



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



Governor's Office of Planning & Research

June 25, 2019

JUNE 25 2019

STATE CLEARINGHOUSE

Mr. Kevin Murray
San Francisquito Creek Joint Powers Authority
615 B Menlo Avenue
Menlo Park, CA 94025

Subject: San Francisquito Creek Flood Protection, Ecosystem Restoration, and Recreation Project Upstream of Highway 101, Draft Environmental Impact Report, SCH #2013062019, Santa Clara County and San Mateo County

Dear Mr. Murray:

The California Department of Fish and Wildlife (CDFW) received a Program Draft Environmental Impact Report (EIR) from the San Francisquito Creek Joint Powers Authority (SFCJPA) for the San Francisquito Creek Flood Projection, Ecosystem Restoration, and Recreation Project Upstream of Highway 101 (Project) on April 29, 2019 pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; hereafter CEQA; Cal. Code Regs., § 15000 et seq.; hereafter CEQA Guidelines).

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204). The SFCJPA provided an extension to the deadline for CDFW to submit the comment letter to June 26, 2019.

CDFW ROLE

CDFW is a Trustee Agency with responsibility pursuant to CEQA for commenting on projects that could directly or indirectly impact biological resources. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). As a Trustee Agency, CDFW is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities (CEQA Guidelines § 15386; Fish and Game Code § 1802).

CDFW is also considered a Responsible Agency under CEQA §15381 if a project requires discretionary approval, such as under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration Agreement (LSAA), or other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. CDFW will act as a Responsible Agency because it anticipates issuing an LSAA for Project activities that impact a stream (Fish and Game Code, §§ 1600 – 1616), specifically San Francisquito Creek. CDFW may also act as a Responsible Agency in issuing an Incidental Take Permit (ITP) if Project activities result in "take" of any species listed as candidate, threatened, or endangered pursuant to CESA (Fish and Game Code, § 2050 et seq.).

PROJECT DESCRIPTION

Background: The SFCJPA is a regional government agency formed in 1999 by East Palo Alto, Menlo Park, Palo Alto, the San Mateo County Flood Control District, and the Santa Clara Valley Water District. This agency plans, designs, and implements projects along San Francisquito Creek which is divided between San Mateo and Santa Clara counties.

For the purpose of this draft EIR, San Francisquito Creek is considered to have three major and distinct reaches. Reach 1 includes the length of the creek between San Francisco Bay and the upstream side of the bridge at West Bayshore Road. Construction within Reach 1 was completed in 2018 (Environmental Impact Report SCH #2010092048). Reach 2 includes the length of the creek between the upstream side of West Bayshore Road and extends to the area immediately upstream of Pope-Chaucer Bridge. Reach 2 includes the work proposed to occur in the near future as a result of this draft EIR. Reach 3 is upstream of the Pope Chaucer Bridge and extends throughout the upper watershed. Reach 3 is an area subject to potential future projects discussed in this draft EIR would complement the objectives of the work proposed in Reach 2.

Objective: The SFCJPA seeks to sustainably and adaptively manage the watershed system and to increase the conveyance and/or detention of water in order to protect people and property from creek flows of at least the 100-year-event level, now and in a future with climate change. The draft EIR analyzes alternatives that meet this objective at a programmatic level, and conducts a more detailed project level analysis to enable the implementation of the first phase of work in Reach 2 to protect the communities from flows up to the 1998 flood event level.

The specific objectives of the draft EIR are as follows:

- Protect life, property, and infrastructure from floodwaters exiting the creek during flows up to 7,500 cubic feet per second (cfs), while minimizing impacts of the Project on adjacent communities and the environment;
- Enhance habitat within the Project area, particularly interconnected habitat for threatened and endangered species;
- Create new recreational opportunities and connect them to existing bike and pedestrian corridors;
- Minimize operational and maintenance requirements; and
- Not preclude future actions to bring cumulative flood protection up to a 100-year flow event.

Under the draft EIR, 17 alternatives were evaluated and screened based on their ability to meet the Project objectives. For Reach 2, Alternatives 2 (Channel Widening Alternative) and 5 (Floodwalls Alternative) advanced for full analysis in the draft EIR. Both alternatives include replacing the Pope-Chaucer Bridge and widening the channel immediately upstream of U.S. Highway 101 (Site 5) to align the channel with the recently completed modifications to the bridge at the highway's West Bayshore frontage road. For flood protection methods, Alternative 2 would involve primarily creek channel widening, replacing decades-old sacked concrete walls with more vertical, architecturally treated soil nail walls, and Alternative 5 would involve

construction of floodwalls at the top of the creek's banks. Both alternatives would include construction of creekside parks and aquatic habitat enhancements. The Channel Widening Alternative was determined to be the preferred alternative. Reach 3 Alternative 3 (Construct One or More Detention Basins) advanced for full analysis in the draft EIR. Alternative 3 was split into two alternatives, each representing one of two potential detention basin sites. However, Reach 3 alternatives are analyzed at a program level due to insufficient information at this time.

Timeframe: The draft EIR indicates that the proposed work in Reach 2 would be implemented between June 15 and October 15. Construction would begin in either 2020 or 2021 and take up to two years.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below primarily to assist the SFCJPA in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources. These comments and recommendations are based on the requirement for the environmental document to include the following information:

Project Description

Table 2-1. Screening of Alternative Based on Each Alternative's Ability to Meet Project Objectives

The table lists multiple objectives and compares them with the alternative projects (alternatives 2 – 17). To address one concern in particular related to the expected large volume of excavated materials for a project of this scope, and resultant potential need for disposal of excess sediment and other materials, CDFW recommends that the draft EIR include an analysis of the cut and fill balance for each alternative. For those alternatives expected to create a surplus of excavated sediment, the locations of disposal sites (on-site and/or off-site) should be described, and the potential impacts of sediment disposal on biological resources fully analyzed as part of the proposed Project.

Replacement of Pope-Chaucer Bridge and Channel Widening (Reach 2; Section 2.8.2)

The draft EIR states that "construction would begin in the spring, with work starting within the stream channel on June 15." The EIR should describe in detail all activities that would occur in the spring for the replacement of the Pope-Chaucer bridge and/or any other activities of the proposed Project. For example, if Project activities are proposed to occur in the spring in upland locations outside of the stream channel, the draft EIR must address all potential impacts of these activities on biological resources, including special-status species and their habitats. Additionally, the draft EIR states that stream vegetation would be removed 250 feet upstream and 250 feet downstream of the bridge to accommodate construction equipment, but it does not describe the type of vegetation or habitat present. The draft EIR should describe all existing habitat types within the Project area, including species composition as well as amounts and types of impacts (temporary, semi-permanent or permanent) resulting from implementation of the Project.

The draft EIR states that rock slope protection (RSP) would be installed up- and downstream of the bridge. Although the draft EIR includes some information on the length of the RSP, the amount and height of RSP expected to be used along the banks should be specified as well. Since the draft EIR states that fish habitat would be constructed over the in-channel RSP, CDFW is concerned that this approach could result in fish entrapment. Therefore, please clearly justify the proposed amount of RSP, and evaluate feasible bio-engineering alternatives to minimize the amount of RSP.

The draft EIR states soil nail walls would be installed at multiple sites. At Site 5, the bank is proposed to be set back and a sheet pile wall constructed near West Bayshore Road. CDFW recommends evaluating methods of reducing the amount of hardscape and providing more habitat value to these sites. For example, we recommend evaluating the option of laying back the bank to a gentler slope (with installation of plantings) while still retaining the stream capacity or installing wooden crib walls or a similar structure. While the draft EIR indicates that existing sacked concrete is proposed for removal at Sites 3, 4 and 5, it appears to be planned for installation at Site 2. CDFW is concerned that sacked concrete is not typically stable as a long-term bank protection treatment and ends up being uplifted and eroded; therefore, we do not recommend its use. The EIR should therefore evaluate use of other bank stabilization treatments that would reduce or eliminate hardscape.

Construction of Small Creekside Parks

Part of the Channel Widening Alternative includes constructing small creekside parks and the draft EIR states that it would include landscaping and benches. The EIR should specify the plant species composition of the landscaping and ensure that plantings are composed of native species only. Since these parks would be near the creek, CDFW recommends that the plant palette for these parks include native riparian species appropriate for the local area. The EIR should also clarify the specific location of these parks, including whether they would be created above or below top of bank.

Construction Equipment

The draft EIR states that when vehicles and equipment are not in use, they would be stored within either the "instream" or upland staging areas. However, the draft EIR should clarify whether all vehicles and equipment would be stored within the dewatered area of the channel. Also, the draft EIR states that the instream staging areas are shown in Figures 2-3 through 2-6, but these figures show both the construction area and instream staging combined. The specific location of the instream staging areas should therefore be described and updated figures provided.

Dewatering

Construction of the Project would involve dewatering of the creek; however, it is not clear in the draft EIR whether partial dewatering of the creek would be feasible. Partial dewatering could result in less impeded movement for steelhead and other native fish migrating up- and/or downstream.

Operations and Maintenance

The draft EIR states that “the Project would require similar maintenance activities as those currently conducted along the creek” and concludes that no impact would occur. However, the draft EIR does not describe current maintenance activities and whether those activities were previously analyzed under CEQA. Unlike construction impacts, which tend to be one-time impacts, operation and maintenance activities are repeated activities that can have cumulative effects. It is not clear if these activities appropriately represent the environmental baseline. Please provide a description of current operations and maintenance activities and cross-reference past CEQA analysis pertaining to those activities to demonstrate that all effects have been analyzed. Additionally, the draft EIR states that sediment deposition as well as other activities would be inspected after construction of the Project. Please clarify how often sediment is currently removed, whether there is a known source, where the sediment is disposed offsite if it cannot be reused, and whether the Project is expected to address excess deposition.

Biological Resources

The draft EIR indicates that “construction of the floodwalls could temporarily impact 1.61 acres of riparian habitat (for excavation to build the walls) and permanently impact 0.167 acres (the footprint of the walls)” for the Floodwalls Alternative in Reach 2. While the draft EIR addresses footprint impacts, it does not discuss changes to the stream associated with additional hardscape. For example, a concrete floodwall could result in hydromodification of the channel and alteration of sediment and large wood deposition. CDFW therefore recommends that the EIR include an analysis and discussion of physical changes that might occur as a result of construction of the proposed floodwalls and a discussion of related effects to streamflow and aquatic habitat.

The draft EIR indicates that the Project would result in impacts to several habitat types, including freshwater emergent wetland, coastal oak woodland, valley oak riparian, coastal scrub, and saline emergent wetland. However, the draft EIR does not clearly define temporary and permanent impacts nor explain how some of these habitat types could meet the criteria of a temporary impact, which includes complete restoration of the impact area to pre-project conditions within one year of the impact. Habitat types such as seasonal wetland or willow riparian typically cannot typically be fully restored to their pre-project value or function within one year of removal or other disturbance. Please be advised that if a habitat type cannot be fully restored to pre-project conditions within one year, CDFW considers this impact as either semi-permanent (restoration within two years) or permanent (more than two years). CDFW recommends that the EIR fully evaluate the type and duration of impacts for each habitat type within the Project area and provide compensatory mitigation appropriate for each type of impact. For example, mitigation for semi-permanent impacts should be higher than those for temporary impacts in order to offset the temporal loss of habitat functions and values to fish and wildlife species.

However, CDFW questions the accuracy of the habitat assessment included in the draft EIR and its evaluation of impacts to biological resources given that habitats for wildlife and plant species were assessed in years 2010, 2012 and 2013. Given the time since the last

reconnaissance surveys were conducted, the potential exists for special-status species not observed during the last surveys to occupy the Project area. The draft EIR should re-evaluate the habitat types within the Project area and include a more accurate and updated description of baseline conditions. If suitable habitat still exists for special-status and sensitive plant and wildlife species, then surveys should be conducted and survey results included in the EIR. The draft EIR indicates that the California Natural Diversity Database (CNDDDB) as well as other databases were accessed to identify all special-status species that could occur in the Project area. It is not clear when the databases were accessed. As indicated above, if databases prior to conducting surveys six or more years ago, CDFW advises re-consulting data sources and including the most current results in the EIR.

The draft EIR also does not clearly describe the number of trees expected to be impacted by Project construction activities, and whether these trees are located within the riparian corridor or in upland locations. Appendix B focuses on trees that would be impacted on private property, but a more thorough evaluation of all tree impacts should be included in the EIR. In addition, the draft EIR states that to compensate for any tree removal, planting of new trees would be in accordance with each city's tree ordinances. Please be advised that impacts to riparian vegetation would be subject to Fish and Game Code 1600 et seq. (see **Regulatory Requirements** below) and compensation required in an LSAA. The EIR, however, must include more defined mitigation measures to effectively compensate for all impacts to both riparian and upland vegetation.

Please be advised that monitoring of vegetation is typically 5 to 10 (or more) years, depending on the plant palette. Some plant species such as oaks typically have very slow growth rates. Additionally, the biological functionality of oak woodlands may be impacted by thinning or clearing due to loss of wildlife roosting and nesting trees, encroachment by conifers, loss of acorn mast trees, and other factors. The draft EIR should clearly describe all impacts to oak woodlands and include a mitigation and monitoring plan that would adequately account for species with slow growth rates.

Table 3.3.-4 in the draft EIR shows that the Federally Threatened (FT) and State Species of Special Concern (SSC) California red-legged frog (CRLF) (*Rana draytonii*) has the potential to be impacted by the Project in Reach 2, but the FT and State Threatened (ST) California tiger salamander (CTS) (*Ambystoma californiense*) is only included in Reach 3 (see next paragraph). CDFW recommends further assessment of the potential for CTS to occur in Reach 2. Mitigation Measure BIO-25 in the draft EIR proposes to conduct surveys of upland habitat and avoid CTS if found. However, the draft EIR doesn't specify whether protocol-level surveys would be conducted. Similarly, CDFW advises that it is very difficult to fully avoid impacts to CTS. If CTS breeding ponds are located within 1.3 miles of Reach 2 of the Project area and suitable upland habitat is present between breeding ponds and the construction site, then the SFCJPA should consider CTS as present in Reach 2 and assess the Project's potential for take of this CESA-listed species (see **Regulatory Requirements** below).

For Reach 3, the draft EIR indicates that the detention basins could attract breeding CRLF and CTS, which would be subject to take during sediment removal activities. Mitigation Measure BIO-19 proposes to construct an impermeable fence around the basin to prevent CRLF and

CTS from entering the basins. CDFW is concerned that MM-BIO-19 is unlikely to be effective. Fencing and barriers require almost daily maintenance, and as such are costly and prone to failure. Even if carefully maintained, frogs are good climbers, and the exclusion fence may not fully exclude them. Barriers can also result in mortality, particularly for CTS, because individuals encountering an obstacle, rather than moving in a different direction, stop against the barrier, and often die from desiccation. As an alternative to exclusion fencing, the EIR should analyze feasible and effective alternatives such as sizing the basin and managing the hydroperiod for no more than 48 hours so that CTS and CRLF are not attracted to the feature for breeding.

The draft EIR states that habitat for the Federal Candidate (FC) and ST longfin smelt (*Spirinchus thaleichthys*) is absent. CDFW recommends that a more thorough habitat assessment be conducted for longfin smelt and that Table 3.3-3 be revised, if necessary. Please be advised that pile driving impacts could result in take of longfin smelt if they are present within the Project area during construction and an ITP may be necessary.

The draft EIR states that "the project area is situated entirely in an intergrade zone of snakes that are genetic hybrids of San Francisco garter snake (SFGS) (*Thamnophis sirtalis tetrataenia*) and red-sided garter snake (*Thamnophis sirtalis parietalis*); these intergrades are not considered to belong to either species and are not protected as such..." The draft EIR does not provide a citation explaining the basis for this assumption. Please be advised that CDFW does not have an adopted policy for hybrid species and was not consulted regarding the Fully Protected (FP) status for SFGS in this area. CDFW recommends that this text be removed or that consultation with CDFW occur in order to modify this language.

The draft EIR states that habitat for the FP salt marsh harvest mouse (SMHM) (*Reithrodontomys raviventris*) is absent. In order to better assess the potential direct and/or indirect impacts of the Project to this species, the EIR should consider the proximity to Reach 1 and the staging area within this reach when considering whether habitat is present for SMHM. The EIR should also consider this for the SSC salt-marsh wandering shrew (*Sorex vagrans halicoetes*), the FP California Ridgway's rail (*Rallus obsoletus obsoletus*), and the FP California black rail (*Laterallus jamaicensis contorniculus*). In addition, the draft EIR states that there would be no impact to San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*) in Reach 2 because this species does not occur in this area. However, the EIR should more clearly justify this determination since woodrat nests are often cryptic yet relatively common in riparian vegetation located in urbanized settings.

Please note that Townsend's big-eared bat (*Corynorhinus townsendii*) is no longer a state candidate species under CESA. This species is an SSC.

REGULATORY REQUIREMENTS

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. For more information on CESA and the ITP application process, please visit our website at: <http://www.wildlife.ca.gov/Conservation/CESA>.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [CEQA §§ 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 Agreement

CDFW will require an LSAA, pursuant to Fish and Game Code §§ 1600 et. seq. for Project-related activities within San Francisquito Creek and any other waters within the proposed Project area subject to 1600 et seq. 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 EIR for the Project. CDFW may not execute the final LSAA until it has complied with CEQA (Public Resources Code § 21000 et seq.) as the responsible agency.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

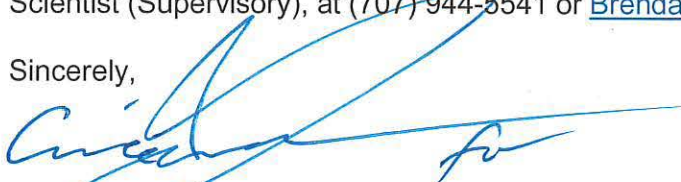
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

Mr. Kevin Murray
San Francisco Creek Joint Powers Authority
June 25, 2019
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CONCLUSION AND FUTURE COORDINATION

CDFW appreciates the opportunity to comment on the draft EIR to assist the SFCJPA in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Ms. Mayra Molina, Environmental Scientist, at (707) 428-2067 or Mayra.Molina@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #2013062019

ec: Ms. Susan Glendening
San Francisco Regional Water Quality Control Board
Susan.glendening@waterboards.ca.gov

Mr. Gary Stern
NOAA Fisheries
Gary.stern@noaa.gov

Mr. Joseph Terry
U.S. Fish and Wildlife Service
joseph.terry@fws.gov