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GAVIN NEWSOM, Governor
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March 20, 2024

Governor's Office of Planning & Research

Hayes Morehouse, Water Pollution Control Manager
 City of San Leandro
 3000 Davis Street
 San Leandro, CA 94577
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Mar 22 2024
STATE CLEARINGHOUSE

Subject: San Leandro Water Pollution Control Plant Treatment Wetland and Shoreline Resiliency Project, Mitigated Negative Declaration, SCH No. 2024020945, City of San Leandro, Alameda County

Dear Hayes Morehouse:

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 Leandro (City) for the San Leandro Water Pollution Control Plant Treatment Wetland and Shoreline Resiliency 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 & G. 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.

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

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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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 § 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.

Cutting the Green Tape Program

CDFW's Cutting the Green Tape (CGT) program is a statewide effort, representing CDFW's environmental permitting and grant funding programs with added support from its general counsel and executive leadership. This program is leading efforts to develop and implement improvements to how the department issues permits and administers its grant programs, to accelerate the pace and scale of restoration throughout the state.

A Restoration Management Permit (RMP) is a tool available under the CGT program that consolidates "take" authorizations that voluntary habitat restoration projects may need to obtain into a single streamlined permit. The RMP can authorize state-defined take (hunt, pursue, capture, catch, or kill, or attempt to do so) of endangered, threatened, and candidate species pursuant to section 2081, subdivision (a), of CESA as well as fully-protected species (FPS) pursuant to Fish and Game Code, §§ 3511, 4700, 5050, and 5515.

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Leandro

Objective: The objective of the Project is to convert a 6.9-acre wastewater storage basin into a multi-benefit freshwater treatment wetland and install a modular nitrification system to convert ammonia from existing secondary treated wastewater to nitrate. The primary purpose is to reduce the loading of wastewater-born nitrogen, phosphorus, and other contaminants, such as pharmaceutical compounds, into San Francisco Bay. The Project will create wet meadow habitat along a portion of the Bay Trail; create ecological and engineering-based educational opportunities within a densely urban and industrialized portion of San Francisco Bay; demonstrate the effectiveness of a novel contaminant removal process; repurpose an underutilized wastewater retention basin to enhance aesthetic qualities; and improve operation capacity and flexibility within San Leandro's Water Pollution Control Plant.

Location: The Project is located at the Wastewater Pollution Control Plant at 3000 Davis Street in San Leandro, California.

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Timeframe: The Project is anticipated to span approximately four months during the summer and fall of 2024 (see comment under Section II Editorial Comments and/or Suggestions).

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 migration measures. CDFW concludes that a MNDChoose an item. is appropriate for the Project.

I. Environmental Setting 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 U.S. Fish and Wildlife Service (USFWS)?

COMMENT #1: Page 3-21-3-23 – Tidal Slough

Issue: The MND describes the tidal slough that runs through the San Leandro Water Pollution Control Plant and along the east and southeastern edge of the wastewater storage basin. The tidal slough receives stormwater discharges from municipal sources and some overflow from ornamental irrigation ponds at the nearby golf course. The MND states that the Project will not "influence" the tidal slough.

Specific impact: Work within the Project area has the potential to deposit debris, waste, sediment, or other materials into the tidal slough, causing deleterious impacts to fish and wildlife species, including, but not limited to, federal proposed and state threatened longfin smelt (*Spirinchus thaleichthys*), federal threatened green sturgeon (southern Distinct Population Segments (DPS)) (*Acipenser medirostris*), State Species of Special Concern white sturgeon (*A. transmontanus*), and federal threatened Central California Coast steelhead (*Oncorhynchus mykiss*). In addition, the tidal slough appears to be characterized by a defined bed, bank, and channel and is subject to Fish and Game Code 1600 et. seq.

Why impact would occur: Project activities, such as trenching along the land bridge that crosses over the tidal slough to place a HDPE pipe between the nitrification system and the treatment wetland, and modification of the outfall structure between the basin and the tidal slough, could inadvertently introduce sediment, construction materials, and other contaminants to the tidal slough. In addition, startup of initial discharges of tertiary-treated effluent upon completion of modification of the outfall structure could introduce a turbidity plume to the tidal slough due to a build-up of sediment within the outfall.

Evidence impact would be significant: Substantial deposition of sediment, debris, or other deleterious materials into streams without necessary permitting would be a violation under Fish and Game Code 1600 et. seq.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Environmental Setting and Related Impact Shortcoming)

Mitigation Measure #1: Notification of Lake or Streambed Alteration

Fish and Game Code 1600 et. seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or

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other materials that could pass into any river, stream, or lake. Project construction activities may necessitate that the Project proponent submit a Notification of LSA to CDFW. CDFW is required to comply with CEQA in the issuance of an LSA Agreement. Additional information can be found at <https://www.wildlife.ca.gov/Conservation/LSA>.

Mitigation Measure #2: Gate Valve

The MND states that an in-line gate valve will be installed between the concrete vault box and the outfall from within developed areas (presumably meaning the stormwater discharge basin) to avoid impacts to the tidal slough. This appears to be an appropriate measure to reduce the likelihood of inadvertently discharging sediment or other deleterious materials between the basin outfall structure and the tidal slough during Project activities.

Mitigation Measure #3: Low Tide

To minimize turbidity impacts to special-status fish species that could be present in the tidal slough during Project activities, work within the concrete vault box and outfall structure between the stormwater discharge basin and the tidal slough should be conducted during low tide, when the outfall is exposed above the water surface elevation.

Mitigation Measure #4: Filter

To minimize turbidity impacts to special-status fish species that could be present in the tidal slough during startup and initial discharge of tertiary-treated effluent, a drain pipe sleeve or similar filtering device should be installed at discharge point of the outfall structure.

II. Editorial Comments and/or Suggestions

Page 2-15 of the MND states that the active construction phase of the Project is estimated to span approximately four months, beginning in July 2024. However, Table 2-1 shows construction phases and activities extending between August 2024 through October 2025. Please clarify whether the Project activities will be completed within one or two construction seasons.

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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

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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 Tami Schane, Senior Environmental Scientist (Specialist) at (415) 710-0711 or Tami.Schane@wildlife.ca.gov; or to Ryan Watanabe, Acting Senior Environmental Scientist (Supervisory) at (707)732-1991 or Ryan.Watanabe@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77F9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024020945)
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