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February 27, 2025

Sandrine Ganry, Senior Engineer
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Subject: Water Tank 1 (Cunningham Tank) Replacement Project, Initial Study/Mitigated Negative Declaration, SCH No. 2025020008, City of San Bruno, San Mateo County

Dear Sandrine Ganry:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Initial Study/Mitigated Negative Declaration (IS/MND) from the City of San Bruno (City) for the Water Tank 1 (Cunningham Tank) Replacement 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.

California Endangered Species Act and Native Plant Protection Act⁸

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 or Native Plant Protection Act (NPPA), either during construction or over the life of the Project. Under CESA, take is defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill." Issuance of an ITP is subject to CEQA documentation. If the Project will impact CESA or NPPA listed species, early consultation with CDFW is encouraged, as significant modification to the Project and

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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mitigation measures may be required to obtain an ITP. Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. Fully protected species may not be taken or possessed at any time (Fish and Game Code, §§ 3511, 4700, 5050, and 5515).

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 et. seq.

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, drainage ditches, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. In addition, infrastructure installed beneath such aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Any impacts to the mainstems, tributaries and floodplains or associated riparian habitat would likely require an LSA Notification. CDFW, as a responsible agency under CEQA, will consider the IS/MND for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA as the Responsible Agency.

Raptors and Other Nesting Birds

CDFW has authority over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include §§ 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

PROJECT DESCRIPTION SUMMARY

Proponent: City of San Bruno

Objective: The objective of the Project is to replace an existing 2.5-million-gallon, seismically deficient welded steel potable water tank with a new 3.5-million-gallon prestressed concrete water tank. Primary Project activities include removing the existing tank, constructing the partially buried new tank in the same footprint, revising the arrangement and depth of the waterlines and drainage at the site, as well as widening the existing access road, construction a new retaining wall and new chemical building with a retaining wall, and replacing an existing draining pipe.

Location: The Project is located at the cross streets, Jenevein Avenue and the Interstate-280 (I-280) North on-ramp, San Bruno, CA 94066, in San Mateo County; Latitude 37.615868, Longitude -122.423177; APN 019-300-140.

Timeframe: TBD

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

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indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Project Description 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 1: Nesting Birds; Page 78

Issue: Nesting birds, including “a variety of common nesting and migratory bird species” have the potential to nest on the ground, in trees, on structures, or in vegetation within and in the vicinity of the Project area. The IS/MND states that “Project construction could disturb special-status and common nesting birds in the vicinity of the Project alignment due to construction noise and activity,” and “such disturbance could cause stress-related behavior changes or even nest abandonment.” The IS/MND includes Mitigation Measure BIO-1 to protect nesting birds, yet this measure is not sufficient to reduce potential impact to less-than-significant levels. Specifically, the nesting bird season described in the IS/MND is not inclusive of early-season owl breeding or late-season raptor breeding. In addition, Mitigation Measure BIO-1 does not include a sufficient survey radius to ensure all potentially impacted nesting birds will be detected or ensure sufficient buffer distances will be prescribed from nesting birds.

If construction commences during the nesting season without sufficiently sized nest buffers in place, or if construction activities occur without a qualified biologist having performed appropriately timed breeding bird surveys, nesting birds, as stated in the IS/MND, “may be impacted directly through the removal of nest structures, or indirectly through localized disturbance sufficient to cause nest abandonment,” a potentially significant impact under CEQA.

Specific impact, why impact would occur, and evidence impact would be significant: The federal MBTA and California Fish and Game Code protect migratory and nesting birds, including species with potential to occur in the Project area. The nesting seasons for owls, passerines, and raptors range from January 15- September 15, February 15- August 30, and February 15- September 15, respectively.

No-disturbance buffers for any bird nests identified in pre-construction surveys should be of a sufficient, species-specific size to protect young birds until they have fledged and are foraging independently. Buffers for passerines, accipiters, and buteos should be a minimum of 250 feet, 500 feet, and 1,000 feet, respectively. The no-disturbance buffers proposed in the IS/MND nesting bird measure are not adequately sized to protect buteos, which require larger no-disturbance buffers than their smaller, accipiter kin.

Recommendation 1: CDFW recommends the IS/MND include sufficient avoidance and minimization measures to protect nesting birds by incorporating the following mitigation measure to reduce potential impacts to less-than-significant levels:

Recommended Nesting Bird Mitigation Measure: If Project grading or construction is scheduled to take place between January 15 – September 15, a pre-construction survey of the project vicinity for nesting birds shall be conducted by a qualified biologist experienced with the nesting behavior of bird species of the region. The survey shall determine if active nests are present within the planned area of disturbance or within 250 feet for passerines, 500 feet for accipiters and 1,000 feet for buteos. The survey shall be performed no more than 7 days prior to the commencement of construction activities, and a second

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focused survey shall be conducted within 48 hours prior to construction activities that would occur during the nesting/breeding season. If ground disturbance activities are delayed following a survey, then an additional pre-construction survey shall be conducted such that no more than two weeks will have elapsed between the last survey and the commencement of ground disturbance activities. If a lapse of Project-related activities of seven days or longer occurs, another focused survey will be conducted before Project activities can be reinitiated.

If an active bird nest is found within survey radii, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. A protective buffer distance shall be established by a qualified biologist based on the conditions of the site, such as whether the nest is in a line of sight of the construction and the sensitivity of the birds nesting. Typical protective buffers are as follows: 1) 250 feet for passerines, 2) 500 feet for accipiters, and 3) 1,000 feet for buteos. No Project personnel or equipment shall be allowed to enter the protective buffer until the qualified biologist determines that the young have fully fledged and will no longer be adversely affected by the Project.

The qualified biologist shall observe any identified active nests prior to the start of any construction-related activities to establish a behavioral baseline of the adults and any nestlings, and the nest site(s) shall be monitored by the biologist periodically to see if the birds are stressed by the construction activities and if the protective buffer needs to be increased. The perimeter of the nest setback zone shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by the qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of grading or construction in the nest-setback zone. The qualified biologist shall serve as a biological monitor during those periods when construction activities occur near active nest areas to ensure that no inadvertent impacts on these nests occur. All buffers shall be shown on all sets of construction drawings.

COMMENT 2: Special-Status Plants; Page 78

Issue: The IS/MND identifies the potential for special-status plant species to occur within the Project area, including Franciscan onion (*Allium peninsulare* var. *franciscanum*), western leatherwood (*Dirca occidentalis*), and bent-flowered fiddleneck (*Amsinckia lunaris*), yet the IS/MND does not provide avoidance, minimization or mitigation measures to address potential temporary or permanent impacts to these species due to Project development.

Specific impact, why impact would occur, and evidence impact would be significant: Franciscan onion, western leatherwood, and bent-flowered fiddleneck have a California Rare Plant Ranks (CRPR) of 1B.2. 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. The additional threat rank of 0.2 indicates that 20 to 80 percent of their occurrences are threatened, respectively. Consistent with CEQA Guidelines, section 15380, the status of special-status plants as CRPR 1 or 2 species qualifies them as endangered, rare, or threatened species under CEQA (see: <https://www.cnps.org/rare-plants/california-rare-plant-ranks>). If special-status plants occur within or adjacent to Project sites and would be directly or indirectly impacted by Project development, the Project may result in a substantial reduction in the number or restriction in the range of endangered, rare, or threatened species, a mandatory finding of significance pursuant to CEQA Guidelines section 15065, subdivision (a).

The conservation of special-status native plants is essential to maintaining biodiversity in the California Bay Area. Native plants are better adapted to the local environment, allowing them to grow more efficiently, require less maintenance, and

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provide habitat resources for other native species (Berthon et al. 2020). Industrial land development is a leading threat to endangered plant communities, causing resource depletion through direct habitat replacement and increased input of pollutants into the environment (Czech et al. 2000). Limited distribution and small population sizes of special-status plants can increase the difficulty in species detection, and robust survey efforts are imperative to determine whether plant species protected under the CESA and NPPA occur within the Project area. Robust and timely survey efforts are a necessary first step in avoiding take of listed species.

Recommendation 3: CDFW recommends the IS/MND incorporate the following mitigation measure to avoid, minimize, and mitigate potential impacts on special-status plants that have the potential to occur within the Project area.

Recommended Special-Status Plant Mitigation Measure: Prior to construction at all Project sites not composed of hardscape or ornamental vegetation, a qualified biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur at or adjacent to each site where plants could be indirectly impacted. Surveys shall be conducted following CDFW's *Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>) and include checking reference sites for target special-status plant species. Per this protocol, more than one year of surveys may be necessary if, for example, lack of rain inhibits growth of annual plants. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and provide an avoidance plan to CDFW and obtain CDFW written approval of the plan. If full avoidance is not possible, Project activities may not commence until the Project has consulted with CDFW and obtained CDFW's written approval prior to the start of construction, which may include salvaging topsoil, transplanting and monitoring individuals, compensatory habitat mitigation, or other measures, based on the life history of the species and other relevant factors.

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. (See 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 IS/MND to assist the City in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Shannon Husband, Environmental Scientist, at (707) 337-1364 or Shannon.Husband@wildlife.ca.gov; or Wes 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, Sacramento

REFERENCES

- Berthon, K., Thomas, F., and Bekessy S. 2020. The role of 'nativeness' in urban greening to support animal biodiversity. *Landscape and Urban Planning* 205 (2021) 103959.
- Czech, Brian & Krausman, Paul & Devers, Patrick. (2000). Economic Associations Among Causes of Species Endangerment in the United States. *Bioscience*. 50. 10.1641/0006-3568(2000)050[0593:EAACOS]2.0.CO;2.