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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

April 6, 2020

Governor's Office of Planning & Research

APR 07 2020

STATE CLEARINGHOUSE

Ms. Jessica Martinez-Mckinney
Associate Planner II
City of Santa Cruz
212 Locust Street, Suite C
Santa Cruz, CA 95060
jmartinezmckinney@cityofsantacruz.com

Subject: Laguna Creek Diversion Retrofit Project, Notice of Preparation, SCH #202003456, City and County of Santa Cruz

Dear Ms. Martinez-Mckinney:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Santa Cruz for the Laguna Creek Diversion Retrofit Project (Project) located in the County of Santa Cruz. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological 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), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

The proposed Project will retrofit the existing Laguna Creek diversion structure to provide in-stream sediment transport past the diversion and be deposited downstream.

The proposed Project will include: a new intake structure and a Coanda screen; new valve control vault; streambank protection and armoring; new monitoring and control equipment; and modifications to the existing intake and sediment control bypass valves.

ENVIRONMENTAL SETTING

The special-status species that have the potential to occur in or near the Project area, include, but are not limited to:

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- California giant salamander (*Dicamptodon ensatus*) – a state species of special concern;
- California red-legged frog (*Rana draytonii*) – federally listed as threatened under the Endangered Species Act (ESA) and a state species of special concern; and
- Santa Cruz black salamander (*Aneides niger*) – a state species of special concern.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Santa Cruz in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on biological resources.

COMMENT 1: Full Project Description of Project Features

The CEQA Guidelines (§§15124 and 15378) require that the draft Environmental Impact Report (EIR) incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact.

To fully address the Project's impacts to biological resources, please include complete descriptions of the following features within the draft EIR:

- Detailed descriptions and cross sections of armored streambank and apron; and
- Operation and maintenance of the new system, including but not limited to, timing of sediment releases.

COMMENT 2: Species Baseline

CDFW recommends that the Project's draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, or endangered species (CEQA Guidelines, §15380).

Habitat assessments and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDB). Based on the data and information from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project area.

COMMENT 3: Riprap

CDFW recommends exploring all other stabilization techniques (e.g., native vegetation plantings) before installing riprap. If riprap is deemed necessary, CDFW recommends planting riprap with native vegetation or identifying if riprap can be covered with sediment or stream simulation bed material to provide habitat for fish and wildlife.

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Installation of riprap may have direct and cumulative adverse impacts on fish and wildlife resources within Laguna Creek. Riprap could alter stream flow (e.g., stream deflection), cause stream erosion, and decrease fish and wildlife habitat. If riprap is installed as part of the Project, please discuss these effects in the analysis and include mitigation to address significant impacts.

COMMENT 4: California Giant Salamander (CGS)

Issue: CGS live within and near streams in coastal forests of southern Santa Cruz County to southern Mendocino and Lake County (Kucera 1997). The Project area contains habitat for CGS, and there is potential for CGS to occur within the Project area. To reduce impacts to CGS to a level that is less-than-significant, avoidance and minimization measures are necessary.

Specific impact: Without appropriate avoidance and minimization measures for CGS, potentially significant impacts associated with Project activities include accidental entrapment, reduced reproductive success, and direct mortality of individuals.

Evidence impact would be significant: Aquatic adults and larvae are known to hide within spaces between streambed rocks and terrestrial adults are known to occur under surface litter and in underground tunnels (Kucera 1997). Project activities will occur within the streambed and streambank where CGS are potentially located. Additionally, noise, sediment removal, movement of workers, and temporary dewatering have the potential to significantly impact CGS.

Recommended Potentially Feasible Mitigation Measures
To evaluate potential impacts to CGS, CDFW recommends incorporating the following mitigation measures into the draft EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: CGS Pre-Construction Survey
CDFW recommends that a qualified wildlife biologist conduct focus surveys for CGS 48 hours prior to Project implementation.

Recommended Mitigation Measure 2: CGS Relocation
CDFW recommends that if CGS individuals are found at the Project area during the pre-construction survey or during Project activities, they should be allowed to move out of the area on their own. If a CGS is unable to move out of the project area on its own, a qualified wildlife biologist should relocate CGS out of the Project area into habitat similar to where it was found.

COMMENT 5: California Red-Legged Frog (CRLF)

Issue: CRLF primarily inhabit ponds but can also be found in other waterways, including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). The Project area contains habitat and CRLF have the potential to

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occur in the Project area. Avoidance and minimization measures are necessary to reduce impacts to CRLF to a level that is less-than-significant.

Specific impact: Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated. Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017). Project activities have the potential to significantly impact CRLF.

Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential impacts to CRLF, CDFW recommends incorporating the following mitigation measures into the draft EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 3: CRLF Pre-Construction Surveys
CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF in accordance with the U.S. Fish and Wildlife Service (USFWS) "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005) to determine if CRLF are within or adjacent to the Project area.

Recommended Mitigation Measure 4: CRLF Avoidance
CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified wildlife biologist monitor construction activity daily for CRLF and ensure that Project activities avoid CRLF.

COMMENT 6: Santa Cruz Black Salamander (SCBS)

Issue: SCBS are found within mixed deciduous woodland, coniferous forests, and coastal grasslands within the Santa Cruz Mountains (Reilly and Wake 2015). They are typically found in moist soils such as under rocks and damp logs. The Project area contains habitat for SCBS and have the potential for SCBS to occur within the Project area. To reduce impacts to SCBS to a level that is less-than-significant, avoidance and minimization measures are necessary.

Specific impact: Without appropriate avoidance and minimization measures for SCBS, potentially significant impacts associated with the Project's activities include accidental entrapment, reduced reproductive success, and direct mortality of individuals.

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Evidence impact would be significant: SCBS is endemic to California and its range is restricted within the Santa Cruz Mountains (Reilly and Wake 2015). Project activities will occur within the Santa Cruz Mountains where SCBS have the potential to occur. Additionally, noise, sediment removal, movement of workers, and temporary dewatering have the potential to significantly impact SCBS.

Recommended Potentially Feasible Mitigation Measures
To evaluate potential impacts to SCBS, CDFW recommends incorporating the following mitigation measures into the draft EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 5: SCBS Pre-Construction Survey
CDFW recommends that a qualified wildlife biologist conduct a focus pre-construction survey for SCBS 48-hours prior to Project implementation.

Recommended Mitigation Measure 6: SCBS Relocation
CDFW recommends that if any SCBS are discovered at the Project area during the pre-construction surveys or during Project activities, they should be allowed to move out of the area on their own. If a SCBS is unable to move out of the Project area on its own, a qualified wildlife biologist will relocate SCBS out of the Project area into habitat similar to where it was found.

COMMENT 7: Nesting Birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground disturbing or vegetation disturbing activities must occur during the breeding season (February through September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act of 1918 or Fish and Game Code section 3503.

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 7: Nesting Bird Surveys
CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every 14 days during Project activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project area to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified avian biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the qualified avian biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes

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occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

Recommended Mitigation Measure 8: Nesting Bird Buffers
If continuous monitoring of identified nests by a qualified avian biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified avian biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.

REGULATORY REQUIREMENTS

California Endangered Species Act
Please be advised that a CESA Permit 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. Issuance of a CESA Permit 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 a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [CEQA section 21001(c), 21083, and CEQA Guidelines section 15380, 15064, 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 Fish and Game Code section 2080.

Lake and Streambed Alteration (LSA) Program
Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will 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 notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Monica Oey, Environmental Scientist, at (707) 428-2088 or monica.oey@wildlife.ca.gov; or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786 or randi.adair@wildlife.ca.gov.

Sincerely

DocuSigned by:
Gregg Erickson
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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #202003456

REFERENCES

Kucera, T. 1997. California Wildlife Habitat Relationships System. California Department of Fish and Wildlife California Interagency Wildlife Task Group. A004 pp.

Reilly, S.B. and D.B. Wake. 2015. Cryptic Diversity and Biogeographical Patterns within the Black Salamander (*Aneides flavipunctatus*) Complex. Journal of Biogeography. Vol. 42: 280-291 pp.

Thomson, R. C., A.N. Wright, and H.B. Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

United States Fish and Wildlife Service (USFWS). 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

USFWS. 2017. Species Account for California Red-legged frog. March 2017. 1 pp.