



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Ave
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

July 28, 2021

July 28 2021

STATE CLEARINGHOUSE

Patrick Treanor
Plant Engineer
Carmel Area Wastewater District (CAWD)
3945 Rio Road
Carmel, California 93922

**Subject: CRFREE Mitigation Pipeline Undergrounding (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH No.: 2021060364**

Dear Mr. Treanor:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from CAWD for the 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. 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. Although the comment period for your request has passed, CDFW would appreciate if you would still consider the following comments.

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

¹ CEQA is codified in the California Public Resources Code in § 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with § 15000.

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 2

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 alteration regulatory authority (Fish & G. 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 & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include §§ 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, 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, including non-native species. It is possible that without mitigation measures, activities associated with the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. CDFW prohibits and cannot authorize take of any fully protected species.

PROJECT DESCRIPTION SUMMARY

Proponent: Carmel Area Wastewater District (CAWD)

Objective: The objective of the Project is to replace and remove existing wastewater pipes that extend over the south arm of the Carmel River Lagoon. The existing pipes are susceptible to flood damage. New pipes will be installed under the bed of the Lagoon by conducting horizontal directional drilling. Primary Project activities include installation of an approximately 1,000-foot segment of two parallel wastewater pipelines under the Lagoon.

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 3

Once the new pipes are installed and connected to the main line, the old pipes that cross the Lagoon will be removed, and the underground segments of the existing pipes will be filled and abandoned. There will be a total of three staging areas, one on each side of the Lagoon and one at the CAWD Wastewater Treatment Plant. To facilitate construction access and staging, portions of the existing access roads and adjacent upland areas on the east and west sides of the Lagoon will need to be mowed, hand-trimmed, stabilized, widened, and/or cleared.

Location: The 18-acre Project site is within the Carmel River Lagoon; Assessor's Parcel Numbers (APNs): 243-021-007, 243-011-001, and 243-031-037.

Timeframe: Unspecified

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist CAWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The habitats present in and around the Carmel River Lagoon support many special-status resources. CDFW recommends that these resources be evaluated and addressed, as recommended below, prior to any approvals that would allow ground-disturbing activities or land use changes. The MND indicates that the Project will result in a potentially significant impact unless mitigation measures are taken. However, the measures currently included in the MND are general, non-specific, and/or may be inadequate to reduce impacts to less than significant. CDFW is concerned regarding potential impacts to special-status species known to, or with potential to, occur in the vicinity of the Project site including, but not limited to: the State fully protected white-tailed kite (*Elanus leucurus*); the State endangered foothill yellow-legged frog (*Rana boylei*); the federally threatened and State Species of Special Concern California red-legged frog (*Rana draytonii*); and federally and State-listed special-status plant species including the State and federally endangered and California Rare Plant Ranked (CRPR) 1B.1 Hickman's cinquefoil (*Potentilla cristae*), the federally endangered and the State threatened and CRPR 1B.2 Monterey gilia (*Gilia tenuiflora ssp. arenaria*), the State rare and CRPR 1B.1 Pacific Grove clover (*Trifolium polyodon*), the federally endangered and CRPR 1B.1 Yadon's rein orchid (*Piperia yadonii*), and the federally threatened and CRPR 1B.2 Monterey spineflower (*Chorizanthe pungens var. pungens*). To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) in order to determine whether any special-status species and/or suitable habitat features may be present within the Project site. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol-level surveys and to identify any Project-related impacts under CESA.

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 4

CDFW recommends that a qualified biologist conduct a habitat assessment of the Project site, well in advance of Project implementation, to determine if habitat suitable to support special-status plant or animal species, including, but not limited to, those mentioned above is present. If suitable habitat is present, CDFW recommends assessing presence/absence of special-status species by conducting surveys following recommended protocols or protocol-equivalent surveys. Recommended protocols vary by species and more information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If State-listed species are detected at a Project site, consultation with CDFW is warranted to discuss how to avoid take, or if avoidance is not feasible, to acquire an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081 subdivision (b) prior to initiating any ground-disturbing activities. Please note that moving a species out of harm's way, as suggested under mitigation measure BIO-3, would constitute take as defined by Fish and Game Code section 86, and it is recommended that this mitigation measure be avoided in the absence of proper authorization from CDFW and/or U.S. Fish and Wildlife Service (USFWS). CDFW recommends that the CEQA document provide quantifiable and enforceable measures, as needed, that will reduce impacts to less than significant levels.

Of greatest concern to CDFW are white-tailed kite, foothill yellow-legged frog, California red-legged frog, and the special-status plant species listed above. CDFW recommends the specific mitigation measures below to address potential impacts to these species.

Fully Protected Raptors

Recommended Mitigation Measure 1: Fully Protected Raptor Habitat Assessment

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project site or its vicinity (within ½ mile) contains suitable nesting or roosting habitat for fully protected raptors.

Recommended Mitigation Measure 2: Fully Protected Raptor Surveys

CDFW recommends that focused surveys be conducted by experienced biologists at the Project site prior to Project implementation. To avoid impacts to these species, CDFW recommends conducting these surveys in accordance with protocols developed by CDFW (CDFG 2010). If Project activities are to take place during the typical bird breeding season (February 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project activity.

Recommended Mitigation Measure 3: Fully Protected Raptor Avoidance

In the event that fully protected raptor species nest- or roost-sites lie within ½ mile of the Project site, implementation of avoidance measures is warranted. CDFW recommends that a qualified wildlife biologist be on-site during all Project-related

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 5

activities and that a ½-mile no-disturbance buffer be implemented around the nest and/or roost site. If the ½-mile no-disturbance buffer cannot feasibly be implemented, contacting CDFW for assistance with additional avoidance measures is recommended. Fully addressing potential impacts to fully protected raptor species and requiring measurable and enforceable mitigation in the MND is recommended.

Foothill Yellow-Legged Frog (FYLF) and California Red-Legged Frog (CRLF)

Recommended Mitigation Measure 4: FYLF and CRLF Surveys

Because the MND acknowledges a high potential for CRLF occurrence within the Project site, and because occurrence records for FYLF lie within the vicinity of the Project site (CDFW 2021), CDFW recommends that a qualified wildlife biologist conduct protocol-level surveys for FYLF and CRLF in areas where potential habitat exists. For FYLF, CDFW advises conducting visual encounter surveys following the methodology described in “Considerations for Conserving the Foothill Yellow-Legged Frog” (CDFW 2018a), to determine if the species is present within or adjacent to the Project site. For CRLF, CDFW recommends conducting surveys in accordance with the “Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog” (USFWS 2005) to determine if the species is present within or adjacent to the Project site. Please note that dip-netting would constitute take as defined by Fish and Game Code § 86, so it is recommended this survey technique be avoided. In addition, CDFW advises surveyors adhere to Appendix E, “The Declining Amphibian Task Force Fieldwork Code of Practice,” of the CDFW’s (2018) “Considerations for Conserving the Foothill Yellow-Legged Frog”.

Recommended Mitigation Measure 5: FYLF and CRLF Avoidance

If any FYLF or/and CRLF are found during pre-construction surveys or at any time during construction, consultation with CDFW is warranted to determine if the Project can avoid take. CDFW recommends that initial ground-disturbing activities be timed to avoid the period when FYLF and CRLF are most likely to be moving through upland areas (October 15 and May 1). When ground-disturbing activities must take place between October 15 and May 1, CDFW recommends a qualified biologist monitor construction activity daily for FYLF and CRLF.

Recommended Mitigation Measure 6: FYLF Take Authorization

Mitigation Measure BIO-3 of the MND currently allows an approved biologist to move special-status amphibian species that are likely to be killed or injured by Project activities from the Project site prior to commencement. However, implementation of the measure as currently drafted would constitute take as defined by Fish and Game Code section 86. If take of FYLF cannot be avoided, take authorization is necessary prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 6

Special-Status Plant Species

Recommended Mitigation Measure 7: Special-Status Plant Habitat Assessment

The MND and supporting biological resource study acknowledge that protocol-level rare plant surveys were not conducted throughout the entire Project site and that rare plant surveys were restricted to a 7.2-acre portion of the 18-acre Project site. Occurrences of several State and federally listed special-status species lie within the vicinity of the Project site (CDFW 2021). Based on a review of aerial imagery, the Project site appears to support suitable habitat for several special-status plant species (CNPS 2021). As currently drafted, Mitigation Measure BIO-2a requires that protocol-level rare plant surveys be conducted in the spring and summer immediately prior to Project implementation. However, given current drought conditions, if rainfall conditions are not suitable to support germination, particularly of annual herbs, it is possible that special-status species may not be detectable within this survey window. For this reason, CDFW recommends that a qualified botanist conduct a habitat assessment of the entirety of the Project site, in advance of project implementation, to determine if suitable habitat for special-status plant species is present.

Recommended Mitigation Measure 8: Special-Status Plant Surveys

If suitable habitat is present, CDFW recommends that the Project site be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities” (CDFW 2018b). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period of focal species. Mitigation Measure BIO-2a states that reference site surveys will be conducted “if determined necessary.” However, as currently drafted, this measure is not enforceable. In addition, as described immediately above, and considering current drought conditions, CDFW recommends the use of reference sites to ensure that surveys are timed appropriately. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Recommended Mitigation Measure 9: Special-Status Plant Avoidance

If special-status plant species are found on the Project site, or their presence is assumed, CDFW recommends that special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 7

Recommended Mitigation Measure 10: State-Listed Plant Take Authorization

If a plant species listed pursuant to CESA or State designated as rare is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b) for State listed threatened or endangered plants or pursuant to the Native Plant Protection Act and Fish and Game Code section 1900 et seq. for State designated rare plants.

I. Editorial Comments and/or Suggestions

Lake and Streambed Alteration: The Project will include activities within Carmel River Lagoon that are likely subject to CDFW's regulatory authority pursuant Fish and Game Code § 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement (LSAA). If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue a Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 8

continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, California red-legged frog, steelhead south-central California coast DSP, Smith's blue butterfly, and special-status plant species such as Yadon's rein orchid, Monterey gilia, and Monterey spineflower. Take under FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations 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:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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 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.)

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 9

CONCLUSION

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

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with recommended mitigation measures in this comment letter. Questions regarding this letter or further coordination should be directed to Aimee Braddock, Environmental Scientist at aimee.braddock@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Gerald Hatler

37BF80A1646F41C...

Gerald Hatler for Julie A. Vance
Regional Manager

Attachments

A. MMMRP for CDFW Recommended Mitigation Measures

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

ec: Jeff Cann
CDFW

Patrick Treanor, Plant Engineer
Carmel Area Wastewater District (CAWD)
July 28, 2021
Page 10

REFERENCES

California Department of Fish and Game (CDFG) 2010. Bald Eagle Breeding Survey Instructions. California Department of Fish and Game, April 2010.

California Department of Fish and Wildlife (CDFW) 2018a. Considerations for Conserving the Foothill Yellow-Legged Frog. California Department of Fish and Wildlife. May 14, 2018.

CDFW, 2018b. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. California Department of Fish and Wildlife, March 2018.

CDFW, 2021. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed July 23, 2021.

California Native Plant Society (CNPS), 2021. <https://rareplants.cnps.org/>. Accessed July 25, 2021.

USFWS, 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

Patrick Treanor, Plant Engineer
 Carmel Area Wastewater District (CAWD)
 July 28, 2021
 Page 11

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
 RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

PROJECT: CRFREE Mitigation Pipeline Undergrounding

SCH No.: 2021060364

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: Fully Protected Raptor Habitat Assessment	
Mitigation Measure 2: Fully Protected Raptor Surveys	
Mitigation Measure 4: FYLF and CRLF Surveys	
Mitigation Measure 6: FYLF Take Authorization	
Mitigation Measure 7: Special-Status Plant Habitat Assessment	
Mitigation Measure 8: Special-Status Plant Surveys	
Mitigation Measure 10: State-Listed Plant Take Authorization	
<i>During Construction</i>	
Mitigation Measure 3: Fully Protected Raptor Avoidance	
Mitigation Measure 5: FYLF and CRLF Avoidance	
Mitigation Measure 9: Special-Status Plant Avoidance	