



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 26, 2023

Roger Leventhal, Project Manager
Marin County Flood Control and Water Conservation District
3501 Civic Center Drive, Suite 304
San Rafael, CA 94903
Rleventhal@marincounty.org

Subject: Deer Island Basin Complex Tidal Wetland Restoration Project, Initial Study/Mitigated Negative Declaration, SCH No. 2023030749, Marin County

Dear Roger Leventhal:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an Initial Study/Mitigated Negative Declaration (IS/MND) from the Marin County Flood Control and Water Conservation District for the Deer Island Basin Complex Tidal Wetland Restoration Project (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.

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 & Game 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 environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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.

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 2

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 (LSA) 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened, rare, or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

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 notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 3

PROJECT DESCRIPTION SUMMARY

Proponent: Marin County Flood Control and Water Conservation District

Objectives: The objectives of the Project are: 1) restore floodplain and tidal connectivity to diked historical tidal wetlands along Novato Creek; 2) enhance ecological functions within existing and historic Baylands habitats along and adjacent to Novato Creek; 3) preserve and improve habitat conditions that support native species; 4) contribute to long-term flood control goals by increasing hydraulic conveyance of Novato Creek; and 5) protect critical infrastructure located within and adjacent to the Project site.

The Project intends to restore and enhance approximately 71.1 acres, comprising the Bird Ponds, including 57.6 acres of aquatic habitat, 3.1 acres of transitional habitat, and 10.4 acres of upland habitat; and to restore approximately 201.1 acres in Deer Island Basin South, including 187.4 acres of aquatic habitat, 3.3 acres of transitional habitat, and 10.4 acres of upland habitat. Over time, tidal pond habitat within the Bird Ponds is anticipated to evolve into a mosaic of tidal wetland and channel habitat, while open water in Deer Island Basin South is anticipated to evolve to mudflat and ultimately to tidal wetlands and channels.

Primary Project activities include vegetation clearing; installation of exclusion fencing and sediment control fencing; breaching, lowering, and raising of various sections of levees; creating a new levee section; widening of Novato Creek and excavating new tidal side channel habitat; removing a limited number of trees; creating ecotone slopes alongside some levee sections; creating an interim levee along existing pipeline infrastructure; installing a culvert and flap gate along Novato Creek; beneficially re-using top soil from the adjacent floodplain; creating a restored dendritic channel network in Deer Island Basin South; creating habitat berms; and constructing wooden pedestrian boardwalks to enable Pacific Gas and Electric Company tower access.

Location: The Project is located within the incorporated limits of the City of Novato, Marin County and spans Novato Creek and former connected tidal marsh between the Sonoma Marin Area Rail Transit (SMART) rail line on the upstream end and State Route 37 on the downstream end. The focus of the IS/MND consists of Duck Bill Pond and Heron's Beak Pond (referred collectively as the "Bird Ponds") and Deer Island Basin South. The Project includes actions within Assessor's Parcels 153-170-46, 153-170-44, 153-200-57, 153-200-38, 153-200-37, 153-200-34, 153-200-31, 153-200-28, 153-200-27, 153-200-26, and 153-200-25.

Timeframe: The Bird Ponds portion of the Project is anticipated to be constructed in two construction seasons from 2024-2025, and the Deer Island Basin South portion of the Project is anticipated to be constructed in two construction seasons from 2026-2027.

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 4

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Marin County Flood Control and Water Conservation 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 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, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

I. Project Description and Related Impact

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 (USFWS)?

COMMENT #1 – Eroding Fish Screen

Issue: Page II-6 of the IS/MND discusses an existing fish screen that was placed between Novato Creek and a culvert to Heron's Beak Pond following sediment removal in the pond in 2020. The document states that this fish screen is currently eroding at the bottom which allows some tidal exchange during high tides even when the slide gate is closed, and that a plug is put into place from February to June to prevent fish from entering Heron's Beak Pond. In addition, based on site visits, staff have noted that the fabric screen has been damaged by other wildlife, including river otters and raccoons. It is not clear as to the timing that this feature will be removed for Project construction, and if/how this issue will be remedied in the interim.

Specific impact: Erosion beneath the fish screen and damage to the fabric netting may inadvertently allow fish, including special-status species such as the federal threatened Central California Coast steelhead (*Oncorhynchus mykiss*), federal threatened green sturgeon (*Acipenser medirostris*), and state threatened longfin smelt (*Spirinchus thaleichthys*), to enter the pond or to be entrained between the fish screen and the culvert.

Why impact would occur: Fish may be more susceptible to predation or could become trapped within unsuitable environmental conditions without an ability to return to Novato Creek.

Evidence impact would be significant: Injury or mortality to fish resulting from predation or exposure to unsuitable environmental conditions may further population

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 5

declines of fish species already at risk due to loss of bay habitat and exposure to pollutants.

Recommended potentially feasible mitigation measures:

Mitigation Measure #1: Effective Fish Screening

To prevent or minimize entrainment or impingement risk, water intake structures are generally screened to meet CDFW and National Marine Fisheries Service screening criteria. The IS/MND should clarify if/when the existing fish screen will be removed as part of the Project and how any replacement of a similar feature will be improved to include a functioning screen that meets resource agency requirements. Likewise, if the Project is intended to provide unscreened access by fish to Bird Ponds, the IS/MND should clarify how the restoration design ensures that fish are not stranded after high tides/flows recede.

II. Mitigation Measures and Impacts

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 – Erosion Control Materials

Issue: Mitigation Measure BIO-2: Best Management Practices for Biological Resources states that erosion control materials will not contain plastic or monofilament netting. This is an appropriate measure to reduce the risk of impacts to fish and wildlife resources. It is unclear whether geotextile fabric is intended to be used during construction of the Project. Use of synthetic erosion control materials should be avoided to the extent feasible. Please be aware that although straw wattles may appear to be composed of natural materials, they often contain bailing wire ties inside that are not visible.

Specific impact: Synthetic erosion control materials can impact fish and wildlife resources in a variety of ways, including through ingestion of materials, entanglement/entrapment of individuals, and creation of physical barriers to fish and wildlife, as well as inhibiting the growth and development of plant roots and rhizomes.

Why impact would occur: Synthetic erosion control materials, including geotextile fabric, can tear easily by abrasion against features (e.g., rocks) in the environment; wash downstream and create barriers; degrade both chemically and physically due to exposure to sunlight; and girdle plantings.

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 6

Evidence impact would be significant: Injury or mortality due to ingestion of synthetic materials, entanglement/entrapment, and impediment of movement of fish and wildlife species may further population declines of species already at risk due to loss of habitat and exposure to deleterious materials. The inability of existing and newly established plantings to grow and thrive may preclude special-status plant species and sensitive habitats such as tidal and brackish marsh from establishing on the Project site and limit or reduce the amount of habitat available for special-status fish and wildlife species.

Recommended potentially feasible mitigation measures:

Recommendation #1: Avoid Use of Synthetic Materials

To avoid potential issues with the unintended consequences of erosion control materials, including geotextile fabric, Mitigation Measure BIO-2 should be revised to state that erosion control materials will be free of synthetic materials and instead be composed of natural fibers to the degree feasible. If needed, biodegradable polymers may be considered as well. If geotextiles are used, they should be properly anchored and placed where they are not exposed to sunlight and excessive flows where they can mobilize, break down, or be torn. Alternatives to geotextiles for erosion control should be considered, such as gravel filters and native vegetation plantings.

COMMENT #3 – Nesting Birds

Issue 1: Table 1 of Appendix B states that the state fully protected white-tailed kite (*Elanus leucurus*) is known to nest at the adjacent Deer Island Preserve and that due to suitable habitat in the Project, likely forages over the marsh. However, potential impacts to this species are not addressed with the other special-status bird species discussed on page VI-28 of the IS/MND.

Issue 2: The IS/MND does not address potential impacts to the state endangered and state fully protected bald eagle (*Haliaeetus leucocephalus*), which may forage over the Project site.

Issue 3: Table 2 of the IS/MND indicates the work window for nesting birds will be mid-August through mid-February. Mitigation Measure BIO-5: Nesting Bird Protection states that vegetation removal will occur outside of the bird nesting season, which is described as February 1 through August 31. The bird nesting season work windows in Table 2 and Mitigation Measure BIO-5 are not consistent with each other. In addition, please be aware that some bird species, including, but not limited to, hummingbirds and owls, may begin nesting as early as December or January, and that raptors may continue to nest into mid-September.

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 7

Issue 4: Mitigation Measure BIO-5 states that surveys will be performed within 330 feet of the Project site to locate any active raptor nests or rookeries. This proposed distance between the Project site and potentially active nests located outside of the Project site is not sufficient to identify potentially nesting birds that may be impacted by Project activities.

Issue 5: Mitigation Measure BIO-5 proposes no-disturbance buffers for nesting birds, starting at 30 feet for passerines and 330 feet for raptors, acknowledging that they may be adjusted depending on level of ambient activity. These proposed distances are likely insufficient to be adequately protective of nesting birds from visual and auditory Project impacts.

Issue 6: Mitigation Measure BIO-5 states that any birds that begin nesting within the Project site and survey buffers amid construction activities are assumed to be habituated to construction-related or similar noise and disturbance levels. The document states that the qualified biologist will coordinate with USFWS and/or CDFW staff to determine if a no work exclusion zone is needed in these cases. Construction activities may impact nesting birds, regardless of whether the disturbance levels were ambient prior to nest building. In addition, changes in construction activities (e.g., increases in the type and/or number of pieces of heavy equipment in operation at a given time, movement of equipment, etc.) could also further impact nesting birds despite having built their nests during some level of ambient construction activity.

Specific impact: Direct mortality of foraging adults or young by being struck with construction equipment; reduction or loss of foraging habitat and/or foraging opportunities; potential separation of adults and young due to visual and auditory disturbance/stress during operation of construction equipment; nest abandonment; reduction in reproductive success.

Why impact would occur: The Project will include operation of heavy equipment for grading, channel widening, levee and ecotone slope construction, sediment deposition and contouring, installation of water control structures, and activities associated with habitat restoration that may include tidal marsh and/or managed pond habitat conversion. The Project will include impacts such as noise, groundwork, and operation and movement of equipment and workers that would have the potential to disturb foraging, roosting, and nesting birds on or directly adjacent to the Project site.

Evidence impact would be significant: Bald eagles (*Haliaeetus leucocephalus*) are state endangered under CESA, and both bald eagles and white-tailed kite (*Elanus leucurus*) are state fully protected species under California Fish and Game Code (§ 3511). In addition, take of nesting birds, birds in the orders Falconiformes or

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 8

Strigiformes, and migratory nongame birds as designated in the Migratory Bird Treaty Act is a violation of Fish and Game Code (§ 3503, § 3503.5, and § 3513).

Recommended potentially feasible mitigation measures:

Recommendation #1: Nesting Birds Consideration

The IS/MND should address all special-status bird species that may be impacted by the Project, including, but not limited to, white-tailed kite and bald eagle.

Recommendation #2: Nesting Bird Surveys and Buffers

Mitigation Measure BIO-5 as described in the IS/MND should be implemented with the following modifications:

- If Project-related work is scheduled during the nesting season (often defined as February 15 to August 30 for small bird species such as passerines, but suggest January 15 to address early-nesting species, including, but not limited to hummingbirds; January 15 to September 15 for owls and large raptors; and February 15 to September 15 for other raptors), a qualified biologist should conduct a minimum of two surveys for active nests of such birds within 14 days prior to the beginning of Project construction, with a final survey conducted within 48 hours prior to construction. However, species-specific survey protocols may be available and should be followed. Surveys should be conducted at the appropriate times of day and during appropriate nesting times.
- Appropriate minimum survey radii surrounding the work area are typically the following: 1) 250 feet for passerines; 2) 500 feet for small raptors such as accipiters; and 3) 1,000 feet for larger raptors such as buteos. Depending on the line of sight between areas containing potential active nests and Project activities, these suggested minimum survey radii may need to be expanded.
- Prior to construction, the qualified biologist should implement appropriate buffers around active nests based on species, behavior of birds, ambient noise levels, type of construction activities, topography of the Project site, and other site-specific factors that may affect nesting bird disturbance levels. The qualified biologist should conduct baseline monitoring of active nests to characterize “normal” bird behavior and establish a buffer distance which allows the birds to exhibit normal behavior. The qualified biologist should monitor the nesting birds daily during construction activities and increase the buffer if the birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). Suggested minimum buffer distances surrounding active nests are 50 feet for passerines and 300 feet for raptors, herons, and egrets. Protective buffers should

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 9

be established and adhered to around all active bird nests during Project activities, regardless of whether those nests were established before or after the commencement of construction activities. It is advised that buffers 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 buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advises and supports any variance from established buffers.

COMMENT #4 – Longfin Smelt

Issue: Although Table 1 in Appendix B acknowledges moderate potential for state threatened longfin smelt to be present in San Pablo Bay and that it may stray into the tidal portions of the Project area, the Biological Resources section of the IS/MND does not address this species.

Specific impact: Direct mortality through crushing of adults or young, capture and relocation, loss of potential foraging habitat, inadvertent entrapment or entrainment, impingement.

Why impact would occur: The Project may include dewatering, grading, channel widening, levee degradation and construction, sediment deposition and contouring, installation of water control structures, and habitat restoration that may include tidal marsh and/or managed pond habitat conversion.

Evidence impact would be significant: Longfin smelt are listed as a threatened species under CESA. Take of state listed species without incidental take authorization is a violation of CESA. Injury or mortality to state listed fish species from Project activities may further the population decline of a species already at risk due to loss of bay habitat and exposure to pollutants.

Recommended potentially feasible mitigation measures:

Recommendation #1: Longfin Smelt Consideration

Mitigation Measure BIO-7: In-Water Work Window and Mitigation Measure BIO-8: Fish protection during construction should consider the potential impacts to longfin smelt and make any necessary modifications accordingly. The proposed environmental work window between June 1 and November 30 in Mitigation Measure BIO-7 is appropriate to help minimize potential impacts to longfin smelt during Project activities. BIO-8, which addresses fish exclusion via fine-meshed block nets while coffer dams and other diversion structures are being installed, and

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 10

capture and relocation of steelhead, should be appropriately modified to address longfin smelt. In addition, the measures should include provisions to conduct work at low tide to minimize impacts to special-status fish and other aquatic species.

Recommendation #2: Take Coverage for Longfin Smelt

Take coverage of longfin smelt, either through an ITP or a Restoration Management Permit (RMP, if appropriate; see below) should be obtained prior to any activities that may result in take of the species, including capture and relocation, in addition to mortality.

COMMENT #5 – Salt Marsh Harvest Mouse

Issue: Mitigation Measure BIO-3: Salt Marsh Harvest Mouse Protection includes several components appropriate to help minimize the risk of impacting the federal and state endangered and state fully protected salt marsh harvest mouse (*Reithrodontomys raviventris*) (SMHM) due to construction activities. Additional components to this measure should be added to further reduce the risk of take of this species.

Specific impact: Vegetation removal activities, particularly with mechanized equipment, can result in injury or mortality to all life stages of SMHM individuals, including destruction of nests.

Why Impact would occur: The Project will include vegetation removal activities, including clearing and grubbing, in preparation for operation of heavy equipment associated with grading, excavation, and placement of sediment.

Evidence impact would be significant: SMHM are listed as a federal endangered species under the federal Endangered Species Act (ESA) and as an endangered species under CESA, as well as state fully protected under California Fish and Game Code (§ 4700). Take of state listed species without incidental take authorization is a violation of CESA. Injury or mortality to state listed species from Project activities may further the population decline of a species already at risk due to loss of tidal marsh habitat and upland refugia in San Francisco Bay. Project impacts may further population decline, including cumulative impacts resulting in the restriction of its range.

Recommended potentially feasible mitigation measures:

Recommendation #1: Vegetation Removal in SMHM Habitat

Mitigation Measure BIO-4 as described in the IS/MND should be implemented with the following modifications to address vegetation removal activities:

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 11

- No more than three workers will conduct vegetation removal while being monitored by a single CDFW-approved qualified biologist or biological monitor. Additional workers will be allowed to perform vegetation removal as long as they are accompanied by additional qualified biologists or biological monitors, accordingly.
- Workers clearing vegetation will not be greater than 50 feet from a qualified biologist or biological monitor.
- Vegetation removal will begin furthest from the largest contiguous suitable SMHM habitat and proceed towards it, providing cover for SMHM and allowing individuals to move passively toward the contiguous suitable habitat as vegetation is being removed.
- Vegetation will initially be disturbed, allowing SMHM to passively move from the area of disturbance toward the area of largest contiguous marsh.
- No materials will be side cast at any time into suitable SMHM habitat.

COMMENT #6 – Rail Survey Protocol

Issue: The IS/MND describes surveys for federal and state endangered and state fully protected California Ridgway's rail (*Rallus obsoletus obsoletus*) that were conducted in the Project area between 2008 and 2011, and in 2020. The document does not indicate which California Ridgway's rail survey protocol was used for these surveys.

Issue: Mitigation Measure BIO-4: California Ridgway's Rail and California Black Rail Protection describes use of a 500-foot buffer adjacent to tidal marsh areas during the rail breeding season (February 1 through August 31). This buffer may not be sufficient to adequately minimize/avoid impacts of Project-related activities to California Ridgway's rail and to state threatened and state fully protected California black rail (*Laterallus jamaicensis coturniculus*) during the rail breeding season.

Issue: Construction activities may include the temporary or permanent installation of fencing, posts, poles, or other structures that may provide perching opportunities for avian predators of California Ridgway's rail and California black rail.

Specific impact: Nest abandonment or reduced frequency or duration of care for young, as well as decreased time spent foraging and roosting, resulting in reduced health or vigor of all life stages may occur as a result of Project construction activities.

Why impact would occur: Operation of heavy equipment and associated activities may cause breeding rails to temporarily or permanently leave the site, resulting in

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 12

the abandonment of nests and/or young. Project activities may also reduce the amount of available foraging habitat during construction and in the short term until habitat is restored (either passively or through active planting). Project activities may reduce the amount of time rails spend foraging if disturbances cause them to flush or leave nearby foraging habitat. Project activities may temporarily reduce the amount of upland refugial habitat that would ordinarily be used by rails during extreme high tides, potentially exposing them to increased predation.

Evidence impact would be significant: California Ridgway's rail is listed as a federal endangered species under the federal ESA and as an endangered species under CESA, as well as state fully protected under California Fish and Game Code (§ 3511). California black rail is listed as a state threatened species under CESA, as well as state fully protected. Take of state listed species without incidental take authorization is a violation of CESA. Injury or mortality to state listed fish species directly or indirectly from Project activities may further the population decline of a species already at risk. Loss of emergent saline wetland habitat and upland refugia in San Francisco Bay has contributed to declines in local populations of both rail species. Project impacts may further population declines of these species, including cumulative impacts resulting in the restriction of their range.

Recommended potentially feasible mitigation measures:

Recommendation #1: Rail Surveys

Mitigation Measure BIO-4: California Ridgway's Rail and California Black Rail Protection should be modified to specify that appropriately timed rail surveys using the 2015 *California Clapper Rail Survey Protocol* will be conducted in each year of construction in all suitable habitat within the Project. This protocol is recommended for conducting presence/absence surveys of California Ridgway's rail prior to Project construction (as opposed to other available protocols that may be more suitable for long-term monitoring purposes). CDFW staff are available to work with you to incorporate calls of California black rail into the 2015 protocol to ensure that both species are sufficiently surveyed.

Recommendation #2: Rail Buffers

Mitigation Measure BIO-4 should be modified to include a 700-foot no-work buffer to be implemented between the location of construction activities and any current-year breeding rail detections, if construction cannot be avoided during the rail breeding season. The 700-foot no-work buffers should be clearly marked with fencing or flagging to exclude workers from entering the no-work zone. If establishing a 700-foot buffer around breeding rail detections is not feasible, noise reducing modifications to equipment as well as portable acoustic barriers/blankets placed

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 13

near noise sources may be appropriate to reduce auditory and visual impacts to breeding rails. Note that these features may be appropriate regardless of time of year to minimize impacts to foraging rails as well.

Recommendation #3: Authority to Stop Work

Mitigation Measure BIO-4 should include language that specifies that the Qualified Biologist will have authority to stop work any time construction activities appear to cause disturbance to nesting rails (e.g., rails vocalize or fly away from a nest) or an active rail nest is found.

Recommendation #4: Avoid Predator Perching Structures

Mitigation Measure BIO-4 should include language that strives to avoid the temporary or permanent construction of features that may provide perching opportunities for avian predators. If needed for the project, such features may be retrofitted with anti-perching devices to reduce the likelihood that avian predators will use them to perch.

III. Editorial Comments and/or Suggestions

The project description states that the Novato Creek levee adjacent to Farmer's Basin will be raised and that material for this will be obtained from Farmer's Basin. Figure 5 shows construction of two channels within Farmer's Basin that appear to occur within the footprint of existing channels. Please clarify whether the excavated sediment for the adjacent levee will be sourced from the two existing channels, and whether any specific wetland and/or channel restoration or enhancement activities will occur within Farmer's Basin.

The IS/MND states on page II-8 that the Project site contains seven aquatic habitat types. However, six aquatic habitat types (tidal marsh, alkali wetland, seasonal wetland, permanently flooded wetland, tidal channel, and pond) are listed in bullet form, and shown on Figure 4 and in Table 8. Please clarify the number of aquatic habitat types present, and modify the figure, if necessary.

Section IV of the IS/MND lists the Project-related approvals, agreements, and permits that may be needed for construction of the Project. Pursuant to Fish and Game Code, § 2080; Cal. Code Regs., tit. 14, § 783.1 and as stated in the Regulatory Requirements section above, please be advised that an ITP must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA. Alternatively, under CDFW's Cutting the Green Tape Program, an RMP may be appropriate to consolidate take authorizations for voluntary restoration projects that may result in take of CESA-listed and state fully protected species. If take is to be authorized under an RMP, the Project would need to clearly

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 14

demonstrate that it would benefit and contribute to recovery efforts for fully protected species. CESA take coverage in the form of an ITP or RMP should be added to the list of potential permits that may be issued by CDFW for the Project.

Bullets e and f of the Environmental Impact Checklist describing the significance of impacts to biological resources on page VI-19 are duplicated (both say “Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance”). Bullet f should be revised to “Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan”.

Page VI-27 should state that in addition to being a state threatened species, the California black rail is also state fully protected.

Please be advised that western pond turtle (*Actinemys marmorata*) as described on page VI-30, is not a candidate for listing under the federal ESA.

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>.

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).

Roger Leventhal
Marin County Flood Control and Water Conservation District
April 26, 2023
Page 15

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the Marin County Flood Control and Water Conservation District in identifying and mitigating Project impacts on biological resources.

If you have any questions for staff in the Bay Delta Region, please contact Ms. Tami Schane, Senior Environmental Scientist (Specialist), at (415) 710-0711 or Tami.Schane@wildlife.ca.gov; or Mr. Peter McHugh, Senior Environmental Scientist (Supervisory), at (707) 494-0593 or Peter.McHugh@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

B77E9A6211EF486

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023030749)
Tami Schane, CDFW Bay Delta Region - Tami.Schane@wildlife.ca.gov
Peter McHugh, CDFW Bay Delta Region - Peter.McHugh@wildlife.ca.gov
Desiree Dela Vega, CDFW Bay Delta Region - Desiree.Delavega@wildlife.ca.gov
Morgan Kilgour, CDFW Bay Delta Region - Morgan.Kilgour@wildlife.ca.gov
Craig Weightman, CDFW Bay Delta Region - Craig.Weightman@wildlife.ca.gov