



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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November 29, 2023

Richard Thomasser, Deputy Director of Public Works/District Manager
Napa County Flood Control and Water Conservation District
804 First Street
Napa, CA 94559
Flooddistrict@countyofnapa.org

Subject: Napa River/Napa Creek Flood Protection Project – Increment 2 Floodwalls
North of the Bypass, Notice of Preparation of a Supplemental Draft
Environmental Impact Report, SCH No. 1997044002, Napa County

Dear Mr. Thomasser:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (SEIR) for the Napa River/Napa Creek Flood Protection Project – Increment 2 Floodwalls North of the Bypass (Project).

CDFW is providing the Napa County Flood Control and Water Conservation District (County), as the Lead Agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), 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. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT DESCRIPTION AND LOCATION

The County seeks to implement activities to provide 100-year level of flood protection in the City of Napa north of the bypass (Increment 2), as part of the overall Napa River/Napa Creek Flood Protection Project. The Increment 2 flood protection measures consist of four elements: floodwalls south of Lincoln Avenue, floodwalls north of Lincoln

Richard Thomasser
Napa County Flood Control and Water Conservation District
November 29, 2023
Page 2

Avenue, scour protection under the Lincoln Avenue bridge, and two short floodwall closures at the dry bypass.

The Project covers approximately 19.6 acres in the City of Napa, following the Napa River, with crossroads of Lincoln Avenue and Soscol Avenue; at approximately 38.311286° North, -122.277567° West.

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes;
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems;
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features; and
- Construction schedule, activities, equipment, and crew sizes.

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection 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 or NPPA, either during construction or over the life of the Project. Issuance of a CESA ITP 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, such as those identified in **Attachment 1**, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened 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

Richard Thomasser
Napa County Flood Control and Water Conservation District
November 29, 2023
Page 3

(FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration Agreement

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity 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. 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. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, including those listed in **Attachment 1**, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for: 1) collecting these species for necessary scientific research, including efforts to recover fully protected species; 2) relocation of the bird species for the protection of livestock; 3) if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan, or 4) certain projects pursuant to Fish and Game Code section 2081.15.

ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting ("baseline") to understand the Project's, and its alternative's (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including, but not limited to, all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or state,

Richard Thomasser
Napa County Flood Control and Water Conservation District
November 29, 2023
Page 4

and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the County may require. Fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to, those listed in **Attachment 1**.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Consultation System, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>)¹, must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Encroachments into riparian habitats, wetlands or other sensitive areas;

¹ California Rare Plant Rank (CRPR) 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is 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/rare-plant-ranking-review>).

Richard Thomasser
Napa County Flood Control and Water Conservation District
November 29, 2023
Page 5

- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

The Project will require an LSA Notification and may require an ITP for CESA listed species. Please include as mitigation measures the requirements to submit an LSA Notification to CDFW and comply with the LSA, if issued, and obtain an ITP from CDFW, if take of CESA listed species may occur.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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,

Richard Thomasser
Napa County Flood Control and Water Conservation District
November 29, 2023
Page 6


please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB online field survey form and other methods for submitting data can be found 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://wildlife.ca.gov/Data/CNDDDB/Plantsand-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 & G. Code, § 711.4; Pub. Resources Code, § 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.

If you have any questions, please contact Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species and Sensitive Natural Communities

ec: Office of Planning and Research, State Clearinghouse (SCH No. 1997044002)

Richard Thomasser
 Napa County Flood Control and Water Conservation District
 November 29, 2023
 Page 7

Attachment 1: Special-Status Species and Sensitive Natural Communities

Scientific Name	Common Name	Status
Amphibians and Reptiles		
<i>Dicamptodon ensatus</i>	California giant salamander	SSC
<i>Rana boylei</i> pop. 1	foothill yellow-legged frog - north coast DPS	SSC
<i>Emys marmorata</i>	western pond turtle	SSC
Birds		
<i>Haliaeetus leucocephalus</i>	bald eagle	SE, BGEPA, FP
<i>Buteo swainsoni</i>	Swainson's hawk	ST
<i>Agelaius tricolor</i>	tricolored blackbird	ST
<i>Athene cunicularia</i>	burrowing owl	SSC
<i>Geothlypis trichas sinuosa</i>	saltmarsh common yellowthroat	SSC
<i>Elanus leucurus</i>	white-tailed kite	FP
<i>Buteo regalis</i>	ferruginous hawk	WL
Fishes		
<i>Hypomesus pacificus</i>	Delta smelt	SE, FT
<i>Spirinchus thaleichthys</i>	longfin smelt	ST, FC
<i>Oncorhynchus tshawytscha</i>	Chinook salmon - winter-run	SE, FE
<i>Oncorhynchus tshawytscha</i>	Chinook salmon - spring-run	ST, FT
<i>Acipenser medirostris</i>	southern green sturgeon	FT, SSC
<i>Oncorhynchus mykiss</i>	Central California coast winter steelhead	FT
<i>Entosphenus tridentata</i>	Pacific lamprey	SSC
<i>Pogonichthys macrolepidotus</i>	Sacramento splittail	SSC
<i>Acipenser transmontanus</i>	white sturgeon	SSC

Richard Thomasser
 Napa County Flood Control and Water Conservation District
 November 29, 2023
 Page 8

<i>Lampetra richardsoni</i>	western brook lamprey	SSC
Invertebrates		
<i>Syncaris pacifica</i>	California freshwater shrimp	SE, FE
<i>Branchinecta conservatio</i>	conservancy fairy shrimp	FE
<i>Danaus plexippus plexippus</i> pop. 1	monarch - California overwintering population	FC
Mammals		
<i>Reithrodontomys raviventris</i>	salt-marsh harvest mouse	SE, FE, FP
<i>Antozous pallidus</i>	Pallid bat	SSC
Plants		
<i>Trifolium amoenum</i>	two-fork clover	FE, CRPR 1B.1
<i>Lasthenia conjugens</i>	Contra Costa goldfields	FE, CRPR 1B.1
<i>Lilaeopsis masonii</i>	Mason's lilaeopsis	SR, CRPR 1B.1
<i>Trichostema ruygtii</i>	Napa bluecurls	CRPR 1B.2
<i>Trifolium hydrophilum</i>	saline clover	CRPR 1B.2
<i>Extriplex joaquinana</i>	San Joaquin spearscale	CRPR 1B.2
<i>Lathyrus jepsonii</i> var. <i>jepsonii</i>	Delta tule pea	CRPR 1B.2
<i>Symphotrichum lentum</i>	Suisun Marsh aster	CRPR 1B.2
Sensitive Natural Communities		
<i>Quercus lobata</i> riparian	valley oak, live oak, Fremont cottonwood riparian alliance	S3
<i>Bolboschoenus maritimus</i>	salt marsh bulrush marshes alliance	S3

FE = federally listed as endangered under ESA; FT = federally listed as threatened under ESA; FC = federally listed as candidate under ESA; BGEPA = Bald and Golden Eagle Protection Act; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SR = state listed as rare under NPPA; FP = fully protected; SSC = state Species of Special Concern; WL = CDFW Watch List species; CRPR = California Rare Plant Rank; DPS = distinct population segment; S3 = sensitive natural community state ranked as vulnerable