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Governor's Office of Planning & Research

October 22, 2021

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STATE CLEARINGHOUSE

Mr. Paul Jensen, Development Director
City of San Rafael, Community Development Department
1400 Fifth Avenue
San Rafael, CA 94901
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Subject: Tiscornia Marsh Habitat Restoration and Sea Level Rise Adaptation Project,
Draft Environmental Impact Report, SCH No. 2021020362, City of San
Rafael, Marin County

Dear Mr. Jensen:

The California Department of Fish and Wildlife (CDFW) has reviewed the Draft Environmental Impact Report (DEIR) for the Tiscornia Marsh Habitat Restoration and Sea Level Rise Adaptation Project (Project) pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; hereafter CEQA; Cal. Code Regs., §15000 et seq.; hereafter CEQA Guidelines).

Thank you for the opportunity to provide comments and recommendations regarding those activities included in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish & G. Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 & 15204).

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed

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alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in take¹ as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

CDFW is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Rafael

Objective: The goal of the proposed Project is to enhance the ecological function of the Tiscornia Marsh property and to increase flood protection for the nearby Canal neighborhood of San Rafael, while maintaining the community value of the Albert J. Boro Community Center and Pickleweed Park. Specific objectives include:

- Restoring tidal marsh on the Project site to improve ecological function and habitat quantity, quality, and connectivity (including upland transition zones) for native marsh species and marsh-upland transition species, including special-status species.
- Protecting Project site marshlands from future marsh edge erosion.
- Increasing the level of flood protection for the Canal neighborhood and other nearby communities of Central San Rafael.
- Creating sustainable benefits that consider future environmental changes such as sea level rise and sedimentation.
- Maintaining and improving public access to passive recreational and outdoor education opportunities (e.g., hiking, jogging, and bird watching).

The proposed Project will restore Tiscornia Marsh to its former extent by beneficially reusing dredged material from local sources. A course beach will be constructed along the bayside edge of the restored marsh to resist future erosion. Tidal action will be restored to the diked marsh at the north end of Pickleweed Park. The Project will reconstruct approximately 4 acres of eroded tidal marsh; preserve and protect the approximately 8 remaining acres of Tiscornia Marsh; and restore approximately 5 acres of diked marsh by reconnecting it to tidal inundation. The Project will also construct a

¹ Take is defined by Fish and Game Code section 86 as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

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new levee measuring approximately 600 feet in length on the south side of the existing diked marsh and improve approximately 1,100 feet of shoreline levee to achieve greater flood protection, public access, and habitat benefits.

Location: The proposed Project is located along the northern boundary of the Canal neighborhood in central San Rafael, Marin County, at Assessor's Parcel Numbers (APNs) 009-142-01, 009-032-06, 009-032-08, and 009-032-09. Tiscornia Marsh is bounded by Albert J. Boro Community Center and Pickleweed Park on the west; the mouth of San Rafael Creek which transitions to San Rafael Bay on the north; the former Schoen Park south of the Tiscornia Marsh shoreline levee; and Spinnaker Drive on the southeast.

Timeframe: The Project is anticipated to be completed in three phases, beginning in 2023 and likely finishing in 2026 or 2027.

ENVIRONMENTAL SETTING

Marine Biological Significance

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

State and Federally Listed and Commercially/Recreationally Important Species

Protected species under the State and Federal Endangered Species Acts that could potentially occur within and adjacent to the Project area include:

- Chinook salmon (*Oncorhynchus tshawytscha*), federal and State threatened (Spring-run), federal and State endangered (Winter-run)
- Steelhead (*O. mykiss*), federal threatened (Central California Coast and Central Valley Evolutionarily Significant Units)
- Green sturgeon (*Acipenser medirostris*), federal threatened and State species of special concern (southern Distinct Population Segment)
- Longfin smelt (*Spirinchus thaleichthys*), federal candidate and state threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California Ridgway's rail (*Rallus obsoletus obsoletus*), federal and State endangered and State fully protected
- California black rail (*Laterallus jamaicensus coturniculus*), State threatened and

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State fully protected

- Salt Marsh Harvest Mouse (*Reithrodontomys raviventris*), federal and State endangered and State fully protected

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

- Dungeness crab (*Cancer magister*)
- Pacific herring (*Clupea pallasii*)
- Rockfish (*Sebastes* spp.)
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*)

The Project site is characterized by a variety of vegetative and non-vegetative communities, including ruderal/non-native grassland/turf dominated by non-native grasses and forbs; coastal scrub dominated by California sagebrush (*Artemisia californica*) and coyote brush (*Baccharis pilularis*) but also including invasive pride of madeira (*Echium candicans*), dwarf mallow (*Malva neglecta*), and Canarian sea lavender (*Limonium perezii*); scattered native and non-native trees such as coast live oak (*Quercus agrifolia*), black oak (*Q. kelloggii*), sweet gum (*Liquidambar styraciflua*), Canary Island date palm (*Phoenix canariensis*), and acacia (*Acacia* sp.); landscaped areas such as soccer field turf, mowed grass, wood chips; developed areas such as paved and unpaved trails; low tidal marsh dominated by California cordgrass (*Spartina foliosa*); mid-high tidal marsh zones dominated by pickleweed (*Salicornia pacifica*) but also including jaumea (*Jaumea carnosa*), salt grass (*Distichlis spicata*), alkali heath (*Frankenia salina*), and gumplant (*Grindelia stricta*); diked marsh dominated by pickleweed as well as salt grass, alkali heath, fat hen (*Atriplex prostrata*), and rabbitsfoot grass (*Polypogon monspeliensis*); tidal waters comprised of the mouth of San Rafael Creek, San Rafael Bay, small tidal marsh channels, mudflat; and a small, created pond in the northwest corner near San Rafael Creek.

COMMENTS AND RECOMMENDATIONS

Comment 1: Lake and Streambed Alteration Agreement

CDFW requires a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams. 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. For the Project described

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in the DEIR, activities that may directly or indirectly impact San Rafael Creek will be subject to Fish and Game Code section 1600 et. seq. Notification.

Comment 2: Mitigation Measure 3.4-1: General Construction-related Mitigation Measures

Issue: Mitigation Measure 3.4-1 states that a qualified biologist only has a 4-year degree in biology or a related field with demonstrated experience with the species of concern. This requirement would not meet CDFW recommendations for approving biological staff for a Project that may be subject to CDFW's regulatory authority.

Recommendation: CDFW recommends that Mitigation Measure 3.4-1 include a condition that the biologist's name and qualifications be provided to CDFW, and other approving agencies, for review and approval prior to being assigned as the lead biologist for Project-related monitoring and training activities. Qualifications that may be considered acceptable for qualified biologists include a minimum of five years of academic training and professional experience in biological sciences and related resource management activities, with a minimum of two years conducting surveys for each species that may be present in the Project area.

Comment 3: Mitigation Measure 3.4-2: Avoid and Minimize Impacts on California Black Rail and California Ridgway's Rail

Issue: Mitigation Measure 3.4-2 states that construction activities within 500 feet of tidal marsh areas will be avoided during rail breeding season (February 1 through August 31). Disturbance of incubating or brooding adults may translate into reduced hatch or fledge success of young through increased nest predation if the adult vacates the nest, or through temperature stress due to lack of thermoregulation by the adult. In addition, continued disturbance may stress the adults and reduce survival through disruption of normal activities, such as reduced foraging or resting time or increased susceptibility to predators (USFWS 2013).

Recommendation: To reduce the likelihood of Project-related impacts to incubating or brooding adults and fledglings, CDFW recommends including a 700-foot no-activity buffer from identified breeding rail calling centers during the rail breeding season. This buffer is described in the Suisun Marsh Habitat Management, Preservation, and Restoration Plan (USBR, USFWS, and CDFW 2013).

Issue: Mitigation Measure 3.4-2 also states that if a California black rail or California Ridgway's rail vocalizes or flushes within 10 meters (32.8 feet), it is possible that a nest or young may be nearby. The DEIR goes on to state that if

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an alarmed bird or nest is detected, work will be stopped. It is not clear what the rationale is of including the reference to a distance of 10 meters in the measure. It is reasonable to assume that Project activities may disturb breeding rails located further away than 10 meters from the source of disturbance, and that rails may vocalize or flush accordingly.

Recommendation: CDFW recommends that the measure be revised to be clear that the qualified biologist will have authority to stop work if they determine that Project activities have caused any rails to vocalize or flush, regardless of distance of the rails from work activities, or if a rail nest is detected within 700 feet of work activities.

Issue: Mitigation Measure 3.4-2 also states that rail breeding surveys will be conducted following the *Site-Specific Protocol for Monitoring Marsh Birds* developed by the Don Edwards San Francisco Bay and San Pablo Bay National Wildlife Refuges. Please be aware that per USFWS staff, this 2017 monitoring protocol was developed for research-based projects that include a long-term monitoring component and is not appropriate for presence/absence surveys.

Recommendation: CDFW recommends that the June 2015 *California Clapper Rail Survey Protocol* developed by the U.S. Fish and Wildlife Service (USFWS) San Francisco Bay-Delta Fish and Wildlife Office (USFWS 2015) be used for presence/absence surveys. As this 2015 protocol does not include playback calls for California black rail, CDFW is available to work with you to incorporate calls for that species into the protocol to ensure that both rail species are included in the surveys.

Comment 4: Mitigation Measure 3.4-4: Avoid and Minimize Impacts on Salt Marsh Harvest Mouse and Salt Marsh Wandering Shrew

Issue: Mitigation measure 3.4-4 states that mechanized hand tools or another method approved by CDFW and USFWS will be used in vegetation removal in salt-marsh harvest mouse habitat. Please be advised that CDFW is aware that mechanized hand tools have resulted in mortality and/or injury to salt-marsh harvest mice and other species during vegetation removal for other projects in the Bay Area.

Recommendation: CDFW recommends the use of non-mechanized hand tools for vegetation removal activities in salt-marsh harvest mouse habitat to the maximum extent practicable. If the exclusive use of non-mechanized hand tools is not practical due to the scale of the Project, the use of mechanized hand tools may be possible in combination with a phased approach. The vegetation would be initially disturbed using non-mechanized instruments such as the handles of

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brooms or rakes (or something similar) to allow individuals to move out of harm's way and allow inspection by a qualified biologist, followed by an initial cut of the top layers of vegetation. The process would be repeated until the vegetation is low enough that the qualified biologist could then inspect the remaining vegetation down to ground-level. Once the qualified biologist determined that mice or nests are not present, then the vegetation removal crew could proceed with mechanized hand tools.

Issue: Mitigation Measure 3.4-4 does not describe a limit to the number of workers removing vegetation relative to the number of qualified biologists/monitors present. CDFW is aware that in some projects, vegetation removal has proceeded at a faster rate than one or two qualified biologists/monitors can effectively inspect vegetation for the presence of mice and nests, particularly when mechanized hand tools were utilized.

Recommendation: CDFW recommends limiting the number of vegetation removal workers relative to the number of qualified biologist/monitors present to ensure that the ability of the qualified biologists/monitors to effectively view and detect mice and/or nests is maximized. Due to the rapid rate that vegetation removal can occur, particularly if non-mechanized hand tools are used, a suggested ratio of vegetation removal workers to qualified biologists/monitors is 3:1. It may be appropriate to increase this ratio if the vegetation removal is conducted strictly with non-mechanized hand tools.

Comment 5: Mitigation Measure 3.4-6 – Fish and Marine Mammal Protection During Pile Driving

Issue: Mitigation measure 3.4-6 specifies that the Project sponsor shall prepare a National Oceanic and Atmospheric (NOAA)-approved sound attenuation monitoring plan to protect fish and marine mammals prior to starting in-water construction that would require pile driving. Given that the Project may impact state listed species and be subject to CDFW's permitting authority, the sound attenuation monitoring plan will also need to be reviewed and approved by CDFW prior to being implemented.

Recommendation: CDFW recommends that the first sentence in Mitigation Measure 3.4-6 be edited to read as follows:

“Prior to the start of any in-water construction that would require pile driving, the Project sponsor shall prepare a NOAA **and CDFW**-approved sound attenuation monitoring plan to protect fish and marine mammals, and the approved plan shall be implemented during construction.”

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Comment 6: Temporary Crane Platform

Issue: The DEIR outlines the installation of the piles for the temporary crane platform using a vibratory hammer to install the 12-16 18-inch diameter piles. CDFW is in agreement with the proposed methods for installing piles. However, the DEIR does not describe the framing, decking, or rails that may be associated with the platform. Fish and Game Code states that it is unlawful to deposit into, permit to pass into, or place where it can pass into waters of the state any substance or material deleterious to fish, plant life, or bird life (Fish and G. Code, § 5650(6).) For CDFW to determine if the platform is consistent with Fish and Game Code, the Final EIR (FEIR) should include a detailed discussion on the types of materials that are being considered for construction of the platform.

Recommendation: CDFW recommends the FEIR provide details regarding the rest of the crane platform construction in addition to the support piles. CDFW recommends avoiding the use of treated wood materials in or above the waters of San Francisco Bay. CDFW also recommends that overwater structures use materials that will allow light penetration to the waters of the bay. This can be achieved by spacing deck boards one inch apart or using slated/grated decking made of metal or composite materials.

Additionally, if any of the proposed measures for pile driving, including methods for pile driving or the types of piles, change before Project implementation, CDFW recommends further consultation regarding potential take of state listed species and the potential need for an Incidental Take Permit.

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, online field survey form, and contact information for CNDDDB staff can be found 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>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish, wildlife, plants, and the habitats on which they depend. An assessment of filing fees is necessary (Fish and G. Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the

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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

Thank you for the opportunity to comment on the Project's DEIR. If you have any questions for staff in the Bay Delta Region, please contact Ms. Tami Schane, Senior Environmental Scientist (Specialist), at (415) 831-4640 or Tami.Schane@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or Brenda.Blinn@wildlife.ca.gov. For questions for staff in Marine Region, please contact Mr. Arn Aarreberg, Environmental Scientist, at (707) 576-2889 or Arn.Aarreberg@wildlife.ca.gov; or Mr. Eric Wilkins, Senior Environmental Scientist (Supervisory), at (805) 594-6172 or Eric.Wilkins@wildlife.ca.gov.

Sincerely,

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REFERENCES

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