



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
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GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

August 20, 2019

**AUG 20 2019**

## STATE CLEARINGHOUSE

Ms. Laurie Williams  
Senior Watershed Planner  
Marin County Flood Control and Water Conservation District, Zone 7  
3501 Civic Center Drive, Suite 304  
San Rafael, CA 94903

Dear Ms. Reid:

Subject: Gallinas Levee Upgrade Project, Initial Study, SCH #2019079013, City of San Rafael, Marin County

The California Department of Fish and Wildlife (CDFW) received a Gallinas Levee Upgrade Project, Initial Study/Mitigated Negative Declaration (MND) from Marin County Flood Control and Water Conservation District (District) for the Gallinas Levee Upgrade Project (Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the IS to inform the Marin County Flood Control and Water Conservation District, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

### Regulatory Requirements

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

#### *Fully Protected Species*

Fully protected species such as salt-marsh harvest mouse, California clapper rail, and California black rail may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and relocation of the bird species for the protection of livestock (Fish and Game Code Section 3511). Therefore, appropriate mitigation measures to ensure avoidance of fully protected species which do not cause "take" should be disclosed in the MND.

#### *Lake and Streambed Alteration Agreement*

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river, lake, or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602; and CDFW may require a Lake and Streambed Alteration (LSA) Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code. CDFW acknowledges that the MND includes language stating that the District will need an LSA Agreement under Required Approvals (page 21).

Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lisa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

CDFW also has jurisdiction 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 raptors are also protected under the federal Migratory Bird Treaty Act.

#### **Project Description and Environmental Setting**

The Project is located within the Santa Venetia neighborhood of an unincorporated community located near the City of San Rafael in Marin County, California. The community is comprised of approximately 900 homes, east of the Marin County Civic Center, bordered on the northern and northeastern edge by the South Fork Gallinas Creek. The Project is along approximately 7,000 linear feet of Las Gallinas Creek from #5 Vendola Drive to #825 Vendola Drive, Marin County.

In 2016, the Federal Emergency Management Agency (FEMA) completed a San Francisco Bay Coastal Study, which resulted in reassessing portions of the Santa Venetia residential neighborhood below the base flood elevation of 9.8 feet. The Project objectives of the Gallinas Levee Upgrade Project include:

- Reduce the risk of tidal flooding in the Santa Venetia neighborhood due to a 100-year tidal elevation until the year 2050.
- Increase the stability and reliability of the levee and the timber reinforced berm (TRB) with new construction and facilitate future maintenance.
- Project and promote healthy native habitat where the Project borders the marsh.

Approximately 35 years ago, a TRB was constructed around the Santa Venetia neighborhood. The Project as proposed would install a TRB in areas where there is none, and increase the height of the TRB to account for the new FEMA base flood elevation, subsidence and projected

20-inches of sea level rise until 2050 in other areas. The new TRB would be approximately 1-3 feet higher, with a maximum elevation of 12.5 feet; yet the final design has yet to be completed. Per Figure 6, some areas will have a landside soil buttress and the TRB will be tied back. Other areas will have no proposed landside soil buttress.

The Project also proposes to replace or remove existing tidal culverts.

## **Comments and Concerns**

### *Salt Marsh Habitat*

CDFW is concerned that the Project as proposed will result in a loss of salt marsh habitat. Page 15 states, "A new survey of the current height of the earthen levee, scheduled to be undertaken by the District in the spring of 2019, will determine the required height of the TRB." Figure 6 does not show the existing high tide line and the proposed high tide line in 2050. Currently, most of the creek-side area of the levee has salt marsh habitat. Also, most of the TRB is low enough or has adjacent vegetation that salt marsh harvest mouse and other marsh species have areas they can escape to during high tide.

CDFW appreciates that the Project Description (Figure 7) and Mitigation Measure BIO-4, include a living shoreline feature, which is a vertical corridor of salt marsh habitat with a lattice for species to potentially use as an escape mechanism during a high tide event.

CDFW is concerned that increasing the height of the TRB by 1 to 3.5 feet along the 7,000-foot levee will ultimately result in the loss of the entire marsh area creek side of the TRB. Therefore, CDFW recommends implementing the following concept included in Mitigation Measure BIO-4 to the greatest extent feasible, "Wherever feasible given space constraints, clean fill shall be placed and compacted on the outboard side of the TRB to increase marsh elevation, while maintaining an appropriate slope to allow development and migration of marsh vegetation in association with sea level rise."

CDFW also recommends that Mitigation Measure BIO-3 and BIO-4, state that once the spring survey is completed to determine the required height of the TRB, the District will map both the current high tide line and the projected high tide line for the entire length and life of the structure, which as proposed is until 2050. If there is a difference in salt marsh habitat between the two maps, to reduce potentially significant impacts, a Mitigation Plan should be written for review and acceptance by CDFW for the resulting loss of any salt marsh habitat.

For the areas of salt marsh habitat that are not projected to be impacted, CDFW recommends long-term monitoring of the salt marsh habitat for the life of the Project to ensure that the habitat is not lost. If the Project impacts exceed the projected marsh impacts in the Mitigation Plan, CDFW recommends developing a mechanism to mitigate for the on-going loss of that habitat.

### *Fully Protected Species*

The MND should include species avoidance measures to be implemented wherever Project activities will directly impact salt marsh vegetation or occur adjacent to salt marsh vegetation. These measures could include barrier fencing, hand removal of salt marsh vegetation, seasonal work windows, and avoidance buffers.

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Mitigation Measure BIO-1 should be revised to specifically add the following language:

Project activities within or adjacent to tidal marsh or suitable Ridgway's (California clapper) rail (CCR) or California black rail (CBR) habitat shall be avoided during rail breeding season (January 15 – August 31 for CCR, February 1 – August 31 for CBR) each year unless appropriately times, yearly protocol level surveys are conducted and survey methodology and results are submitted to and accepted by CDFW. Surveys shall focus on suitable habitat that may be disturbed by project activities during the breeding season to ensure that these species are not nesting in these locations.

If breeding rails are determined to be present, no activities, visual disturbance (direct line of sight) and/or an increase in the ambient noise level shall occur within 700 feet of areas where CCR and/or CBR have been detected during the breeding season. If surveys have not been conducted, all work shall be conducted 700 feet from CCR and/or CBR habitat during nesting season.

#### **FILING FEES**

The Project, as proposed, may have an impact on fish and/or wildlife, and assessment of 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 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).

#### **CONCLUSION**

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends all impacts to be identified and appropriate mitigation measures be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the IS to assist the District in identifying and mitigating Project impacts on biological resources.

CDFW appreciates the opportunity to provide comments on the IS/MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at [karen.weiss@wildlife.ca.gov](mailto:karen.weiss@wildlife.ca.gov).

Sincerely,



Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse