



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, California 95825-1846
SFWO_mail@fws.gov



In Reply Refer to:
2022-0028449

June 13, 2022

Regulatory Division Chief
Attn: Greg Brown
Department of the Army
San Francisco District, Corps of Engineers
450 Golden Gate Avenue
San Francisco, California 94102
gregory.g.brown@usace.army.mil

Subject: Formal Consultation on the Pleasanton Stream and Pond Maintenance Project (U.S. Army Corps of Engineers File No. 2020-00142S) in Alameda County, California.

Dear Regulatory Division Chief:

This letter is in response to the U.S. Army Corps of Engineers (Corps) March 4, 2022, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Pleasanton Stream and Pond Maintenance Project (proposed project) in Alameda County, California. Your request was received by the Service on March 4, 2022. At issue are the proposed project's effects on the federally listed as threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*), Alameda whipsnake designated critical habitat, threatened California red-legged frog (*Rana draytonii*), and the threatened Central California Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*, California tiger salamander). Critical habitat has been designated for the California red-legged frog and California tiger salamander, but none occurs in the project area. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The Service has determined that the proposed project is appropriate to append to the May 31, 2012, *Programmatic Biological Opinion for the Corps Permitted Projects Utilizing the East Alameda County Conservation Strategy that May Affect Federally Listed Species in East Alameda County, California* (Programmatic Biological Opinion; Service 2012). The proposed actions meet the suitability criteria of and is within the geographic area analyzed in the Programmatic Biological Opinion. Therefore, this letter is an agreement by the Service to append the proposed action to the Programmatic Biological Opinion and represents the Services' biological opinion on the effects of the proposed action on the Alameda whipsnake and its critical habitat, California red-legged frog, and California tiger salamander. By appending the proposed action to the Programmatic Biological Opinion, the City of Pleasanton (applicant) acknowledges and accepts all of the conservation measures outlined within the Programmatic

Biological Opinion, including, but not limited to, the measures to minimize adverse effects. The applicant will also follow all reasonable and prudent measures, and all terms and conditions as directed by the Programmatic Biological Opinion. The Corps will ensure that the applicant meets all of these obligations.

The federal action on which we are consulting is the Corps issuing a permit to the City of Pleasanton pursuant to Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 et seq.), for stream and pond maintenance activities at 25 sites in the City of Pleasanton in Alameda County, California. Pursuant to 50 CFR 402.12(j), you submitted a biological assessment for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is likely to adversely affect the California red-legged frog and California tiger salamander, and that the proposed project may affect, and is not likely to adversely affect the Alameda whipsnake and its designated critical habitat.

In considering your request, we based our evaluation on the following:

- 1) The March 4, 2022, initiation letter from the Corps;
- 2) The May 31, 2012, *Programmatic Biological Opinion for the Corps Permitted Projects Utilizing the East Alameda County Conservation Strategy that May Affect Federally Listed Species in East Alameda County, California* (Service 2012);
- 3) The accompanying Pleasanton Stream and Pond Maintenance Project Biological Assessment;
- 4) Additional and clarifying information on this project amongst the Corps, the applicant, and the Service;
- 5) Other information available to the Service.

The Service concurs that the proposed project is not likely to adversely affect the Alameda whipsnake and its designated critical habitat. Nearly all the action area does not contain suitable habitat for Alameda whipsnake, specifically the streams and ponds proposed for maintenance are within developed areas without scrub communities and rock outcroppings. A small section of the action area, approximately 0.35 acre, is on the eastern edge of the Alameda whipsnake Critical Habitat Unit 3: Hayward-Pleasanton Ridge. No primary constituent elements are present within this section of the action area including no small mammal burrows or rocky outcroppings. Based on our evaluation of the current habitat, the proposed conservation measures, the project footprint which is on the edge of critical habitat in a developed residential area, and the short-term, localized activity associated with maintenance actions, together with the low probability of Alameda whipsnake occurring in maintenance areas, we concur that the effects of the project on the Alameda whipsnake and its designated critical habitat will be insignificant and discountable.

The remainder of this document provides our biological opinion on the effects of the proposed project on the California red-legged frog and California tiger salamander.

Consultation History

- March 4, 2022: The Service received the Corps' March 4, 2022, letter requesting initiation of consultation for the proposed project as well as the associated Biological Assessment via email.
- April 20, 2022: The Service requested clarifying and additional information for conference opinion regarding the potential for the listing of the foothill yellow-legged frog Central Coast DPS during the proposed project implementation period from the Corps and the applicant.
- April 21, 2022: The Service received the determination that the proposed actions would have no effect on the foothill yellow-legged frog, therefore no conference opinion was requested.

BIOLOGICAL OPINION

Description of the Proposed Action

The applicant proposes to conduct routine maintenance over a 5-year period for 17 stream sections and 8 stormwater detention ponds throughout the City of Pleasanton to maintain their flood control and stormwater conveyance capacity. Maintenance actions include periodic removal of debris, sediment, and vegetation in and adjacent to stream corridors and detention basins. Locations range from a concrete drainage between Pimlico Drive and the Interstate 580 freeway, to a naturalized stream running through Mission Park, or a detention basin in the Bernal Community Park. All material removed from channels and ponds would be loaded into dump trucks and hauled to the City's existing Laguna Creek soil disposal site. The applicant would conduct all maintenance work between April 15 and October 31 each year during normal working hours from 8 a.m. to 5 p.m.

Weed Abatement in Detention Basins

An agriculture tractor equipped with a fail or rotary type mower is used to abate weeds along and in the maintenance road, along the top of the banks of the basin, the basin floor and the internal and external bank slopes of the basin. Time required for this maintenance action ranges from one to two days per site depending on the size of the basin.

Silt and Rock Removal in Detention Basins

Dump trucks, backhoe and excavator are used to scrape and off-haul the silt or washed-in rock materials layer from floor of the basin. If the area is inundated, dewatering would be conducted to dry and isolate the work area. Time required for maintenance actions varies from one to four days per site.

Weed Abatement in Streams

An enclosed cab, tracked Bobcat with a mowing attachment is used along the maintenance road, along stream bank tops and within the channel itself. Weed abatement along steeper banks or areas unreachable by the Bobcat occurs with gas powered string trimmers. Small sites would require two to three hours to complete. Larger sites for which a Bobcat is required take four to twelve hours of work. This work may occur at most stream sites.

Silt and Rock Removal in Streams

Infrequent silt and rock removal may occasionally be needed within stream areas. Dump trucks, backhoes or excavators are used to remove and haul off silt or washed-in rock materials from the streams. If the area is inundated or flowing, dewatering would be conducted to isolate the work area through installation of coffer dams and a bypass pipe, if necessary. Time required for this maintenance action varies from one to three days per site.

Tule Removal

Dump trucks and an excavator are utilized to dig out tules and their roots from streambeds in order to restore flow capacity through existing channels and infrastructure, such as culverts. Removed tules are loaded into the dump trucks and hauled to Laguna Creek soil disposal site. If the area is inundated or flowing, dewatering would be conducted to isolate the work area through installation of coffer dams and a bypass pipe, if necessary. Tule removal in locations with potential California tiger salamanders may use herbicide treatment instead of mechanical control in order to avoid and minimize the potential to disturb moist soils. Street sweepers are scheduled to sweep the haul route mid-day and after the last load of the day to control dirt and mud. Each site would require from one to five days to complete.

Riparian Tree Maintenance

Hand powered mechanical methods will be used to prune and trim riparian trees along the tops of stream banks as found to be necessary.

Trash Removal

Debris will be collected, loaded into trash bags, and disposed of at an appropriate landfill/disposal facility. Smaller trash items will be removed by hand and with the use of trash grabbers. Any larger items may be skidded out of channels or retention ponds using handlines, cables, and/or vehicle mounted winches. Larger items removed in this way would be landed on access roads near aquatic features within the Action Area where they could be placed in a vehicle and properly disposed.

Dewatering

Sites would be dewatered when necessary to avoid work in flowing or standing water. Cofferdams or other diversion structures would be constructed from materials that are fully contained and can be completely removed from aquatic habitat, such as clean, bagged gravel or rubber bladders. Cofferdams or other diversion structures would be completely removed upon completion of a maintenance activity. Proposed dewatering plans would be included in annual work plans submitted to regulatory agencies, and would require monitoring by a qualified biologist during coffer dam installation, dewatering of the site, and coffer dam removal.

Conservation Measures

The applicant has proposed the following conservation measures to avoid and minimize effects on federally listed species and their habitat. Proposed avoidance and minimization measures for the project are based on measures from the East Alameda County Conservation Strategy and the associated Programmatic Biological Opinion, but modified slightly in some cases to be specific to the needs of this project.

General Avoidance and Minimization Measures

1. An environmental awareness training program will be given to all contractor crew members working on the Action. The training will be given by a Service-approved biologist and will include education on sensitive resources such as protected wildlife with the potential to occur within the Action Area, water quality, and the Action's environmental protection measures.
2. Erosion control measures will be utilized throughout all phases of the Action where sediment runoff from construction may potentially enter waters. Erosion control structures will be monitored for effectiveness and will be repaired or replaced as needed. Appropriate erosion control measures will be installed around any stockpiles of soil or other materials that could be mobilized by rainfall or runoff.
3. Prior to any work activities that could release hazardous materials into the environment, an Accidental Spill Prevention and Cleanup Plan will be prepared and followed. This plan will include required spill control absorbent material, for use beneath stationary equipment, to be always present on-site and available.
4. No fueling, cleaning, or maintenance of vehicles or equipment will take place within any areas where an accidental discharge may cause hazardous materials to enter waterways.
5. Any equipment or vehicles used for the Action will be checked and maintained daily to prevent leaks of fluids that could be deleterious to aquatic habitats.
6. All equipment will be cleaned before arriving on the site and before removal from the site to prevent spread of invasive plants.
7. Construction disturbance or removal of vegetation will be restricted to the minimum footprint necessary to complete the work. The work area will be delineated where necessary to minimize impacts to vegetated habitats beyond the work limit, or to protect vegetation within the work area that does not need to be removed as part of maintenance activities.
8. To minimize temporary habitat disturbances, Action-related vehicle traffic will be restricted to established roads and maintenance activity areas. Action-related vehicles will observe a 15-mile per hour speed limit within maintenance activity areas.
9. Work shall be conducted in isolation from flowing surface water. If surface water is present, prior to the start of activities, the work area will be isolated using temporary cofferdams, and flowing water shall be temporarily diverted around the isolated area. All coffer dams and construction materials will be removed from the work area following completion of work in each season.
10. Pumps used for dewatering at sites will be fitted with 0.25-inch mesh on water intakes to prevent California tiger salamander or California red-legged frog from entering the pump mechanism.
11. Prior to work occurring, locations and equipment access points that minimize riparian disturbance will be determined. Pre-existing access points will be used whenever

possible. Unstable areas, which may increase the risk of channel instability, will be avoided.

12. Staging and storage areas for equipment, materials, fuels, lubricants and solvents, will be located outside of the stream channel banks and outside of seasonal wetlands.
13. Stationary equipment such as motors, pumps, and generators, located adjacent to aquatic features will be positioned over secondary containment sufficient to arrest a catastrophic failure.
14. No construction debris of any type will be allowed to enter or be placed where it may be washed into any aquatic features.
15. At the end of the Action all temporary flagging, fencing, or other materials will be removed from the Action site and vicinity of the channel.
16. No equipment will be washed down where runoff could enter the creek.
17. No motorized equipment will be left within the channel overnight.
18. All maintenance equipment will be maintained to prevent leaks of fuels, lubricants, or other potentially toxic fluids.
19. All refueling and maintenance of equipment, other than stationary equipment, will occur outside of the top-of-bank. Refueling of stationary equipment within the channel (top of bank to top of bank) will only occur when secondary containment sufficient to eliminate escape of all potential fluids is in place.

California Tiger Salamander and California Red-Legged Frog Conservation Measures

1. The qualifications of the Service-approved biologist(s) will be submitted to the Service for review at least thirty (30) calendar days prior to the date earthmoving is initiated at sites where California tiger salamander and California red-legged frog has potential to occur.
2. A Service-approved biologist will conduct an education training for employees working on the Action. Personnel will be required to attend the training that will cover topics such as identification and legal protection of the California tiger salamander and California red-legged frog-specific avoidance and minimization measures.
3. To the extent practicable, ground-disturbing activities will be avoided between November 1 and April 30 because that is the time period when California tiger salamander and California red-legged frog are most likely to be moving through upland areas. If ground disturbing activity must occur within this time period, a Service-approved biologist will survey for California tiger salamander or California red-legged frog presence prior to work activities.
4. A Service-approved biologist(s) will be onsite during all ground disturbing activities including the use of mowers or other heavy equipment for removal of sediment and tules at sites where California tiger salamander and California red-legged frog have potential to occur.

5. Plastic monofilament netting (erosion control matting, or wrapping around straw or coir wattles), or similar plastic material in any form will not be used in order to avoid entangling, strangling, or trapping California tiger salamander, California red-legged frog, and other wildlife.
6. In order to avoid attracting predators of California tiger salamander and California red-legged frog, all trash will be deposited in covered or closed trash containers that will be removed from the sites regularly.
7. No work will occur in wet weather or within 48 hours after a rain event defined as 0.25 inch of rain within a 24-hour period.
8. Initial ground disturbance activities will cease 30 minutes before sunset or earlier and will not begin again until 30 minutes after sunrise or later.
9. If herbicide applications are anticipated as part of vegetation management at any Study Area with potential for California tiger salamander or California red-legged frog to occur, applications will be made during the dry season (i.e., applied May 1 – October 31) and only when the site is dry and no rain is forecast within 72 hours, to avoid runoff events into downstream waters.
10. Each encounter with the California red-legged frog will be treated on a case-by-case basis in coordination with the Service, but the general procedure is as follows: (1) the animal will not be disturbed if it is not in danger; or (2) the animal will be moved to a secure location if it is in any danger. These procedures are further described below:
 - a. When a California red-legged frog is encountered in the Action Area, all activities which have the potential to result in the harassment, injury, or death of the individual will be immediately halted. The Service-approved biologist will then assess the situation in order to select a course of action that will avoid or minimize adverse effects to the animal. To the maximum extent possible, contact with the frog will be avoided and the frog will be allowed to move out of the potentially hazardous situation to a secure location on its own volition. This procedure applies to situations where a California red-legged frog is encountered while it is moving to another location. It does not apply to animals that are uncovered or otherwise exposed or in areas where there is not sufficient adjacent habitat to support the species should the individual move away from the hazardous location.
 - b. California red-legged frogs that are in danger will be relocated and released by the Service-approved biologist outside the construction area within the same riparian area or watershed. If relocation of the frog outside the fence is not feasible (i.e., there are too many individuals observed per day), the biologist will relocate the animals to a location pre-approved by the Service. Prior to the initial ground disturbance, the applicant will obtain approval of the relocation protocol from the Service in the event that a California red-legged frog is encountered and needs to be moved away from the project site. Under no circumstances will a California red-legged frog be released on a site unless the written permission of the landowner has been obtained by the applicant.

- c. The Service-approved biologist will limit the duration of the handling and captivity of the California red-legged frog to the minimum amount of time necessary to complete the task. If the animal must be held in captivity, it will be kept in a cool, dark, moist, aerated environment, such as a clean and disinfected bucket or plastic container with a damp sponge. The container used for holding or transporting the individual will not contain any standing water.
 - d. The Applicant will immediately notify the Service once the California red-legged frog and the site is secure.
11. If California tiger salamander is encountered all activities which have the potential to result in the harassment, injury, or death of the individual will be immediately halted. The California tiger salamander will be avoided and will be allowed to move out of the potentially hazardous situation to a secure location on its own volition. The Service-approved biologist will determine when the California tiger salamander is out of harm's way and work may resume. If the California tiger salamander cannot move out of the way on its own or is injured or killed, the Applicant will immediately notify the Service and California Department of Fish and Wildlife (CDFW) to determine the appropriate next steps.

Action Area

The action area is defined in 50 CFR § 402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” For the proposed project, the action area encompasses 95.04 acres and is situated throughout the City of Pleasanton and the county of Alameda, mostly occurring in developed areas adjacent to park space or residential developments. The Action Area is made up of 25 site locations and is bounded to the north by Interstate 580, to the south by the Callippe Preserve Golf Course, to the west by Foothill Road and to the east by the intersection of Safreno Way and Vineyard Avenue, with one site located just west of Foothill Road. All creek segments and almost all detention ponds occur within the City limits. One detention pond, Vineyard East Detention Pond, is in unincorporated Alameda County.

Analytical Framework for the Jeopardy Determination

Section 7(a)(2) of the Act requires that federal agencies ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species. “Jeopardize the continued existence of” means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR § 402.02).

The jeopardy analysis in this biological opinion considers the effects of the proposed federal action, and any cumulative effects, on the rangewide survival and recovery of the listed species. It relies on four components: (1) the *Status of the Species*, which describes the current rangewide condition of the species, the factors responsible for that condition, and its survival and recovery needs; (2) the *Environmental Baseline*, which analyzes the current condition of the species in the action area without the consequences to the listed species caused by the proposed action, the factors responsible for that condition, and the relationship of the action area to the survival and recovery of the species; (3) the *Effects of the Action*, which determines all consequences to listed

species that are caused by the proposed federal action; and (4) the *Cumulative Effects*, which evaluates the effects of future, non-federal activities in the action area on the species. The *Effects of the Action* and *Cumulative Effects* are added to the *Environmental Baseline* and in light of the status of the species, the Service formulates its opinion as to whether the proposed action is likely to jeopardize the continued existence of the listed species.

Status of the Species

California red-legged frog

Refer to page 28 of the Programmatic Biological Opinion for the Status of the Species (Service 2012).

California tiger salamander

Refer to page 33 of the Programmatic Biological Opinion for the Status of the Species (Service 2012). For additional information and the most recent comprehensive assessment of the California tiger salamander's range-wide status, please refer to the species' 2014 *5-Year Review* (Service 2014) and 2017 *Recovery Plan* (Service 2017). No change in the species' listing status was recommended in this *5-Year Review*.

Environmental Baseline

Environmental baseline refers to the condition of the listed species or its designated critical habitat in the action area, without the consequences to the listed species or designated critical habitat caused by the proposed action. The environmental baseline includes the past and present impacts of all federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of state or private actions which are contemporaneous with the consultation in process. The consequences to listed species or designated critical habitat from ongoing agency activities or existing agency facilities that are not within the agency's discretion to modify are part of the environmental baseline.

The City of Pleasanton contracted WRA Environmental Consultants to conduct habitat assessments of the action area which included a site visit in July of 2019.

California red-legged frog

California red-legged frog has potential to occur within 2 of the 25 sites. One site, called C-06 in the Mission Creek Restoration Area, is 31.29 acres and is a natural perennial stream reach that passes beneath Interstate 680. The closest documented occurrence of California red-legged frog to this site is approximately 2 miles to the southeast, and is in a stock pond (Diversity Database 2022). Another documented population exists approximately 1.8 miles to the southeast within the water features of the Callippe Preserve Golf Course (Diversity Database 2022). Overland dispersal directly from either of these populations is unlikely, given their distance from this site and the presence of barriers to dispersal in the form of residential development and major roadways. However, this site is hydrologically connected to Alameda Creek at their western end. Alameda Creek has several documented occurrences of California red-legged frog along Niles Canyon Road to the south; these populations could potentially provide a source population for this site under the right circumstances. This site is densely riparian in nature, with large trees along both banks and dense shrubs and emergent vegetation along the stream banks. Although

water was not at high flow during the WRA Environmental Consultants July 2019 site visit, pools were observed along the length of C-06 that could support suitable aquatic non-breeding habitat. Emergent vegetation is present as well that may allow for egg mass deposition. C-06 may provide aquatic breeding habitat for California red-legged frog given appropriate flow and water quality conditions. Additionally, given the presence of water and small pools within the stream channel during a dry season site visit, C-06 has suitable nonbreeding aquatic habitat for California red-legged frog. Adults may be present in areas with standing water or in directly adjacent uplands during the dry season. Given that California red-legged frog is generally documented in the vicinity and that this site is directly connected to a perennial waterway that supports known populations nearby, the presence of California red-legged frog at this site cannot be ruled out.

The second site, called C-14 in Dublin Canyon Creek, is 0.78 acre and is a natural perennial stream that runs adjacent to Interstate 580. This site is located adjacent to bridges that connect Dublin Canyon Road to apartment complexes on the north side of the road. C-14 is characterized at the bridge locations by steep banks and a stream bed with a large cobble substrate. California red-legged frog has been documented in the vicinity of this site to both the north and south. The closest occurrences are located approximately 0.75 mile to the northwest on the north side of Interstate 580 (Diversity Database 2022), although Interstate 580 constitutes a nearly complete barrier to dispersal. California red-legged frog is additionally documented in open spaces in the hills to the south of site C-14. While the creek was not at high flow during the WRA Environmental Consultants July 2019 site visit, pools were observed that could serve as aquatic non-breeding habitat. Vegetation around C-14 is riparian in nature, and consists of large oak trees and dense riparian understory shrubs. Directly adjacent areas are either paved or landscaped. Very little vegetation was observed in the stream channel itself, suggesting that California red-legged frogs are unlikely to breed in this reach of Dublin Canyon Creek due to the lack of substrates on which to affix egg masses. Therefore, C-14 is unlikely to provide aquatic breeding habitat given the lack of emergent vegetation or other egg-laying substrates in the stream channel. However, given the presence of water and small pools within the stream channel during a dry season site visit, C-14 has suitable non-breeding aquatic habitat for California red-legged frog. Adults may be present in areas with standing water or in directly adjacent uplands during the dry season. Therefore, based on the biology and ecology of the California red-legged frog, the Service has determined that this species may be present in the action area and may use it as aquatic non-breeding habitat or upland foraging or refugia habitat.

California tiger salamander

California tiger salamander has the potential to occur at 4 of the 25 sites. The first site, called P-05, is 0.18 acre and is a detention pond bordered by the Callippe Preserve Golf Course to the south and undeveloped open space to the north on the other side of Westbridge Lane. The closest occurrence to this site is 0.5 miles to the southeast in a small stock pond (Diversity Database 2022). Other occurrences in the vicinity of P-05 are documented in residential ponds or vernal pools (Diversity Database 2022). Although occurrences are within dispersal distance of P-05, habitat within P-05 is marginal. P-05 is a small stormwater drainage basin with ruderal vegetation and a culverted drainage. While P-05 may occasionally fill with water after precipitation events, it is designed to draw down quickly and does not hold water for a sufficient time period for California tiger salamander larvae to attain metamorphosis. Therefore, P-05 does not contain suitable aquatic breeding habitat. Ground squirrel burrows were identified near P-05 that could provide estivation habitat for California tiger salamander during the dry season, however, no burrows were found within the P-05 site. Thus, California tiger salamander would

likely only be present above ground within the P-05 site as dispersal movement or foraging during the wet season which would be during or shortly after precipitation events.

Two sites, called P-07 that is 1.83 acres and P-08 that is 1.33 acres, are stormwater detention ponds located proximally along the north side of Vineyard Road. These sites are surrounded by residential development, open space, and materials plants, with multiple large, fabricated water bodies to the north of these 2 sites. California tiger salamander has historically occurred within 0.4 miles north of these sites; however, the occurrence is indicated to be possibly extirpated (Diversity Database 2022). Extensive open space to the south with occurrences of California tiger salamander suggest that individuals could potentially disperse across Vineyard Road to utilize these sites under certain circumstances and conditions. Sites P-07 and P-08 are not suitable aquatic breeding habitat for California tiger salamander as they are stormwater detention ponds and are thus designed to briefly hold water and then quickly draw down. Both sites are within dispersal distance of potential suitable aquatic habitat, and the area directly surrounding these detention ponds contain ground squirrel burrows. California tiger salamander may utilize the nearby ground squirrel burrows as estivation habitat, but would only be above ground during or shortly after precipitation events during upland dispersal movements.

The last site, called C-17, is 0.09 acre and is a culverted drainage within a residential development along Lund Ranch Road. C-17 is not suitable aquatic habitat at any life stage as portions of C-17 are cement lined and the site is designed to not hold water for extended periods of time. No small mammal burrows or underground refugia are present within the C-17 site. However, C-17 is located close to a large expanse of open space where California tiger salamander are known to occur. The closest occurrence is approximately 0.35 mile to the southeast in an old stock pond (Diversity Database 2022). Suitable upland habitat is likely within the open spaces to the east and south of C-17 as most of the area remains undeveloped or grazed. Aquatic habitat is present in these open spaces as stock ponds within dispersal distance of C-17. California tiger salamanders may utilize this site during or shortly after precipitation events during upland movement dispersal between patches of more suitable habitat. However, residential development and paving to the north and west of the site may act as a potential barrier to California tiger salamanders making upland dispersal movements during or shortly after precipitation events. Therefore, based on the biology and ecology of the California tiger salamander, the Service has determined that this species may be present in the action area and may use it as upland foraging or dispersal habitat.

Effects of the Action

Effects of the action are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action.

Direct effects to California red-legged frog may occur in aquatic habitats within the action area, specifically at site C-14 as this site will be dewatered to isolate the work area. California red-legged frog may be injured or killed during the dewatering process. At sites where activities are restricted to surface trash removal and mowing, California red-legged frog and California tiger salamander may be injured or killed if struck by the mower or blades. Having a Service-approved biologist be present to monitor all dewatering and ground disturbing activities will

reduce the potential of injury or mortality of California red-legged frog and California tiger salamander.

Discovery, capture, and relocation of individual California red-legged frogs and California tiger salamander may avoid injury or mortality during the proposed action; however, capturing and handling of animals may result in stress and/or inadvertent injury during handling, containment, and transport. A Service-approved biologist will use best practices as outlined in the *Description of the Proposed Action* to minimize this risk. It is expected that very few California red-legged frogs and California tiger salamanders will need to be captured and relocated due to the low quality of present habitat in the action area and work being restricted to occur only during the dry season.

A Service-approved biologist will educate project personnel to make workers aware of their requirements to comply with the conservation measures and increase the possibility that California red-legged frog and California tiger salamander in the work area will be identified and addressed appropriately for avoidance. Worker education is limited by the effectiveness of the presentation and the willingness of the construction personnel to participate in compliance.

These are distinct and short-term events, and no change in feeding, dispersal, or other behavior is anticipated beyond the time activity is occurring. There is no anticipated permanent loss of California red-legged frog or California tiger salamander habitat as a result of the proposed action.

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 that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. During this consultation, the Service did not identify any future non-federal actions that are reasonably certain to occur in the action area of the proposed project.

Conclusion

After reviewing the current status of the California red-legged frog and California tiger salamander, the environmental baseline for the action area, the effects of the proposed Pleasanton Stream and Pond Maintenance Project, and the cumulative effects, it is the Service's biological opinion that the Pleasanton Stream and Pond Maintenance Project, as proposed, is not likely to jeopardize the continued existence of the California red-legged frog, or California tiger salamander. The Service reached this conclusion because the project-related effects to the species, when added to the environmental baseline and analyzed in consideration of all potential cumulative effects, will not rise to the level of precluding recovery or reducing the likelihood of survival of the species based on the following:

- 1) Adverse effects to the California red-legged frog, and California tiger salamander will be reduced by implementation of the described *Conservation Measures*.
- 2) The temporary nature of the Project makes the likelihood of encountering a California red-legged frog and a California tiger salamander low.

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 to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by Service regulations at 50 CFR 17.3 as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the same regulations as an act which actually kills or injures wildlife. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior 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 that is 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 the Corps so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity covered by this incidental take statement. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant 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, the Corps 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

California red-legged frog

The Service anticipates that incidental take of California red-legged frogs will be difficult to detect due to its life history and ecology. Specifically, California red-legged frogs can be difficult to locate due to their cryptic appearance and finding a dead or injured individual is unlikely due to their relatively small size. Losses of California red-legged frogs may also be difficult to quantify due to seasonal fluctuations in their numbers, random environmental events, changes in water regime at their breeding ponds, or additional environmental disturbances. Therefore, the Service anticipates that all California red-legged frogs within the action area will be subject to incidental take in the form of non-lethal harm. The Service also anticipates that no more than two (2) California red-legged frogs would be killed or injured as a result of project-related activities and would be detected by biological monitors.

California tiger salamander

The Service anticipates that incidental take of California tiger salamanders will be difficult to detect due to its life history and ecology. Specifically, California tiger salamanders can be difficult to locate due to their cryptic appearance and finding a dead or injured individual is unlikely due to their relatively small size. Losses of California tiger salamanders may also be

difficult to quantify due to seasonal fluctuations in their numbers, random environmental events, or additional environmental disturbances. Therefore, the Service anticipates that all California tiger salamanders within the action area will be subject to incidental take in the form of non-lethal harm. The Service also anticipates that no more than two (2) California tiger salamanders would be killed or injured as a result of project-related activities and would be detected by biological monitors.

Upon implementation of the following reasonable and prudent measures, incidental take of California red-legged frogs and California tiger salamanders associated with the Pleasanton Stream and Pond Maintenance Project will become exempt from the prohibitions described in section 9 of the Act. No other forms of take are exempted under this opinion.

Effect of the Take

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species.

Reasonable and Prudent Measures

All necessary and appropriate measures to avoid or minimize effects on the California red-legged frog and California tiger salamander resulting from implementation of this project have been incorporated into the project's proposed conservation measures. Therefore, the Service believes the following reasonable and prudent measure is necessary and appropriate to minimize incidental take of the California red-legged frog and California tiger salamander:

- 1) All conservation measures, as described in the biological assessment and restated here in the *Description of the Proposed Action* section of this biological opinion, shall be fully implemented and adhered to. Further, this reasonable and prudent measure shall be supplemented by the terms and conditions below.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Corps must ensure compliance with the following terms and conditions, which implement the reasonable and prudent measure described above. These terms and conditions are nondiscretionary.

1. The Corps shall include full implementation and adherence to the conservation measures as a condition of any permit or contract issued for the project.
2. The Corps shall require that all personnel associated with this project are made aware of the conservation measures and the responsibility to implement them fully.
3. If requested, the applicant shall ensure the Service or their authorized agents can examine the action area for compliance with the *Description of the Proposed Action*, *Conservation Measures*, and *Terms and Conditions* of this biological opinion before, during, or after project completion.

Monitoring:

1. The Corps shall immediately contact the Service's Sacramento Fish and Wildlife Office (SFWO) at (916) 414-6623 to report direct encounters between listed species and project

workers and their equipment whereby incidental take in the form of harm, injury, or death occurs. If the encounter occurs after normal working hours, the Corps shall contact the Office at the earliest possible opportunity the next working day. When injured or killed individuals of the listed species are found, the Corps shall follow the steps outlined in the *Salvage and Disposition of Individuals* section below.

2. For those components of the action that will require the capture and relocation of any listed species, the Corps shall immediately contact the SFWO at (916) 414-6623 to report the action. If capture and relocation need to occur after normal working hours, the Corps shall contact the SFWO at the earliest possible opportunity the next working day.
3. For those components of the action that will result in habitat degradation or modification whereby incidental take in the form of harm is anticipated, the Corps shall provide a precise accounting of the total acreage of habitat impacted to the Service after completion of construction.
4. To avoid transferring disease or pathogens while handling amphibians, Service-approved biologists must follow the recommendations from the Declining Amphibian Population Task Force's Code (https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_Force_Fieldwork_Code_of_Practice.pdf).

Salvage and Disposition of Individuals

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 person is the Coast Bay Division Supervisor of the SFWO at (916) 414-6623.

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) Observations of listed species should be submitted to the California Natural Diversity Database (<https://wildlife.ca.gov/Data/CNDDB>) within sixty days of observation. A copy of the reporting form and a topographic map clearly marked with the location the animals were observed should also be provided to the Service.

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 on the Pleasanton Stream and Pond Maintenance Project. As provided in 50 CFR §402.16(a), reinitiation of consultation is required and shall be requested by the federal agency or by the Service where discretionary federal involvement or control over the action has been retained or is authorized by law, and:

- 1) If the amount or extent of taking specified in the incidental take statement is exceeded;
- 2) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- 3) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or written concurrence, or
- 4) If a new species is listed or critical habitat designated that may be affected by the identified action.

If you have any questions regarding this biological opinion, please contact Arwen Freeman, Fish and Wildlife Biologist (arwen_freeman@fws.gov) at (916) 414-6643 or Ryan Olah, Coast Bay Division Supervisor (ryan_olah@fws.gov), at the letterhead address or at (916) 414-6623.

Sincerely,

Michael Fris
Field Supervisor

ec:

Rita Di Candia, City of Pleasanton, Pleasanton, California
Leslie Lazarotti, WRA, Inc., San Rafael, California
U.S. Army Corp of Engineers, San Francisco, California

LITERATURE CITED

- California Natural Diversity Database (Diversity Database). 2022. RareFind 5 [Internet]. Occurrence Reports for Alameda whipsnake, California red-legged frog, and California tiger salamander. California Department of Fish and Wildlife, California. Accessed: April 2022.
- U.S. Fish and Wildlife Service (Service). 2012. Programmatic Biological Opinion for the East Alameda County Conservation Strategy. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California. 109 pp.
- U.S. Fish and Wildlife Service. 2014. California Tiger Salamander Central California Distinct Population Segment (*Ambystoma californiense*). 5-Year Review: Summary and Evaluation. U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Sacramento, California. 63 pp.
- U.S. Fish and Wildlife Service. 2017. Recovery plan for the Central California Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, California. v + 69 pp.