

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
DIRECTOR'S OFFICE
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**CALIFORNIA ENVIRONMENTAL QUALITY ACT STATUTORY EXEMPTION FOR
RESTORATION PROJECTS
CONCURRENCE NO. 21080.56-2024-048-R3**

Project: Pond A4 Resilient Habitat Restoration Project
Location: Santa Clara County
Lead Agency: Santa Clara Valley Water District
Lead Agency Contact: Judy Nam; jnam@valleywater.org

Background

Project Location: The Pond A4 Resilient Habitat Restoration Project (Project) is located at an approximately 310-acre former salt production pond near Caribbean Drive in Sunnyvale, California on the southern shoreline of San Francisco Bay in Santa Clara County, approximately centered at coordinates 37.42, -122.00. The Project area (Pond A4) is approximately 39 acres and is adjacent to Moffett Channel, Sunnyvale Oxidation Ponds, Guadalupe Slough, and the Pond A8-A5 complex (part of the United States Fish and Wildlife Service [USFWS] Don Edwards National Wildlife Refuge). Santa Clara Valley Water District (Valley Water) currently owns and manages Pond A4 to maintain water quality and aquatic habitat in collaboration with USFWS as set forth in the 2005 Memorandum of Understanding (MOU) describing respective management activities carried out by both agencies.

Project Description: Through implementation of the Project, Valley Water proposes to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend and to restore or provide habitat for California native fish and wildlife. The Project will restore mudflat habitat along the southern shoreline of the former salt pond by beneficially reusing sediment sources from Valley Water's Stream Maintenance Program (SMP) and other potential sources. In its current condition, Pond A4 provides open water habitat and nesting islands for birds, a narrow band of marginal marsh habitat, and limited foraging habitat for shorebirds. Pond A4 lacks connection to tidal action and to adjacent sloughs and channels and is currently maintained by Valley Water. High salinity and low dissolved oxygen levels are managed by drawing water from nearby Pond A3W which is owned and managed by USFWS. The San Francisco Bay Trail (Bay Trail), located atop the existing southern levee of Pond A4, will provide primary access for construction equipment to the Project area.

The Project will construct an approximately 38-acre habitat bench below the existing ordinary high-water mark to provide new shallow-water foraging habitat for shorebirds. The Project will include construction of a staging area along the southern margin of Pond A4 and widening of

a maintenance road to accommodate construction equipment access to Pond A4. Maintenance road improvements and widening will begin with installation of a retaining wall outboard of the maintenance road levee, followed by placement of fill material between the maintenance road levee and new retaining wall. The approximately one-acre staging area will be constructed adjacent to the southeastern portion of the Bay Trail and levee in open non-tidal waters of Pond A4. Approximately 300,000 cubic yards of available sediment from the SMP will be delivered over an estimated 15-year time-period and placed in sections on the southern side of the pond bottom at a slope of 300:1 to create the habitat bench.

Valley Water will continue to maintain Pond A4's non-tidal condition, along with its managed hydroperiod and water quality during and after implementation of the Project. In addition, Valley Water will comply with all conditions stipulated in the Project's Monitoring and Adaptive Management Plan and the existing MOU with USFWS.

The Project is designed to benefit special-status species, sensitive waterbird species, and sensitive habitats; and will result in a net increase of approximately 38 acres of shallow-water and mudflat foraging habitat for shorebirds and dabbling ducks. Shallow-water foraging habitat is limited throughout the San Francisco Bay and is important to migrant and over-wintering shorebird species such as least sandpiper (*Calidris minutilla*), western sandpiper (*Calidris mauri*), dunlin (*Calidris alpina*), short-billed dowitcher (*Limnodromus griseus*), long-billed dowitcher (*Limnodromus scolopaceus*), American avocet (*Recurvirostra americana*), black-necked stilt (*Himantopus mexicanus*), greater yellowlegs (*Tringa melanoleuca*), willet (*Tringa semipalmata*), marbled godwit (*Limosa fedoa*), long-billed curlew (*Numenius americanus*), mallard (*Anas platyrhynchos*), gadwall (*Mareca strepera*), American wigeon (*Mareca americana*), green-winged teal (*Anas carolinensis*), northern shoveler (*Spatula clypeata*), and western snowy plover (*Charadrius nivosus nivosus*). The Project complements and is adjacent to the South Bay Salt Pond Restoration Project (SBSRP), the largest tidal marsh restoration project on the west coast, developed in collaboration with local, state, and federal agency partners to address the large-scale loss of tidal marsh habitat in the San Francisco Bay through restoration of the existing larger salt ponds complex. The Project will provide new foraging habitat within Pond A4 protected from sea level rise and will increase resiliency for these species as sea level rise reduces the amount of available tidal habitats.

Tribal Engagement: Valley Water sent hard copy letters to representatives of five interested California Native American tribes on October 19, 2023, describing the Project and its location and to request tribal input on the Project's potential impacts to tribal cultural resources. Digital copies were also provided via email. On October 29, 2023, an interested tribe provided recommendations for the monitoring and protection of tribal cultural resources and for interpretive signage. Outreach to tribes via telephone and email is ongoing and will continue up to and during the implementation of the Project. Additionally, Valley Water is also conducting tribal outreach for the adjacent Calabazas/San Tomas Aquino Creeks-Marsh Connection Project.

Interested Party Coordination: Valley Water conducted outreach to multiple interested parties and public agencies for the Project. These include multiple meetings with California Department of Fish and Wildlife's (CDFW) Cutting the Green Tape Program, and a field visit with various interested parties such as City of Sunnyvale representatives, design engineers

from Haley & Aldrich, and commercial soil brokers. Additionally, two virtual meetings were held with USFWS and SBSPRP partners to review Project impacts and benefits to sensitive species; a public meeting was held to present the Project to the Valley Water Board of Directors; and Project information was submitted to the Bay Restoration Regulatory Integration Team (BRRIT) composed of federal and state agency staff. A permit pre-application meeting was also held with BRRIT staff to present the Project objectives and designs, and close coordination with the BRRIT related to the Project's permit requirements will continue through 2024.

Anticipated Project Implementation Timeframes:

Start date: June 2024

Completion date: December 2039

Lead Agency Request for CDFW Concurrence: On January 16, 2024, the Director of the California Department of Fish and Wildlife (CDFW Director) received a concurrence request from Santa Clara Valley Water District (Lead Agency) pursuant to Public Resources Code section 21080.56, subdivision (e) (Request). The Request seeks the CDFW Director's concurrence with the Lead Agency's determination on January 12, 2024, that the Project meets certain qualifying criteria set forth in subdivisions (a) to (d), inclusive, of the same section of the Public Resources Code (Lead Agency Determination). The CDFW Director's concurrence is required for the Lead Agency to approve the Project relying on this section of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

Concurrence Determination

The CDFW Director concurs with the Lead Agency Determination that the Project meets the qualifying criteria set forth in Public Resources Code section 21080.56, subdivisions (a) to (d), inclusive (Concurrence).

Specifically, the CDFW Director concurs with the Lead Agency that the Project meets all of the following conditions: (1) the Project is exclusively to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; or is exclusively to restore or provide habitat for California native fish and wildlife; (2) the Project may have public benefits incidental to the Project's fundamental purpose; (3) the Project will result in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery; and includes procedures and ongoing management for the protection of the environment; and (4) Project construction activities are solely related to habitat restoration. Pursuant to Public Resources Code section 21080.56, subdivision (g), CDFW will post this Concurrence on its CEQA Notices and Documents internet page: <https://wildlife.ca.gov/Notices/CEQA>.

This Concurrence is based on best available science and supported, as described below, by substantial evidence in CDFW's administrative record of proceedings for the Project.

This Concurrence is also based on a finding that the Project is consistent with and that its implementation will further CDFW's mandate as California's trustee agency for fish and

wildlife, including the responsibility to hold and manage these resources in trust for all the people of California.

Discussion

- A. Pursuant to Public Resources Code section 21080.56, subdivision (a), the CDFW Director concurs with the Lead Agency that the Project will exclusively conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; or restore or provide habitat for California native fish and wildlife.

The Project will create new mudflat and foraging habitat by constructing a shallow-water habitat bench along the southern shoreline of Pond A4 by beneficially reusing sediment from the SMP and other soil/sediment sources. The habitat bench will provide new foraging areas for at least 17 species of shorebirds under the current managed hydrologic conditions of Pond A4. Approximately two-thirds of migratory shorebird populations on the west coast of North America use the San Francisco Bay for foraging. Currently, Pond A4 and surrounding adjacent ponds provide limited foraging opportunities for shorebirds and ducks, as deeper water creates unsuitable habitat for foraging except along the narrow shoreline. The Project will substantially increase the area of shallow-water foraging habitat ideal for colonization of benthic invertebrate food sources for shorebirds, and thereby improve the diversity and function of habitat for California native fish and wildlife. The ecological value of these habitats will be further enhanced due to their proximity to former salt ponds that have been restored by the SBSRP.

- B. Pursuant to Public Resources Code section 21080.56, subdivision (b), the CDFW Director concurs with the Lead Agency that the Project may have incidental public benefits, such as public access and recreation.

The Project will create new mudflat habitat for foraging shorebirds in the vicinity of a segment of the Bay Trail existing along the top of the southern Pond A4 levee. The presence of new habitat created by the Project will increase shorebird use and may result in incidental public recreation benefits by enhancing the aesthetic experience of Bay Trail users and bird watchers. Additionally, the Project may create and install interpretive signage along the Bay Trail adjacent to Pond A4 providing incidental public education benefits.

- C. Pursuant to Public Resources Code section 21080.56, subdivision (c), the CDFW Director concurs with the Lead Agency that the Project will result in long-term net benefits to climate resiliency, biodiversity, and sensitive species recovery, and includes procedures and ongoing management for the protection of the environment.

Long-term Net Benefits to Climate Resiliency: Due to extensive hydrological modification and land use change, the San Francisco Bay faces a substantial deficit in the volume of sediment needed to restore and sustain existing marshlands. Shallow water marshes act as a buffer to inland areas by reducing flooding impacts induced by

high tides, storms, and continued sea level rise. The Project will help reduce the sediment deficit by beneficially reusing sediments to restore shallow-water foraging habitat and will provide a net benefit to climate resiliency by increasing the substrate elevation of a subsided pond. Additionally, while much of the tidal mudflat that occurs outside of Pond A4 will become open water as sea level rises, Pond A4's shallow-water foraging habitat will remain protected due to its isolation and lack of a tidal connection. As part of this Project, the Pond A4 berm system will continue to be maintained which will isolate it from tidal connection and provide optimal conditions for shorebird foraging.

Long-term Net Benefits to Biodiversity: San Francisco Bay mudflats provide critical foraging habitat to numerous shorebird species. Pond A4 is currently surrounded by deep water, limiting foraging opportunities for shorebirds, as water depths make foraging conditions unsuitable except for a narrow band mudflat along the shoreline edges. The new mudflat habitat created by the Project will be colonized by a variety of benthic invertebrates and provide ample forage to shorebirds over approximately 38 acres. By restoring shallow-water mudflat habitat, the Project will substantially increase the area of foraging habitat for shorebirds and ducks, thereby providing diversity and improved ecological function in Pond A4. This provides additive ecological value to the Project area and across the landscape due to its location and proximity to the larger tidal restoration of the SBSRP. Some of the species that will benefit from the Project include least sandpiper, western sandpiper, dunlin, short-billed dowitcher, long-billed dowitcher, American avocet, black-necked stilt, greater yellowlegs, willet, marbled godwit, long-billed curlew, mallard, gadwall, American wigeon, green-winged teal, northern shoveler, western snowy plover, salt marsh harvest mouse (*Reithrodontomys raviventris*), salt marsh wandering shrew (*Sorex vagrans halicoetes*), California black rail (*Laterallus jamaicensis coturniculus*), and California Ridgway's rail (*Rallus longirostris obsoletus*).

Long-term Net Benefits to Sensitive Species Recovery: The "Western Snowy Plover Monitoring in the San Francisco Bay Annual Report 2021" included management recommendations, one of which states that "USFWS, CDFW, Hayward Area Recreation and Park District (HARD), East Bay Regional Parks District (EBRPD), and Mid-Peninsula Regional Open Space District (MROSD) should continue to meet western snowy plover habitat requirements by providing dry ponds with nearby high salinity foraging habitat and managing ponds in multiple areas around the South Bay for western snowy plovers to reduce impacts from predation, flooding, disturbance and/or disease." Western snowy plovers require dry, sparsely vegetated habitat for both foraging and breeding. In the San Francisco Bay, this habitat is provided by the exposed bottom of salt ponds. The bottom of Pond A4 is not regularly exposed, and thus western snowy plovers do not regularly occur in the Project area, however western snowy plovers are known to nest in adjacent habitat including Ponds A3W and A12, located approximately 1.2 miles west and approximately 0.9 miles northeast from Pond A4. Given the proximity of nesting western snowy plover to Pond A4, the new high-salinity exposed pond bottom foraging habitat created by constructing the habitat bench will directly address this management recommendation.

The mudflat habitat created by this Project will offer foraging opportunities for the western snowy plover during periods of time when the water level within Pond A4 is below the ordinary high-water mark. The amount of suitable foraging habitat will vary throughout the year based on the water elevation within Pond A4, however the Project will increase the total amount of foraging habitat by constructing shallow-water mudflat habitat to provide new suitable foraging habitat. Therefore, the creation of the exposed pond bottom foraging habitat will provide additional suitable western snowy plover foraging habitat which is limited across the South Bay.

Procedures for the Protection of the Environment: The Project will implement multiple Best Management Practices (BMPs) to avoid and minimize impact to air quality, noise, biological resources, cultural resources, hazards and hazardous materials, hydrology, water quality, and transportation. Additionally, Avoidance and Minimization Measures (AMMs) will be employed during Project implementation to prevent harm to sensitive species and their habitats that may potentially occur in the Project area. Species-specific AMMs will be included for sensitive habitats and wildlife species such as western snowy plover, salt marsh harvest mouse, salt marsh wandering shrew, California Ridgway's rail, California black rail, a variety of nesting birds, and additional species as described in the Lead Agency's determination. Some AMMs include environmental training for construction personnel; pre-construction surveys for nesting birds, salt marsh harvest mouse, California rail species, burrowing owl (*Athene cunicularia*), Crotch bumble bee (*Bombus crotchii*), monarch butterfly (*Danaus plexippus plexippus*), and western pond turtle (*Emys marmorata*); and construction buffers for species present within the Project area.

Ongoing Management for the Protection of the Environment: Valley Water currently owns and operates Pond A4 to maintain water quality and aquatic habitat in collaboration with USFWS as described in the interagency MOU. Valley Water will continue to maintain the Pond A4 berm system, along with managing hydroperiod and water quality during and after implementation of the Project. The existing berms will continue to isolate Pond A4 from tidal action after implementation of the Project and may require additional maintenance during and after initial Project restoration efforts. In addition, Valley Water will develop a Monitoring and Adaptive Management Plan (Plan) for the Project in consultation with regulatory agencies and will comply with all conditions stipulated in the Plan. The Plan will include monitoring of seasonal water level fluctuations to determine when the mudflat is exposed and inundated with shallow water and surveys to assess increased bird biodiversity. Furthermore, Valley Water is committed to managing Pond A4 in a sustainable manner by enhancing the quality of shorebird foraging habitat value in Pond A4, which is in alignment with its Board of Directors Ends Policies and stewardship mission.

- D. Pursuant to Public Resources Code section 21080.56, subdivision (d), the CDFW Director concurs with the Lead Agency that the Project does not include any construction activities, except those solely related to habitat restoration.

All Project restoration activities are solely related to transport and placement of suitable sediment in Pond A4 to restore shallow-water and mudflat habitat that will support populations of foraging native shorebirds and ducks.

Scope and Reservation of Concurrence

This Concurrence is based on the proposed Project as described by the Lead Agency Determination and the Request. If there are any subsequent changes to the Project that affect or otherwise change the Lead Agency Determination, the Lead Agency, or any other public agency that proposes to carry out or approve the Project, shall submit a new lead agency determination and request for concurrence from CDFW pursuant to Public Resources Code section 21080.56. If any other public agency proposes to carry out or approve the Project subsequent to the effective date of this Concurrence, this Concurrence shall remain in effect and no separate concurrence from CDFW shall be required so long as the other public agency is carrying out or approving the Project as described by the Lead Agency Determination and the Request.

Other Legal Obligations

The Project shall remain subject to all other applicable federal, state, and local laws and regulations, and this Concurrence shall not weaken or violate any applicable environmental or public health standards. (Pub. Resources Code, § 21080.56, subd. (f).)

CDFW Director's Certification

By:  _____

Date: 2/5/2024

Charlton H. Bonham, Director
California Department of Fish and Wildlife