SSHCP Chapter 9.4.6.3). In this manner, the SSHCP will preserve habitat in advance of Covered Activity species effects.
- F. Permittee will prepare and submit a final mitigation report within 60 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 2 of

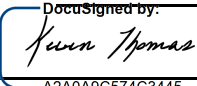
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CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

No revisions have been made to the Mitigation Monitoring and Reporting Program.

The Amendment is issued.

DATE: 2/9/2021

By: 
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Kevin Thomas, Regional Manager
North Central Region
DEPARTMENT OF FISH AND WILDLIFE