United States Department of the Interior

FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish and Wildlife Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814

In reply refer to:
08FBDT00-2016-F-0160

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5438(011)

Mr. Tom Holstein
Environmental Branch Chief
California Department of Transportation
D4 Office of Local Assistance
111 Grand Avenue
P.O. Box 23660
Oakland, CA 94623-0660

Subject: Formal Consultation on the Bay Road Improvement Project: Phase II and Phase III Bay Road between Clark Avenue/Illinois Street and Cooley Landing Regional Park Access Road, East Palo Alto, San Mateo County, California (Federal Project No. HPL4-6438 (11)

Dear Mr. Holstein:

This letter is in response to the California Department of Transportation (Caltrans) May 9, 2016, request to initiate formal consultation with the U.S. Fish and Wildlife Service (Service) for the Bay Road Improvement Project: Phase II and Phase III (project) located in East Palo Alto, San Mateo County, California. The Caltrans consultation initiation letter was received by the Service on May 16, 2016. At issue are the effects of the proposed project on the endangered salt marsh harvest mouse (*Reithrodontomys raviventris*; SMHM) and the endangered California clapper rail (*Rallus longirostris obsoletus*; CCR). This document is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C 1531 *et seq.*) (Act).

Recent genetic analyses of rail species resulted in a change in the common name and taxonomy of the large, "clapper-type" rails (*Rallus longirostris*) of the west coast of North America to Ridgway's rail (*Rallus obsoletus*) (Maley and Brumfield 2013; Chesser *et al.* 2014). Thus the California clapper rail (*Rallus longirostris obsoletus*) is now referred to in the scientific community as the California Ridgway's rail (*Rallus obsoletus obsoletus*). The change in the common name and taxonomy of the California clapper rail, however, does not change the listing status of the species under the Act and will be referred to by the original name in this document.

In reviewing this project, the Service has relied upon: (1) the April, 2016 *Bay Road Improvement Project: Phase I and Phase III Bay Road between Clark Avenue/Illinois Street and Cooley Landing Regional Park Access Road Biological Assessment* (BA); (2) the Caltrans May 9, 2016, letter requesting consultation; and (3) other information available to the Service.

BIOLOGICAL OPINION

Description of the Proposed Action

The City of East Palo Alto proposes to construct improvements to an approximately one-half mile portion of Bay Road between Clark Avenue/Illinois Street and the east end of Bay Road where it meets Cooley Landing Regional Park access road. The proposed project includes two phases of roadway, streetscape, and utility improvements. The proposed project is organized as two phases since each phase addresses a specific set of improvements needed to correct the deficiencies of its section of Bay Road. Phase I of the Bay Road project was previously completed by the City. Phase II addresses the section of Bay Road between Clarke Avenue/Illinois Street and Pulgas Avenue, and Phase III addresses improvements east of Pulgas Avenue where the road is two lanes wide. The proposed project would maintain the existing number of travel lanes in each phase area.

Work throughout the project area would include: construction of wider sidewalks, installation of new bike lanes, resurfacing or otherwise repairing the roadway, construction of new bus stop turn-outs with concrete pavement pads, installation of pedestrian and street lighting, adjusting and improving conflicting or underperforming storm drainage systems, water mains, and other utilities, installation of landscaped medians with new street trees, construction of colored concrete pavement at intersections, installation of lighted crosswalks, installation of irrigation system as well as planting of shrubs or trees in the median and on both sides of the roadway, installation of new pavement striping and construction of a fire engine turn around.

All improvements of Phase II would be constructed within existing developed Bay Road right-of-way (ROW) and as such are not anticipated to affect CCR or SMHM and are not further described in this biological opinion except for where Caltrans did not describe the phases separately.

Phase III of the proposed Bay Road Improvement Project extends from Pulgas Avenue to the terminus of Bay Road where it meets the Cooley Landing Regional Park access road. A San Francisco Bay Trail trailhead is located at the end of Bay Road. Phase III improvements include the following:

Roadway Improvements

- Reconstruct this section roadway, including the road base prior to resurfacing.

- Bay Road would be widened to provide adequate traffic lane widths and room for bicycle lanes; dirt and gravel shoulders would be eliminated and a new sidewalk would be constructed on the north side of the road. A new sidewalk would be constructed on the south side of Bay Road between Pulgas Avenue and Tara Road. All roadway improvements shall be within the existing ROW except an emergency vehicle turnaround that would be constructed on privately-owned land on the south side of Bay Road approximately 120 feet west of the proposed project terminus at Cooley Landing Park and a curb return at the northeast corner of Bay Road and Pulgas Avenue intersection.

- New bicycle lanes would be located on both sides of the road.

- A new combined bicycle/pedestrian pathway linking the Bay Trail trailhead to the new sidewalk and bicycle lane would be constructed on the north side of Bay Road.

- Install new street and pedestrian lighting for safety.

- A new lighted crosswalk would be located at the intersection of Bay Road and Tara Road.

Utilities

- Replacement of an existing 12-inch water main in Bay Road which has reached its design life and is prone to breaks.

- A new storm drainage system consisting of new storm drain main lines, laterals and catch basins would connect to a new storm main extending south on Pulgas Avenue to Runnymede Street, as described under Phase II in the BA.

- The existing sewer main would be relocated to make room for the new storm drain system and other new underground utilities.

- A new underground joint utility trench would extend to the eastern end of Phase III. Existing overhead utilities (electrical, telephone and cable) would be relocated to the utility trench and aboveground distribution structures (poles, cables and supports) removed.

- Landscaped stormwater biotreatment areas would be constructed along sidewalks on Bay Road.

Three components of Phase III of the proposed project are located outside of the ROW and have the potential to affect CCR and SMHM and are described below. These components include:

1. Emergency Turnaround: An emergency vehicle access turnaround that would be construction on privately-owned land on the south side of Bay Road approximately 120 feet west of the proposed project terminus at Cooley Landing Park;

2. Storm Drains: The connection of two new storm mains to an existing culvert located approximately 60 feet east of the terminus of Runnymede Street; and

3. Sidewalk Easement: The acquisition of a sidewalk easement at the northeast corner of Bay Road and Pulgas Avenue Intersection for a curb return and American with Disabilities Act compliant curb ramps

Construction Staging and Schedule (both phases)

Construction equipment and materials would be staged within the existing Bay Road ROW, the Pulgas Avenue ROW and/or the Runnymede Street ROW. The majority of material staging would occur between Illinois Street/Clarke Avenue and Pulgas Avenue, where the Bay Road ROW is approximately 90 feet wide. West of Pulgas Avenue, staging would occur along the existing shoulders of Bay Road within the existing 40-foot ROW. The Pulgas Avenue ROW and/or the Runnymede Street ROW may be used for staging for the construction of storm sewer mains within

those streets. Staging areas would be fitted with sediment and dust control Best Management Practices.

Construction of the proposed project is expected to last approximately 12 to 18 months. Consistent with the City Municipal Code, construction activities would occur from Monday through Friday between 7:00 a.m. and 6:00 p.m., and Saturdays between 9:00 a.m. and 5:00 p.m. No Sunday or Federal holiday construction is proposed.

Conservation Measures

California Clapper Rail

1. The proposed project will minimize effects to CCR by prohibiting construction within 200 meters (656 feet) of salt marsh during the nesting season.

2. Proposed project construction in areas within 200 meters (656 feet) of salt marsh will be limited to the period between September 1 and January 31 minimize potential adverse effects to breeding CCR.

3. If it is necessary to complete work within the 200-meter (656-foot) buffer, then the following standard measures will be implemented to minimize potential effects to CCR:

    a. Prior to initiation of proposed project activities, a protocol level CCR survey effort will be performed by a Service-qualified biologist during the CCR nesting season. A protocol level survey effort requires a minimum of four surveys between January 16 and late March to early April and prior approval of the Service. No construction is permitted during the period in which the surveys are being conducted.

    b. If the survey finds CCR activity centers during the protocol level surveys, no work will occur within 200 meters (656 feet) of any activity centers until after August 31.

    c. If no CCR are observed during the protocol level survey, construction may begin after approval of the survey results by Service.

    d. Construction will be limited to daylight hours only and artificial nighttime lighting on the proposed project site will be shielded, directed downward and minimized at night.

    e. Environmental training will be provided to all persons working on the proposed project site prior to the initiation of project-related activities and training materials and briefings will include all biological resources that may be found on or in the vicinity of the proposed project site, the laws and regulations that protect those resources, the consequences of non-compliance with those laws and regulations and a contact person in the event that protected biological resources are discovered on the proposed project site.

Salt Marsh Harvest Mouse

1. A Service-approved biologist will be on-site during vegetation removal and the installation of a mouse exclusion fence in areas of potential habitat at the east ends of Bay Road and Runnymede Street. The Service-approved biologist will document compliance with the project permit conditions and conservation measures.

2. The Service-approved biologist will conduct preconstruction surveys for the salt marsh harvest mouse immediately prior to the start of work in potential habitat at the fire truck turnaround at the east end of Bay Road and at the storm drain connection at the east end of Runnymede Street.

3. Vegetation clearing in areas of potential habitat at the fire truck turnaround at the east end of Bay Road and at the storm drain connection at the east end of Runnymede Street will be completed only with non-mechanized hand tools (i.e. trowel, hoe, rake, and shovel). No motorized equipment, including weed whackers or lawn mowers, will be used to remove this vegetation. Vegetation will be removed to bare ground or stubble no higher than 1 inch. Vegetation will be removed under the supervision of the Service-approved biologist. Vegetation removal may begin when no mice are observed during the preconstruction surveys and will start at the edge farthest from the salt marsh or the poorest habitat and work its way towards the salt marsh or the better salt marsh habitat.

4. To prevent SMHM from moving through the project site during construction, temporary exclusion fencing will be placed around work areas within ruderal vegetation at the east end of Bay Road and Runnymede Street immediately after the vegetation removal. The fence will integrate heavy plastic sheeting or similar material that does not allow salt marsh harvest mice to pass through or climb, and the bottom should be buried to a depth of 2 inches so that these species cannot crawl under the fence. Fence height will be at least 12 inches higher than the highest adjacent vegetation with a maximum height of 4 feet. All supports for the exclusion fencing must be placed on the inside of the project area. Fence design will be approved by the Service-approved biologist prior to installation.

5. A contractor sensitivity training program will be conducted to educate all persons employed or otherwise working on the project site prior to performing any work in areas of potential SMHM habitat. The program will consist of a presentation from the Service-approved biologist that includes a discussion of the biology, habitats, legal protections, penalties for violations and project-specific protective measures for species present at this site.

6. Vegetation removal will be limited to the minimum amount needed for construction activities and vehicle access. Temporary effects to vegetation in areas adjacent to tidal marsh would be revegetated with native seed following construction.

7. After completion of the initial vegetation removal and installation of the mouse exclusion fence, the Service-approved biologist will conduct weekly site visits to monitor the condition of the exclusion fence and report on its integrity.

8. Any contractor, employee, or agency personnel who inadvertently kills or injures a salt marsh harvest mouse will immediately report the incident to the Service-approved biologist. The Service-approved biologist will contact the Service and Caltrans to report the dead or injured animal via electronic mail and telephone within one working day.

Action Area

The action area is defined as all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR 402.02). The action area for this section 7 consultation encompasses all areas that may be directly or indirectly affected as a result of activities for the project and the broader area that, while outside the construction zone, may be directly or indirectly affected by vibrations, noise, dust, or movement associated with the proposed project. The action area includes Caltrans' Biological Study Area which included approximately 30.55 acres of paved roads and associated developed/landscaped areas, 5.16 acres of ruderal upland, 0.66 acre of salt marsh, and 0.10 acre of open water, and within 700 feet of the salt marsh.

Status of Species

California Clapper Rail

The status of the species has been updated since the issuance of the PBO. The status of California clapper rail and information about its biology, ecology, distribution, and current threats is available in the *Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California* (Service 2013). Critical habitat has not been designated for this species.

Salt Marsh Harvest Mouse

The status of the species has been updated since the issuance of the PBO. There are two subspecies of the salt marsh harvest mouse: the northern subspecies (*R. r. halicoetes*) and the southern subspecies (*R. r. raviventris*). Both subspecies are listed as endangered. The status of the salt marsh harvest mouse and information about its biology, ecology, distribution, and current threats is available in the *Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California* (Service 2013). Critical habitat has not been designated for this species.

Environmental Baseline

Surrounding Land Uses and Existing Conditions

The project is located within the City of East Palo Alto, California, and contains developed residential, industrial, and light commercial land uses. Caltrans' Biological Study Area (BSA) for the project is located on public and private land along Bay Road, Pulgas Avenue, and Runnymede Street in the City of East Palo Alto in San Mateo County, California. Bay Road and Runnymede Street run roughly east to west, and Pulgas Avenue roughly north to south, all through developed residential and commercial areas. The project area terminates on the eastern end within the salt marsh of Cooley Landing and Ravenswood Open Space Preserve. The Ravenswood Open Space Preserve is located immediately to the east, and some of the project's buffer area extends into the Preserve. Topography is very flat, with elevations ranging between approximately 10 and 15 feet (North American Vertical Datum 1988).

Hydrology in most of the project area is managed as surface runoff from streets conveyed to an underground stormwater system. The only area of natural hydrologic function is at the eastern end where portions of salt marsh are present and is influenced by the tides of San Francisco Bay. Habitats were characterized as developed/landscaped areas, ruderal upland, salt marsh (a type of wetland), and open water. The area primarily contains developed and landscaped surfaces (totaling approximately 31 acres) associated with roads including: Bay Road, Tara Road, Pulgas Avenue, Runnymede Street, Demeter Street, and Clarke Avenue. Landscaped areas consist of maintained areas along Bay Road, dominated by ornamental tree species such as blue gum (*Eucalyptus globulus*), Peruvian peppertree (*Schinus molle*), English walnut (*Juglans regia*), ornamental pine trees (*Pinus* spp.), with scattered native vegetation including coast live oak (*Quercus agrifolia*), and shrubs including coyote brush (*Baccharis pilularis*).

Observed vegetative communities in undeveloped parcels primarily consisted of ruderal uplands with sparse landscaped trees or shrubs. Ruderal uplands observed within undeveloped parcels along Bay Road were dominated by ground cover consisting of wild oat (*Avena fatua*), black mustard (*Brassica nigra*), fennel (*Foeniculum vulgare*), ripgut brome (*Bromus diandrus*), bristly ox-tongue (*Helminthotheca echioides*), foxtail barley (*Hordeum murinum*), and other weedy non-native species.

The eastern edge of the proposed project area ends at the Bay Trail. Outboard of the Bay Trail, the area contains salt marsh and open water associated with Cooley Landing and the Ravenswood Open Space Preserve. Salt marsh provides habitat for a variety of special-status wildlife species, including salt marsh harvest mouse.

Wildlife species common to the vicinity of the BSA include house finch (*Carpodacus mexicanus*), great egret (*Ardea alba*), barn swallow (*Hirundo rustica*), and raccoon (*Procyon lotor*). The eastern portion of the project area is located adjacent to open water and salt marsh habitat which could be used by special-status species. The proposed project area does not contain any salt marsh or open water habitat, only non-native/ruderal grassland, developed surfaces and landscaped vegetation are present within the proposed project area. Due to the proximity of the salt marsh to the proposed project area and the planned location of the fire engine turn around, special-status species may be found within the proposed project area, specifically within the fire engine turn around parcel.

Salt Marsh Harvest Mouse

The project area borders the salt marsh of Cooley Landing and Ravenswood Open Space Preserve which contains preferred habitat for SMHM. Figure 7 of the BA considers 1.83 acres of the BSA SMHM habitat but actual project footprint contains an approximately 0.13 acre undeveloped parcel that will be partially developed as a fire engine turn around at the eastern end of Bay Road, and undeveloped ruderal land along a levee at the end of Runnymede Street. Several California Natural Diversity Database (CNDDB) records of this species have been documented within the salt marsh bordering the project area, the nearest of which is located 0.2 mile southeast of the (CDFW 2016). Vegetation to be removed is primarily non-native/ruderal upland species or shrubs but may be used as upland refugia by the species.

California Clapper Rail

The project area borders the salt marsh of Cooley Landing and Ravenswood Open Space Preserve which contains documented habitat for CCR. The nearest CNDDB record for this species is located 0.2 mile southeast of the project area, and dated 2006 (CDFW 2016). Additionally, as reported by McBroom (2015), this species has been consistently observed in "very high density" within salt marsh areas adjacent to the project area from 2010-2015 during annual surveys conducted under the auspices of the Invasive Spartina Project. The project footprint is not located within marsh habitat.

Effects of the Proposed Project

California Clapper Rail

Noise, vibrations, and visual disturbance from construction activities and heavy equipment may result in the harassment of individual CCR in the adjacent habitat and expose them to predation if they were flushed from cover or prevented from seeking available cover. Noise or other construction disturbance during the CCR breeding season (February 1-August 31) could result in the loss of breeding activity or nest abandonment and the loss of all eggs and chicks in the nest. To minimize adverse effects to breeding, work is planned to occur outside of the nesting season. If work is necessary during the nesting season and protocol-level surveys indicate presence, no work will occur within 200 meters (656 feet), less than the standard Service recommendation of 700 feet, of any activity centers until after August 31 minimizing noise and visual disturbance that may result in nest abandonment or stress that could cause reduced success or fecundity.

Salt Marsh Harvest Mouse

Noise and vibrations from construction activities and heavy equipment may result in the harassment of individual SMHM in the adjacent salt marsh habitat and expose them to predation if they were flushed from cover or prevented from seeking available cover.

No work is planned to occur in the adjacent salt marsh habitat. Approximately 0.13 acre of ruderal vegetation that may be used as upland refugial habitat within the fire engine turn around parcel at the eastern terminus of Bay Road and at the eastern terminus of Runnymede Street will be permanently affected. This area is considered marginal habitat because it directly abuts a developed roadway. Approximately 0.75 acre surrounding the 0.13 acre of permanent disturbance will remain in its current ruderal state, maintaining the current function of the area as potential upland refugia for SMHM. Temporary effects to vegetation in areas adjacent to the salt marsh at the ends of Bay Road and end of Runnymede Street will be revegetated following construction. Function of the area as potential refugia during high tides for SMHM would remain intact after construction.

Cumulative Effects

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions unrelated to the proposed project are not considered in this section, because they require separate consultation pursuant to section 7 of the Act. The Service is not aware of specific projects

that might affect the California clapper rail and salt marsh harvest mice in the action area that are currently under review by State, county, or local authorities.

Conclusion

After reviewing the current status of the CCR and SMHM, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the project, as proposed, is not likely to jeopardize the continued existence of the CCR and SMHM. This is based on the project being completed in developed or ruderal vegetation without physically affecting salt marsh habitat and implementation of conservation measures.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by the Service as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering. Harm is defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act, provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by Caltrans so that they become binding conditions of any grant or permit issued to the applicants, as appropriate, for the exemption in section 7(o)(2) to apply. Caltrans has a continuing duty to regulate the activity covered by this incidental take statement. If Caltrans(1) fails to assume and implement the terms and conditions or (2) fails to require the (applicants) to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, Caltrans must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

Amount or Extent of Take

The Service anticipates incidental take of individual CCR and SMHM will be difficult to detect or quantify because of the variable, unknown size of any resident population over time, their elusive and cryptic behavior, and the difficulty of finding killed or injured animals. Due to the difficulty in quantifying the number of CCR and SMHM that will be taken as a result of the proposed project, the Service is quantifying take incidental to the proposed project as the following:

1. Harassment of all CCR in the adjacent salt marsh habitat within 700 feet of the project construction areas; and

2. Harassment, harm, and mortality of all SMHM within suitable habitat of the 1.83 acres of potential habitat as described in the BA.

Upon implementation of the reasonable and prudent measures, incidental take associated with the project will become exempt from the prohibitions described under section 9 of the Act.

Effect of the Take

In the accompanying biological opinion, the Service determines that the levels of take are not likely to result in jeopardy to the CCR and SMHM.

Reasonable and Prudent Measures

The following reasonable and prudent measures are necessary and appropriate to minimize the effects of the proposed project to the CCR and SMHM:

1. Caltrans will minimize the potential for harassment of CCR and harm, harassment, or mortality of SMHM.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Corps shall ensure that the applicants comply with the following terms and conditions, which implement their respective reasonable and prudent measures described above. These terms and conditions are non-discretionary.

1. Term and Condition 1 implements Reasonable and Prudent Measure 1:

   a. Caltrans shall minimize the potential for harm, harassment, injury, killing or other forms of take of the CCR and SMHM from project related activities by implementation of the *Conservation Measures* as described in the *Project Description* in this biological opinion or as modified by the *Terms and Conditions* of this document.

   b. Caltrans shall ensure that the applicants immediately notifies the Service of any killed, injured, or entrapped CCR or SMHM, within one (1) working day of the detection. Please contact the Assistant Field Supervisor of the Endangered Species Division at: San Francisco Bay-Delta Fish and Wildlife Office, 650 Capitol Mall, Suite 8-300, Sacramento, California 95814 or by telephone at (916) 930-5603.

   c. Caltrans shall educate and inform personnel involved in the project as to the *Conservation Measures* and *Terms and Conditions* in this biological opinion.

   d. Caltrans shall comply with the reporting requirements of this biological opinion, including a post-construction report outlining how the Conservation Measures were implemented for this project.

Reporting Requirements

In order to monitor whether the amount or extent of incidental take anticipated from implementation of the project is approached or exceeded, Caltrans shall adhere to the following reporting requirements. Should this anticipated amount or extent of incidental take be exceeded, the Corps must reinitiate formal consultation as per 50 CFR 402.16.

1. The Service must be notified within 24 hours of the finding of any injured or dead listed species or any unanticipated damage to its habitat associated with the proposed project. Injured listed species shall be cared by a licensed veterinarian or other qualified person, such as the Service-approved biologist for the proposed project. Notification will be made to the contact above in *Term and Condition 2b*, and must include the date, time, and precise location of the individual/incident clearly indicated on a U.S. Geological Survey 7.5 minute quadrangle or other maps at a finer scale, as requested by the Service, and any other pertinent information. When an injured or dead individual of the listed species is found, Caltrans shall follow the steps outlined in the Disposition of Individuals Taken section below.

2. Sightings of any listed or sensitive animal species shall be reported to the Service and CNDDB (http://www.dfg.ca.gov/biogeodata/cnddb/).

3. The applicants shall submit a post-construction compliance report prepared by the on-site biologist to the San Francisco Bay-Delta Fish and Wildlife Office within sixty (60) calendar days of the date of the completion of construction activities. This report shall detail (i) dates that construction occurred; (ii) pertinent information concerning the success of the project in meeting the avoidance and minimization measures; (iii) an explanation of failure to meet such measures, if any; (iv) known project effects on the CCR and SMHM, if any; (v) occurrences of incidental take of these listed species, if any; (vi) documentation of employee environmental education; and (vii) other pertinent information.

Disposition of Individuals Taken

Injured listed species must be cared for by a licensed veterinarian or other qualified person(s), such as the Service-approved biologist. Dead individuals must be sealed in a resealable plastic bag containing a paper with the date and time when the animal was found, the location where it was found, and the name of the person who found it, and the bag containing the specimen frozen in a freezer located in a secure site, until instructions are received from the Service regarding the disposition of the dead specimen. The Service contact persons are the Assistant Field Supervisor of the Endangered Species Division at (916) 930-5603; and the Resident Agent-in-Charge of the Service's Office of Law Enforcement, 5622 Price Way, McClellan, California 95562, at (916) 569-8444.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement

recovery plans, or to develop information. The Service recommends the following actions:

1. Encourage or require the use of appropriate California native species in re-vegetation efforts.

2. Facilitate additional educational programs geared toward the importance and conservation of tidal marsh and seasonal wetlands.

3. Assist the Service in implementing other recovery actions identified within most current recovery plans for the CCR and SMHM.

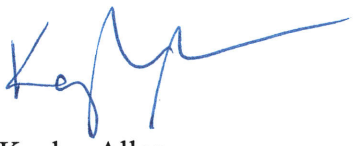
In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION – CLOSING STATEMENT

This concludes formal consultation for the Bay Road Improvement Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any additional take will not be exempt from the prohibitions of section 9 of the Act, pending reinitiation.

If you have any question or concern regarding this response, please contact Kim Squires, Section 7 Division Chief, via email at Kim_Squires@fws.gov. Please refer to Service file number 08FBDT00-2016-F-0160 in any future correspondence regarding this project.

Sincerely,



Kaylee Allen
Field Supervisor

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