



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

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**GAVIN NEWSOM, Governor**

**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Jan 19 2024**

**STATE CLEARINGHOUSE**

January 17, 2024

Luis Damerell, Project Manager

Marin County Flood Control and Water Conservation District

3501 Civic Center Drive, Suite 304

San Rafael, CA 94903

[Envplanning@MarinCounty.org](mailto:Envplanning@MarinCounty.org)

Subject: Santa Venetia Floodwall Project, Subsequent Mitigated Negative Declaration, SCH No. 2019079013, Marin County

Dear Mr. Damerell:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Subsequent Mitigated Negative Declaration (MND) from the Marin County Flood Control and Water Conservation District (District) for the Santa Venetia Floodwall Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW previously provided comments in response to the originally circulated MND.

CDFW is submitting comments on the Subsequent MND to inform the District, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

### **CDFW ROLE**

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on Projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a Project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Marin County Flood Control and Water Conservation District

**Objective:** Construct an approximately 7,200-foot-long, 11 feet high, and 14-inch-wide composite sheet pile floodwall on the south (right) side of South Fork Gallinas Creek.

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Luis Damerell  
Marin County Flood Control and Water Conservation District  
January 17, 2024  
Page 2

This structure would replace an existing timber-reinforced berm floodwall and provide improved protection from floods to approximately 900 homes located on the landward side of the floodwall. Sheet piles would be installed using a vibratory hammer. An upgraded timber-reinforced berm floodwall would be installed at six locations where outfalls or access constraints make installing sheet pile unfeasible.

A 10- to 18-foot-wide work zone along the length of the floodwall would be cleared to facilitate construction. In addition to land access from Vendola Drive, the contractor may access the work zone from South Fork Gallinas Creek. Water access would involve using an amphibious excavator to move material from a barge in South Fork Gallinas Creek to a slide pontoon, and from the pontoon to the work zone. Water access would occur in ten designated areas, each up to 30 feet wide and 100 feet long.

**Location:** The unincorporated Community of Santa Venetia, Marin County, between South Fork Gallinas Creek and Vendola Drive, and between 7 Vendola Drive on the upstream end to 825 Vendola Drive on the downstream end, with an approximate center point 230 feet northwest of the intersection of Vendola Drive and La Pasada Way at 38.0131°N, -122.5191°W (NAD 83).

## REGULATORY REQUIREMENTS

### California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA either during construction or over the life of the Project. **The Project has potential to impact longfin smelt (*Spirinchus thaleichthys*), CESA listed as threatened species, as further described below. The Project also has potential to impact salt marsh harvest mouse (*Reithrodontomys raviventris*), CESA listed as endangered species, Ridgeway’s rail (*Rallus obsoletus*), CESA listed as endangered species, and California black rail (*Laterallus jamaicensis coturniculus*), CESA listed as threatened species. Thank you for including mitigation measures to avoid impacts to salt marsh harvest mouse, Ridgeway’s rail, and California black rail, which are also Fully Protected species as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, &

Luis Damerell  
Marin County Flood Control and Water Conservation District  
January 17, 2024  
Page 3

15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

### **Lake and Streambed Alteration**

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **As described in the Subsequent MND (page 23), the Project would impact a stream, therefore, an LSA Notification would be required. The Project has submitted an LSA Notification (EPIMS-MAN-14846-R3) to CDFW. Thank you for notifying pursuant to Fish and Game Code section 1600 et seq.** CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

### **Fully Protected Species**

Fully Protected species, such as Ridgway's rail, also CESA listed as endangered species, salt-marsh harvest mouse, also CESA listed as endangered species, and California black rail, also CESA listed as threatened species, as described above, may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code, § 2081.15). Project proponents should consult with CDFW early in the Project planning process.

Luis Damerell  
Marin County Flood Control and Water Conservation District  
January 17, 2024  
Page 4

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

### I. Environmental Setting and Related Impact Shortcoming

***MANDATORY FINDING OF SIGNIFICANCE. Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?***

**COMMENT 1:** Longfin smelt

**Issue:** The Subsequent MND does not evaluate potential impacts to longfin smelt. A report titled "Interdisciplinary Studies on Longfin Smelt in the San Francisco Estuary" documented longfin smelt within similar habitat near the Project location (Lewis et al. 2019). Based on the presence of potential habitat and proximity to known spawning locations, South Fork Gallinas Creek is an area where longfin smelt may occur and spawn.

**Specific impact and why impact would occur:** The Project could result in mortality of longfin smelt larva if they are crushed between the substrate and the amphibious excavator, slide pontoon, or construction matting during in-water work access activities, as larva are not sufficiently developed to move away from these Project activities. In addition, mortality of adults and larvae may result from hydroacoustic impacts caused by pile driving. Project activities which result in impacts including mortality would be a violation of CESA unless the Project obtains an ITP from CDFW.

**Evidence impact would be potentially significant:** Longfin smelt is CESA listed as threatened species and therefore is considered a threatened species pursuant to Section 15380 of the CEQA Guidelines. Impacts to longfin smelt could substantially reduce the species' population, which would be considered a Mandatory Finding of Significance pursuant to Section 15065, subdivision (a) of the CEQA Guidelines. Therefore, if longfin smelt are present in the Project area and would be impacted, Project impacts to longfin smelt would be potentially significant.

**Recommended Mitigation Measures:** For an adequate environmental setting and to reduce impacts to longfin smelt to less-than-significant, CDFW recommends including the following mitigation measures in the Subsequent MND.

Luis Damerell  
Marin County Flood Control and Water Conservation District  
January 17, 2024  
Page 5

*Longfin Smelt Avoidance.* Access to the Project via water shall be conducted only between August 1 and November 30, when longfin smelt larva are not expected to be present in the work area, unless otherwise approved in writing by CDFW. The Project shall adhere to the work period and all other requirements of the LSA issued by CDFW for the Project.

*Hydroacoustic Monitoring and Noise and Vibration Reduction.* Pile driving shall not occur in the water. Sound pressure levels generated by work within the bed, bank, or channel of a stream, or by pile driving within 100 feet of surface water, shall be monitored and kept below thresholds that result in injury to fish, currently 206 decibel peak Sound Pressure Level (SPL) and 187 decibel cumulative Sound Exposure Level (SEL), at mid-depth, 10 meters from where work is occurring. If the SPL or SEL thresholds will be exceeded, Permittee shall contact CDFW within 24 hours and before continuing construction.

If SPL and SEL thresholds in the above measure may be exceeded, the Permittee will furnish, install, operate, and maintain a sound attenuation system to reduce noise generated. A design of the attenuation system shall be submitted to CDFW for written approval 14 days prior to initiation of construction (i.e., isolation casings, confined bubble curtain, unconfined bubble curtain, wood pile cushions). The system must be operating prior to beginning pile driving activity within a reasonable dispersal distance of the water where it is feasible for injurious sound levels to reach the water. If the attenuation system fails, pile driving shall immediately stop and may not resume at the location until the system is put back into operation.

*Pile Driving Equipment.* All piles shall be installed using a vibratory hammer. An impact hammer shall not be used.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## **ENVIRONMENTAL DOCUMENT FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the

Luis Damerell  
Marin County Flood Control and Water Conservation District  
January 17, 2024  
Page 6

Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the Subsequent MND to assist the District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at (707) 799-4210 or [Alex.Single@wildlife.ca.gov](mailto:Alex.Single@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov) or (707) 210-4415.

Sincerely,

DocuSigned by:

*Erin Chappell*

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Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2019079013)

Luis Damerell  
Marin County Flood Control and Water Conservation District  
January 17, 2024  
Page 7

## REFERENCES

- CDFW. 2023. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 20 December 2023].
- Lewis, L., et al. 2019. Interdisciplinary Studies on Longfin Smelt in the San Francisco Estuary. University of California, Davis. Davis, CA. Website [https://www.researchgate.net/publication/349428334\\_Interdisciplinary\\_Studies\\_on\\_Longfin\\_Smelt\\_in\\_the\\_San\\_Francisco\\_Estuary](https://www.researchgate.net/publication/349428334_Interdisciplinary_Studies_on_Longfin_Smelt_in_the_San_Francisco_Estuary) [accessed 22 December 2023].

Luis Damerell  
 Marin County Flood Control and Water Conservation District  
 January 17, 2024  
 Page 8

## ATTACHMENT 1

### Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
<b>MM BIO-6</b>	<i>Longfin Smelt Avoidance.</i> Access to the Project via water shall be conducted only between August 1 and November 30, when longfin smelt larva are not expected to be present in the work area, unless otherwise approved in writing by CDFW. The Project shall adhere to the work period and all other requirements of the LSA issued by CDFW for the Project.	During Water Access for Duration of Construction	Project Applicant
<b>MM BIO-7</b>	<i>Hydroacoustic Monitoring and Noise and Vibration Reduction.</i> Pile driving shall not occur in the water. Sound pressure levels generated by work within the bed, bank, or channel of a stream, or by pile driving within 100 feet of surface water, shall be monitored and kept below thresholds that result in injury to fish, currently 206 decibel peak Sound Pressure Level (SPL) and 187 decibel cumulative Sound Exposure Level (SEL), at mid-depth, 10 meters from where work is occurring. If the SPL or SEL thresholds will be exceeded, Permittee shall contact CDFW within 24 hours and before continuing construction.  If SPL and SEL thresholds in the above measure may be exceeded, the Permittee will furnish, install, operate, and maintain a sound attenuation system to reduce noise generated. A design of the attenuation system shall be submitted to CDFW for written approval 14 days prior to initiation of construction (i.e., isolation casings, confined bubble curtain, unconfined bubble curtain, wood pile cushions). The system must be operating prior to beginning pile driving activity within a reasonable dispersal distance of the water where it is feasible for injurious sound levels to reach the water. If the attenuation system fails, pile driving shall immediately stop and may not resume at the location until the system is put back into operation.	For Duration of Construction	Project Applicant
<b>MM BIO-8</b>	<i>Pile Driving Equipment.</i> All piles shall be installed using a vibratory hammer. An impact hammer shall not be used.	For Duration of Construction	Project Applicant