



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
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March 29, 2023

Philip Benedetti, Senior Engineer
Ross Valley Sanitary District
2960 Kerner Boulevard
San Rafael, CA 94901
PBenedetti@rvsd.org

Subject: Woodland Area Gravity Sewer Improvement Project, Mitigated Negative Declaration, SCH No. 2023030187, Marin County

Dear Mr. Benedetti:

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 Woodland Area Gravity Sewer Improvement 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 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

Description: The Project's purpose is to relieve hydraulic and structural deficiencies and reduce groundwater infiltration associated with aging District infrastructure. The Project entails the construction and rehabilitation, within the existing alignment, of sanitary sewer mains and related appurtenances, and restoration of the work area in Tamalpais Creek following work being conducted.

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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Approximately 4,277 linear feet of existing sanitary sewer mains would be replaced. Sewer main size and material consist of 6-inch to 8-inch vitrified clay pipe and 8-inch to 12-inch high-density polyethylene pipe. Pipes would be excavated using pipe bursting, open cut, and jack-and-bore or directional drilling methods.

Approximately 45 square feet in the bed of Tamalpais Creek, and an unknown amount of bank and riparian habitat would be excavated to remove an existing pipe. The creek bed would be restored to existing grade and a riffle would be built. Staging and access areas on the bank would be restored with native vegetation.

Location: Unincorporated Community of Kent Woodlands, at the intersection of Acorn Way and Woodland Road in Marin County, running approximately 0.25 miles west and 0.35 miles east from a center point of Latitude 37.94969 °N, Longitude -122.56204 °W.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank; or deposit or dispose of material where it may pass into a river, lake, or stream including associated riparian or wetland resources. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **As described in the MND, the Project would impact Tamalpais Creek, one unnamed tributary to Tamalpais Creek, and wetlands hydrologically connected to Tamalpais Creek; therefore, an LSA Notification pursuant to Fish and Game Code section 1602 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 District 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 are also 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 and in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

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I. Stream Alteration

Comment 1: Permits for Stream and Wetland Impacts, MND pages 2 and 5; and Figures 1 and 2 in Appendix A to Attachment E.

Issue: The MND states that the Project would impact Tamalpais Creek and therefore, require an LSA Notification pursuant to Fish and Game Code section 1600 et seq. However, the MND does not include a mitigation measure requiring LSA Notification and compliance with the LSA Agreement, if issued, or permits from the Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (USACE) for impacts to streams or wetlands.

Further, the maps included as Figures 1 and 2 in Appendix A to Attachment E show an impact to an unnamed tributary of Tamalpais Creek; this impact should be addressed in the Project Description section of the MND and included in the LSA Notification.

Recommended Mitigation Measure: To comply with Fish and Game Code section 1600 et seq. and the Clean Water Act, CDFW recommends including the mitigation measure below.

Lake and Streambed Alteration Notification and other Resource Agency Permits. The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: <https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and USACE pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.

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 U.S. Fish and Wildlife Service?

Comment 2: Napa false indigo (*Amorpha californica* var. *napensis*), California Rare Plant Rank (CRPR)² 1B.2, bent-flowered fiddleneck (*Amsinckia lunaris*), CRPR 1B.2,

² CRPR rank definitions are available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

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and other special-status plants, MND Page 24 and Pages 9 and 11 in Appendix A to Attachment E.

Issue: The discussion of special-status plants on MND Page 24 states that “the Project site does not provide habitat for special-status plant species”, implying that no impacts would occur due to their lack of presence. Page 9 in Appendix A to Attachment E states that oak woodland is located in portions of the Project area.

The mixed oak woodland present at the Project site may provide habitat for two species of special-status plants, Napa false indigo and bent-flowered fiddleneck. It is not clear if appropriate surveys were conducted during the appropriate bloom periods for all potentially occurring special-status plants and if surveys followed accepted protocols.

According to the California Natural Diversity Database (CNDDDB 2023), Napa false indigo has 14 occurrences within 5 miles of the Project location with the closest occurrences approximately 0.6 miles south-southeast and 0.85 miles northwest of the Project. Bent-flowered fiddleneck has three occurrences within 5 miles of the Project location with the closest occurrence approximately 3.5 miles northwest of the Project.

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, the potential exists for these species to occur at the Project site despite the barrier of urbanization.

Specific impact, why the impact would occur, and evidence impact would be potentially 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.

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 2023). The plants discussed above have the additional threat rank of 0.2, indicating that 20 to 80 percent of their occurrences are threatened (CNPS 2023).

Impacts to special-status plants including, but not limited to, Napa false indigo and bent-flowered fiddleneck may result in local population declines or extirpation of a 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 occur on or adjacent to the Project site where they may be impacted, impacts to special-status plants would be potentially significant.

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Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to special-status plants such as Napa false indigo and bent-flowered fiddleneck 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. 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 2018 *Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities* (see: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>). The habitat assessment and 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 habitat assessment and 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 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.

III. Editorial Comments and/or Suggestions

Comment 3: Special-Status Species Table

CDFW recommends that a list or table of all special-status species with the potential to occur at the Project be included in the MND or publicly available biological report. This list or table should include the source of information about each potentially occurring special-status species (e.g., CNDDDB), and discussion of why or why not the species has potential to occur at the Project or adjacent to the Project where the species may be indirectly impacted by, for example, visual or auditory disturbances, or hydrological modifications (e.g., will not occur due lack of salt marsh habitat at or near the Project).

Please be advised that the LSA Agreement, if issued, would likely include the above recommended mitigation measures, as applicable, in addition to other avoidance and minimization measures to protect fish and wildlife.

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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 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>.

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 District 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; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:

Erin Chappell

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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. 2023030187)

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REFERENCES

California Native Plant Society, Rare Plant Program. 2023. Rare Plant Inventory (online edition, v9.5). Website <https://www.rareplants.cnps.org> [accessed 27 February 2023].

CDFW. 2023. California Natural Diversity Database (CNDDDB) Management Framework. California Department of Fish and Wildlife. Sacramento, CA. Website <https://wildlife.ca.gov/Data/BIOS> [accessed 27 February 2023].

DiTomaso, J. M. 2000. Invasive weeds in rangelands: Species, impacts, and management. *Weed Science* 48:255-265.

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-1	LSA Notification and other Resource Agency Permits. The Project shall notify CDFW pursuant to Fish and Game Code section 1600 et seq. using the Environmental Permit Information Management System (see: https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS) for Project activities affecting lakes or streams, associated riparian or otherwise hydrologically connected habitat, and any connected wetlands, and shall comply with the LSA Agreement, if issued. Projects shall also obtain and comply with applicable permits from the RWQCB and USACE pursuant to the Clean Water Act and Porter-Cologne Water Quality Control Act.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
BIO-2	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. 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 2018 <i>Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities</i> (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline). The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not	Prior to Ground Disturbance	Project Applicant

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	<p>proceed until CDFW has provided written approval of the habitat assessment and 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 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.</p>		
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