State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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March 7, 2024

Akin Okupe, M.B.A., P.E., General Manager
East Palo Alto Sanitary District
901 Weeks Street
East Palo Alto, CA 94303
AOkupe@epasd.com

Subject: Sanitary Sewer Parallel Trunk Line (Manhole T-0 to T-32), Initial Study/Mitigated Negative Declaration, SCH No. 2024020354, City of Palo Alto, San Mateo County

Dear Mr. Okupe:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) prepared by the East Palo Alto Sanitary District (District) for the Sanitary Sewer Parallel Trunk Line (Manhole T-0 to T-32) (Project), located in the City of Palo Alto (City) in Santa Clara County (County). CDFW is submitting comments on the IS/MND regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines § 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological 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), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

California Endangered Species Act

Please be advised that a CESA Permit 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 impact threatened or endangered species (Pub. Resources Code, §§ 21001(c), 21083, and 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 Fish and Game Code, § 2080.

Lake and Streambed Alteration Program

The Project has the potential to impact resources including, but not limited to, San Francisquito Creek (Creek). Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code, § 1600 et. seq.) for any Project-related activities that will 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. CDFW considers work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the Responsible Agency.

PROJECT DESCRIPTION

The Project proposes to construct a new, 18-inch sanitary sewer line, parallel to an existing 24- to 30-inch sanitary sewer line, from manhole T-0 within the Palo Alto Regional Water Quality Control Plant, running north/northwest through the Palo Alto Airport (Airport) to manhole T-32, just east of San Francisquito Creek bridge. The total length of the proposed new trench route is approximately 6,000 linear feet. Construction activities will include survey staking of the pipeline alignment, trench excavations, import and placement of pipes, manholes, and backfill materials, compaction of backfill, and restoration of ground surface to match existing conditions. The width and depth of trench will be 20 feet, and 10 feet, respectively. The Project construction activities could last up to 12 months and a schedule is to be determined.

ENVIRONMENTAL SETTING AND LOCATION

The Project site is located in the City of Palo Alto in Santa Clara County with approximate elevations of 13 feet above sea level at the San Francisquito Creek bridge and eight feet above sea level at the water quality control plant (IS/MND).

The Project activities start at the T-0 manhole located at the Palo Alto Regional Water Quality Control Plant at 2501 Embarcadero Way, Palo Alto, California, the trench route continues north/northwest across Embarcadero Road through the Palo Alto Airport parking area to T-4 manhole, where the route turns northwest and parallels the runway

along the east side of the adjacent golf course. A drainage channel also parallels the sewer line route (from approximately Manholes T-8 to T-4) to the southwest with tidal water and salt marsh vegetation. At manhole T-10, the route turns southwest and runs between the golf course and the San Francisquito Creek Trail, and the route ends at manhole T-32, east of San Francisquito Creek bridge (IS/MND).

The site is located west of Highway 101, east of San Francisco Bay, north of Embarcadero Road, and south of San Francisquito Creek. A water quality control plant, golf course, regional airport, roads, northern coastal salt marsh, a salmonid bearing creek, nature preserve, and the Bay, bound the Project area.

COMMENTS AND RECOMMENDATIONS

According to the IS/MND, the Project activities will take place in the vicinity of Northern Coastal Salt Marsh and riparian habitat where sensitive habitat communities exist, wildlife, fully protected, and species of special concern occur. The IS/MND notes mitigation measures (BIO-1–BIO-8) to mitigate Project impacts on biological resources.

CDFW offers the following comments and recommendations to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

Comment 1: BIO-2 and BIO-3 (Fully Protected Species and Take)

Issue 1: The Project MND proposes to obtain incidental take coverage to authorize incidental take of fully protected species through a Fish and Game Code section 2081 Incidental Take Permit (ITP) application. Fully protected species, including salt marsh harvest mouse (*Reithrodontomys raviventris*), California Ridgway's rail (*Rallus obsoletus obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), and California least tern (*Sternula antillarum browni*), may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to Fully Protected species if certain conditions are met (Fish & G. Code

§2081.15). Project proponents should consult with CDFW early in the Project planning process.

Issue 2: The IS/MND does not include sufficient avoidance measures to avoid risk of take to Fully Protected species likely to occur at the Project site. For example, the IS/MND indicates if California Ridgway's rail or California black rail are observed in or near the work area, that a "no-disturbance buffer" of at least 50 feet will be implemented until the Fully Protected species leave the work area (p. 39). A "no-disturbance buffer," of 50 feet may not be sufficient to avoid causing impacts such as nest abandonment that can result in "take." Additional Project protective measures are needed to avoid the potential for the Project to cause "take" of fully protected species.

Evidence the impact would be significant: Take or possession of CDFW Fully Protected species is prohibited (Fish & G. Code, §§ 3511 & 4700). Take, as defined by Fish and Game Code § 86 is to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

According to the IS/MND, "…the proposed project may directly impact California Ridgway's rail and California black rail through the loss of marsh habitat and cause indirect impacts as a result of construction noise travelling to occupied habitat in Faber Marsh. Construction activities could result in the loss or disturbance of individual animals" (p. 37).

Recommendations: Develop a plan to avoid Fully Protected species and their habitat in consultation with CDFW and incorporate the plan into the final Project MND. The plan should include the following considerations:

Conduct an appropriately timed, protocol-level survey for fully protected species and their habitat and include results of the surveys to inform additional Project avoidance measures.

Ensure a qualified biologist(s) is on-site daily, including prior to ground- and vegetation-disturbing activities and during construction. Provide the on-site qualified biologist(s) stop work authority if necessary to avoid impacts to any Fully Protected species. If a Fully Protected species is or becomes present within the Project area, the qualified biologist shall notify and consult with CDFW to determine next steps.

Conduct noise assessment study and consult with CDFW to determine the measures (including the appropriate buffer distances for various species) necessary to avoid impacts to Fully Protected species and northern salt marsh habitat.

Comment 2: BIO-5 (Burrowing Owls)

Issue: BIO-5 indicates that pre-construction surveys will be conducted to identify whether the species is on-site and may evict burrowing owls if avoidance is not possible (IS/MND, p. 45). CDFW does not consider eviction of burrowing owls (i.e., passive removal of an owl from its burrow or other shelter) as a "take" avoidance, minimization, or mitigation measure.

Evidence the impact would be significant: Burrowing owl is a California Species of Special Concern due to population decline and breeding range retraction The IS/MND indicates that burrowing owl (*Athene cunicularia*) are "…known to occur on the project site…[and] small mammal burrows on the site could be utilized for nesting habitat" (p.44). The Project may result in burrowing owl nest or wintering burrow abandonment, loss of young, and reduced health and vigor of adults or young from audio and visual disturbances caused by construction activities (Klute et. al 2003).

Recommendation: Submit burrowing owl survey results to CDFW and consult to develop a plan to avoid burrowing owl habitat, burrows, and individuals. If passive re-location must be performed, a passive relocation plan shall be provided to CDFW for review and approval. As part of this plan, off-site habitat compensation shall be required for any nest burrows used within the last three years that would be removed. Habitat compensation acreage shall be approved by CDFW, as the amount depends on site-specific conditions, and completed before Project construction. It shall also include placement of a conservation easement and preparation and implementation of a long-term management plan.

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 (CNDDB). The CNDDB field survey form can be filled out and submitted online at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, section 711.4; Pub. Resources Code, section 21089). 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.

CONCLUSION

Thank you for the opportunity to comment on the Project's MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Mr. Jason Teichman, Environmental Scientist, at (707) 210-5104 or Jason.Teichman@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

Sincerely,

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

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024020354)

REFERENCES

California Department of Fish & Wildlife. California Natural Diversity Database (CNDDB) Rarefind Electronic database. Sacramento, CA. Accessed February 2024.

Initial Study/Mitigated Negative Declaration (IS/MND) Sanitary Sewer Parallel Trunk Line (Manhole T-0 to T-32), prepared by EMC Planning Group, dated February 9, 2024.

Klute, D. S., L. W. Ayers, M. T. Green, W. H. Howe, S. L. Jones, J. A. Shaffer, S. R. Sheffield, and T. S. Zimmerman. 2003. *Status Assessment and Conservation Plan for the Western Burrowing Owl in the United States*. U.S. Department of Interior, Fish and Wildlife Service, Biological Technical Publication FWS/BTPR6001-2003, Washington, D.C.