



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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Governor's Office of Planning & Research

June 22, 2021

June 23 2021

STATE CLEARINGHOUSE

Mr. Steve Moore
Ross Valley Sanitary District
2960 Kerner Boulevard
San Rafael, CA 94901
smoore@rvsd.org

Subject: Lower Fawn Drive Sewer Rehabilitation Project, SCH No. 2021050550,
Mitigated Negative Declaration, Marin County

Dear Mr. Moore:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Ross Valley Sanitary District (District) for the Lower Fawn Drive Sewer Rehabilitation Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the District, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife 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) or Native Plant Protection Act, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Ross Valley Sanitary District

Objective: The Project would rehabilitate or replace approximately 1,550 linear feet of sanitary sewer pipelines and related infrastructure to increase capacity and improve structural defects in the sanitary sewer system. Sewer pipelines would be increased from 6-inch to 8-inch-diameter. Project activities include excavating trenches, pipe-

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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bursting, removing old sewer pipelines, installing new pipelines, rehabilitating maintenance holes, and restoring work sites to pre-Project condition.

Location: The Project is located at Fawn Drive in the Town of Sleepy Hollow, in unincorporated Marin County. The Project begins at the intersection of Butterfield Road and Fawn Drive, then continues east on Fawn Drive until it meets Fawn Court, and then continues north on Fawn Drive for approximately 800 feet. The approximate centroid of the Project is Latitude 38.00235°N, Longitude 122.57218°W.

Timeframe: The Project is anticipated to begin in late summer 2021 and be completed by October 2021.

ENVIRONMENTAL SETTING

The Project area is located on approximately 0.6 acres of roadway and road shoulder within the District's right-of-way on Fawn Drive. The Project area consists of paved roads, sidewalks, and landscaping along the roadway frontages. Fawn Drive crosses Sleepy Hollow Creek via a concrete box culvert and vegetation at this location includes native riparian species. Nearby land is dominated by single-family homes and residential neighborhoods. Several small businesses and an elementary school are also located near the Project. Special-status species with the potential to occur on or near the Project include, but are not limited to, central California coast steelhead (*Oncorhynchus mykiss irideus* pop. 8), listed as threatened pursuant to the federal Endangered Species Act (ESA); California red-legged frog (*Rana draytonii*), listed as threatened pursuant to ESA and a California Species of Special Concern (SSC); Northwest/North Coast clade foothill yellow-legged frog (*Rana boylei*), SSC; western pond turtle (*Emys marmorata*), SSC; and California giant salamander (*Dicamptodon ensatus*), SSC.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration Agreement

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. The MND identifies that an existing sanitary sewer line proposed for removal and replacement crosses Sleepy Hollow Creek (MND page 22 and Attachment C). This activity has the potential to impact Sleepy Hollow Creek and may require Notification, see further details below. In this case, CDFW will consider the CEQA document for the Project and may

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issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

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 during construction or over the life of the project. Issuance of an ITP 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 an ITP.

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) and 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 CESA.

Raptors and Other Nesting Birds

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 sections 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species may not be taken or possessed at any time (Fish and Game Code, §§ 3511, 4700, 5050, and 5515).

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project’s avoidance of significant impacts on biological resources, in part through implementation of CDFW’s below recommendations, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

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Project Description and Related Impact Shortcoming

Lake or Streambed Alteration Notification

The MND describes that a sanitary sewer line replacement would occur on Fawn Drive where it crosses Sleepy Hollow Creek (MND page 22 and Appendix C). However, the specific methods for removal and replacement at this site are unclear. The MND states that all work would be limited to the District's right-of-way and that "no disturbance to the active channel would occur" (MND page 23). The District's right-of-way appears to encompass the entire concrete box culvert that crosses Sleepy Hollow Creek, plus an additional buffer area upstream and downstream of the culvert. The construction plans included in the MND show that the existing and proposed replacement sewer line are below the existing grade of the road and that Project activities at this site would occur by open trench. Disturbance to any part of the bed, bank, or channel of Sleepy Hollow Creek, regardless of the active channel width or if the creek would be dry during the activities, may be a significant impact pursuant to CEQA and a substantial impact pursuant to Fish and Game Code section 1602. As noted above, if the Project may substantially impact Sleepy Hollow Creek, the District must notify CDFW of the activity (see: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>).

For an adequate Project description and to reduce potential impacts to less-than-significant, CDFW recommends that the MND: 1) provide further details of the Project activities at Sleepy Hollow Creek, including the location of the existing sewer line relative to the creek and the culvert, and the location and dimensions of the trench; and 2) include the below Mitigation Measure.

Mitigation Measure BIO-2: Notification of Lake or Streambed Alteration

For Project activities that may substantially alter the bed, bank, or channel of Sleepy Hollow Creek, a Notification shall be submitted to CDFW pursuant to Fish and Game Code section 1602 prior to Project construction. If CDFW determines that an LSA Agreement is warranted, the District shall comply with all required measures in the LSA Agreement.

Environmental Setting and Related Impact Shortcoming

Central California Coast Steelhead

The MND states that Central California Coast (CCC) steelhead, ESA listed as threatened, occur in Sleepy Hollow Creek and that the creek is federally designated as critical habitat (MND page 19). Project activities such as trenching that occur in the vicinity of Sleepy Hollow Creek have the potential to significantly impact CCC steelhead through temporary loss of stream habitat and potential increase of sediment and turbidity in the creek.

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To reduce impacts to less-than-significant, CDFW recommends the below Mitigation Measure.

Mitigation Measure BIO-3: Avoid Impacts to Central California Coast Steelhead

The Project shall avoid impacts to CCC steelhead by limiting all work within or near Sleepy Hollow Creek to periods when Sleepy Hollow Creek is dry. No sediment shall be allowed to enter Sleepy Hollow Creek.

California Red-legged Frog

According to the MND, the Project is within the range of the California red-legged frog, a federally listed as threatened species and SSC, but there is not suitable habitat within the Project area (MND page 19). California red-legged frogs require a variety of habitats, including aquatic breeding habitats and upland dispersal habitats. In addition, a lack of documented records does not indicate species absence as the California Natural Diversity Database (CNDDDB) is a positive-indicator-only database. The Project is within the range of California red-legged frog and potentially suitable habitat of the species. Breeding sites of the species are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, springs, sag ponds, dune ponds and lagoons. Additionally, California red-legged frogs frequently breed in artificial impoundments such as stock ponds (U.S. Fish and Wildlife Service (USFWS) 2002). Breeding sites are generally found in deep, still or slow-moving water (>2.5 feet) and can have a wide range of edge and emergent cover amounts. California red-legged frogs can breed at sites with dense shrubby riparian or emergent vegetation, such as cattails or overhanging willows, or can proliferate in ponds devoid of emergent vegetation (i.e., stock ponds). Habitat includes nearly any area within one to two miles of a breeding site that stays moist and cool through the summer; this includes non-breeding aquatic habitat in pools of slow-moving streams, perennial or ephemeral ponds, and upland sheltering habitat such as rocks, small mammal burrows, logs, densely vegetated areas, and even man-made structures (i.e., culverts, livestock troughs, spring-boxes, and abandoned sheds) (USFWS 2017). California red-legged frog populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, mining, overgrazing by cattle, 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 the species (Thomson et al. 2016, USFWS 2017).

The Project could injure or kill California red-legged frogs if they occur on-site. Therefore, Project activities have the potential to significantly impact California red-legged frog. To reduce impacts to less-than-significant, CDFW recommends the following Mitigation Measure.

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Mitigation Measure BIO-4: California Red-legged Frog Habitat Assessment and Surveys, and U.S. Fish and Wildlife Service Authorization for Impacts

At least two weeks prior to the commencement of ground-disturbing activities, the Project area at Sleepy Hollow Creek and nearby vicinity, including a minimum 500-foot radius surrounding the Project area at Sleepy Hollow Creek, shall be assessed by a Qualified Biologist for the presence of California red-legged frog individuals and habitat features. Habitat features include both aquatic habitat such as plunge pools and ponds and terrestrial habitat such as burrows. The results of the habitat feature assessment shall be submitted to CDFW for written acceptance prior to starting Project activities. If California red-legged frogs are encountered during the assessment or Project activities, the Project shall not proceed or all work shall cease, and CDFW shall immediately be notified. Work shall not proceed until the frog, through its own volition, moves out of harm's way and CDFW has provided permission in writing to proceed with the Project. If California red-legged frog is encountered, additional approvals from USFWS may be necessary pursuant to ESA.

Western Pond Turtle

The MND identifies that Sleepy Hollow Creek may act as a movement corridor for western pond turtle, an SSC (MND page 19). The Project is adjacent to aquatic habitat and is approximately three miles from a CNDDDB occurrence of western pond turtle. Unprocessed data from CNDDDB identifies western pond turtle occurrences within approximately 3.3 miles of the Project. Western pond turtles can move more than 4 miles up or down stream; therefore, the project area is within the mobility range of these observations (Holland 1994). The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015).

The Project may result in loss of western pond turtle adults, young, or their nests, or disturbance to this species from construction activities. Western pond turtle is declining throughout its range, primarily due to loss of habitat from urbanization and conversion to agriculture (Spinks et al. 2003). Additionally, bouts of prolonged drought have exacerbated species decline (Purcell et al. 2017). Based on the above, the Project would potentially substantially adversely affect western pond turtle. Therefore, Project impacts to western pond turtle would be potentially significant. To reduce impacts to less-than-significant, CDFW recommends the following Mitigation Measure.

Mitigation Measure BIO-5: Western Pond Turtle Habitat Assessment, Surveys, and Relocation

A qualified biologist shall conduct a habitat suitability assessment in the vicinity of the Sleepy Hollow Creek crossing on Fawn Drive to determine where western pond turtles

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may occur in or adjacent to the Project area. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the project area. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for western pond turtles, with detections. If any pond turtles or their nests are found, the biologist shall prepare a relocation plan and submit it to CDFW for written acceptance, and then implement the plan. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the biologist.

Foothill Yellow-Legged Frog

The MND identifies that the Project is within the range of the Northwest/North Coast clade of foothill yellow-legged frog, an SSC, and that historic CNDDDB occurrences exist within five miles (MND Attachment E). The Project is within approximately 2.4 and 1.4 miles of extirpated CNDDDB occurrences of foothill yellow-legged frog. However, presumed extant CNDDDB occurrences exist approximately 2.8 and 3.6 miles from the Project area, and within five miles of the Project, CNDDDB occurrences have been verified as recently as 2018. Different life stages of the species use a variety of habitat types for development, foraging, and overwintering (Thompson et al. 2016). The species utilizes upland habitats adjacent to streams and have been observed 164 feet away from streams under rocks or other refugia (Nussbaum et al. 1983; Thompson et al. 2016; Zweifel 1955). Little information is known about foothill yellow-legged frog terrestrial movements and the species may travel farther from streams. The species also occur in swales or other moist areas.

The Northwest/North Coast genetic clade of foothill yellow-legged frog has been extirpated from much of the southern segment of its range in the San Francisco Bay Area and is at risk from urbanization, severe wildland fires, and climate change (*ibid.*). The Project may result in injury or mortality to foothill yellow-legged frog through crushing, killing, or injuring individuals from vehicles, equipment, and workers during Project activities. Project impacts to foothill yellow-legged frog would be potentially significant. To reduce impacts to less-than-significant, CDFW recommends the MND incorporate the below Mitigation Measure.

Mitigation Measure BIO-6: Foothill-yellow Legged Frog Habitat Assessment, Surveys, and Relocation

A qualified biologist shall conduct a habitat suitability assessment in the vicinity of the Sleepy Hollow Creek crossing on Fawn Drive to determine where foothill yellow-legged frogs may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed. If suitable habitat is identified, the biologist shall provide a foothill yellow-legged frog survey methodology to CDFW for review and approval a minimum of two weeks prior to Project construction.

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No Project activities shall begin until foothill yellow-legged frog surveys have been completed using a method approved by CDFW in writing. The survey methodology will target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area will include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted at different times of day and under variable weather conditions if possible. The qualified biologist shall also conduct a pre-construction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for foothill yellow-legged frog, with detections. If any foothill yellow-legged frogs are found, the biologist shall prepare an avoidance, minimization, and relocation plan and submit it to CDFW for written acceptance, and then implement the plan.

The LSA Agreement, if issued by CDFW, would likely include the above recommendations, as applicable.

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 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>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. 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. Payment of the fee is required for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

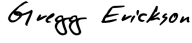
CONCLUSION

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

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Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at amanda.culpepper@wildlife.ca.gov or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4E93C80FEA
Gregg Erickson
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse (SCH No. 2021050550)
Carolyn Huynh, Integral Consulting, chuynh@integral-corp.com

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