



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:
08ESMF00-2012-TA-0387-1

MAY 01 2012

Ms. Jane M. Hicks
Chief, Regulatory Division
Attn: Holly Costa
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, California 94103-1398

Subject: Information Request for Section 7 Consultation for the Oakland Zoo California Exhibit Expansion Project, City of Oakland, Alameda County, California (Corps File No. 2012-00032S)

Dear Ms. Hicks:

This letter is in response to your March 9, 2012, letter requesting informal consultation with the U.S. Fish and Wildlife Service (Service) for the effects to the federally threatened California red-legged frog (*Rana draytonii*) and threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) for the Oakland Zoo California Exhibit Expansion Project in the City of Oakland, Alameda County, California. Your letter in conjunction with a "not likely to adversely affect" determination for these species was received in our office on March 13, 2012. Your letter concludes that if additional information becomes available that would lead the Corps to determine that the project would adversely affect any federally listed species then your March 9, 2012, letter would also serve as your written initiation of formal consultation. This letter is to inform you that we do not concur with your determination and the provided information is insufficient to initiate formal consultation. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act).

Your letter refers to the Joint Aquatic Resource Permit Application (JARPA) which contains several documents with varying levels of detail and analysis. The California Environmental Quality Act (CEQA) documents in Attachment C and the Biological Assessment and appendices in Attachment D of the JARPA are specifically referenced. However, it is unclear which document or if all of the documents are to be used for the section 7 consultation. The document should not be used as a biological assessment for federally listed species during federal consultation under the Act. The CEQA document does not contain adequate information for

section 7 consultation. Additionally, the Biological Assessment and the CEQA document contain different minimization and mitigation measures and it is not clear which measures are intended to be included in this consultation.

To minimize confusion, the remainder of this response letter will only refer to Attachment D of the JARPA which includes the Biological Assessment and its appendices. The Biological Assessment for the proposed project does not contain a level of detail sufficient to prepare a biological opinion or a concurrence with a not likely determination and does not contain all of the information necessary to initiate formal consultation as outlined in the regulations governing interagency consultations (50 CFR § 402.14). In order to fully evaluate the potential effects to listed species as a result of the proposed project, the Service has the following comments and information requests:

1. Please provide color copies of the documents to be used for this consultation. All of the figures have color coded legends or have items that are differentiated by color and are unreadable in the provided black and white copy.
2. Please provide a biological assessment for the California red-legged frog. Your letter requests consultation but the Biological Assessment does not provide sufficient information on the California red-legged frog to make any determination. As noted above, the CEQA document is an inadequate and inappropriate document for section 7 consultation.
3. Page 7, Section 2.2.1 Detailed Description of the Project: The description of the exhibits should be as close to the final project design as possible. Any changes to the project that may affect listed species and/or suitable habitat will result in the need for this consultation to be reinitiated.
4. Page 7, Section 2.2.1 Detailed Description of the Project: The Veterinary Hospital should not be included in this consultation since technical assistance from the Service was provided to the Oakland Zoo and the Veterinary Hospital is currently under construction. Additionally, the Service did not provide "informal consultation" as stated in this paragraph. The regulatory definition of informal consultation can only occur between the Service or National Marine Fisheries Service and a federal action agency. The Service provided technical assistance to the Oakland Zoo and did not consult with a federal agency.
5. Page 8, Section 2.2.1 Detailed Description of the Project, Aerial Gondola People-Moving System: This subsection does not describe the construction methods including support structure construction, equipment, construction timing or duration, or access roads needed to construct the gondola.
6. Page 8, Section 2.2.1 Detailed Description of the Project, California Interpretive Center: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the building.
7. Page 8-9, Section 2.2.1 Detailed Description of the Project, Wolf, Jaguar, Eagle and

- Condor Exhibits: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the exhibits.
8. Page 9, Section 2.2.1 Detailed Description of the Project, Beaver/Water Fowl Aviary and Restrooms: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the exhibits and restrooms.
 9. Pages 9-10, Section 2.2.1 Detailed Description of the Project, Grizzly Bear Exhibit: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the exhibit.
 10. Page 10, Section 2.2.1 Detailed Description of the Project, Mountain Lion/Black Bear Exhibits: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the exhibits.
 11. Page 10, Section 2.2.1 Detailed Description of the Project, Small Exhibit Activity Zone: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the activity zone.
 12. Pages 10-11, Section 2.2.1 Detailed Description of the Project, Interpretive Kiosk, Botanical Exhibit and Bison/Tule Elk Feeding Station: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the exhibits.
 13. Page 11, Section 2.2.1 Detailed Description of the Project, Overnight Experience: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the campground or facilities.
 14. Page 11, Section 2.2.1 Detailed Description of the Project, Perimeter Fence: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the fence. Will the fence be maintained for fuels reduction? Will there be a vegetation buffer around the fence? Please provide details on the fence design and the wildlife passage mentioned in this subsection.
 15. Page 11, Section 2.2.1 Detailed Description of the Project, Landscaping: This subsection does not describe the where the landscaping will occur or the methods, where the signage and/or irrigation would be located. This subsection should also include construction details similar to the above comments.
 16. Page 12, Section 2.2.1 Detailed Description of the Project, Veterinary Hospital: The

Veterinary Hospital should not be included in the project description for this consultation since technical assistance from the Service was provided to the Oakland Zoo and it is currently under construction.

17. Pages 12-13, Section 2.2.1 Detailed Description of the Project, Access Roads and Paths: Please provide a figure or figures in the Biological Assessment that show the existing paths in relation to the proposed extended and new paths. Also provide details on construction methods, staging areas, materials, and maintenance schedule of roads and paths (need to analyze if there are on-going effects).
18. Page 13, Section 2.2.1 Detailed Description of the Project, Grading Plans: Please provide a final grading plan in the Biological Assessment. Will there be grading outside of building and exhibit footprints? Will there be grading for slope stabilization?
19. Page 13, Section 2.2.1 Detailed Description of the Project, Water Facilities: This subsection does not describe the construction methods, construction footprint, equipment, construction timing or duration, or access roads needed to construct the pipelines.
20. Page 14, Section 2.2.1 Detailed Description of the Project, Storm Drain Facilities: This subsection does not describe the construction footprint, equipment, construction timing or duration, or access roads needed to construct the facilities.
21. Page 15, Section 2.2.1 Detailed Description of the Project, Electricity and Natural Gas Facilities: This subsection does not describe the construction footprint, equipment, construction timing or duration, or access roads needed to construct the facilities.
22. Page 16, Section 2.2.1 Detailed Description of the Project, Proposed Construction Activities and Schedule: If construction details are not described in the specific activity sections they should be described here. If the construction and phasing changes where project effects change, the project will need to be reinitiated. This includes habitat loss.
23. Page 16, Section 2.2.1 Detailed Description of the Project, Habitat Enhancement Plan and Appendix B: The Habitat Enhancement Plan does not contain detailed information on the activities nor does it provide an effects analysis on those activities on listed species. Many "Implementing Actions" are to develop plans and programs but are not actual plans that the Service can analyze for beneficial or adverse effects to listed species. Please provide specific details and analysis of effects these actions may have on listed species.
24. Page 16, Section 2.2.1 Detailed Description of the Project, Ecological Recovery Zone: Refer to comment #23.
25. Page 18, Section 3.2. Records Review, Threatened, Endangered, Proposed Threatened or Proposed Endangered Species: Refer to comment 4 regarding informal consultation. The technical assistance request and response did not include any avoidance measures for California red-legged frogs and this section does not describe the specific measures that were discussed during the site visit. There are no measures outlined in the Biological

Assessment specific to California red-legged frogs contrary to page 2 of your letter.

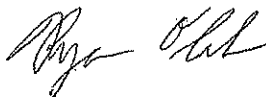
26. Page 32-33, Section 5.1.1, Permanent Loss of Habitat or Potential Reduction of Habitat Value and Table 3: Please define the terms: "permanent limited", "permanent full loss", and "permanent low disturbance". The math is incorrect in Table 3. $8.94 + 0.20 + 9.14 + 7.46 = 25.74$ not 16.60 for example. This section appears to be contradictory. Please explain how placing animals with large home ranges in an unnaturally small enclosure will provide "significant habitat value for the Alameda whipsnake and are considered a permanent affect but not a total loss"? Regardless of whether these large mammals were once native to California, keeping them in a small space will damage the existing vegetation (pacing, trampling, grazing, urination/defecation, bedding down, etc.). Please clarify how if it is not a "total loss of habitat" how Alameda whipsnakes will be able to utilize these enclosures and will not avoid them in the future. This would be an indirect permanent loss of habitat. Additionally, it is unclear how the roads are being characterized as permanent or temporary impacts to habitat.
27. Page 32-33, Section 5.1.2. Temporary Impacts to Potential Alameda Whipsnake Habitat During Construction and Table 3: Please account for all access roads and specify which are truly temporary (restored within one season and not used again). It is unclear how the conversion of habitat to maintained fire trails is a temporary impact. The Service considers conversion of habitat to a maintained road or trail permanent habitat loss. Please fully describe how these actions are temporary.
28. Page 33, Section 5.1.3 Impacts Due to Fuel Management: Please provide a fuels management plan for this project. This section is too vague to fully analyze potential effects to individuals and habitat. On-going maintenance is considered a permanent effect to habitat. Will fuel management need to occur in other areas like the perimeter fence? Also, "take" as mentioned in the last sentence of this section appears to be referring to the State definition of "take". The federal definition of take includes harm in the form of habitat loss and not just effects to individuals. This is an important distinction.
29. Page 35, Section 5.2.1 Potential Alteration of Alameda Whipsnake Movement: Refer to comment 26. Please provide rationale for these assertions.
30. Page 36, Section 7.0 Mitigation and Monitoring Measures: It would be helpful to have the measures mentioned in one section and not spread out and duplicated between multiple documents, drafts, and appendices. Please include the measures and designed that are applicable to this consultation into this biological assessment and not refer to the CEQA document. The CEQA document is voluminous and not adequate for section 7 purposes.
31. Page 36, Section 7.0 Mitigation and Monitoring Measures: The first paragraph mentions the draft Mitigation and Monitoring Plan and states it will be finalized through negotiation with the Service and the California Department of Fish and Game. The Service has not been involved with the preparation of this document and the Mitigation and Monitoring Plan will need to be finalized before formal consultation can commence. These negotiations can occur through informal consultation. The Mitigation and Monitoring Plan

in its current iteration is unacceptable to the Service.

32. Page 36, Section 7.0 Mitigation and Monitoring Measures, Construction Mitigation: The Service will require a Service-approved biological monitor on-site during all construction activities. Please describe the measures that will be taken to prevent the spread of French broom.
33. Page 37, Section 7.0 Monitoring: The Service will require weekly construction reports and monthly vegetation management reports. Post-construction monitoring needs to include adaptive management triggers and remediation actions.
34. Page 37-39, Section 7.0 Compensation Mitigation: Refer to comment 26. These ratios and definitions of effects to habitat are not acceptable to the Service. This section states the ratios were based on a previous resource consultation but doesn't say which consultation, agency, species, or if this is even appropriate for this project. Table 3 and Table 4 have different numbers for permanent impacts. Any habitat proposed for a conservation easement will not be open to the public or public uses including zoo activities. Therefore, the proposal is not acceptable to the Service. Because of this, the Service will not comment further on the proposal elements at this time.
35. Page 39-40, Section 8.0 Determination: This section concludes the project is likely to adversely affect the Alameda whipsnake and requests formal consultation and does not mention the California red-legged frog.
36. The Service requests an adequate project description including but not limited to all aspects of construction, habitat enhancement and management, minimization measures and an effects analysis for all listed species that may be affected. Specific measures to minimize those effects, including loss of habitat, should also be included.

Until we receive the requested information, the Service cannot begin formal consultation on the the Oakland Zoo California Exhibit Expansion Project. If you have any questions regarding this response, please contact Kim Squires, Senior Endangered Species Biologist (Kim_Squires@fws.gov) or Ryan Olah, Coast Bay/Forest Foothills Division Chief (Ryan_Olah@fws.gov) at the letterhead address or telephone (916) 414-6600.

Sincerely,



Eric Eric Tattersall
Deputy Assistant Field Supervisor

cc:

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