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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



July 15, 2020

Governor's Office of Planning & Research

**Jul 16 2020**

Ms. Ave' Brown  
Contra Costa County Public Works Department  
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Martinez, CA 94553  
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## **STATE CLEARINGHOUSE**

Subject: Contra Costa County Routine Maintenance Program, Mitigated  
Negative Declaration, SCH No. 2020060286, Contra Costa County

Dear Ms. Brown:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Contra Costa County Flood Control and Water Conservation District and the Contra Costa County Public Works Department (collectively referred to as the County) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency if a project requires discretionary approval, such permits issued under the California Endangered Species Act (CESA) and 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.

### **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

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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.

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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 restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 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**

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.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Contra Costa County Flood Control and Water Conservation District and the Contra Costa County Public Works Department

**Objective:** The County is responsible for conducting routine maintenance activities throughout Contra Costa County to ensure that facilities are properly functioning and operational. The County developed the Routine Maintenance Program Manual to describe the various routine maintenance activities conducted by the County. Primary maintenance activities include culvert repair and replacement; sediment removal from channels, basins, and culverts; trash and debris removal; and vegetation trimming and removal along and within channels.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially

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significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

### **Impacts from Beaver Dam Modification or Removal**

In recent conversations with CDFW, the County has expressed interest in removing or modifying beaver dams as a part of their Routine Maintenance Program; however, these activities are not identified in the MND. Unlike debris, which is defined in the MND as non-sedimentary materials that are deposited as a result of high flows or through human activity, beaver dams are wildlife habitat with significant environmental value. Beavers and their dams are an important resource for restoring and maintaining anadromy (Bouwes et al. 2016) and provide in-channel habitat for a variety of wildlife, including native fish, amphibians, birds, and mammals. Routine, county-wide modification or removal of these habitat features may result in significant impacts to biological resources. In addition, beavers are ecosystem engineers and negatively impacting this species throughout the county will result in a synergistic level of environmental impacts which should be analyzed and fully mitigated to a level of less-than-significant in the MND. CDFW recommends addressing these impacts in mitigation measures that clearly indicate triggers necessitating dam removal, methods for deconstruction, and measures to minimize impacts to beavers, native fish, and other native wildlife species.

To reduce this significant impact to a level of less-than-significant, CDFW recommends the following mitigation measure be incorporated in the IS/MND:

#### *Recommended Mitigation Measure 1: Beaver Dam Assessment and Modification*

Beaver dams within natural or engineered earthen channels shall be evaluated by a hydrologist or fluvial geomorphologist. If the hydrologist/fluvial geomorphologist determine that the beaver dam will: (1) substantially obstruct water flow, (2) reduce channel capacity, (3) increase the risk of flooding, (4) accelerate erosion, or (5) damage existing County-maintained facilities (e.g., culverts, bridges, etc.), the hydrologist/fluvial geomorphologist shall prepare a Beaver Dam Assessment and Modification Plan with a focus to maintain the ecological functionality of the dam and beavers to the maximum extent feasible. The Beaver Dam Assessment and Modification Plan shall summarize and quantify the threat of the beaver dam, and prescribe a detailed methodology for modifying the dam to reduce or eliminate the risk of flooding, erosion, and/or damage to County facilities. For the purposes of a Routine Maintenance Program, beaver dam modifications should be limited to installation and maintenance of "pond leveling" devices only.

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### **Timing and Use of Aquatic Herbicides**

The MND identifies the use of aquatic herbicides as a Routine Maintenance activity but limits the description of use to the timing of application (April through October) and compliance with existing laws and regulations. An MND should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences (CEQA Guidelines §15151). To allow full contemplation of potentially significant impacts and the efficacy of associated mitigation measures, CDFW recommends that the County revise the aquatic herbicide impact analysis to include the following information within the MND: (1) the types and relative quantities of aquatic herbicides to be used on an annual basis; (2) frequency of herbicide use at each site; (3) anticipated area of impact for each application; and (4) any use of terrestrial herbicides in habitat adjacent to the project sites that may compound the impacts of herbicides on aquatic wildlife. If after revising the analysis the County identifies significant impacts, then the County should revise the MND to include mitigation measures to offset these impacts to a less-than-significant.

### **Use of Rodenticides**

In recent conversations with CDFW, the County identified that it currently uses rodenticides at reservoir and dam sites as a part of its Routine Maintenance Program and requested that this use of rodenticide be included in the County's Routine Maintenance Agreement. However, the use of rodenticides at reservoir and dam sites is not contemplated within this MND. The use of rodenticides may result in a potentially significant impacts to non-target wildlife. Anticoagulant rodenticides, including diphacinone, have been detected in the majority of predators and scavengers tested in California (Hosea 2000), including bobcats (*Lynx rufus*; Serieys et al. 2015) and raptors (Kelly et al. 2015). CDFW recommends the County revises the MND to identify: (1) alternative or concurrent methods for long-term rodent control, including the landscape management techniques identified in the MND; (2) triggers for deploying the use of rodenticides; (3) how, when, where, and in what quantities rodenticides will be used; (4) mitigation measures to reduce the risk of non-target impacts to wildlife. Acute rodenticides, such as zinc phosphide, and fumigants carry much less risk of secondary exposure in wildlife and should be prioritized over anticoagulant rodenticides. To reduce this significant impact to a level of less-than-significant, CDFW recommends that rodenticides—anticoagulant or non-anticoagulant—be applied through bait stations and not broadcast in the environment in order to prevent non-target species from ingesting it directly. Bait stations should be monitored regularly and modified as needed to ensure that non-target wildlife are not accessing the bait.

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## **Large Woody Material**

The County identified that large woody material (LWM) will be retained where feasible in open natural or earthen engineered channels in Wildcat, Pinole, and San Pablo creeks. LWM provides natural in-stream habitat and shelter for native fish and amphibians and would provide ecosystem benefits to Contra Costa streams in general, not just those listed within the MND. Removal of LWM in streams throughout the County is a significant impact. CDFW recommends the following mitigation measures be incorporated in the MND for all perennial and fish-bearing streams within the Routine Maintenance Program to reduce this significant impact to a level of less-than-significant:

### *Recommended Measure 2: Threat to In-Stream Structures*

The County shall only modify large woody material (LWM) from streams when the accumulation of LWM poses a threat to: (1) road stability, bridges, culverts, or other in-stream structures; (2) structures such as homes; (3) project sites with a significant increase in flooding risk that would impact previously described structures; and (4) project sites with an increase in erosion risk to property and increase sediment load. The County shall only cut, notch or otherwise modify the minimum amount of stream wood to reduce the hazard as directed by a hydrologist or fluvial geomorphologist. LWM shall only be removed when such threats cannot be addressed by modifications.

### *Recommended Measure 3: LWM Height Limit*

The County shall limit modifications and/or removal of LWM that extends higher than two feet above the existing streambed grade, unless the LWM is immediately upstream and threatening a culvert, bridge, house or other public structure (see Measure 2.12). To preserve channel stability and prevent erosion, the County shall avoid removing LWM that is embedded in the bank or channel.

### *Recommended Measure 4: Length of LWM*

When modifying log jams, the County shall leave trees, logs and/or stumps in the longest lengths and diameters practicable. If logs must be cut from fallen trees, the County shall leave as much as possible of the main trunk attached to the root ball and only cut branches that are obstructing flow.

### *Recommended Measure 5: Review of LWM Removal Activities*

All proposed LWM removal activities shall be reviewed and approved by a Qualified Biologist and hydrologist or fluvial geomorphologist. Written concurrence from the Qualified Biologist hydrologist or fluvial geomorphologist shall be provided with the notification of proposed activities (Measure 4.1).

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### **Compensatory Mitigation for In-Channel Impacts**

The MND indicates that compensatory mitigation for permanent and temporary impacts to wetlands and other waters in eastern Contra Costa County will be achieved through payment of wetland mitigation fees to the East Contra Costa County Habitat Conservancy (Conservancy). However, the Conservancy does not provide coverage for fish habitat, including in-channel impacts to perennial streams. To reduce impacts to fish habitat to a level of less-than-significant, CDFW recommends that the County require compensatory mitigation at a minimum ratio of 3:1 (conserved habitat to impacted habitat) for permanent impacts and 1:1 (conserved habitat to impacted habitat) for temporary impacts to stream channels subject to CDFW permitting authority under Fish and Game Code 1602. Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement. Otherwise, CDFW is available to coordinate with the County on a comprehensive compensatory mitigation program to provide a greater level of flexibility if needed.

### **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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### **CONCLUSION**

CDFW appreciates the opportunity to comment on the IS/MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or

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[Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse

## REFERENCES

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- Kelly, T.R., R.H. Poppenga, L.A. Woods, Y.Z. Hernandez, W.M. Boyce, F.J. Samaniego, S.G. Torres, C.K. Johnson. 2015. Causes of mortality and unintentional poisoning in predatory and scavenging birds in California. *Vet Record Open*.
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