

7 April 2020

Ref: 308010-00221

Gregg Erickson
Regional Manager, Bay Delta Region
State of California, Natural Resources Division
Department of Fish and Wildlife
2825 Cordelia Road, Suite 100
Fairfield, CA 94534

Dear Mr. Erickson

TOWN OF DISCOVERY BAY-DIFFUSER OUTFALL REPAIRS, INITIAL STUDY/MITIGATED NEGATIVE DECLARATION, SCH #2020020418, TOWN OF DISCOVERY BAY, CONTRA COSTA COUNTY

This letter is in response to the comments and recommendations provided in your letter of March 20, 2020 (March 20 Letter) by the California Department of Fish and Wildlife (CDF&W) from the staff review of the Town of Discovery Bay Diffuser Outfall Repairs Project (Project) Initial Study Mitigated Negative Declaration (ISMND). We are responding to each comment individually for the purpose and intent to respectfully address the concerns and advise on the *comments* received in order to achieve a thorough understanding of the Project components, logistical planning, and full completion efforts.

We are hoping that with a thorough description of the area of concern or construction details for each CDF&W comment of the resource discussed, and by providing clarification of either the non-existence or non-applicability of the individual concerns, all parties can reach a collaborative understanding and expectation of the lack of impact, or cooperative monitoring and mitigation efforts to satisfy CDF&W laws, ordinances and regulations (LORs) under California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the review and please do not hesitate to contact me if you have questions or require additional information. We look forward to collaborating in this effort to construct a successful project and support our client, Town of Discovery Bay, with these applications and requisite review process.

Sincerely,



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Town of Discovery Bay-Diffuser Outfall Repairs, Initial Study/Mitigated Negative Declaration, Responses to CFDW Comments

Comment 1: Section IV. Biological Resources does not define floristic survey protocol

Town of Discovery Bay (Town) has determined all offsite activity including construction planning and preparation, materials and equipment storage, tooling, and commissioning activities will be done within the fenced perimeter of the Town's wastewater treatment plant facility located nearby the construction area. This will eliminate surface and ground activities and thereby eliminate all potential impacts to terrestrial biological resources. This planning procedure obviates the necessity to conduct a floristic survey under the protocol indicated as the land usage will be confined to currently disturbed service roads/access areas used during normal maintenance activities. Therefore, the impacts will be non-existent, and surveys are not applicable.

Comment 2: Revision needed to mitigate impacts to special-status plants to less-than significant

Referencing the response to Comment 1, by the Town implementing the construction planning alternative to use the Town's wastewater treatment plant located near the construction area eliminates all potential impacts to special-status plants.

Additionally, we propose the mitigation measures included in Comment 2 to retain a Qualified Botanist to conduct two (2) special-status plant species surveys as well as to develop and implement a restoration/remediation and mitigation plan be removed as the staging area indicated in the ISMND has been eliminated from the Project planning.

Comment 3: Revisions needed to mitigate impacts to Swainson's hawk (*Buteo swainsoni*) to less-than-significant

The cottonwood tree along the Reclamation Ditch 800 drainage canal was observed by Town of Discovery Bay maintenance staff on March 25, 2020, and no nests were observed at this time. This tree was judged to be approximately 0.5 to 0.75 miles from the proposed Project site. It is possible that this tree could serve as a roosting/perching site. Project scheduling has been adjusted whereby construction would not occur until after September 15 so that the nesting period will be avoided. Perching/roosting concerns should be ameliorated by the distance of the tree from the construction activity, and staging has been changed to occur at the Town's wastewater treatment plant and not on the surface 0.5 acres as designated in the IS/MND. Moreover, the activities associated with transfer of construction material from the wastewater treatment plant to barges will be conducted within the fenced perimeter of the wastewater treatment plant. Barges will be launched at a public boat launch site, thereby eliminating the need for equipment transfer at a shoreline access point. The equipment transfer process would occur two or three times over a two-week period and would be consistent with normal maintenance activities at the site.

Comment 4: Revisions needed to fully avoid impacts to white-tailed kite (*Elanus leucurus*)

The data on breeding sites of white-tailed kites from Contra Costa County Breeding Bird Atlas indicated confirmed breeding status west of the Project area. These data are reported on a relatively coarse, township-reporting unit and from 1998. This information on breeding status and nest sites of white-tailed kite for Contra Costa County has apparently not been updated.

This species usually nests in broad-leafed deciduous trees adjacent to riparian habitat near open areas and in stands of oaks in oak woodland habitat, but more often in single, isolated trees in large stands or in larger shrubs (Davis, C.L. 2014. White-tailed Kite, Spector of the California Skies. San Francisco Bay National Wildlife Refuge Complex. Vol. 37, No. 4). Thus, the cottonwood tree along the RD-800 drainage canal that occurs 0.5 to 0.75 miles from the proposed Project site could serve as a suitable nest site. No nest sites were observed in this tree on March 25, 2020 by Town of Discovery Bay maintenance staff. However, to avoid any nesting impacts to white-tailed kite, the Project schedule has been changed to occur after September 15.

A second potential impact includes the restriction or disruption of white-tailed kites from potential hunting in grassland areas that occur on a section of the 0.5-acre of the proposed staging area. The staging area and preparation of materials and equipment needed for the Project have been changed and will be conducted within the fenced perimeter of the Town's wastewater treatment plant. The construction material would be moved from the wastewater treatment plant to barges over a period of several days, but this activity would be consistent with normal daily maintenance activities at the site using existing service roads.

Comment 5 shown on Page 5 of the March 20 Letter: Revisions needed to mitigate impacts to burrowing owls (*Athene cunicularia*) to a level of less-than significant

Referencing the response to Comment 1, by the Town implementing the construction planning alternative to use the Town's wastewater treatment plant located near the construction area eliminates all potential impacts to burrowing owls.

Additionally, we propose the mitigation measures included in Comment 5 (shown on Page 5 of the March 20 CDF&W Letter) to retain a Qualified Biologist to perform a burrowing owl habitat assessment, pre-construction surveys, and impact assessments as well as to develop and implement a mitigation monitoring and reporting plan be removed as the staging area indicated in the ISMND has been eliminated from the Project planning.

Comment 5 shown on Page 7 of the March 20 Letter: Revisions needed to mitigate impacts to nesting birds to a level of less-than significant

Referencing the response to Comment 1, by the Town implementing the construction planning alternative to use the Town's wastewater treatment plant located nearby the construction area eliminates all potential impacts to nesting birds.

Additionally, in order to ensure complete avoidance and mitigation measures are implemented, the Town has revised the scheduling to start construction, including all requisite commissioning activities, beginning after September 15, 2020 to avoid disturbance to any nearby nesting birds not in the vicinity of the Project.

In consideration of the above Project details and staging location changes, we propose the mitigation measures included in Comment 5 (shown on Page 7 of the March 20 Letter) to retain a Qualified Biologist to perform a habitat assessment and nesting survey for nesting bird species be removed, as the staging area indicated in the ISMND has been eliminated from the Project planning.

Comment 6: Revisions needed to mitigate impacts to fish to a level of less-than-significant

The Town has changed the Project schedule to start after September 15, 2020 and as the milestone tasks are coordinated to be completed within 2 weeks, the Project completion will occur prior to November 30, 2020 to comply with all biological resource habitat components including special-status fish species with the Project area. The Town will be in full compliance of the regulations referenced in Comment 6 and impact mitigation including the work window of August 1 to November 30 to avoid impacts to Delta smelt, longfin smelt and Chinook salmon. Because of Project scheduling changes, the Project will not necessitate obtaining California Endangered Species Act (CESA)-listed fish take coverage through an Incidental Take Permit (ITP) issued by CDF&W. As this is a repair Project to existing facilities in previously impacted areas under previous permitting guidelines and approvals, no additional impact to shallow water habitat for fish species is anticipated, negating the 3:1 mitigation ratio as indicated.

Comment 7: Additional suggested measures to mitigate Project impacts to fish and wildlife to a level less-than-significant

The Town agrees to operate the hydraulic dredge in a manner consistent with recommendations included in Comment 7, as it is a necessary tool needed to excavate the damaged pipe section from the trench in the river bottom. The Town will use a smaller-scale hydraulic dredge, also known as a suction excavator, which will be operated so that the contact point is at or below the surface of the material being moved. The suction excavator will be hand operated by divers present underwater and will be maneuvering the suction nozzle to remove material and uncover the damaged pipe section. Material removed will be temporarily stored on the barge and replaced in the trench once the replacement pipe section is installed.

In accordance with the Project construction details and therefore in compliance of the mitigation measures discussed in Comment 7, a water pump will not be employed for any of the repair elements necessary,

thereby eliminating the need or potential of pumping water and negating the CDF&W Fish Screening Criteria mitigation measure.

In accordance with the Project construction details and therefore in compliance of the mitigation measures discussed in Comment 7, there will be no open trenches on land required for this Project. The only trench constructed will be underwater in the river bottom.

In accordance with the Project construction details and as detailed in response to Comment 1 and therefore in compliance of the mitigation measures discussed in Comment 7, all materials and equipment, including pipes, culverts, hoses, or similar equipment, will be stored within the fenced plant perimeter of the Town's wastewater treatment plant.

Response to Mitigation Monitoring and Reporting Program for California Department of Fish and Wildlife's Recommended Mitigation Measures Under the California Environmental Quality Act: Town of Discovery Bay – Diffuser Outfall Repairs

Mitigation Measure 1: Special-Status Plant Assessment and Avoidance. A Qualified Botanist shall conduct a minimum of two (2) surveys for each special-status plant species with potential to occur within the Project site prior to initiation of Project Activities during the appropriate blooming period in accordance with CDF&W's Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities (<https://www.wildlife.ca.gov/conservation/surveyprotocols>). Report of survey findings shall be done in accordance to the guidance in these protocols and submitted to CDF&W prior to Project construction.

Response:

Not applicable per Responses to Comment 1 and Comment 2.

Mitigation Measure 2: A Qualified Botanist shall develop and implement a restoration/remediation and mitigation plan according to CDF&W guidelines and in coordination with CDF&W. At a minimum, the plan shall include collection of reproductive structures from affected plants, a full description of microhabitat conditions necessary for each affected species, seed germination requirements, restoration techniques for temporarily disturbed occurrences, assessments of potential transplant and enhancement sites, success and performance criteria, and monitoring programs, as well as measures to ensure long-term sustainability.

Response:

Not applicable per Responses to Comment 1 and Comment 2.

Mitigation Measure 3: Pre-construction Survey for Swainson's Hawk. If work is to be conducted during the nesting season (February 15 – September 15), focused surveys for active Swainson's hawk nests shall be conducted by a qualified biologist in a manner consistent with the Recommended Timing and Methodology of Swainson's Hawk Nesting Surveys in California's Central Valley. At least two surveys shall be completed within two survey periods immediately prior to a Project's initiation. If a lapse in Project-

related work of 15 days or longer occurs, another focused survey shall be performed, and the results sent to CDF&W prior to resuming work. Surveys shall be conducted in all suitable habitat located at the Project work site, in staging, storage, and stockpile areas, and along transportation routes. Surveys shall be conducted within ½-mile of the Project area. If any active Swainson's hawk nests are found within ½-mile of the Project site, CDF&W shall immediately be contacted, and additional survey measures may be required for Project activities.

Response:

Not applicable per Response to Comment 3.

Mitigation Measure 4: A Qualified Biologist shall perform a burrowing owl habitat assessment, pre-construction surveys, and impact assessments. The Qualified Biologist is an individual who shall have a minimum of five years of academic training and professional experiences in biological sciences and related resource management activities with a minimum of two years conducting habitat assessments, pre-constructions surveys for breeding and non-breeding seasons, and impact assessments for burrowing owl. The Qualified Biologist shall be familiar with burrowing owl and its local ecology; shall be familiar with appropriate State and federal statutes, scientific research, and conservation of burrowing owl; and shall have experience with analyzing impacts of development on burrowing owls and their habitat.

Response:

Not applicable per Response to Comment 5 shown on Page 5 of the March 20 CDF&W Letter.

Mitigation Measure 5: Nesting Bird Assessment and Avoidance. Prior to the initiation of Project activities, including ground-disturbing activities scheduled to occur between February 15 and September 15, a Qualified Biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five days prior to the initiation of work. Surveys shall be conducted throughout the Project site, in staging, storage, and soil stockpile areas, and along transportation routes. The minimum survey radii surrounding the work area shall be the following: 1) 250 feet for passerines, 2) 500 feet for small raptors such as accipiters, and 3) 1,000 feet for larger raptors such as buteos. The Qualified Biologist conducting the surveys shall be familiar with the breeding behaviors and nest structures for birds known to nest in the project vicinity. Surveys shall be conducted during periods of peak activity (early morning, dusk), shall be of sufficient duration to observe movement patterns and shall concentrate on areas of suitable habitat. Survey results, including all descriptions of timing, duration, and methods used, shall be submitted to CDF&W for review 48 hours prior to the initiation of the Project. If a lapse in Project activity of 14 days or more occurs, the survey shall be repeated, and no work shall proceed until the results have been submitted to CDF&W.

Response:

Not applicable per Response to Comment 5 shown on Page 7 of the March 20 CDF&W Letter.

Mitigation Measure 6: Hydraulic Dredge Operation. The hydraulic dredge shall be operated so that the intake is at or below the surface of the material being removed. The hydraulic dredge intake may be a raised a maximum of three (3) feet above the river bottom for brief periods for the purpose of purging or flushing of the intake system.

Response:

The Town concurs with Mitigation Measure 6 and will implement as described in the Response to Comment 7.

Mitigation Measure 7: CDF&W Fish Screening Criteria. When pumping water, a water pump with a CDF&W-approved fish screen must be used. See the CDF&W fish screen criteria from the California Salmonid Stream Habitat Restoration Manual, 4th edition, California Department of Fish and Wildlife, located at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22610&inline>

Response:

Not applicable per Response to Comment 7.

Mitigation Measure 8: Open Trenches. Any open trenches, pits, or holes with a depth larger than one (1) foot shall be covered at the conclusion of work each day with a hard, non-heat conductive material (e.g. plywood). No netting, canvas, or material capable of trapping or ensnaring wildlife shall be used to cover open trenches. If use of a hard cover is not feasible, multiple wildlife escape ramps shall be installed, constructed of wood or installed as an earthen slope, in each open trench, hole, or pit that is capable of allowing large (e.g. deer) and small (e.g. snakes) wildlife to escape on their own accord. Prior to the initiation of construction each day and prior to the covering of the trench at the conclusion of work each day, the Designated Biologist or Qualified Biological Monitor shall inspect the open trench, pit, or whole for wildlife. If wildlife is discovered, it shall be allowed to leave. If wildlife does not leave, and the animal is a State-listed species, consultation is required before work can be initiated.

Response:

Not applicable per Response to Comment 7.

Mitigation Measure 9: Open Pipes Restriction. All pipes, culverts, hoses, or similar structures that are stored at the construction site, vertically or horizontally, for one or more overnight periods shall be securely capped, screened, or filled with material on both ends prior to storage and thoroughly inspected for wildlife by the Qualified Biological Monitor, in consultation with the Designated Biologist, prior to use. Only the Designated Biologist shall relocate special status species wildlife, if necessary. All hollow pipes or posts installed as part of the Project and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the workday in which installation occurs

Response:

Not applicable per Response to Comment 7.