

**Attachment F:  
USFWS Biological Opinion**

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# 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:  
08FBDT00-2019-I-0110

December 29, 2020

Mr. Greg Brown  
U.S. Army Corps of Engineers  
San Francisco District, Regulatory Division  
450 Golden Gate Avenue, 4th Floor  
San Francisco, CA 94102

Subject: Informal Consultation on the Parr Boulevard Development Project in Contra Costa County, California

Dear Mr. Brown:

This letter is in response to the U.S. Army Corps of Engineers (Corps) November 19, 2018, request for initiation of informal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Parr Boulevard Development Project (Project) in Contra Costa County, California. Your request was received by the Service on November 19, 2018. At issue are the proposed Project's effects on the federally endangered California clapper rail (*Rallus longirostris obsoletus*), and the federally endangered salt marsh harvest mouse (*Reithrodontomys raviventris*). Regarding taxonomic assignment and nomenclature for the California clapper rail, until a time when the Service officially adopts changes made by the American Ornithologists' Union (from California clapper rail [*Rallus longirostris obsoletus*] to Ridgway's rail [*Rallus obsoletus*]), the Service maintains the use of California clapper rail (*Rallus longirostris obsoletus*) as used in this current correspondence. 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 federal action on which we are consulting is the construction of two commercial buildings, driveways, and off-street parking on a 29.86-acre site. 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, but is not likely to adversely affect the California clapper rail and the salt marsh harvest mouse.

In reviewing this project, the Service has relied upon: (1) the Corps' November 19, 2018, letter requesting initiation of informal consultation and the enclosed Biological Assessment; (2) the

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Revised Biological Assessment - June 2020, which was received by the Service on October 2, 2020; and (3) other information available to the Service.

### **Project Description**

This Project includes construction of two office/warehouse structures totaling 327,974 square feet of gross floor area plus associated off-street driveways and parking on an approximately 29.86-acre site. The proposed structures include a 122,128 square-foot building on the western side of the property and a 205,846 square-foot structure on the eastern side of the property. A portion of the two buildings would be used for offices, and the remaining interior space would serve as warehouses with loading docks. The site would also include driveway access and vehicular parking for automobiles and truck trailers. Bio-retention facilities and mitigation areas would be located around the perimeter of the Project site to compensate for impacts to wetlands/waters.

Construction activities on the property will result in the permanent fill of Corps jurisdictional wetland/waters totaling 0.415 acre (1,844 linear feet). An additional 0.019 acre of jurisdictional wetlands will be temporarily impacted in association with wetland construction. Mass grading will impact nearly the entire site, resulting in impacts to jurisdictional seasonal wetlands, jurisdictional waters, non-jurisdictional isolated wetlands and non-jurisdictional waters.

The Project applicant proposes to provide compensatory mitigation to address identified impacts to Corps jurisdictional wetland/waters by creating wetland mitigation around the perimeter of the Project site. The Project mitigation will be provided within the property's mitigation sites, through the construction (establishment/creation) of seasonal wetland habitat and wetland swales. This mitigation is only for Corps wetland/waters impacts and not for listed species under the Act.

### *General Minimization Measures*

The Project applicant proposes the following conservation measures.

1. At least 15 days prior to any ground disturbing activities, the applicant will submit to the Service for review and approval the qualifications of the proposed biological monitor(s). A qualified biological monitor means any person who has completed at least four years of university training in wildlife biology or a related science and/or has demonstrated field experience in the identification and life history of the listed species.
2. A Service-approved biological monitor will remain on-site during all construction activities in or adjacent to habitat for listed species.
3. Prior to construction, a construction employee education program will be conducted in reference to potential listed species on site. At minimum, the program will consist of a brief presentation by persons knowledgeable in endangered species biology and legislative protection (approved biologist) to explain concerns to contractors, their employees, and agency personnel involved in the Project. The program will include: a

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description of the species and their habitat needs; any reports of occurrences in the Project area; an explanation of the status of each listed species and their protection under the Act; and a list of measures being taken to reduce effects to the species during construction and implementation. Fact sheets conveying this information and an educational brochure containing color photographs of all listed species in the work area(s) will be prepared for distribution to the above-mentioned people and anyone else who may enter the Project area. A list of employees who attend the training sessions will be maintained by the applicant to be made available for review by the Service upon request. Contractor training will be incorporated into construction contracts and will be a component of weekly Project meetings.

4. Preconstruction surveys for listed species will be performed immediately prior to groundbreaking activities. Surveys will be conducted by the biological monitor. If at any point, construction activities cease for more than five consecutive days, additional preconstruction surveys will be conducted prior to the resumption of these actions.
5. To prevent the accidental entrapment of listed species during construction, all excavated holes or trenches deeper than 6 inches will be covered at the end of each work day with plywood or similar materials. Foundation trenches or larger excavations that cannot easily be covered will be ramped at the end of the work day to allow trapped animals an escape method. Prior to the filling of such holes, these areas will be thoroughly inspected for listed species by the biological monitor.
6. Only approved biological monitors will conduct preconstruction surveys.
7. All trash and debris within the work area will be placed in containers with secure lids before the end of each work day in order to reduce the likelihood of predators being attracted to the site by discarded food rappers and other rubbish that may be left on-site. Containers will be emptied as necessary to prevent trash overflow onto the site and all rubbish will be disposed of at an appropriate off-site location.
8. All vegetation which obscures the observation of wildlife movement within the affected areas containing or immediately adjacent aquatic habitats will be completely removed by hand just prior to the initiation of grading to remove cover that might be used by listed species.
9. All construction activities must cease one half hour before sunset and should not begin prior to one half hour after sunrise. There will be no nighttime construction.
10. Grading and construction will be limited to the dry season, typically May-October.
11. Best Management Practices (BMPs) will be used to minimize erosion and impacts to water quality and effects to aquatic habitat. A Storm Water Pollution Prevention Plan (SWPPP) will be prepared.
12. The applicant will ensure a readily available copy of the section 7 consultation is

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maintained by the construction foreman/manager on the Project site whenever earthmoving and/or construction is taking place. The name and telephone number of the construction foreman/manager will be provided to the Service prior to groundbreaking.

13. The construction area shall be delineated with high visibility temporary fencing at least 4 feet in height, flagging, or other barrier to prevent encroachment of construction personnel and equipment outside of the construction area. Such fencing shall be inspected and maintained daily until completion of the Project. The fencing will be removed only when all construction equipment is removed from the site.
14. Silt fencing or wildlife exclusion fencing will be used to prevent listed species from entering the Project area. Exclusion fencing will be at least 3 feet high and the lower 6 inches of the fence will be buried in the ground to prevent animals from crawling under. The remaining 2.5 feet will be left above ground to serve as a barrier for animals moving on the ground surface. The fence will be pulled taut at each support to prevent folds or snags. Fencing shall be installed and maintained in good condition during all construction activities. Such fencing shall be inspected and maintained daily until completion of the Project. The fencing will be removed only when all construction equipment is removed from the site.
15. The approved biological monitor shall ensure that the spread or introduction of invasive exotic plant species shall be avoided to the maximum extent possible. When practicable, invasive exotic plants in the Project areas shall be removed.
16. The Project site shall be revegetated with an appropriate assemblage of native plants.
17. If the Corps on-site mitigation is approved, revegetation of the corridor will be accomplished with an appropriate assemblage of native wetland vegetation suitable for the area. A restoration and monitoring plan shall be prepared for review and approval by the Corps. Such a plan must include, but not be limited to, location of the restoration, species to be used, restoration techniques, time of year the work will be done, identifiable success criteria for completion, and remedial actions if the success criteria are not achieved.

#### *Salt Marsh Harvest Mouse Avoidance and Minimization Measures*

##### Vegetation Removal:

1. If any areas with pickleweed vegetation or other marsh vegetation within 50 feet of the edge of pickleweed vegetation need to be cleared for proposed Project activities, vegetation will be removed.
2. Vegetation will be removed by hand and will be trimmed to no higher than one inch above ground. Root crowns shall be preserved in areas of temporary impact. Where possible, trimming will begin farthest away from remaining marsh or pickleweed habitat and proceed toward the remaining habitat.

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3. All clearing of vegetation will be done under the direct supervision of a Service-approved biologist. If more than one crew of vegetation clearers is working at a given time, then a Service-approved biologist will be with each crew.
4. Only hand operated tools will be used with a preference for non-mechanical tools such as machete, trowel, hoe, rake, or shovel.
5. As directed by the Service-approved biological monitor, cut native vegetation will be stored onsite and re-spread as mulch at the completion of the proposed Project in areas where the impact is temporary. Cut non-native vegetation listed as moderately to highly invasive by the California Invasive Plant Council (<https://www.cal-ipc.org/plants/inventory/>, California Invasive Plant Council 2020) will be bagged and removed offsite at a suitable disposal site. Areas of vegetation removal are part of permanent impact areas and will not be restored as part of the proposed Project. Cut vegetation will therefore be removed and disposed of offsite.
6. If a salt marsh harvest mouse is observed within the areas being removed of vegetation or elsewhere within the work site, the Service-approved biologist will stop work in the immediate area and contact the Service and the Corps to reinitiate consultation.

#### California clapper rail

The California clapper rail occurs within the vicinity of the Project, but not within the Project area. The wetlands and drainages within the Project site do not provide adequate cover favored by California clapper rails. The Project site contains small patches of pickleweed and other wetland vegetation, which is short, sparse, small in size, narrow, and patchy. California clapper rails typically prefer extensive, dense, continuous marshland habitat composed primarily of cordgrass for both nesting and foraging. The Project site also lacks mudflats or other preferred foraging habitats that could be utilized by the species. Due to the existing infrastructure and activity within the Project vicinity, the Service anticipates construction noise will not rise above ambient conditions in nearby marshes.

#### Salt marsh harvest mouse

While salt marsh harvest mice have been documented in the salt marshes west of the Project site, across Richmond Parkway, and two additional sites to the northwest and southwest, the Project site itself provides poor habitat that is unlikely to support a population of this species. It contains small patches of pickleweed and other wetland vegetation within two drainage channels, which is sparse, patchy, small in stature, and narrowly confined to the bottom of the channels. The Project site is primarily dominated by non-native invasive plants that are not considered suitable vegetation for salt marsh harvest mouse. Additionally, the Project site is inaccessible. Richmond Parkway and Parr Boulevard isolate the Project site from salt marsh habitat. This section of Richmond Parkway is a high traffic expressway that is over 110 feet wide with tall curbs and a 40-foot-wide center divider, making it an impassible barrier for salt marsh harvest mice. Industrial development and Parr Boulevard lie between the Project site and San Pablo Creek and

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would also be considered impassible. The only other access to the site from marsh habitats would be through an unvegetated culvert that is over 200 feet long and is fitted with a flap gate. If salt marsh harvest mice could first get past the initial flap gate barrier, it is unlikely this species would then travel through 200 feet of culvert. The Project applicant has proposed minimization measures in the unlikely event mice are present on-site.

Based on the analysis above and the proposed conservation measures, the Service concurs with the Corps' determination that Parr Boulevard Development Project is not likely to adversely affect the California clapper rail and the salt marsh harvest mouse.

This concludes formal consultation on the Parr Boulevard Development 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.

(b) An agency shall not be required to reinitiate consultation after the approval of a land management plan prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604 upon listing of a new species or designation of new critical habitat if the land management plan has been adopted by the agency as of the date of listing or designation, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation. This exception to reinitiation of consultation shall not apply to those land management plans prepared pursuant to 16 U.S.C. 1604 if:

(1) Fifteen years have passed since the date the agency adopted the land management plan prepared pursuant to 16 U.S.C. 1604; and

(2) Five years have passed since the enactment of Public Law 115-141 [March 23, 2018] or the date of the listing of a species or the designation of critical habitat, whichever is later.

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If you have any questions regarding this response, please contact Andrew Raabe, Endangered Species Biologist, at [andrew\\_raabe@fws.gov](mailto:andrew_raabe@fws.gov) or Kim Squires, Section 7 Division Manager, at [kim\\_squires@fws.gov](mailto:kim_squires@fws.gov).

Sincerely,

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07:38:06 -08'00'

Jana Affonso  
Assistant Field Supervisor

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### **Literature Cited**

California Invasive Plant Council. 2020. The Cal-IPC Inventory of Invasive Plants.  
<https://www.cal-ipc.org/plants/inventory/>.