



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](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 19, 2020

Mr. Scott Orr, Deputy Director of Planning  
Sonoma County Permit and Resource Management Department  
2550 Ventura Avenue  
Santa Rosa, California 95403  
[scott.orr@sonoma-county.org](mailto:scott.orr@sonoma-county.org)

Subject: UPE01-0181 Ghilotti Use Permit Project, Mitigated Negative Declaration,  
SCH No. 2020090529, Sonoma County

Dear Mr. Orr:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Sonoma County (County) for the UPE01-0181 Ghilotti Use Permit Project (project) pursuant the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed project.

## **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) 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), 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.

## **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 ITP.

Mr. Scott Orr  
Sonoma County Permit and Resource Management Department  
October 19, 2020  
Page 2

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) and 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 and a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's FOC does not eliminate the project proponent's obligation to comply with CESA.

### **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. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW 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:** Todd Road Partners

**Objective:** Conduct current and future operations within the existing construction yard including equipment storage, stockpiling construction materials, stockpiling dirt, and stockpiling and crushing asphalt grindings, rock, and broken concrete for recycling within an area of approximately 18 acres on a 19.02 acre site. The Use Permit would bring current and future operations into compliance with Sonoma County Permit and Resource Management Department regulations.

**Location:** The project is located at 304 Todd Road southwest of the Ghilotti Avenue Todd Road intersection in unincorporated Sonoma County. It is centered at approximately Latitude, Longitude: 38.383053, -122.723599 on Assessor Parcel Number 134-171-050.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the below comments and recommendations 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, in part through

Mr. Scott Orr  
Sonoma County Permit and Resource Management Department  
October 19, 2020  
Page 3

implementation of CDFW's below recommendations, CDFW concludes that an MND is appropriate for the project.

### **Environmental Setting**

*MANDATORY FINDINGS OF SIGNIFICANCE: Does the project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict range of a rare or endangered plant or animal?*

#### **Comment 1: MND Page 30**

*Issue:* The southern portion of the project appears to support grassland habitat that may be suitable for California tiger salamander (CTS, *Ambystoma californiense*), a State threatened and federally endangered species. The MND concludes that the "property no longer supports habitat for CTS..." and references a 2008 U.S. Fish and Wildlife Service (USFWS) Biological Opinion for the project to support this conclusion.

However, based on current and historical imagery in Google Earth, it is unclear if the southern approximately 5 acres of the project site have been subject to disturbance from construction yard operations allowing grassland habitat to reemerge. Therefore, it is possible that CTS could occupy these areas. The California Natural Diversity Database (CNDDDB) documents a 2003 occurrence of CTS larvae within an ephemeral erosion control ditch for a soil deposition area along Ghilotti Avenue on the "Ghilotti Property"; a 2010 occurrence of a juvenile CTS approximately 1,000 feet east of the project site, a 2001 occurrence of breeding habitat within a ditch along Langner Avenue approximately 900 feet south of the project site; a 2005 occurrence of breeding habitat within a swale approximately 2,500 feet west of the project site; and several other CTS occurrences within 1.3 miles of the project site, which is the dispersal distance of CTS. There is also potential breeding habitat approximately 640 feet west of the project site at approximately Latitude, Longitude: 38.385314, -122.725209 and additionally within 1.3 miles of the project site.

Additionally, the MND describes a Roadway Realignment concluding that it would not impact CTS habitat based on a Biological Resources Evaluation (BRE) prepared for the project. However, the BRE was not provided, therefore CDFW is unable to evaluate potential habitat impacts. The MND also includes Mitigation Measure BIO-1 requiring biological monitoring of the Roadway Realignment if it occurs during the wet season, and states that if any CTS are observed, the biologist shall implement applicable protective protocols of CDFW and USFWS [i.e., CDFW/USFWS *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander, October 2003 (CTS Interim Guidance)*]. However, it is unclear what the "protective protocols" would be or how the *CTS Interim Guidance* would inform them as the guidance is focused on a CTS survey methodology.

Mr. Scott Orr  
Sonoma County Permit and Resource Management Department  
October 19, 2020  
Page 4

*Specific impacts and why they would occur:* The project may result in CTS injury, mortality, and habitat loss. It could directly affect CTS by crushing, killing, or injuring individuals by vehicles, equipment and workers during project activities such as soil stockpiling and other earth-moving activities, transport of supplies and workers, on-site storage of construction materials and equipment, and landscaping work. CTS could be also become entombed in burrows or other suitable refugia during these activities. As it does not appear there is CTS barrier fencing surrounding the entire project site, CTS could travel onto it and be crushed, killed, or injured even where grassland habitat has been removed. Additionally, sediment from the soil stockpiles could wash into ditches on the perimeter of the project site supporting CTS breeding habitat, based on the above CNDDDB record, which could adversely impact CTS adults, eggs, or larvae.

*Evidence impact would be significant:* The

(c)(1) and (c)(2)]

would potentially substantially reduce the number or restrict the range of CTS. Therefore, project impacts to CTS would be potentially significant.

*Recommendation:* For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND:

- Include a thorough analysis of the potential for CTS habitat within the project area based on the above information including an aerial-based map clearly showing the project site and features in relation to CTS habitat, a copy of the BRE, and any other biological technical studies.
- Identify any potentially significant impacts to CTS including potential Mandatory Findings of Significance, prior to mitigation. For such impacts, the MND should include mitigation measures such as installation of a CTS permanent barrier around the project site and maintaining it in perpetuity, off-site compensatory habitat pursuant to the Santa Rosa Plain Conservation Strategy, restricting initial ground disturbance to the work to the dry season (June 15 to October 15), pre-construction surveys, and biological monitoring.
- Require an ITP from CDFW for impacts to CTS and compliance with the ITP upon issuance. Please be advised that CDFW's mitigation requirements may differ from those of the Santa Rosa Plain Conservation Strategy and USFWS.

Mr. Scott Orr  
Sonoma County Permit and Resource Management Department  
October 19, 2020  
Page 5

- Require consultation with USFWS to determine if authorization under the federal ESA is warranted, and compliance with any such authorization.

Please be advised that the Terra Bagnata Wetland Mitigation Project referenced in the MND does not provide mitigation for project impacts for this project to CTS under CESA. Required mitigation under CESA would be the result of an ITP for the project, which CDFW has not issued.

*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 the CDFW or USFWS, or on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?*

**Comment 2:** MND Page 34 and 52

*Issue:* The project site appears to include seasonal ditches which may constitute a stream pursuant to Fish and Game Code section 1600 et seq. based on aerial imagery and the above CNDDDB report, and the MND which indicates that surface drainage from the project site flows into drainage ditches paralleling Ghilotti Avenue and the west side of the project, which both connect to the Colgan Creek Flood Control Channel. According to the above referenced USFWS BO, a drainage ditch forms the western, eastern, and southern boundaries of the project site and supports wetland vegetation including a variety of rushes (*Juncus* sp.).

The project site also appears to be located adjacent to potential wetlands to the west based on aerial imagery and the California Aquatic Resources Inventory. The wetlands could support State and federally endangered plants such as Sonoma sunshine (*Blennosperma bakeri*) and Sebastopol meadowfoam (*Limnanthes vinculans*), and other special-status plants. There are CNDDDB records of the endangered plants approximately 1,800 feet west and southwest of the project.

*Specific impacts and why they would occur:* Project activities could result in fill of the potential streams, and runoff from soil stockpiles could introduce sediment adversely impacting stream and wetland habitat, and endangered and other special status plants.

*Evidence impact would be significant:* The project could substantially adversely affect stream and associated riparian habitat, and wetlands, by resulting in loss or degradation of these vulnerable habitat types. Sonoma sunshine and Sebastopol meadowfoam qualify as endangered plants under CEQA because they are listed as endangered under CESA and ESA. [CEQA Guidelines, § 15380, subds. (c)(1) and (c)(2)]. Other special-status plants that may occur in the wetlands may qualify as well. Therefore,

Mr. Scott Orr  
Sonoma County Permit and Resource Management Department  
October 19, 2020  
Page 6

project impacts to streams, wetlands, and endangered and other special-status plants would be potentially significant.

*Recommendation:* For an adequate environmental setting and impact analysis, and to reduce impacts to less-than-significant, CDFW recommends that the MND:

- Include a thorough analysis of the ditches and wetlands within and adjacent to the project including evaluating if the ditches may constitute a stream under Fish and Game Code section 1600 et seq., considering stream characteristics and connectivity. Provide aerial-based mapping of all aquatic features within and adjacent to the project. Please be advised that artificially created streams may be considered jurisdictional by CDFW.
- Identify potentially significant direct and indirect impacts to streams, adjacent wetlands, and endangered and other special-status plants based on the above information. For such impacts, the MND should include mitigation measures such as installing erosion controls, for example silt fencing or fiber rolls, between project activities and stream or wetland habitats. Erosion control material should be free of weeds and monofilament netting. Erosion controls should be regularly monitored by a biologist or other qualified individual for the life of the project to ensure they are appropriately placed, effective, and repaired immediately.
- Require an LSA Notification to CDFW pursuant to Fish and Game Code section 1600 et seq. for impacts to streams and compliance with the LSA Agreement upon issuance.

## **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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

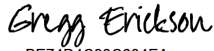
## **CONCLUSION**

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the project. CDFW appreciates the opportunity to comment on the MND to assist the County in identifying and mitigating project impacts on biological resources.

Mr. Scott Orr  
Sonoma County Permit and Resource Management Department  
October 19, 2020  
Page 7

Questions regarding this letter or further coordination should be directed to Ms. Melanie Day, Senior Environmental Scientist (Specialist), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at [Karen.Weiss@wildlife.ca.gov](mailto:Karen.Weiss@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C804EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse (SCH No. 2020090529)