



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



May 27, 2021

Governor's Office of Planning & Research

May 27 2021

Sanhita Ghosal
City of San Jose
200 E. Santa Clara Street, 3rd FL
San José, CA 95113
sanhita.ghosal@sanjoseca.gov

STATE CLEARINGHOUSE

Subject: NISL Coyote Creek Bank Repair Project, Mitigated Negative Declaration,
SCH No. 2021040759, Santa Clara County

Dear Sanhita Ghosal:

The California Department of Fish and Wildlife (CDFW) received the Mitigated Negative Declaration (MND) from the City of San Jose (City) for the NISL Coyote Creek Bank Repair Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. 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 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 and Game 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.

¹ 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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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 alteration regulatory authority (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: International Disposal Corporation of California

Objective: Repair an approximately 140-foot-long section of eroded bank on Coyote Creek.

Location: Newby Island Sanitary Landfill, 1601 Dixon Landing Road, Milpitas, Santa Clara County, CA 95035. The coordinates are 37°27'17.58"N latitude and - 121°55'58.96"W longitude (NAD 83 or WGS 84). The Assessor's Parcel Number is 015-40-005.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Initial Study, Appendix B Biological Evaluation, 3.3.2 Impacts to Habitat for Special Status Animals, page 35

The *Impacts to Habitat for Special-Status Animals* section states that the Project site does not provide suitable habitat for salt marsh harvest mouse (SMHM, *Reithrodontomys raviventris*, State Endangered and Fully Protected, Federal Endangered) due to a narrow band of brackish marsh at the Project site and lack of salt marsh plant associations (i.e., pickleweed, *Salicornia virginica*) in which SMHM are typically found. Appendix B, Table 2, page 21 states that presence of SMHM is unlikely due to lack of plant associations (i.e., dominated by pickleweed or alkali bulrush, *Schoenoplectus robustus*) in which SMHM are typically found. The Initial Study, b. Existing Conditions, page 52 states that the tidal brackish marsh within the Project boundary (75 lineal feet) is dominated by hardstem bulrush (*Schoenoplectus acutus*).

CDFW concurs that SMHM may be present within pickleweed-dominated vegetation (Shellhammer *et al.* 2010 and Sustaita *et al.* 2011) and alkali bulrush-dominated

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vegetation (Shellhammer *et al.* 2010). However, SMHM may also be found in vegetation dominated by perennial pepperweed (*Lepidium latifolium*) and spearscale (*Atriplex prostrata*) (Shellhammer *et al.* 2010) and may be found in mixed vegetation dominated plant associations other than pickleweed including species such as fat hen (*Atriplex triangularis*), saltgrass (*Distichlis spicata*), Baltic rush (*Juncus balticus*), and Olney's threesquare bulrush (*Schoenoplectus americanus*) (Sustaita *et al.* 2011). SMHM may also be found in grassland habitat adjacent to these wetland habitats (Sustaita *et al.* 2011).

The vegetation present adjacent to the proposed Project construction area was not discussed in the Initial Study. If any of the habitats, as listed above, are present near the Project area, SMHM may potentially occur and be affected by the proposed Project. As a Fully Protected Species (Fish and Game Code section 4700), SMHM may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research. In order to avoid significant impacts to SMHM CDFW recommends that the following measures be included in the MND:

1. SMHM - Vegetation Removal. Wetland and ruderal grass immediately adjacent to the wetland vegetation should be removed only with non-mechanized hand tools (i.e., trowel, hoe, rake, and shovel). Motorized equipment, including weed wackers or lawn mowers, should not be used to remove this vegetation. A qualified biologist shall monitor for SMHM during vegetation removal. If SMHM is found, Project work should cease and the SMHM must be allowed to leave the Project area of its own volition.
2. SMHM - Exclusion Fence and Monitoring. When the qualified biologist has determined that SMHM is not present within the Project area, an exclusion fence should be installed to prevent re-entry of individuals within the Project area. The qualified biologist should conduct a daily inspection within the exclusion fence prior to the start of construction activities. Exclusion fencing should be inspected for holes and gaps and repaired immediately after detection. If SMHM is found, Project work should cease and the qualified biologist shall contact CDFW to determine the correct course of action.

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base 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:

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<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. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & Game Code, § 711.4; Pub. Resources Code, § 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.

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist at (707) 944-5534 or by email at kristin.garrison@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory) at (707) 944-5541 or by email at brenda.blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Brian Wines, San Francisco Bay Regional Water Quality Control Board,
brian.wines@waterboards.ca.gov

LITERATURE CITED

Shellhammer, H., R. Duke, and M. Orland. 2010. Use of Brankish Marshes in the South San Francisco Bay by Salt Marsh Harvest Mice. California Fish and Game 96(4): 256-259.

Sustaita D., P. Finfrock Quickert, L. Patterson, L. Barthman-Thompson, and S. Estrella. 2011. Salt Marsh Harvest Mouse Demography and Habitat Use in the Suisun Marsh, California. The Journal of Wildlife Management 75(6):1498–1507.