

FW Proposed Rockville Trails Estates and Solano Water Biological Opinion

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Sent: Monday, September 01, 2008 10:18 AM  
To: Yankovich, Michael G.  
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Subject: Proposed Rockville Trails Estates and Solano Water Biological Opinion

Dear Mr. Yankovich:

This electronic mail message concerns the Rockville Trails Estates project in Solano County, California. On August 6, 2008, the U.S. Fish and wildlife Service (Service) provided your agency with two letters commenting on the Revised Draft Environmental Impact Report for the Rockville Trails Estates Residential Subdivision in the County of Solano, California (SCH 2005012037) (Service files 81420-2008-TA-1798 and 81420-2008-TA-1798-1). At issue are the effects of the project on the threatened California red-legged frog (*Rana aurora draytonii*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), threatened vernal pool fairy shrimp (*Branchinecta lynchi*), endangered vernal pool tadpole shrimp (*Lepidurus packardii*), endangered Contra Costa goldfields (*Lasthenia conjugens*), endangered showy indian clover (*Trifolium amoenum*). This e-mail is based on the Formal Consultation on the Water Service Contract Renewal between the Bureau of Reclamation and Solano Water Agency, Solano and Yolo Counties, California (Service file 1-1-99-F-54) dated March 19, 1999 (Solano water biological opinion). Our comments and recommendations are made under the authority of the Endangered Species Act of 1973, as amended (16 USC 1531 § et seq)(Act).

We believe the Rockville Trails Estates project will fall under the requirements of the Solano water biological opinion if the water for the project is supplied by the Solano Irrigation District, Maine Prairie Water District, City of Fairfield, or one of the other Member Agencies included in the biological opinion.

Numbers 3 and 4 of the Short-Term Conservation Measures on pages 21-23 in the Solano water biological opinion state:

3. The four cities will require new project proponents to provide evidence of compliance with the Act prior to approval of any action or project (including issuance of permits, plan amendments, zoning changes, etc). This requirement does not apply to ministerial actions, previously approved projects as of the date of the water contract renewal, or to rebuilding or minor additions and expansions on previously developed areas of the parcels, as long as the action will not affect any listed species or their habitat. This requirement will be met by the following processes:

a. As part of the CEQA process, the cities will include the following language as part of the Initial Study or EIR for a project, if either indicates that threatened or endangered species could be adversely by the project:

“The applicant is hereby notified of additional conditions as stipulated by the U.S. Fish and wildlife Service (Service). Features of the applicant’s project may adversely affect federally listed threatened or endangered species. An applicant must go through one of two processes to obtain authorization to take federally listed species incidental to completing this project. First, when the authorization or funding of a Federal agency is an aspect of a project that may affect federally listed species, section 7 of the Endangered Species Act requires the Federal agency to formally consult with the Service. Formal consultation is concluded when the Service issues a biological opinion to the Federal agency. The biological opinion includes terms and conditions to minimize the effect of take on listed species.

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The Federal agency must make the terms and conditions into binding conditions of its own authorization to the project applicant. An example of this process is when the U.S. Army Corps of Engineers consults with the Service prior to issuing a permit to fill jurisdictional waters under section 404 of the Clean Water Act. The terms and conditions of the biological conditions become binding on the project applicant through the Corps' 404 authorization. Second, when no Federal funding or authorization is involved in a project, an applicant must prepare a habitat conservation plan and obtain a permit directly from the Service in accordance with section 10(a)(1)(B) of the Act. For further information on these processes please contact the Endangered Species Division of the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office at (916) 979-2527."

b. If either the Initial Study or EIR for a project indicates that threatened or endangered species could be adversely affected by the project, the member agencies (Service note: the member agencies includes the Solano Irrigation District, Main Prairie Water District, and the City of Fairfield) will not undertake any action or project (including issuance of grading or other permits, plan amendments, zoning changes) without demonstration of compliance with the Act by the project proponent. Compliance may be in the form of either: (1) a letter from the Service expressing no concerns that the project will adversely affect listed species; (2) a biological opinion issued for a Federal authorization of the project; (e.g., for a Section 404 permit); or (3) a permit issued by the Service pursuant to section 10(a)(1)(B) of the Act, to authorize incidental take for the project.

4. c. The member agencies will not undertake any action or project (including issuance of grading or other permits, plan amendments, or zoning changes) that would potentially result in degradation of habitat for the six species (as determined by the Service) prior to proof of compliance with the Act, in the form described above in General Conservation Measure 3.b. Degradation of habitat includes actions that appreciably reduce the likelihood of survival and recovery of the six species referenced above. City actions or projects referenced above do not include ministerial actions or previously approved projects as the date of the water contract renewal, nor building or minor additions and expansions on previously developed areas of the parcels, as long as no listed species or their habitat will be affected by the action.

The Service understands the comment period for the Revised Draft Environmental Impact Report for the Rockville Trails Estates Residential Subdivision has closed. However, compliance with the Solano water biological opinion may be a requirement depending upon the source of water for the project and we believe this issue should be included in the review of the project under CEQA.

We remain interested in working with the County of Solano and the applicant in the resolution of the issues regarding endangered species and the Rockville Trails Estates project. Please contact me if you have any questions regarding this electronic mail message.

s/Chris Nagano

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