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

March 20, 2020

Mr. Len Marino
Advisian, Worley Group Inc.
2330 E. Bidwell Street, Suite 120
Folsom, CA 95630

Subject: Town of Discovery Bay-Diffuser Outfall Repairs, Initial Study/Mitigated Negative Declaration, SCH #2020020418, Town of Discovery Bay, Contra Costa County

Dear Mr. Marino:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the Town of Discovery Bay for the Town of Discovery Bay-Diffuser Outfall Repairs (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. [Fish and Game Code, §§ 711.7, subd. (a) and 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Town of Discovery Bay

Objective: The objective of the Project is to remove 10-inch and 6-inch high-density polyethylene (HDPE) pipe segments and replace them with an 18-inch piping of the same combined length. This will result in a structure with a constant 18-inch diameter throughout the entire length of the outfall pipe body and with the same number of diffuser ports at the Discovery Bay Sanitary Outfall. The replacement pipe would meet modelled discharge requirements, which would not be increased after pipe replacement. Primary Project activities include trench excavation in the riverbed to uncover the 10-inch and 6-inch diffuser pipe segments. The pipe segments will be removed, leaving the original 18-inch segment installed in the riverbed. Replacement segments of 18-inch HDPE pipe will be installed and bolted to the original 18-inch segment. The trench will be backfilled with granular material.

Location: Discovery Bay, eastern Contra Costa County, within Old River on the west levee (left river bank), south of the Contra Costa Water District Los Vaqueros Pump Station, cross streets at 2500 Channel Road and Highway 4, Latitude 37°53’08”N, Longitude -121°34’30”W.

Timeframe: Two to three weeks, starting June 2020

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Town of Discovery Bay in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project’s avoidance of significant impacts on the biological resources with implementation of mitigation measures, including those CDFW recommends in Attachment A, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

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

Section IV of the IS/MND does not include defined survey protocols for floristic surveys or require a qualified botanist to conduct the surveys.

To correct this, CDFW recommends Section IV. Biological Resources be revised to include adherence to CDFW’s *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018), including the reporting requirements contained in those protocols, and to indicate a qualified botanist shall conduct the surveys according to the protocols. See https://wildlife.ca.gov/conservation/survey-protocols#377281280-plants.

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

The IS/MND does not identify any special-status plants as occurring on or near the Project site, although it states that sixteen species of sensitive plants and their habitats have potential to occur within the U.S. Geological Survey 7.5-minute quadrangle map (Woodward Island). It also states that field surveys were conducted in 2003. CDFW recommends adding plant avoidance measures in the event special-status plants are discovered. CDFW also recommends the addition of a mitigation measure in the revised IS/MND with the following language:

> *"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 CDFW's* Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities (*https://www.wildlife.ca.gov/conservation/survey-protocols). Report of survey findings shall be done in accordance to the guidance in these protocols and submitted to CDFW prior to Project construction."*

CDFW also recommends the measure state the following:

> *"A Qualified Botanist shall develop and implement a restoration/remediation and mitigation plan according to CDFW guidelines and in coordination with CDFW. 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."*

In addition, the measure should be revised to require conservation and management in perpetuity through recordation of conservation easements on lands where mitigation occurs to ensure impacts to special-status plant species are mitigated to a level of less-than-significant. Conservation lands should be placed under a Conservation Easement, an endowment should be funded for managing the lands for the benefit of the conserved species in perpetuity, and a long-term management plan should be prepared and implemented by a land manager. The Grantee of the Conservation Easement should be an entity that has gone through the due diligence process for approval by CDFW to hold or manage conservation lands.

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

The IS/MND states that a cottonwood tree occurs along the Reclamation District 800 drainage canal west of the Project area, which could provide nesting and perching/roosting structure for Swainson's hawk and that no nests were observed in this tree during the 2003 field observations. Also, the grasslands of the Project area provided foraging habitat for Swainson's hawk.

CDFW 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). Swainson's hawks are designated as a State of California Threatened Species and impacts to the species and its habitat is prohibited without meeting certain conditions. Swainson's hawk often nest peripheral to riparian systems. They also use lone trees in agricultural fields or pastures and roadside trees, when available and adjacent to suitable foraging habitat. The loss and conversion of native grasslands and agricultural lands to urbanization and orchard and vineyard agriculture is the primary threat to Swainson's hawk populations throughout California. The Project's potential impacts to this species is a significant impact that warrants mitigation to less-than-significant through the IS/MND.

The IS/MND does not mitigate potential impacts to Swainson's hawk to less-than-significant because the IS/MND lacks an evaluation of impacts to Swainson's hawks and does not include mitigation measures requiring pre-construction surveys conducted according to CDFW's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000). The IS/MND does not define avoidance measures in the event Swainson's hawks are discovered or reduce impacts from indirect impacts of nesting hawks from construction activity to a level of less-than-significant, nor does it offset those impacts with a compensatory mitigation requirement.

To correct this, CDFW recommends the IS/MND is revised to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to Swainson's hawk and their habitats according to CDFW's *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California* (1994) (Staff Report). If impacts are identified, CDFW recommends the IS/MND be revised to include adherence to the mitigation strategies defined in the Staff Report in addition to adherence to the CDFW's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000) survey protocol. Both documents are available online at https://www.wildlife.ca.gov/Conservation/Survey-Protocols. CDFW recommends the IS/MND be updated to include a measure requiring compensatory mitigation for impacts to Swainson's hawk nesting and foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts. If impacts to Swainson's hawk cannot be fully avoided, then CDFW recommends language defining the Project's obligation to obtain take coverage through an Incidental Take Permit (ITP) issued by CDFW.

CDFW recommends the following specific and enforceable measure to Swainson's hawk be incorporated into a revised IS/MND to minimize and avoid impacts:

"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 CDFW 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, CDFW shall immediately be contacted and additional survey measures may be required for Project activities."

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

The IS/MND states that breeding of white-tailed kite occurs immediately adjacent to the western side of the proposed Project site and that suitable foraging habitat is present.

Proposed Project activities may indirectly impact white-tailed kite. The white-tailed kite is a fully protected species under State law and may not be taken or possessed at any time.

To correct this, CDFW recommends the IS/MND include an analysis of the Project's potential impacts to this fully protected species, including raptor surveys prior to the start of Project activities and during the breeding and nesting seasons when detection is most likely to identify white-tailed kite nests and roosts. If impacts are identified, CDFW recommends the IS/MND is revised to adhere to Fish and Game Code to fully avoid impacts to the species and to require immediate notification to CDFW if the species is detected during Project activities.

Comment 5: Revisions needed to mitigate impacts to burrowing owls (*Athene cunicularia*) to a level of less-than-significant

Section 3.5.3 Proposed Mitigation Measures states that burrowing owls have occurred in the southwestern part of the Project site and weed control through disking and mowing have reduced the potential for burrows occur on the Project site, and that owls have not recently been observed by maintenance personnel. Mowing creates conditions conducive to burrowing owl habitation, as they prefer short grass areas habitats which gives them an opportunity to see predators. Disking collapses burrows, but only within the first couple of feet of earth. Deeper burrows remain untouched and squirrel populations persist to create more burrows which burrowing owls may utilize.

The burrowing owl is listed by the State of California to be a Species of Special Concern, defined as a species with declining population levels, limited ranges, and/or continuing threats which make them vulnerable to extinction (https://wildlife.ca.gov/Conservation/SSC). Habitat loss, degradation, and fragmentation are the greatest threats to burrowing owls in California. Loss of agricultural and other open lands (such as grazed landscapes) also negatively affect burrowing owl populations. Because of their need for open habitat with low vegetation, burrowing owls are unlikely to persist in agricultural lands dominated by vineyards and orchards or urbanized lands. Also, fossorial mammal burrows are important habitat to burrowing owl. Therefore, loss of burrowing owl habitat can be considered a significant impact that warrants mitigation to less-than-significant through the IS/MND.

The Project has the potential to adversely impact the species through temporary losses of potential nesting and foraging habitat. The Project may also result in additional impact to burrowing owl through nest abandonment, loss of young, and reduced health and vigor of chicks (resulting in reduced survival rates) and breeding and foraging disturbance through Project activities. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover.

The IS/MND does not mitigate potential impacts to burrowing owls to less-than-significant because the IS/MND lacks an evaluation of impacts to burrowing owls and does not include avoidance and mitigation measures requiring 1) pre-construction surveys conducted according to CDFW'S *Staff Report on Burrowing Owl Mitigation* (2012) and 2) avoidance measures determined by CDFW if and when burrowing owls are discovered at the Project site. The IS/MND does not define avoidance measures in the event burrowing owls are discovered or reduce impacts from permanent loss of burrowing owl nesting or foraging habitats to a level of less-than-significant as it does not offset those impacts with a compensatory mitigation requirement.

To correct this, CDFW recommends the IS/MND be revised to include an impacts analysis that provides an evaluation and discussion of potential impacts of the Project to burrowing owls and their habitats. If impacts are identified, CDFW recommends the IS/MND be revised to include pre-construction surveys following the methodology described in *Appendix D: Breeding and Non-breeding Season Surveys* of the CDFW *Staff Report on Burrowing Owl Mitigation* (Staff Report) and adherence to the mitigation strategies defined in the CDFW *Staff Report on Burrowing Owl Mitigation* (2012) in addition to adherence to the survey protocol. Both documents can be found at https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds. CDFW recommends the IS/MND be updated to include a measure requiring compensatory mitigation for impacts to burrowing owl foraging habitat at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts and a 1:1 ratio for temporary impacts. Mitigation lands for owls should include presence of burrows, burrow surrogates, presence of fossorial mammal dens, well-drained soils, abundant and available prey within close proximity to burrows, as well as foraging, wintering, and dispersal areas. The location of mitigation areas for burrowing owls should be approved by CDFW prior to the start of Project-related activities.

Please be advised that that CDFW does not consider exclusion of burrowing owls or "passive relocation" as a "take" avoidance, minimization, or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid "take."

CDFW recommends the following specific and enforceable measure to burrowing owl be incorporated into a revised IS/MND to minimize and avoid impacts:

"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-construction 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.

The Qualified Biologist shall conduct a habitat assessment to determine if burrowing owl habitat is present and if occupancy surveys are required. If the Qualified Biologist determines that potential burrowing owl habitat is present on the Project site, the Qualified Biologist shall conduct burrowing owl surveys. The surveys shall be conducted during the breeding season from February 1 to August 31 when detection probability is the highest. The Qualified Biologist shall conduct a minimum of three surveys during daylight hours and each survey shall occur at least three weeks apart during the peak of the breeding season (between April 15 and July 15), during the nesting period, and during the late nestling period.

If surveys confirm occupied burrowing owl habitat in or adjoining the Project area, the Qualified Biologist shall complete an impact assessment for burrowing owl. The impact assessment shall evaluate all factors that could affect burrowing owls on the Project site. The impact assessment shall suggest mitigation methods, if appropriate. Examples include, but are not limited to, avoidance of occupied burrows during the nesting period of February 1 to August 31, avoidance of occupied burrows during non-breeding season, pre-construction surveys, site surveillance, use of buffer zones or visual screens, and burrow exclusion.

If habitat loss or degradation occur on the Project site, the impacts to burrowing owl shall be mitigated. A mitigation monitoring and reporting plan shall be developed and implemented prior to project implementation.

All habitat assessment, pre-construction survey protocols, impact assessment, reporting requirements, and mitigation guidance can be found in the Staff Report on Burrowing Owl Mitigation dated March 7, 2012. The document can be found at https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds. For more information, see https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline.

Comment 5: Revisions needed to mitigate impacts to nesting birds to a level of less-than-significant

Section IV. Biological Resources does not include nesting survey protocols or avoidance measures for nesting birds that may be utilizing the Project site prior to the start of Project activities.

To ensure impacts to nesting birds are mitigated to a level of less-than-significant, CDFW recommends that the IS/MND is revised to include the addition of the following and enforceable nesting bird assessment and avoidance mitigation measure in the event nesting birds are detected:

"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 CDFW 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 CDFW.

If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the Qualified Biologist. Active nests within or adjacent to the Project site shall be monitored by the Qualified Biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruption to nesting behaviors, then that nest shall have the buffer immediately increased by the Qualified Biologist until no further interruptions to breeding behavior are detectable."

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

Proposed Project activities are likely to result in impacts to special-status fish species within the Project area, especially Delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*), and fall- and winter-run Chinook salmon (*Oncorhynchus tshawytscha*). The middle of the rearing and migration of fall-run Chinook salmon and the spawning and incubation of winter-run Chinook salmon fall within the months of June and July. Allowing the in-water work window to start before August 1 increases the possibility of impacts to these protected species during a vulnerable life stage. This includes direct and indirect take from suction dredging and long-term decrease of water quality due to consistent release of urban effluent over time.

To correct this, CDFW recommends that Mitigation Measure BIO 3: FISH be revised to incorporate the in-water work window of August 1 to November 30 to avoid impacts to Delta smelt, longfin smelt, and Chinook salmon. In the event Project logistics require work outside of the recommended in-water work window, CDFW recommends inclusion of language defining the Project's obligation to obtain CESA-listed fish take coverage through an ITP issued by CDFW that would allow for Project-related work to occur outside the restrict work window.

CDFW also recommends the IS/MND be updated to include a measure requiring compensatory mitigation for impacts to shallow water habitat for fish species at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts from Project activities to

mitigate impacts to less-than-significant. CDFW also recommends identifying either the specific CDFW-approved mitigation bank from which credits will be purchased or outline an additional enforceable mitigation strategy in the event appropriate credits are not available for purchase.

CDFW recommends the following specific and enforceable measure to fish be incorporated into a revised IS/MND to minimize and avoid impacts:

"Designated Work Period. Project activities within the Old River shall be confined to the period of August 1 through November 30 when listed fish are less likely to occur within and/or near the Project area."

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

CDFW recommends the following specific and enforceable measures to fish and wildlife be incorporated into a revised IS/MND to minimize and avoid impacts:

"*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."*

"CDFW Fish Screening Criteria. When pumping water, a water pump with a CDFW-approved fish screen must be used. See the CDFW 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."

"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."

"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."

CDFW has attached a Mitigation and Monitoring Reporting Program (MMRP) with the recommended measures that should be included in the Lead Agency's revised IS/MND and MMRP.

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base 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 the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data#44524420-pdf-field-survey-form. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/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. 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

CDFW appreciates the opportunity to comment on the IS/MND to assist the Town of Discovery Bay in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or Andrea.Boertien@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov.

Sincerely,

DocuSigned by:
83102FD7C6BE497...

Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse – state.clearinghouse@opr.ca.gov
Aaron Goldsworthy, Town of Discovery – agoldsworthy@todb.ca.gov

Attachment 1

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

STATE CLEARINGHOUSE NO.: 2020020418

PROJECT PROPONENT: Town of Discovery Bay
Aaron Goldsworthy, Project Manager
Len Marino, Contact

PROJECT: Town of Discovery Bay – Diffuser Outfall Repairs

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
BEFORE DISTURBING SOIL OR VEGETATION					
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 CDFW's Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities (https://www.wildlife.ca.gov/conservation/survey-protocols). Report of survey findings shall be done in accordance to the guidance in these protocols and submitted to CDFW prior to Project construction.	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Project Proponent	
2	A Qualified Botanist shall develop and implement a restoration/remediation and mitigation plan according to CDFW guidelines and in coordination with CDFW. 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.	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Project Proponent	
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 CDFW 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, CDFW shall immediately be contacted and additional survey measures may be required for Project activities.	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Project Proponent	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
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, preconstructions 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. The Qualified Biologist shall conduct a habitat assessment to determine if burrowing owl habitat is present and if occupancy surveys are required. If the Qualified Biologist determines that potential burrowing owl habitat is present on the Project site, the Qualified Biologist shall conduct burrowing owl surveys. The surveys shall be conducted during the breeding season from February 1 to August 31 when detection probability is the highest. The Qualified Biologist shall conduct a minimum of three surveys during daylight hours and each survey shall occur at least three weeks apart during the peak of the breeding season (between April 15 and July 15), during the nesting period, and during the late nestling period. If surveys confirm occupied burrowing owl habitat in or adjoining the Project area, the Qualified Biologist shall complete an impact assessment for burrowing owl. The impact assessment shall evaluate all factors that could affect burrowing owls on the Project site. The impact assessment shall suggest mitigation methods, if appropriate. Examples include, but are not limited to, avoidance of occupied burrows during the nesting period of February 1 to August 31, avoidance of occupied burrows during non-breeding season, pre-construction surveys, site surveillance, use of buffer zones or visual screens, and burrow exclusion. If habitat loss or degradation occur on the Project site, the impacts to burrowing owl shall be mitigated. A mitigation monitoring and reporting plan shall be developed and implemented prior to Project implementation. All habitat assessment, pre-construction survey protocols, impact assessment, reporting requirements, and mitigation guidance can be found in the Staff Report on Burrowing Owl Mitigation dated March 7, 2012. The document can be found at https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds. For more information, see https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline.	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities	Project Proponent	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
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 CDFW 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 CDFW. If nesting birds are found, then no work shall be initiated until nest-specific buffers have been established with written approval from CDFW. The buffer area(s) shall be fenced off from work activities and avoided until the young have fledged, as determined by the Qualified Biologist. Active nests within or adjacent to the Project site shall be monitored by the Qualified Biologist daily throughout the duration of Project activities for changes in bird behavior or signs of distress related to Project activities. If nesting birds are showing signs of distress or disruption to nesting behaviors, then that nest shall have the buffer immediately increased by the Qualified Biologist until no further interruptions to breeding behavior are detectable.	CDFW CEQA Comment Letter	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Project Proponent	
DURING CONSTRUCTION					
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.	CDFW CEQA Comment Letter	Entire Project	Project Proponent	
7	CDFW Fish Screening Criteria. When pumping water, a water pump with a CDFW-approved fish screen must be used. See the CDFW 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.	CDFW CEQA Comment Letter	Entire Project	Project Proponent	
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.	CDFW CEQA Comment Letter	Entire Project	Project Proponent	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
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.	CDFW CEQA Comment Letter	Entire Project	Project Proponent	