



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



June 12, 2020

Governor's Office of Planning & Research

Jun 15 2020

STATE CLEARINGHOUSE

Mr. Joseph Lawlor
East Contra Costa County Habitat Conservancy
30 Muir Road
Martinez, CA 94553
Email: Joseph.Lawlor@dcd.cccounty.us

Subject: PG&E Transmission Pipeline L-114 Replacement Project, Initial Study/Mitigated Negative Declaration, SCH #2020050321, City of Brentwood, Contra Costa County

Dear Mr. Lawlor:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated (IS/MND) from the East Contra Costa County Habitat Conservancy (Conservancy) for the PG&E Transmission Pipeline L-114 Replacement Project (Project) pursuant the California Environmental Quality Act (CEQA). CDFW is submitting comments on the IS/MND to inform the Conservancy, as the Lead Agency, of our concerns regarding the proposed Project.

CDFW ROLE

CDFW is a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), 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.

REGULATORY REQUIREMENTS

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., 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 notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511).

PROJECT DESCRIPTION SUMMARY

Proponent: Pacific Gas and Electric Company (PG&E)

Objective: Install a new 24-inch pipeline using a horizontal directional drill (HDD) underneath Marsh Creek to replace the service provided by the existing pipeline. The existing 22-inch L-114 transmission line would be retired in place by filling the pipeline with slurry cement and then capping the line. The pipeline would then be filled completely with slurry cement.

Location: The Project is in the City of Brentwood and unincorporated Contra Costa County. The 15-acre Project site, which includes all the work areas where construction activities would take place, is bordered by a residential development and agricultural land. Marsh Creek intersects the Project site and the creek headwaters are south of the Project site where the creek flows from the Marsh Creek Reservoir facility. The existing pipeline L-114 crosses under Marsh Creek near Vineyards Parkway and Marsh Creek Road.

Timeframe: The Project is anticipated to take approximately three months.

COMMENTS AND RECOMMENDATIONS

The IS/MND Biological Resources section Discussion (a) states that:

Conservation Measure 2.12. Wetland, Pond, and Stream Avoidance and Minimization. This measure applies to all projects that have the potential to discharge fill into waters and wetlands and includes requirements to obtain the applicable permits, stream setback requirements (as applicable), staking of wetlands/waters that will not be affected, environmental training of personnel working near wetlands/waters, trash and debris removal, 200-foot equipment and

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vehicle refueling setbacks from wetlands/waters, appropriate erosion control measures, and native seed revegetation.

The IS/MND Biological Resources section Discussion (b) states that:

In addition, there is a potential for frac-out between the north and central work area HDD pits that could temporarily affect Marsh Creek or surrounding riparian habitat. This would be a potentially significant impact.

In addition, Mitigation Measure BIO-6 requires that the construction contractor consult with CDFW, SWRCB, RWQCB, and USACE to determine if any permits are required for drilling prior to project construction and to notify the Conservancy if a frac-out occurs.

CDFW is advising the Conservancy and PG&E that the Project as described in the IS/MND requires an LSA Notification for substantially altering the streambed and placing materials where they may pass into a stream. Although the HDD activities and pipeline placement will occur about 48 feet below the existing grade of the stream channel, the geotechnical report that CDFW reviewed for the Project and the IS/MND did not establish whether these activities will avoid Marsh Creek's hyporheic zone. This zone is where the exchange of water between a stream and sediments supporting the stream are located. In addition, the likelihood of a frac-out or inadvertent return of drilling fluids into the stream is likely given the highly unstable nature of the geologic materials underneath Marsh Creek (i.e. gravel and shale). In addition, CDFW recommends that the IS/MND be revised to add CDFW as a Public Agency whose approval is required.

CONCLUSION

CDFW has determined that the Project would require an LSA Notification and CDFW recommends that the IS/MND be revised to include CDFW as a Public Agency whose approval is required. CDFW appreciates the opportunity to comment on the IS/MND to assist the Conservancy in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov; or Mr. James Starr, Environmental Program Manager, at James.Starr@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C804EA
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH# 2019060006)