

Notice of Determination

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To:
Office of Planning and Research
For U.S. Mail:
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Street Address:
1400 Tenth Street
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From:
Department of Fish and Wildlife
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 95434
Contact: Mayra Molina
Phone: (707) 428-2067



Lead Agency
Santa Clara Valley Water District
5750 Almaden Expwy, San Jose, CA 95118
Contact: Mike Coleman
Phone: (408) 630-3096

SUBJECT: *Filing of Notice of Determination pursuant to Public Resources Code section 21108*

State Clearinghouse Number: 2015062026

Project Title: Lower Penitencia Creek Improvements (Lake or Streambed Alteration Agreement No. 1600-2018-0082-R3)

Project Location: The project is located along 5,100 linear feet of the Lower Penitencia Creek channel in the City of Milpitas, County of Santa Clara, State of California.

Project Description: The California Department of Fish and Wildlife (CDFW) has executed Lake and Streambed Alteration Agreement number 1600-2018-0082-R3, pursuant to section 1602 of the Fish and Game Code to the project Applicant, Ngoc Nguyen, Santa Clara Valley Water District.

The Lower Penitencia Creek Improvements (Project) will involve various elements along four reaches of the Lower Penitencia Creek, including: installation of sheetpile and concrete floodwalls, earthen fill, a wetland bench, relocation and raising of a levee, headwall installation on the San Andreas Drive Bridge, maintenance road improvements, and revegetation.

This is to advise that CDFW, acting as a Responsible Agency, approved the above described project on February 18, 2020 and has made the following determinations regarding the project pursuant to California Code of Regulations section 15096, subdivision (i):

1. The project will / will not have a significant effect on the environment. This determination is limited to effects within CDFW's permitting jurisdiction as a Responsible Agency.
2. CDFW considered the environmental impact report prepared by the Lead Agency for this project pursuant to California Code of Regulations section 15096, subdivision (f).
3. Mitigation measures were / were not made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan was / was not adopted by CDFW for this project.
5. A statement of overriding considerations was / was not adopted by CDFW for this project.
6. Findings were / were not made by CDFW pursuant to California Code of Regulations section 15091.

The final environmental impact report prepared for the project is available to the general public at the office location listed above for the Lead Agency. CDFW's record of project approval as Responsible Agency is available at CDFW's regional office.

Signature Kare Weiss for *Date:* February 19, 2020
Craig J. Weightman, Environmental Program Manager

Governor's Office of Planning & Research

Date Received for filing at OPR: FEB 27 2020

STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
AGREEMENT REGARDING PROPOSED LAKE OR STREAM ALTERATION
NO. 1600-2018-0082-R3**

Ngoc Nguyen, Santa Clara Valley Water District
Lower Penitencia Creek Improvements Project

CEQA FINDINGS

INTRODUCTION:

The California Environmental Quality Act (CEQA)(Public Resources Code §21000, *et seq.*), and the State CEQA Guidelines (Guidelines)(Title 14, Cal. Code Regs. 15000, *et seq.*) require that prior to reaching a decision on a project, a responsible agency must consider the environmental effects of the project as shown in the document prepared by the lead agency.

As the lead agency for the Lower Penitencia Creek Improvements Project (Project), the Santa Clara Valley Water District (Valley Water), certified an Environmental Impact Report (EIR) on December 2011 and an Addendum to the EIR on February 3, 2020.

The California Department of Fish and Wildlife (CDFW) is issuing an agreement regarding proposed Lake or Streambed Alteration to the project applicant, Valley Water, represented by Ngoc Nguyen. The Project will involve various elements along four reaches of the Lower Penitencia Creek for the purpose of flood protection for projected 1% flow events. The elements will include installation of sheetpile and concrete floodwalls, earthen fill, a wetland bench, relocation and raising of a levee, headwall installation on the San Andreas Drive Bridge, maintenance road improvements, and revegetation.

CDFW is a responsible agency under CEQA for the purpose of approving the Lake and Streambed Alteration Agreement necessitated by Valley Water's proposed project. As a CEQA responsible agency, CDFW is required by Guidelines §15096 to review the environmental document certified by the lead agency approving the project and to make certain findings concerning the project's potential to cause significant, adverse environmental effects. However, when considering alternatives and mitigation measures approved by the lead agency, a responsible agency is more limited than the lead agency. CDFW has responsibility for mitigating or avoiding only the direct or indirect environmental effects of the Lake and Streambed Alteration Agreement that it approves.

FINDINGS:

CDFW has considered the EIR and Addendum prepared by the lead agency. CDFW has independently concluded that the Lake and Streambed Alteration Agreement should be issued under the terms and conditions specified therein. CDFW finds that with the mitigation measures incorporated into the Lake and Streambed Alteration Agreement, there will be no significant effects from the proposed project.

The Project is Approved.

DATE: February 19, 2020

By: *Karen J. Weightman for*
Craig J. Weightman, Environmental Program Manager
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region