



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
OFFICE OF LAW ENFORCEMENT
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February 1, 2005

HAND DELIVERED

Sean Sweeney, Golf Program Manager

City of San Francisco Recreation and Parks Department
San Francisco, CA 94117

Dear Mr. Sweeney,

This letter concerns the threatened California red-legged frog (*Rana aurora draytonii*) and "Horse Stable Pond" at Sharp Park Golf Course in San Mateo County, California. This animal is protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The California red-legged frog was listed as threatened on May 23, 1996 (6/FR 25832).

It is our understanding that beginning in early 2003 through 2004 and presently, the operation of a water pump that is controlled by the City and County of San Francisco Recreation and Parks Department (during the winter rainfall events) lowered the water level at Horse Stable Pond and resulted in the stranding and exposure of a number of egg masses of the California red-legged frog. This action apparently caused the death of an unknown quantity of embryonic tadpoles of the completely aquatic early stage of this animal's lifecycle.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm" has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only is the California red-legged frog protected from such activities as collecting, but also from

actions that damage or destroy its habitat. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a)(1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

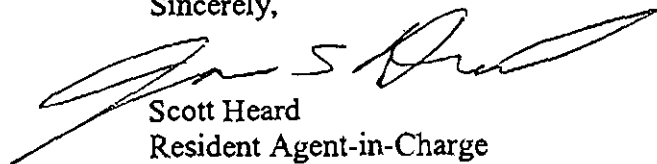
In order to avoid further potential violations of the Endangered Species Act, we recommend that you obtain authorization for incidental take through either Section 7 or 10(a)(1)(B), as appropriate for the California red-legged frog, and also the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) which also has been documented to inhabit the area.

Enclosed for your convenience and future reference is a copy of Title 16, United States Code, Section 1531 et seq., as well as a copy of Title 50, Code of Federal Regulations, Section 17.

Should you have any questions or wish to seek assistance or further clarification, please feel free to contact Special Agent Marilee Brown at 916-414-6665.

Your compliance and cooperation on this matter would be greatly appreciated.

Sincerely,



Scott Heard
Resident Agent-in-Charge

cc. Special Agent Brown
Special Agent Ken McCloud
Chief of Endangered Species – Sacramento, CA

Encl. 16 USC 1538 et seq.
50 CFR Part 17