CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
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CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2018-009-05

Project: Laguna County Sanitation District Facilities Construction, Operation, and Maintenance Project

Location: Western Santa Maria Valley, Santa Barbara County, California

Applicant: Laguna County Sanitation District, Santa Barbara County Public Works Department

Background

The Laguna County Sanitation District (Applicant) proposes to construct new facilities, as well as conduct ongoing operation and maintenance activities (Project). The Project is located northwest of Orcutt and southwest of the city of Santa Maria in Santa Barbara County, California. The Project Area includes Applicant-owned property located at the western terminus of Dutard Road, adjacent and nearby land not owned by the Applicant, and access roads. The operation and maintenance activities would occur on the Applicant's property and within established rights-of-way. New facilities would be constructed both onsite and offsite. The construction, operation, and maintenance activities (Covered Activities) involve the following:

- Phased expansion of existing treatment facilities;
- Removal of an existing soil stockpile and expansion of an existing storage reservoir;
- Burial of an above-ground segment of a supply pipeline to the existing storage reservoir;
- Construction of a tertiary-treated water pipeline to the Rancho Maria Golf Course and environs;
- Construction of a tertiary-treated water pipeline to Waller Park and environs;
- Replacement of the Foster Road segment of the trunk sewer line; and
- Operation and maintenance activities, such as repair/replacement of the existing piping and pump facilities, repair and maintenance of roads, vegetation maintenance, and erosion control.

The Project will require heavy equipment (e.g., water truck, excavator, backhoe, loader, flatbed trailer), and all necessary equipment needed to complete construction.

The Project Area lies within the historic range and federal critical habitat of California tiger salamander (CTS) (*Ambystoma californiense*) and the Covered Activities described above

have the potential to incidentally take[1] CTS where those activities take place within development and farming areas. In particular, CTS could be incidentally taken as a result of crushing or entombment by equipment or personnel (from collapsing of burrows), or entrapment in trenches during trench excavation. CTS is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G).)

CTS are distributed in six metapopulations in Santa Barbara County:

- southwestern Santa Maria Valley (West Orcutt), which includes the Project Area;
- southeastern Santa Maria Valley (Bradley-Dominion);
- west Solomon Hills/north Los Alamos Valley;
- east Los Alamos Valley:
- Purisima Hills; and
- Santa Rita Valley.

There are five known CTS breeding ponds in and near the Project Area. These are: (1) GUAD-3, also known as the Reservoir Pool; (2) SAMA-3, also known as the Black Road Pool; (3) SAMA-2, also known as the Mahoney Pools, east of the Project Area; (4) GUAD-2, south of the Project Area; and (5) GUAD-1, south of the Project Area.

Three known CTS breeding ponds lie in proximity to the proposed recycled water pipeline alignments: SAMA-4; SAMA-6; SAMA-7; SAMA-10; and SAMA-21. Another two potential CTS breeding ponds are within 2,200 feet of the Foster Road segment of the trunk sewer line: SAMA-8 and SAMA-20. The Project Area is within the southwestern West Orcutt subpopulation of CTS. This subpopulation is part of the Southwestern Santa Maria Valley metapopulation, and encompasses the known CTS breeding sites extending from the Casmalia Hills on the south to the Santa Maria Airport on the north and from west of Black Road to eastward to SR 135. There are 12 known CTS breeding sites and several potential breeding sites within this area. Four of these known ponds occur along the base of the Casmalia Hills, just off the southwestern edge of the Orcutt Dune Sheet. The other eight ponds occur on the Orcutt Dune Sheet.

Larval CTS have been found at three locations during field surveys on and adjacent to the Applicant's property: (1) a seasonal pool, the majority of which lies on Applicant-owned property (Reservoir Pool = GUAD-3); (2) a seasonal pool adjacent to Black Road (Black Road Pool = SAMA-3); and (3) a complex of seasonal pools on private property north of Dutard Road east of Black Road (Mahoney Pools = SAMA-2). These locations are among the westernmost documented occurrences of CTS in the Santa Maria Valley. There are also

[1] Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459,507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take'...means to catch, capture or kill").

anecdotal accounts of adult CTS reported at three other locations within and adjacent to the Applicant's property.

The Reservoir Pool covers approximately 2-3 acres at capacity. It is bisected by PG&E's transmission line corridor (a legal parcel). During the spring seasons of 2005, 2006, and 2008, the United States Fish and Wildlife Service (USFWS) and local biologists surveyed the Reservoir Pool. CTS larvae were observed in each year. Additionally, the Applicant's operations and maintenance personnel have found adult CTS above-ground on foggy mornings in grassland several hundred feet north of Reservoir Pool. An adult male CTS was captured during the course of upland drift fence surveys in February of 2014, near the western boundary of APN 113-240-014.

Anticipated incidental take associated with the proposed construction, operation and maintenance or repair of new facilities could potentially include mortality to, or injury of, terrestrial adult or juvenile CTS associated with the removal of upland habitat. CTS could be crushed while harboring in burrows. Vehicle traffic has some potential to result in mortality of CTS, however vehicle use associated with facility operations is generally limited to daytime hours. Finally, harassment from relocating encountered CTS may significantly disrupt normal behavioral patterns, including breeding, feeding, or sheltering. Take resulting from Covered Activities will be incidental to the otherwise lawful and permitted activities conducted by the Applicant.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the applicant prepared a Habitat Conservation Plan (HCP) in support of an application for an Incidental Take Permit (ITP) pursuant to section 10(a)(1)(B) of the ESA. On August 22, 2017, the USFWS issued an ITP (Service file No. TE16913C) to the Applicant. The HCP describes the Project and specifies measures the Applicant will take to minimize and mitigate impacts to species resulting from the taking that will likely result from the Project. The ITP requires the Applicant to comply with terms of the HCP and its related ITP, and incorporates additional conditions.

Quantification of potential impact to CTS habitat from each Project component is based on best available information. Impacts requiring compensatory mitigation will be offset through establishment of a Conservation Easement on 132.83 acres owned by the Applicant. An evaluation of habitat value for CTS within the proposed Conservation Easement is provided in the HCP. The assessment concluded that it supports high quality CTS aquatic breeding and upland refuge habitat. A Management Plan for the Conservation Easement is also included in the HCP.

Some individuals could be injured or killed if they are not detected during pre-activity capture and relocation surveys. The number of individuals that would be harassed, harmed, injured, or killed is undetermined but would likely be proportional to habitat quantity and quality (e.g., rodent burrow density). In addition, populations of CTS are likely to vary substantially from year-to-year. Because of this uncertainty and difficulty of estimating the actual number of CTS that might be taken by proposed activities, the Applicant will rely primarily on habitat

acreage as a proxy to measure impacts to CTS. In addition, both annual and cumulative (30-year term of permit) take limits for individuals will be set. In any one year, the annual take limits are two CTS dead or injured, and five CTS harassed. During the life of the permit the cumulative take limits are 20 CTS found dead or injured, and 40 CTS captured and relocated (i.e., "harassed"). If either annual or cumulative take limits are exceeded, the Applicant will immediately contact the Ventura Field Office to discuss the need for a permit amendment. Project activities that are likely to cause additional take will be suspended until the review is completed.

The project could realize beneficial impacts in addition to the preservation, management, and protection of aquatic breeding and upland refuge habitat for CTS afforded by the Conservation Easement. The Rancho Maria Recycled Water Pipeline portion of the Project would require construction of a new reservoir to provide irrigation water supply and increase storage capacity. Existing irrigation reservoirs on the Rancho Maria Golf Course may be used by CTS for breeding.

Loss of habitat is the primary factor that led to the listing of CTS. The preservation of 132.83 acres of aquatic and upland habitat associated with the Reservoir Pool and maintaining the land in its current use as irrigated livestock pasture will help to ensure the viability of local CTS populations by preventing conversion to more intensive land uses, such as irrigated cropland. Therefore, protection and management of the Conservation Easement effectively mitigates for the Project's impacts to CTS and its habitat.

Adaptive management is a component of HCPs required by the Five-point Policy developed by the USFWS and the National Marine Fisheries Service in 2000. This process will allow the Applicant's management activities to be adjusted during the life of the Permit through periodic assessment. Adaptive management provides a means for ensuring that the biological goals and objectives of the HCP are being met. It employs feedback loops to incorporate results of surveys and monitoring into decision-making regarding future management techniques. Periodic assessment may also indicate the need to revise management strategies that could require amending the HCP. The process of adaptive management is integral to ensuring that the biological goals and objectives will be achieved.

On September 13, 2017, the Director of the CDFW received the initial notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITP and its required implementation of the HCP are consistent with CESA for purposes of the Project and CTS. On September 28, 2017, the Applicant sent the Director a Rescind Request in order to further evaluate and coordinate with CDFW on the Conservation Easement and associated management funding instruments. On August 27, 2018, the Applicant once again submitted to the Director of CDFW a consistency determination request (Cal. Reg. Notice Register 2018, No. 37-Z, p. 1602).

Determination

CDFW has determined that the ITP and its associated HCP are consistent with CESA as to the Project and CTS, because the mitigation measures contained in the ITP and its associated HCP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the HCP and ITP will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization, and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of CTS. The mitigation measures in the ITP and its associated HCP include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- The Applicant proposes to preserve and endow a Conservation Easement of 132.83 acres to be held by CDFW as mitigation for the conservation of the CTS.

- The Applicant will ensure field crews participate in training prior to the initiation of activities. Trainings will emphasize Project-specific information on CTS, avoidance and minimization measures, roles and responsibilities, and communication protocols.

- Project workers shall limit their vehicle use to existing routes of travel. The Applicant will prohibit cross-country travel unless access is determined critical for a particular activity and the route has been flagged to avoid or minimize adverse effects.

- The Applicant will ensure Project-related vehicle speeds will not exceed 10 miles-per-hour within CTS upland habitat.

- Prior to moving vehicles or equipment, employees shall look under the vehicles or equipment for CTS individuals. If employees observe an individual, no one shall move the vehicle until the animal has vacated the area on its own accord or has been relocated out of harm's way by the USFWS-approved biologist.

- A USFWS-approved biologist shall be present daily during the pre-initial ground disturbance period surveys, as well as during initial grading and excavation activities. Upon completion of initial ground disturbance, the biologist will periodically (minimum twice per week) visit the Project site throughout the construction period. During periods of rain or heavy fog/dew, the biologist will conduct daily pre-activity surveys to ensure that no CTS individuals have migrated into the work area. No construction work will be initiated until the USFWS-approved biologist determines that the work area is clear of CTS individuals.

- The Applicant shall implement The Declining Amphibian Task Force Fieldwork Code of Practice for all amphibian relocation activities. The USFWS-approved biologist shall relocate any CTS found within the Project footprint to an active rodent burrow system located no more than 300 feet outside of the Project Area unless otherwise approved by CDFW and USFWS. The USFWS-approved biologist shall identify relocation areas based upon best suitable habitat available. Only a USFWS-approved biologist shall relocate California tiger salamanders. The USFWS-approved biologist shall document both locations by photographs and GPS positions. The USFWS-approved biologist shall photograph and measure (snout-vent) CTS for identification purposes prior to relocation. The Applicant will provide all documentation to the USFWS and CDFW within 24 hours of relocation.

- The Applicant will avoid rodent burrows to the extent possible. If burrows cannot be avoided, the Applicant may perform burrow excavation using hand tools or via gentle excavation using construction equipment, under the direct supervision of the USFWS-approved biologist. In lieu of burrow excavation, the Applicant may use steel plates or plywood to protect small mammal burrows from ground disturbance. The Applicant will remove plates and plywood nightly when a significant rain event is forecasted within 48 hours and if work is scheduled to cease for consecutive days.

- The Applicant will install exclusionary barriers at the discretion of the USFWS-approved biologist to minimize the potential for CTS to enter the worksite.

- The USFWS-approved biologist will inspect steep-walled excavations (e.g., trenches) that may act as pitfall traps for wildlife at least once per day and immediately before backfilling. In lieu of daily inspections (e.g., weekends), the Applicant will install exclusionary fencing, covers, ramps, or similar mechanisms to prevent wildlife entrapment.

- The Applicant will cap or seal with tape (or equivalent material) open pipe segments each night, or otherwise will store open pipe segments at least three feet above ground.

- If covered activities must occur during the rainy season, the Applicant will not work during rain events (greater than 0.5 inches of rainfall), 48 hours prior to rain events, or during the 48 hours after these events.

Monitoring and Reporting Measures

- If a dead or injured CTS is found, the Applicant shall notify the USFWS Ventura Field Office at (805) 644-1766 within 72 hours. In addition, the Applicant shall notify CDFW immediately.

- The Applicant will conduct onsite construction monitoring, maintain daily monitoring logs, and prepare a post-construction compliance report.

- By January 31 following each year of permit issuance and Project implementation, the Applicant shall submit a report to the Ventura USFWS Office to document the status of the Project. Although not a condition of the HCP, CDFW requests a copy of the report as well.

Financial Assurances

- The Applicant will provide financial assurances consistent with CESA, in the form of a letter demonstrating the establishment of a trust fund that will hold the Conservation Easement management fund endowment with the Applicant. The Applicant will provide a copy of the trust fund establishment letter to CDFW. The Applicant will also provide a copy of the executed Conservation Easement over 134.83 acres identified in the HCP as mitigation for the conservation of the CTS.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of the state-listed threatened CTS, provided the Applicant implements the Project as described in the HCP and its associated ITP including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the HCP and its associated ITP. If there are any substantive changes to the Project, including changes to the minimization and mitigation measures in the HCP, or if USFWS amends or replaces ITP, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)).

By: _____ Date: 10/3/18

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REFERENCES

Searcy, C. A. and H. B. Shaffer. 2008 Calculating biologically accurate mitigation credits: insights from the California tiger salamander. *Conservation Biology* 22: 997-1005.