



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



November 24, 2025

Jeanine Jackson, Engineer II
 Marin County Flood Control and Water Conservation District
 3501 Civic Center Drive, Suite 304
 San Rafael, CA 94903
Jeanine.Jackson@marincounty.gov

Subject: Cardinal Road Levee Upgrade Project, Mitigated Negative Declaration,
 SCH No. 2025101570, Marin County

Dear Jeanine Jackson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Marin County Flood Control and Water Conservation District (District) for the Cardinal Road Levee Upgrade Project (project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the District, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Marin County Flood Control and Water Conservation District

Objective: The primary objective of the project is to address chronic seepage issues and flood risk associated with Coyote Creek and tidal backwater from Richardson Bay,

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.

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which will provide long-term adaptation capacity for projected mid-century sea level rise. Key components of the project include:

- Installation of a steel sheet pile floodwall with a height extending 3 feet above the existing floodwall (finished top elevation of +13 feet North American Vertical Datum of 1988 (NAVD88)), designed to allow future extension to +16 feet NAVD88 to accommodate sea level rise. The new sheet pile floodwall would increase the elevation of the levee by approximately three feet;
- Embedding the wall to a depth of approximately 15 feet below ground surface to minimize groundwater seepage and ensure structural stability;
- Improvement of a 10-foot-wide service path along the levee crown for access, inspection, and maintenance;
- Installation of a new storm drain system to convey flows from an earthen swale located behind the properties at 262 to 270 Cardinal Road to the Shoreline Pump Station. This includes the placement of storm drain inlet within the swale and a storm drainpipe routed to the pump station, and removal of an existing culvert that outfalls to Coyote Creek;
- Removal of two concrete drain boxes and associated culverts along the levee and
- Replacement of the existing 30-inch diameter culvert that discharges from the Cardinal Road Pump Station with a new polyvinyl chloride culvert, installed with a pipe seal to prevent leakage through the floodwall.

Location: The 5.90-acre project site is located along an 1,100-linear-foot section of Coyote Creek east of Flamingo Road to a point just upstream of the Shoreline Pump Station, adjacent to and south of California State Route 1, in unincorporated Marin County. The project is within Section 33, Township 1 North, Range 6 West as depicted on the Mount Diablo Meridian San Rafael U.S. Geological Survey 7.5' quadrangle map, on portions of 21 Assessor's Parcel Numbers, and centered at approximately Latitude 37.87812 °N, Longitude 122.52394 °W.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the project has the potential to result in "take" of plants or animals listed or candidate

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species under CESA, either during construction or over the life of the project.² **The project has the potential to result in take of longfin smelt - San Francisco Bay-Delta Distinct Population Segment (*Spirinchus thaleichthys* pop. 2, longfin smelt), a CESA listed as threatened species, and white sturgeon (*Acipenser transmontanus*), a CESA candidate threatened species, as further described below.** Issuance of a CESA ITP 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 ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; 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 CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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. **The project would impact Coyote Creek, therefore an LSA Notification may be required, as further described below.** CDFW will consider the CEQA document for the project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Fully Protected Species

Fully protected species which may occur in or adjacent to the project area, such as **California Ridgway's rail (*Rallus obsoletus obsoletus*) and California black rail (*Laterallus jamaicensis coturniculus*)**, may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;

² "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (Fish & G. Code, § 86).

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- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code, § 2081.15). Project proponents should consult with CDFW early in the project planning process. **Thank you for including Mitigation Measure (MM) BIO-3 in the MND requiring the project to conduct breeding rail surveys and implement a 700-foot buffer if rails are detected, during breeding season.**

Raptors and Other Nesting Birds

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 sections 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 birds are also protected under the federal Migratory Bird Treaty Act.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below, CDFW concludes that an MND is appropriate for the project. **Attachment 1** includes CDFW's recommended mitigation measures in a Draft Mitigation Monitoring and Reporting Program.

- I. Mandatory Findings of Significance: Does the project have the potential to substantially reduce the number or restrict the range of a rare or endangered plant or animal?***

AND

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or U.S. Fish and Wildlife Service (USFWS)?

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COMMENT 1: Mitigated Negative Declaration Page 46, Longfin Smelt - San Francisco Bay-Delta Distinct Population Segment and white sturgeon, Mitigation Measure and Related Impact Shortcoming

Issue: The MND includes MM BIO-4b stating that activities occurring below the high tide line should be conducted during low tide events to avoid or minimize impacts to special-status fish. However, the MND does not clearly indicate whether in-water work or dewatering will occur during these low tide events, and these activities could occur during high tide events because MM BIO-4b implementation is not compulsory as the MM states “should” instead of “shall.” Longfin smelt have been documented in Richardson Bay, downstream and approximately 0.4-mile northeast of the project (California Native Diversity Database [CNDDDB] Occurrence Number 24). The MND also notes that white sturgeon are present year-round in the San Francisco Bay, which is downstream of the project. Therefore, longfin smelt and white sturgeon may be present within the project area at all tide levels, including low tide events, if water is present.

Specific impacts and why they may occur and be significant: If in-water work or dewatering would occur during the project at any tide level, the project may result in injury to or mortality of longfin smelt or white sturgeon. Longfin smelt is considered threatened under CEQA pursuant to CEQA Guidelines section 15380. Therefore, if longfin smelt are present at the project site, the project may substantially reduce the number of this species, which would be a *mandatory finding of significance* pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

In addition, white sturgeon is a CESA candidate threatened species and a CDFW Species of Special Concern, therefore project impacts to this species during in-water work or dewatering would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to longfin smelt, white sturgeon, and other special-status fish species to less-than-significant and comply with CESA, CDFW recommends that the MND include the below mitigation measure.

MM-BIO-1. Avoid in-water work and dewatering: No equipment shall be operated and no work, including dewatering, shall occur in the portion of Coyote Creek where surface water is present. If work in surface water or dewatering must occur, the project shall consult with CDFW to determine if impacts to longfin smelt and white sturgeon may occur. If take of longfin smelt and white sturgeon cannot be avoided, the project shall obtain a CESA ITP from CDFW prior to project construction and shall comply with the ITP. Additionally, the project shall consult with USFWS and National Marine Fisheries Service (NMFS), as applicable, if impacts to federally listed fish species may occur.

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II. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 2: Mitigated Negative Declaration Page 46, Lake and Streambed Alteration Agreement, Mitigation Measures and Related Impact Shortcoming

Issue: The project would impact Coyote Creek and connected tidal marsh habitat, therefore an LSA Notification to CDFW is required. The MND MM-BIO 5a requires “[r]elevant permits from agencies such as the [Army] Corps [of Engineers] and [Regional Water Quality Control Board] shall be acquired prior to the placement of fill within jurisdictional aquatic resources.” However, MM-BIO 5a does not specifically require the project to submit an LSA Notification to CDFW prior to construction.

Specific impacts and why they may occur and be significant: The project will permanently and likely temporarily impact Coyote Creek and connected tidal marsh including likely substantial alteration of the bed, bank, or channel. Stream habitat including connected wetlands is of critical importance to protecting and conserving the biotic and abiotic integrity of an entire watershed. When stream habitat is substantially altered, riparian functions become impaired, thereby, likely substantially adversely impacting aquatic and terrestrial species. Removing connected tidal marsh habitat may also result in the degradation of stream habitat. Therefore, if the above impacts to stream habitat occur, project impacts to stream habitat would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to streams to less-than-significant and comply with Fish and Game Code section 1602 et seq., CDFW recommends including the following mitigation measure in the MND.

MM-BIO-2. Lake and Streambed Alteration Agreement: The project shall submit an LSA Notification to CDFW pursuant to Fish and Game Code section 1602 prior to project construction. If CDFW determines that an LSA Agreement is warranted, the project shall comply with all required measures in the LSA Agreement, including, but not limited to requirements to mitigate impacts to the streams and riparian habitat. Permanent impacts to the stream and associated riparian habitat shall be mitigated by restoration of riparian habitat at a minimum 3:1 mitigation to impact ratio based on acreage and linear distance as close to the project area as possible and within the same watershed and year as the impact, unless otherwise approved in writing by CDFW. Temporary impacts shall be restored on-site in the same year as the impact. Restoration shall include preparing a restoration plan, a minimum of five years of monitoring and maintenance, and achieving success criteria.

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Please be advised that an LSA Agreement, if issued, would likely include the above recommended mitigation measures, as applicable, and additional measures to protect fish and wildlife resources.

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 filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the District in identifying and mitigating project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nick Wagner, Senior Environmental Scientist (Specialist), at (707) 428-2075 or Nicholas.Wagner@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

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ec: Office of Land Use and Climate Innovation, (SCH No. 2025101570)
Joseph Terry, USFWS - Joseph.Terry@fws.gov
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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
BIO-1. Avoid in-water work and dewatering: No equipment shall be operated and no work, including dewatering, shall occur in the portion of Coyote Creek where surface water is present. If work in surface water or dewatering must occur, the project shall consult with CDFW to determine if impacts to longfin smelt and white sturgeon may occur. If take of longfin smelt and white sturgeon cannot be avoided, the project shall obtain a CESA ITP from CDFW prior to project construction and shall comply with the ITP. Additionally, the project shall consult with USFWS and NMFS, as applicable, if impacts to federally listed fish species may occur.	Prior to and during ground disturbance	Project Applicant
BIO-2. Lake and Streambed Alteration Agreement: The project shall submit an LSA Notification to CDFW pursuant to Fish and Game Code section 1602 prior to project construction. If CDFW determines that an LSA Agreement is warranted, the project shall comply with all required measures in the LSA Agreement, including, but not limited to requirements to mitigate impacts to the streams and riparian habitat. Permanent impacts to the stream and associated riparian habitat shall be mitigated by restoration of riparian habitat at a minimum 3:1 mitigation to impact ratio based on acreage and linear distance as close to the project area as possible and within the same watershed and year as the impact, unless otherwise approved in writing by CDFW. Temporary impacts shall be restored on-site in the same year as the impact. Restoration shall include preparing a restoration plan, a minimum of five years of monitoring and maintenance, and achieving success criteria.	Prior to and during ground disturbance	Project Applicant