



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



November 29, 2022

Raed Al-Zaher, Project Manager  
City of San Rafael  
111 Morphew Street  
San Rafael, CA 94901  
[Raed.Al-Zaher@cityofsanrafael.org](mailto:Raed.Al-Zaher@cityofsanrafael.org)

Subject: Rotary Manor Culvert Replacement Project, Mitigated Negative Declaration,  
SCH No. 2022100506, City of San Rafael, Marin County

Dear Mr. Al-Zaher:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of San Rafael (City) for the Rotary Manor Culvert Replacement Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

CDFW is submitting comments on the MND to inform the City, as the Lead Agency, of potentially significant impacts to biological 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, 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:** Rotary Manor Culvert Replacement Project

**Objective:** Replace a corrugated metal culvert conveying San Rafael Creek with a reinforced box culvert.

**Location:** 1821 Fifth Avenue, San Rafael, CA 94901, Marin County, with an approximate centroid of 37.975294, -122.539173 (NAD 83).

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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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**Timeframe:** Construction of the proposed Project would take approximately 3.5 months in 2023.

## **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. 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 LSA Notification requirements. **As described in the MND (page 62), the Project would impact San Rafael Creek, and therefore an LSA Notification would be required, as further described below.** 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.

## **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. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below which are also included in Attachment 1, Draft Mitigation and Monitoring Reporting Plan, CDFW concludes that an MND is appropriate for the Project.

### **I. Project Description and Related Impact Shortcoming**

***Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or the U.S. Fish and Wildlife Service (USFWS)?***

**Comment 1:** Riparian habitat and LSA Notification, Page 62

**Issue:** The MND does not include a mitigation measure ensuring that impacts to riparian habitat will be reduced to less-than-significant by requiring compliance with LSA Notification requirements.

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**Specific impacts, why they may occur and be potentially significant:** The Project may substantially adversely affect riparian habitat by removing riparian habitat, resulting in the loss or degradation of this vulnerable habitat type. The MND states that the Project will require an LSA Agreement and 401 and 404 water quality certifications, and that restoration and other permit conditions required by these permits will reduce impacts to less-than-significant (Page 62); however, obtaining the above permits is not required in an enforceable mitigation measure.

**Recommended Mitigation Measure:** To reduce potential impacts to riparian vegetation to less-than-significant and comply with LSA requirements pursuant to Fish and Game Code section 1600 et seq., CDFW recommends including the mitigation measure below.

*Lake and Streambed Alteration.* The Project shall submit an LSA Notification to CDFW prior to the start of Project activities and comply with all conditions of the LSA Agreement, if issued. The Project shall also obtain 401 and 404 water quality certifications pursuant to the Clean Water Act and comply with these permits.

## II. Environmental Setting and Related Impact Shortcoming

***Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?***

**COMMENT 2:** Napa false indigo (*Amorpha californica* var. *napensis*), bent-flowered fiddleneck (*Amsinckia lunaris*), Koch's cord moss (*Entosthodon kochii*), and other special-status plants, Pages 28 and 30-47.

**Issue:** The species table on pages 30 through 47 includes several special-status plant species with an "unlikely" Occurrence Potential despite the presence of habitat. The table states that Napa false indigo has an occurrence two miles southwest of the Project site, bent-flowered fiddleneck has an occurrence 4 miles west of the Project site, and Koch's cord moss has an occurrence 8.6 miles northwest of the Project site.

*Amorpha* species related to Napa false indigo are spread downstream in river systems, and *Amsinckia* species related to bent-flowered fiddleneck can be carried long distances by humans and animals (DiTomaso 2000). In both cases, it appears that the potential exists for these species to occur at the Project site despite the barrier of urbanization.

Bryophytes including mosses such as Koch's cord moss are less affected by urbanization and habitat degradation than vascular plants (McCune et al. 2020), and locally and regionally uncommon bryophytes may be found in areas highly disturbed by

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human activity, including urban centers (Sabovljevic and Grdovic 2009, Zarnowiec 1996). Based on the ability of related species to persist in urban environments, this species of moss may be present at the Project site.

**Specific impact, why the impact would occur, and evidence impact would be significant:** Special-status plants may be impacted by ground-disturbing activities and vegetation removal. For example, vehicle, equipment and foot traffic may bury, excavate, crush, trample, or disturb special-status plants. Soil disturbance may result in permanent loss of special-status plants.

Napa false indigo is a California Rare Plant Rank (CRPR) 1B.2 species, bent-flowered fiddleneck is a CRPR 1B.2 species, and Koch's cord moss is a CRPR 1B.3 species. Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century (CNPS 2021). Napa false indigo and bent-flowered fiddleneck have the additional threat rank of 0.2, indicating that 20 to 80 percent of their occurrences are threatened (CNPS 2021).

Impacts to special-status plants including Napa false indigo, bent-flowered fiddleneck, and Koch's cord moss may result in local population declines or extirpation of the species. Insufficient mitigation may result in prolonged temporal or permanent impacts to a special-status plant species' range, distribution, and population in the State. Therefore, if special-status plants such as Napa false indigo, bent-flowered fiddleneck, and Koch's cord moss would be directly or indirectly impacted by the Project, impacts would be potentially significant.

**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce impacts to special-status plants to less-than-significant, CDFW recommends including the below mitigation measure.

*Pre-Project Special-Status Plant Surveys.* Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants in all areas that will be directly or indirectly impacted by the Project. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities<sup>2</sup>. The survey reports shall be submitted to CDFW prior to the start of construction. Project

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<sup>2</sup> CDFW, 2018. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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activities shall not proceed until CDFW has provided written approval of the survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a minimum 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.

**COMMENT 3:** Foothill yellow-legged frog (Northwest/North Coast Clade) (*Rana boylei*), Page 54

**Issue:** The MND does not include a survey requirement for foothill yellow-legged frog. The MND identifies that the Project is over four miles from current known occurrences of the species and that the Project site is surrounded by urban habitat that may present a movement barrier. However, foothill yellow-legged frog may disperse through or into the Project site via San Rafael Creek or tributaries.

**Specific impacts, why they may occur and be potentially significant:** If present at the Project site, foothill yellow-legged frogs could be crushed or entombed by soil or equipment during construction. The Northwest/North Coast Clade of foothill yellow-legged frog is a California Species of Special Concern (SSC). The SSC designation is given to species native to California satisfying one or more of the following criteria: 1) is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; 2) is listed as Federally-, but not State threatened or endangered; 3) meets the State definition of threatened or endangered but has not formally been listed; 4) is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; or 5) has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status. Therefore, if foothill yellow-legged frog is present at the Project site, impacts to foothill yellow-legged frog would be potentially significant.

**Recommended Mitigation Measure:** For an adequate environmental setting and to reduce potential impacts to foothill yellow-legged frog to less-than-significant, CDFW recommends including the mitigation measures below.

*Foothill Yellow-Legged Frog Survey Methodology.* A 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

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

*Foothill Yellow-Legged Frog Surveys.* Prior to starting Project activities, a Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology (see above Mitigation Measure). If foothill yellow-legged frogs, their eggs, 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 activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, 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. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If the Project has collected data that 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, then the Project may request CDFW written approval that a survey methodology and surveys for foothill yellow-legged frogs are not necessary.

**Please be advised that an LSA Agreement issued for the Project would likely include the above recommended mitigation measures, 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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online 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>.

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## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 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

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 Alex Single, Environmental Scientist, at (707) 799-4210 or [Alex.Single@wildlife.ca.gov](mailto:Alex.Single@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Erin Chappell*  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022100506)

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## REFERENCES

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## Attachment 1

### Draft Mitigation and Monitoring Reporting Plan

| Biological Resources (BIO) |   |   |                   |
|----------------------------|---|---|-------------------|
| Mitigation Measure (MM)    | Description   | Timing  | Responsible Party |
| <b>BIO-4</b>               | <i>Lake and Streambed Alteration.</i> The Project shall submit an LSA Notification to CDFW prior to start of Project activities and comply with all conditions of the LSA Agreement, if issued. The Project shall also obtain 401 and 404 water quality certifications pursuant to the Clean Water Act and comply with these permits.   | Prior to Ground Disturbance and continuing over the course of the Project | Project Applicant |
| <b>BIO-5</b>               | <i>Pre-Project Special-Status Plant Surveys.</i> Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants in all areas that will be directly or indirectly impacted by the Project. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities. The survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a minimum 3:1 mitigation to impact ratio including permanent protection of habitat through | Prior to Ground Disturbance   | Project Applicant |

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|              |  |                             |                   |
|--------------|--|-----------------------------|-------------------|
|              | a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.   |                             |                   |
| <b>BIO-6</b> | <p><i>Foothill Yellow-Legged Frog Survey Methodology.</i> A 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 activity 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 downstream of the Project activity area. Surveys should be conducted at different times of day and under variable weather conditions if possible.</p> | Prior to Ground Disturbance | Project Applicant |
| <b>BIO-7</b> | <p><i>Foothill Yellow-Legged Frog Surveys.</i> Prior to starting Project activities, a Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology (see above Mitigation Measure). If foothill yellow-legged frogs, their eggs, 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 activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, 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. The results of the survey shall be submitted to CDFW for written acceptance prior to starting</p>  | Prior to Ground Disturbance | Project Applicant |

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|  |   |  |  |
|--|---|--|--|
|  | <p>Project activities. If the Project has collected data that 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, then the Project may request CDFW written approval that a survey methodology and surveys for foothill yellow-legged frogs are not necessary.</p> |  |  |
|--|---|--|--|