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**GAVIN NEWSOM, Governor**  
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Governor's Office of Planning & Research

**Oct 25 2021**

## STATE CLEARINGHOUSE

October 22, 2021

Mr. Alex Anaya  
Marin Municipal Water District  
220 Nellen Avenue  
Corte Madera, CA 94925  
[aanaya@marinwater.org](mailto:aanaya@marinwater.org)

Subject: Pine Mountain Tunnel Tanks Project, Mitigated Negative Declaration,  
SCH No. 2021090343, Marin County

Dear Mr. Anaya:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Marin Municipal Water District (Marin Water) for the Pine Mountain Tunnel Tanks Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform Marin Water, 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 (NPPA), the Lake and Streambed Alteration (LSA) Program, 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:** Marin Water

**Objective:** The Project would construct two, 2-million-gallon capacity, 95-foot-diameter, 45-foot-tall water storage tanks on 0.7 acres of undeveloped land. Material storage and staging for the Project would occur at a developed site called Bullfrog Quarry and encompass approximately one acre. After constructing the new water tanks, the Pine Mountain Tunnel water storage facility would be abandoned. Primary Project activities

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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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would include grading, excavating, trenching, concrete pouring, drilling, hauling, tree-removal, replacing an existing culvert, realigning ephemeral drainages on-site, and installing new culverts.

**Location:** The Project is located approximately 530 feet southeast of the intersection of Bolinas Road and Concrete Pipe Road, on the western side of Concrete Pipe Road, south of the Town of Fairfax in unincorporated Marin County. The approximate centroid of the Project is Latitude 37.97167°N, Longitude 122.6039°W and the Assessor's Parcel Number is 197-120-23.

**Timeframe:** The Project is anticipated to begin in January 2022 and be completed by December 2026.

## ENVIRONMENTAL SETTING

The Project covers 0.7 acres of undeveloped land surrounded by forest and woodland. Predominant tree species on the site include Pacific madrone (*Arbutus menziesii*), coast live oak (*Quercus agrifolia*), California black oak (*Q. Kelloggii*), valley oak (*Q. lobata*), California buckeye (*Aesculus californica*), and California bay (*Umbellularia californica*) (MND page 3-29). To the north and west of the Project the surrounding area consists of single-family homes on large lots and the Meadow Country Club golf course. The rest of the surrounding area is open space managed by Marin Water and includes forested habitat, including coast redwood (*Sequoia sempervirens*) stands. Two ephemeral channels occur on the Project site and converge at an existing culvert under Concrete Pipe Road (MND page 3-29). Special-status species with the potential to occur in or near the Project area include, but are not limited to, northern spotted owl (*Strix occidentalis caurina*), listed as threatened pursuant to CESA and the federal Endangered Species Act (ESA); Napa false indigo (*Amorpha californica* var. *napensis*), California Rare Plant Rank (CRPR) 1B.2<sup>2</sup>; bent-flowered fiddleneck (*Amsinckia lunaris*), CRPR 1B.2; Northwest/North Coast clade foothill yellow-legged frog (*Rana boylei*), a California Species of Special Concern (SSC); pallid bat (*Antrozous pallidus*), SSC; and white-tailed kite (*Elanus leucurus*), a Fully Protected species.

## REGULATORY REQUIREMENTS

### 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.

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<sup>2</sup> CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline> and on the California Native Plant Society webpage <https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>

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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 the Project site contains two ephemeral channels that would likely be considered streams by CDFW (MND page 3-29). Project activities identified as permanently or temporarily impacting these streams, such as by culverting portions of the channels, replacing an existing culvert, and re-routing the channels (MND pages 3-29 and 3-58) would require LSA Notification, see further recommendations below. In this case, CDFW would consider the CEQA document for the Project and may 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 and Native Plant Protection 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 or NPPA, such as northern spotted owl, 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 or NPPA 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) & 21083; CEQA Guidelines, §§ 15380, 15064, & 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.

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### **Fully Protected Species**

Fully Protected species, such as white-tailed kite, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

### **COMMENTS AND RECOMMENDATIONS**

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

#### **Lake or Streambed Alteration Notification**

As noted above, the Project would permanently or temporarily impact ephemeral streams by culverting portions of the channels, replacing an existing culvert, and re-routing the channels (MND pages 3-29 and 3-58). To comply with California Fish and Game Code section 1600 et seq. and reduce impacts to less-than-significant, CDFW recommends the following Mitigation Measure.

#### *Mitigation Measure BIO-6: Notification of Lake or Streambed Alteration*

For Project activities that may substantially alter the bed, bank, or channel of the ephemeral streams, an LSA 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, Marin Water shall comply with all required measures in the LSA Agreement, including but not limited to requirements to offset permanent impacts to ephemeral streams and riparian habitat.

#### **Environmental Setting and Related Impact Shortcoming**

##### ***Riparian Habitat and Sensitive Natural Communities***

The MND identifies that the Project site is located within mixed oak forest and woodland, an alliance which is not identified as a sensitive natural community (MND page 3-29). However, Marin Water undertook a fine-scale vegetation classification and mapping project in 2004 through 2009, and based on that mapping exercise, the Project site is classified as a madrone forest alliance and, more specifically, a madrone-California bay association (Marin Municipal Water District 2009). The madrone forest alliance is state rarity ranked S3, which CDFW considers a sensitive natural community (CDFW 2021). Alternately, a 2019 fine scale vegetation mapping exercise in Marin County classifies the site as California bay forest and woodland alliance (One Tam 2019). The California bay forest and woodland alliance is also state rarity ranked S3 and is considered a sensitive natural community (CDFW 2021). It is unclear from the information provided in the MND how the site was mapped as a mixed oak forest and

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woodland and appears that the site might instead be identified as a madrone forest or a California bay forest and woodland, both of which are considered sensitive natural communities.

Additionally, it appears that the Project may impact riparian habitat on and adjacent to the ephemeral streams.

The Project would remove up to 25 trees with diameter at breast height greater than 18 inches (MND page 3-31) and permanently remove 0.7 acres of the sensitive natural community through grading, construction, and paving, a potentially significant impact to this sensitive natural community. While tree replacement or alternative mitigation measures are identified for removal of large trees in BIO-5, sensitive natural communities should receive mitigation that will appropriately mitigate impacts to the community and not just individual trees. To adequately describe the environmental setting and reduce impacts to less-than-significant, CDFW recommends: 1) providing further details and baseline information about the vegetation classification of the Project site, 2) providing clarification if riparian habitat would be impacted, and 3) including the following Mitigation Measure.

*Mitigation Measure BIO-7: Sensitive Natural Community Mitigation*

Permanent impacts to riparian habitat and any sensitive natural community shall be mitigated by restoration of riparian habitat and any sensitive natural community at a 3:1 mitigation to impact ratio based on acreage and linear distance as close to the Project site as possible and within the same watershed. Tree replanting ratios shall adhere to requirements pursuant to the LSA Agreement, if issued by CDFW. Oak trees shall be replaced at minimum 10:1 ratio, unless otherwise approved by CDFW. Any temporary impacts shall be restored on-site. Restoration shall include but not be limited to developing a restoration plan including success criteria, planting native species, removing nonnative invasive vegetation, and five years of maintenance and monitoring or more as needed to achieve success criteria.

***Artificial Lighting***

The MND identifies that the Project will install permanent security lighting around the perimeter of the Project site and may require extended work days during construction activities that would require night lighting (MND pages 2-4, 2-7, and 3-5). Night lighting can disrupt the circadian rhythms and natural behaviors of many wildlife species. For example, wildlife can use photoperiod cues for communication (e.g., bird song; Miller 2006), timing of foraging (Stone et al. 2009), behavioral thermoregulation (Beiswenger 1977), and timing of migration (Longcore and Rich 2004). Artificial light can also instigate phototaxis, which is the phenomenon of attraction and movement towards light. Phototaxis can result in disorientation, entrapment, and temporary blindness for a

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variety of species (*ibid.*). As lighting would be installed for the life of the water tanks, this potential impact would be sustained over many years, in addition to temporary impacts during construction of the Project. Based on the above, using artificial lights would cause a potentially significant impact to biological resources.

To reduce impacts to less-than-significant, CDFW recommends eliminating all non-essential lighting from the Project and avoiding work and use of artificial light outside of daylight hours. The following Mitigation Measure should be incorporated into the Project if lighting cannot be avoided.

*Mitigation Measure BIO-8: Minimize Impacts of Artificial Light*

All lighting shall be installed to minimize the area that receives light, including installing shielding around bulbs and ensuring lights are cast downward with no spillover to adjacent land or upward light into the night sky. Lighting shall rate a correlated color temperature of 3,000 Kelvins or less and shall remain off until needed<sup>3</sup>.

***Foothill Yellow-legged Frog and Seasonality Restriction***

The MND identifies that foothill yellow-legged frog, an SSC, has a low probability of occurring on-site and that there are recent observations of the species within a mile of the Project (MND page 3-18). As the Project anticipates working during the wet season (MND page 2-7), the probability of foothill yellow-legged frog entering the work site is higher than if the Project were limited to the dry season when the ephemeral creeks on site do not retain water. The Project has the potential to crush, injure, or kill foothill yellow-legged frogs through grading, paving, and other construction activities, a potentially significant impact. To reduce impacts to less-than-significant, CDFW recommends the following Mitigation Measure.

*Mitigation Measure BIO-9a: Foothill Yellow-legged Frog Survey Methodology*

A CDFW-approved Qualified Biologist shall provide a foothill yellow-legged frog survey methodology to CDFW for review and written approval no less than 30 days prior to beginning Project activities, unless CDFW approves otherwise in writing. No Project activities shall begin until foothill yellow-legged frog surveys have been completed using a method approved by CDFW. Survey methodology shall target all life stages and shall have an adaptive management approach based on the stream conditions at the time of surveys (i.e., whether ponded or flowing water is present, or whether the stream has been completely dry for less than 30 days). Surveys within and adjacent to the Project area shall include searching suitable habitat including but not limited to cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed and 500 feet upstream and

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<sup>3</sup> See the International Dark-Sky Association website for more information <https://www.darksky.org/>

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downstream of the Project area. Surveys should be conducted at different times of day and under variable weather conditions if possible.

*Mitigation Measure BIO-9b: Foothill Yellow-legged Frog Surveys*

Prior to starting Project activities, a CDFW-approved Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology (Mitigation Measure BIO-8b). If foothill yellow-legged frogs, or any other special-status species, are found, CDFW shall be notified immediately, and construction shall not occur without written approval from CDFW allowing the Project to proceed. In this event, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. Additionally, a Qualified Biologist shall be on site daily to monitor work and ensure impacts to foothill yellow-legged frogs are avoided. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project site, then surveys for foothill yellow-legged frogs are not necessary.

*Mitigation Measure BIO-10: Dry Weather Work Window for Ephemeral Streams*

Project activities within 50 feet of the ephemeral streams shall be limited to the dry work window of June 15 to October 15, unless otherwise approved in writing by CDFW. Within this area, Project work shall be restricted to dry weather and when no flowing water is present. The Permittee shall monitor forecasted precipitation. When a 0.25-inch or more of precipitation is forecasted to occur, the Permittee shall stop work before precipitation commences. No Project activity may be started if its associated erosion control measures cannot be completed prior to the onset of precipitation. After any storm event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sediment problems and take corrective action as needed. Seventy-two-hour weather forecasts from the National Weather Service shall be consulted and work shall not resume until runoff ceases and there is less than a 30 percent forecast for precipitation for the following 24-hour period. Weather forecasts shall be documented upon request by CDFW.

**Mitigation Measures and Related Impact Shortcoming**

***Northern Spotted Owl***

The MND identifies that known northern spotted owl nest sites occur to the north and south of the Project site, as close as 300 feet from the Project (MND page 3-24 and 3-25). The northern spotted owl is listed as threatened pursuant to CESA and ESA. The MND includes Mitigation Measure BIO-2b, which requires work outside of the northern

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spotted owl nesting season unless protocol-level surveys are conducted identifying that no nesting owls are within 0.25 miles of the Project (MND page 3-28). This measure appears to avoid and minimize potential noise impacts to nesting northern spotted owls, but does not address the permanent loss of 0.7 acres of northern spotted owl habitat resulting from the Project. Population levels and vital rates for northern spotted owl continue to decline throughout California, and habitat loss is still one of the most significant threats to northern spotted owl survival (CDFW 2016). The Project would remove northern spotted owl habitat through tree removal, grading, paving and construction activities, a potentially significant impact. To reduce impact to less-than-significant, CDFW recommends the following Mitigation Measure.

*Mitigation Measure BIO-11: Northern Spotted Owl Habitat Mitigation*

Permanent impacts to northern spotted owl habitat shall be mitigated by restoring northern spotted owl habitat at a 3:1 mitigation to impact ratio as close to the Project site as possible following the same restoration requirements as outlined in Mitigation Measure BIO-7 above.

***Nesting Birds***

The MND identifies Mitigation Measure BIO-2a to avoid potentially significant impacts to nesting birds (MND pages 3-27 and 3-28). The existing measure identifies a timeline of 14 days prior to ground-disturbing activities within the nesting season for pre-construction nesting bird surveys. CDFW recommends using a timeline of 7 days to ensure newly constructed nests are identified prior to beginning ground-disturbing activities. If a period of more than 7 days elapses between the survey date and start of Project activities, then an additional survey should be conducted.

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended measures, as applicable.

**GENERAL COMMENTS**

The MND provides a table of species that were analyzed for their potential to occur on or near the Project site (MND page 3-18, Table BIO-1). This list includes California giant salamander (*Dicamptodon ensatus*) which is incorrectly identified as requiring vernal pools and annual grasslands for habitat (MND page 3-18). CDFW believes that habitat requirements for California tiger salamander (*Ambystoma californiense*) were inadvertently copied to this section of the table as the Project is not within the range or habitat of this species, and therefore it should be removed. We recommend updating the habitat requirements for California giant salamander to reference cool forest or woodland habitats associated with rocky streams or springs (CWHR 1997). It appears that this species may have potential to occur at the Project site, similar to the other amphibians assessed for this Project.



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## 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 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 & G. Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or [amanda.culpepper@wildlife.ca.gov](mailto:amanda.culpepper@wildlife.ca.gov), or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at [melanie.day@wildlife.ca.gov](mailto:melanie.day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Stephanie Fong  
Acting Regional Manager  
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2021090343)

Nicole Fairley, San Francisco Bay Regional Water Quality Control Board,  
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