

Appendix A

Notice of Preparation and Scoping Comments

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212 Locust Street, Suite C, Santa Cruz, CA 95060 ♦ (831) 420-5200

March 16, 2020

Notice of Preparation of an Environmental Impact Report and Public Scoping Meeting Notice

RE: Laguna Creek Diversion Retrofit Project

To Interested Agencies and Persons:

The City of Santa Cruz (City) as the Lead Agency for the Laguna Creek Diversion Retrofit Project (Proposed Project) has issued this Notice of Preparation (NOP) pursuant to the California Environmental Quality Act (CEQA) to notify interested parties that an Environmental Impact Report (EIR) for the Proposed Project will be prepared. The EIR will evaluate potential environmental impacts of the Proposed Project. The City is soliciting public input regarding the scope and content of environmental information to be included in the EIR.

The NOP provides information about the public review and comment period, project location, project description and the probable environmental effects of the Proposed Project, and is posted on the City's website at cityofsantacruz.com/waterenvdocs.

Public Review and Comment

Because your agency may need to use the EIR prepared by our agency when considering your permit or other approval for the Proposed Project, if any is required, please respond with written comments regarding the proposed scope and the intended content of the EIR as it relates to your agency's area of statutory responsibility or your areas of concern or expertise. We are requesting that all comments be provided in writing to enable us to address the comments as intended in the EIR. Written comments are also requested from organizations and other interested parties regarding the scope and evaluation of potential environmental issues associated with the Proposed Project.

Written responses are due within 30 days of the receipt of this notice, as provided by state law. As such, a 30-day public review and scoping period is established from **March 16, 2020, to April 15, 2020**. Comments may be submitted by mail, email, or by attending the Public Scoping Meeting (see details below) and submitting a written comment. All comments should indicate a contact person for the agency or organization, if applicable.

All written responses are requested to be received by 5:00 p.m. on Monday, April 15, 2020, and should be sent to the following address:

Jessica Martinez-McKinney, Associate Planner II
City of Santa Cruz Water Department
212 Locust Street, Suite C
Santa Cruz, CA 95060
Email: jmartinezmckinney@cityofsantacruz.com

One public scoping meeting regarding the Proposed Project and EIR will be held. You or members of your agency or organization are invited to attend to provide written comments on the scope and content of environmental information to be included in the EIR. The meeting will be held as follows:

Tuesday, March 31, 2020 at 5:30 p.m. at Santa Cruz Police Department Community Room, 155 Center Street, in Santa Cruz

Project Location and Existing Facilities

The Proposed Project, located in the Davenport Quadrangle (U.S. Geological Survey), involves the City's Laguna Creek Diversion Facility (Facility), which serves as an important source of raw water for the City's North Coast System. The Facility directs water from Laguna Creek into the North Coast System by way of the Laguna Pipeline, just north of the Smith Grade roadway in unincorporated Santa Cruz County, in the community of Bonny Doon and approximately 12 miles northwest of downtown Santa Cruz (see Figure 1 in attachments to this NOP). The Facility is one of four surface water collection/diversion sources supplying raw water to the City's North Coast System. The Facility is approximately 0.1 mile upstream of the confluence with Reggiardo Creek and 4.0 miles upstream of the Pacific Ocean. The North Coast System provides approximately 15% to 35% of City's overall water supply, and enhances systemwide operational flexibility due to its favorable water quality and year-round reliability.

Access to the Facility is provided by unimproved roads off Smith Grade. The Facility is located on privately owned land (Assessor's Parcel Number 062-101-03) with deeded access and rights to the City for the Facility per an agreement from January 1889. The Facility is near the northwestern section of Wilder Ranch State Park (in a section closed to the public), and is surrounded by forested land and scattered residential development.

The Facility was originally constructed circa 1890 as a stone masonry dam and minor improvements have been installed subsequently, including the screened intake structure, a cover on the diversion flume, sediment control bypass valves in the dam, and a control building.

The dam is approximately 60 feet long and 12 feet high and spans the entire width of the creek channel. The dam creates an impoundment upstream that passively directs water into a screened intake structure connected to a diversion flume. A schematic diagram of the existing Facility is shown in Figure 2.

The diversion flume is approximately 100 feet long and channels diverted water into the Laguna Pipeline, a transmission pipeline that conveys water via gravity to the City's Coast Pump Station from which it is pumped for treatment at the City's Graham Hill Water Treatment Plant.

The Facility includes two sediment control bypass valves in the dam that are operated pneumatically to move sediment movement past the dam. The rate at which water is diverted from the creek to the Laguna Pipeline is controlled either manually or via the City's SCADA system by an electronic diversion control valve and measured by a propeller-type flowmeter. This system allows adjustments to the diversion rate to ensure adequate flow is maintained downstream of the Facility. A control building houses operational equipment. Piping from the flume also allows for flow to be returned to the stream to meet in-stream flow requirements, as needed. The creek passes under Smith Grade approximately 400 feet downstream from the Facility through a culvert maintained by Santa Cruz County.

As shown in Figure 1, the Proposed Project site consists of the Facility—the existing dam, intake structure, diversion flume, pipeline, control building, and downstream plunge pool—as well as the surrounding area, including the three existing unimproved access roadways from Smith Grade.

Existing Water Diversion Operations

The City has historically diverted water from Laguna Creek as needed throughout the year based on established pre-1914 senior water rights. However, since 2013, the City has limited its diversions in order to maintain beneficial in-stream flows suitable for various salmonid life stages within the downstream anadromous reaches of Laguna Creek, based on ongoing agreements with the California Department of Fish and Wildlife. While the City is capable of diverting up to approximately 7 cubic feet per second based on current infrastructure, during the various salmonid life stages water is limited and often unavailable, as flows naturally recede below agreed in-stream flow levels. There is no typical diversion rate or diversion season, as the available flows are highly dependent on rainfall volume and timing.

Purpose and Need for the Project

While the Facility has several operational deficiencies related to management of sediment, fisheries protection, and maintenance challenges—issues that have been studied by the City—the overall condition of the Facility is satisfactory, with no signs of major deterioration, and it has adequate strength and stability for continued service.^{1,2} Even so, since the early 2000s, the California Department of Fish and Wildlife has corresponded with the City requesting improvements to sediment management and fisheries protection at the Facility. To that end, the City's draft Anadromous Salmonid Habitat Conservation Plan includes improvements at the Facility as a biological objective and as a covered activity, and improvements were analyzed at a programmatic level in the 2005 Program EIR for the North Coast System Repair and Replacement Project.³

To address the aforementioned operational and maintenance issues, the City has developed the project-level definition of the Proposed Project, which is the subject of this project-level EIR. A description of these operational and maintenance issues and how the Proposed Project would address them is outlined as follows:

- In-stream Transport of Sediment. The dam impedes natural movement of sediment downstream. While two sediment control bypass valves can be operated during periods of sediment transport (e.g., during storms) to allow sediment to pass through the dam, they are intermittently clogged and have limited capacity, resulting in sediment buildup behind the dam.

¹ Black & Veatch. 2018. Laguna and Majors Diversions Condition Assessment Report. October 22, 2018.

² Wood Rodgers. 2002. North Coast Rehabilitation Project Laguna and Majors Creeks Diversion Facilities. November 18, 2002.

³ Entrix. 2005. *Program Environmental Impact Report for the North Coast System Repair and Replacement Project*. Final. October 2005.

Periodic dredging and sediment removal is required to conduct maintenance activities and to clear the intake screens of sediment. The Proposed Project would address this issue by changing the type and orientation of the water intake so that sediment would not obstruct water intake through the screen and sediment would be able to pass downstream unimpeded. The new system would be designed to transport sediment past the dam in sync with the hydrology of the creek by using the stream energy present during high stream flows.

- Fish Protection Consistent with Regulatory Requirements. The existing intake screen is aged, buried in sediment, and near structural failure. The screen was designed to prevent entrainment of debris within the diverted water and has a woven-wire opening of approximately 0.5 inch. Weekly maintenance and cleaning of the existing intake screen is required to clear sediment from the intake structure when the Facility is in service.

The existing screen panels do not meet current regulatory requirements for screening of non-anadromous fish species. While federally or state-listed anadromous fish species are not present in the Proposed Project area due to several downstream natural barriers, Laguna Creek does contain rainbow trout (*Oncorhynchus mykiss*) populations, and therefore appropriate fish screening will be provided by the Proposed Project.

The Proposed Project would provide better controls of the water levels downstream so that fish are not stranded by rapid changes in water levels when the City diverts Laguna Creek and maintains the water intake.

- Maintenance, Safety, and Access. The Proposed Project would address operational and maintenance issues by providing a flexible approach to manage the quantity and quality of water that can be diverted, minimize the use of power, and provide for economical and operational feasibility. The Proposed Project would also allow for better remote control of diversions and would include improvements for safe access to the Facility.

Project Description

The Proposed Project would retrofit the existing Facility to provide for natural sediment transport past the diversion and to protect fish species and habitat, as described above. As shown in Figures 2 and 3, the Proposed Project would be comprised of the following primary components:

- New Intake Structure and Screen. The Proposed Project would use Coanda screen technology. A Coanda screen consists of finely spaced wedge-shaped wires that deflect a portion of the water to a collection chamber below the screen. The Coanda screen would be placed at the downstream side of the dam with the face of the screen sloped downward such that water would pass over it at high velocity. The Coanda screen technology involves no moving parts, provides screening of fine materials, and is self-cleaning, which minimizes issues with clogging and cleaning maintenance (see Figure 3 for images of the Coanda screen technology).
- New Intake Structure Appurtenances. New control valves would allow for diversion rates to be regulated at fine intervals. Water would be diverted into new diversion piping that would connect to the existing Laguna Pipeline. A water collection chamber would be installed to collect water for diversion into the new diversion piping. The water collection chamber would likely accumulate fine sediments, so a bypass piping system and control valve would be installed to clear the water collection chamber of sediment for either return to the creek or for manual removal.

- New Valve Control Vault. A concrete vault and other minor structures would be installed along the creek bank to house the new intake structure appurtenances. The valve vault would be installed in a location that is accessible by staff for maintenance and operation.
- Riprap Apron. Limited reinforcement of the dam and streambank may be necessary and may entail installation of a riprap apron at the base of the dam and/or placement of riprap or armoring materials along the creek to protect the vault and Facility.
- New Monitoring and Control Equipment. New monitoring and control equipment including water quality sensors, water meters, valve actuators, and telecommunications would be connected to the existing electrical distribution system on site.
- Existing Intake and Sediment Control Bypass Valves. The existing intake structure would be retained with modifications to allow for emergency diversion of water around the dam if needed for future maintenance activities. The proposed modifications would include installing piping inside the intake and backfilling with concrete around it. The sediment control bypass valves may be abandoned in place or capped to allow flexibility for future use.
- New Access and Safety Provisions. The Proposed Project may include access and safety improvements such as stairways and guard rails at various locations within the Facility including along the streambank, at the new intake structure, across the dam, and at the valve vault.

The Proposed Project would not increase the diversion rates at the Facility, which would remain consistent with those described above for the existing Facility (see Existing Water Diversion Operations above). The Proposed Project would continue to allow the City to operate its diversion while enhancing its ability to meet its in-stream flow requirements.

Construction

Upon completion of this environmental review and approval by the City of the Proposed Project, construction is anticipated to occur in 2021 and would take place over approximately 2 to 3 months during the low-flow period (June to October). Construction activities would generally include the following phases: pre-construction and site mobilization; construction of a cofferdam and stream flow bypass system; dam preparation and foundation work; concrete formwork and installation of the intake screen, piping, and valves; modification of existing intake and sediment control valves; startup and testing; site restoration; and commissioning.

A temporary cofferdam would be placed upstream and downstream of the dam with temporary connecting piping allowing for the bypass of steam flow around the dam so that the construction area is isolated from the flowing creek. Minor channel grading and sediment removal may be required upstream and downstream of the dam. Grading and contouring may be required along the streambank. The new intake structure, screen, and associated appurtenances would be constructed in the creek channel and streambank. The Proposed Project may require demolition of a portion of the dam or modifications to the dam for the installation of the new intake structure, appurtenances, and monitoring equipment. Improvements to the existing access roads from Smith Grade may entail limited tree removal for widening of the roads, compaction, grading, and placement of aggregate. Construction staging areas would generally be along the existing access roads on the site.

Probable Environmental Effects of the Proposed Project

After completing a preliminary review of the Proposed Project, as described in Section 15060(d) of the CEQA Guidelines, the City has determined that an EIR should be prepared to assess the potentially significant environmental impacts of the Proposed Project. Because the preparation of an EIR is clearly required for the Proposed Project, an Initial Study will not be prepared.

The EIR will address environmental impacts of the Proposed Project's construction and operation activities, and will propose mitigation measures to address significant impacts that are identified. The following describes the anticipated environmental issues that will be addressed in the EIR.

- Air Quality and Greenhouse Gas Emissions. Effects on air quality and greenhouse gas emissions would primarily be associated with construction activities and would be temporary and short term. However, both construction and operational emissions of criteria pollutants and greenhouse gasses will be estimated using the California Emissions Estimator Model emissions model and compared to the Monterey Bay Air Resources District emissions-based thresholds to assess potential impacts.
- Biological Resources. Potential impacts on biological resources could result from construction of a cofferdam and stream flow bypass system; installation of the intake screen, piping, and valves; modification of existing intake and sediment control valves; minor channel grading, contouring, and sediment removal upstream and downstream of the dam; dewatering activities; and access road improvements. Potential direct and indirect impacts to sensitive vegetation communities, special-status plant and wildlife species, and jurisdictional aquatic resources associated with both construction and operation of the Proposed Project will be assessed. A general biological survey of the study area, focused habitat assessments, aquatic resources jurisdictional delineation, and preparation of a technical biological resources report will be completed to support the EIR analysis.
- Cultural and Tribal Resources. Potential impacts to cultural and tribal resources could occur during ground-disturbing construction activities. In addition, the dam will be evaluated under all applicable federal, state, and local significance criteria. If found eligible, potential impacts from proposed modifications to the dam will be assessed and mitigation will be recommended, if warranted. Potential impacts to archaeological and tribal resources will also be evaluated. A cultural resources inventory and evaluation report will be prepared to support the EIR analysis.
- Energy. A temporary increase in the consumption of energy would be required during construction and limited use of power would be required for operations. The impact analysis will assess if the Proposed Project would result in potentially significant environmental impacts due to wasteful, inefficient, or unnecessary consumption of energy resources during project construction or operation, or conflict with or obstruct a state or local plan for renewable energy or energy efficiency.
- Geology and Soils. Construction of the Proposed Project could result in site-specific impacts on or from local geology and soils conditions. Potential impacts related to geologic, seismic, and soils constraints will be assessed based on information provided in project geotechnical studies. Potential impacts to paleontological resources will also be evaluated.
- Hazards and Hazardous Materials. Potential impacts related to hazards and hazardous materials will be evaluated including the potential hazardous materials associated with

transport, use, and disposal of hazardous materials during construction and potential hazardous emissions or hazardous materials use during construction and operations.

- Hydrology and Water Quality. Potential impacts related to hydrology and water quality will be assessed including temporary and permanent impacts to hydrology and water quality as a result of in-stream construction and access road improvements.
- Land Use and Planning. Potential land use and planning impacts will be assessed. The analysis will evaluate potential conflicts with the County's Local Coastal Program and/or California Coastal Act, as relevant to the Proposed Project.
- Noise and Vibration. Potential construction-period noise and vibration impacts to sensitive receivers (residences) in the vicinity of the Proposed Project will be assessed with modeling based on noise measurements taken at the site and review of construction phases and equipment usage. Operational noise would not be expected to change with the Proposed Project and therefore will not be analyzed in detail in the EIR.
- Transportation. Construction-related vehicle trips will be estimated and temporary construction-related traffic will be evaluated to identify any hazardous conditions on roadways or inadequacies in emergency access that may result during construction of the Proposed Project. Given that operation of the Proposed Project would not result in substantial changes in staffing at the site, vehicle miles traveled will not be evaluated in detail in the EIR. Vehicle miles traveled is the new transportation metric for evaluating changes in project vehicle trips developed in response to Senate Bill 743 and the associated revisions to the CEQA Guidelines that became effective December 2018.
- Impacts Not Found Significant. The EIR will also explain why other effects were determined to not be potentially significant and were not discussed in detail in the EIR. For example, the Facility is not visible from public viewpoints, would not damage scenic resources, or produce light and glare; therefore, no significant aesthetic impacts are anticipated. The retrofit would not result in additional service/utility demands related to police or fire protection, schools, parks and recreation, water demand/supply, or wastewater generation. Agriculture and forestry resources, population and housing, mineral resources, and wildfire are also expected to not be significant and therefore will be discussed in this section.
- Other Sections. The EIR will include additional topics as required by the CEQA Guidelines including growth inducement, cumulative impacts, and alternatives.

The Proposed Project would not expand the City's service area and would not increase the capacity to deliver water to meet the water supply needs in the existing service area. Therefore, construction of the Proposed Project would not likely result in growth-inducing impacts. Nevertheless, the potential for these types of impacts to result will be examined. In addition, the EIR will address whether the Proposed Project could result in cumulative impacts that are significant when combined with the impacts of other City projects or projects occurring in the area at the same time.

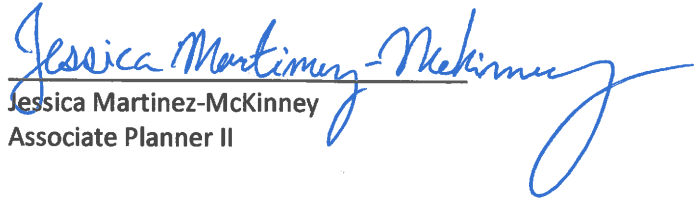
The EIR will describe and evaluate a reasonable range of alternatives to the Proposed Project. The alternatives would feasibly attain most of the Proposed Project's basic objectives while simultaneously avoiding or substantially lessening any significant effects of the Proposed Project. The "No Project" alternative will also be evaluated as required by CEQA.

March 16, 2020

Further Information

For environmental review information or questions about the Proposed Project, please contact Jessica Martinez-McKinney at jmartinezmckinney@cityofsantacruz.com.

Sincerely,


Jessica Martinez-McKinney
Associate Planner II

Attachments

Figure 1: Project Location and Vicinity

Figure 2: Existing Schematic and Proposed Facility Improvements (Plan View)

Figure 3: Coanda Screen Examples and Proposed Facility Improvements (Cross-section)

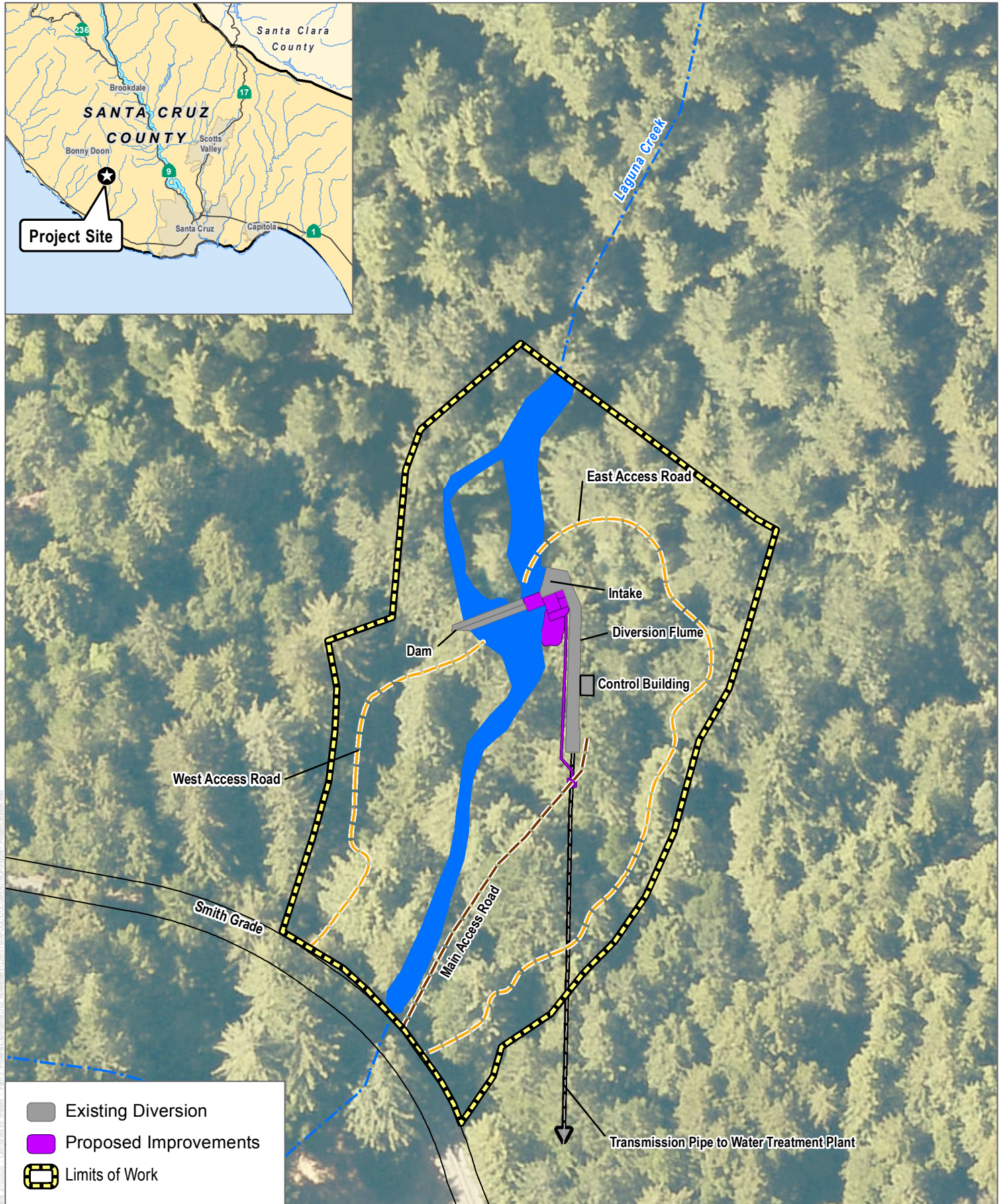
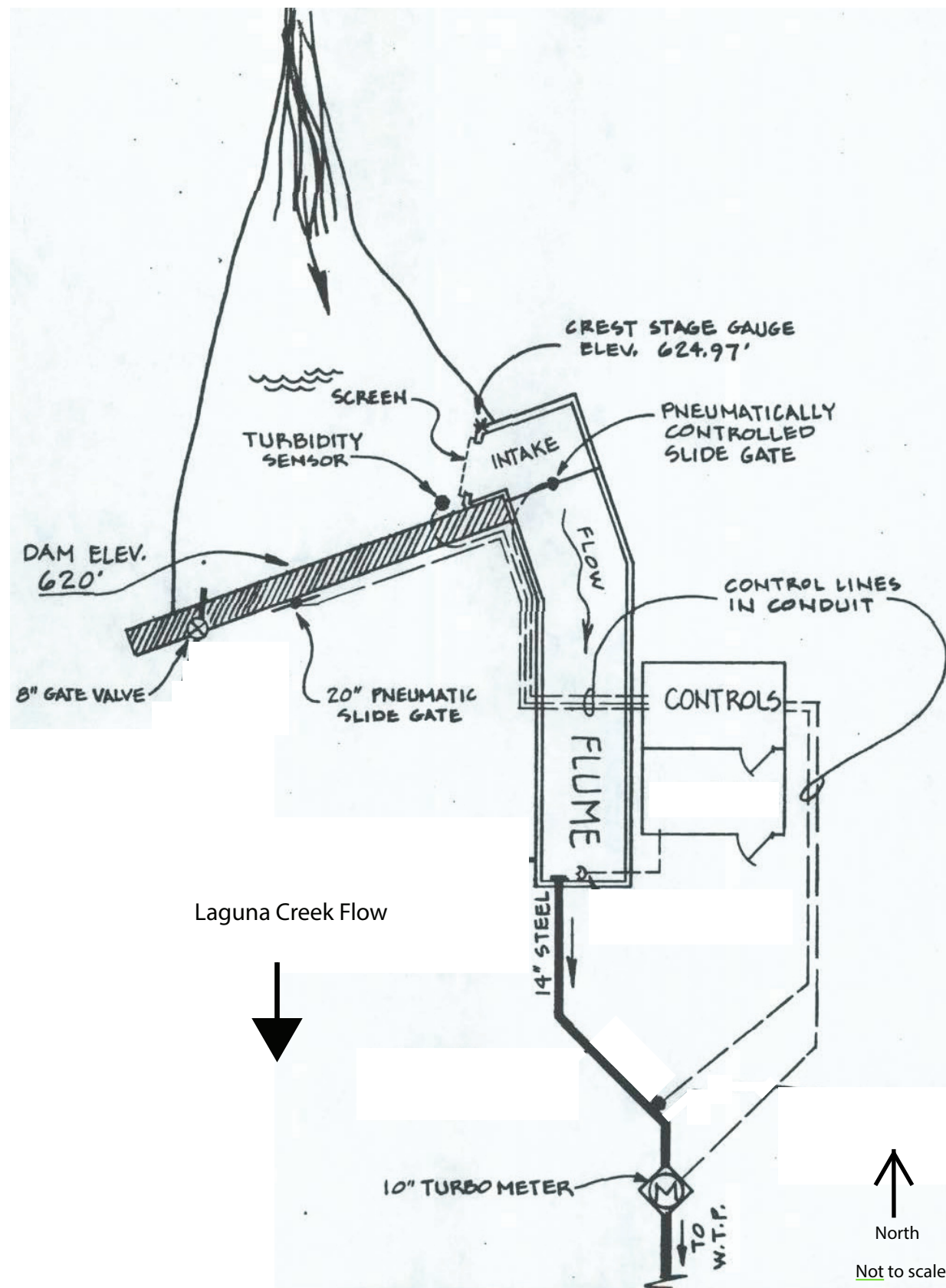


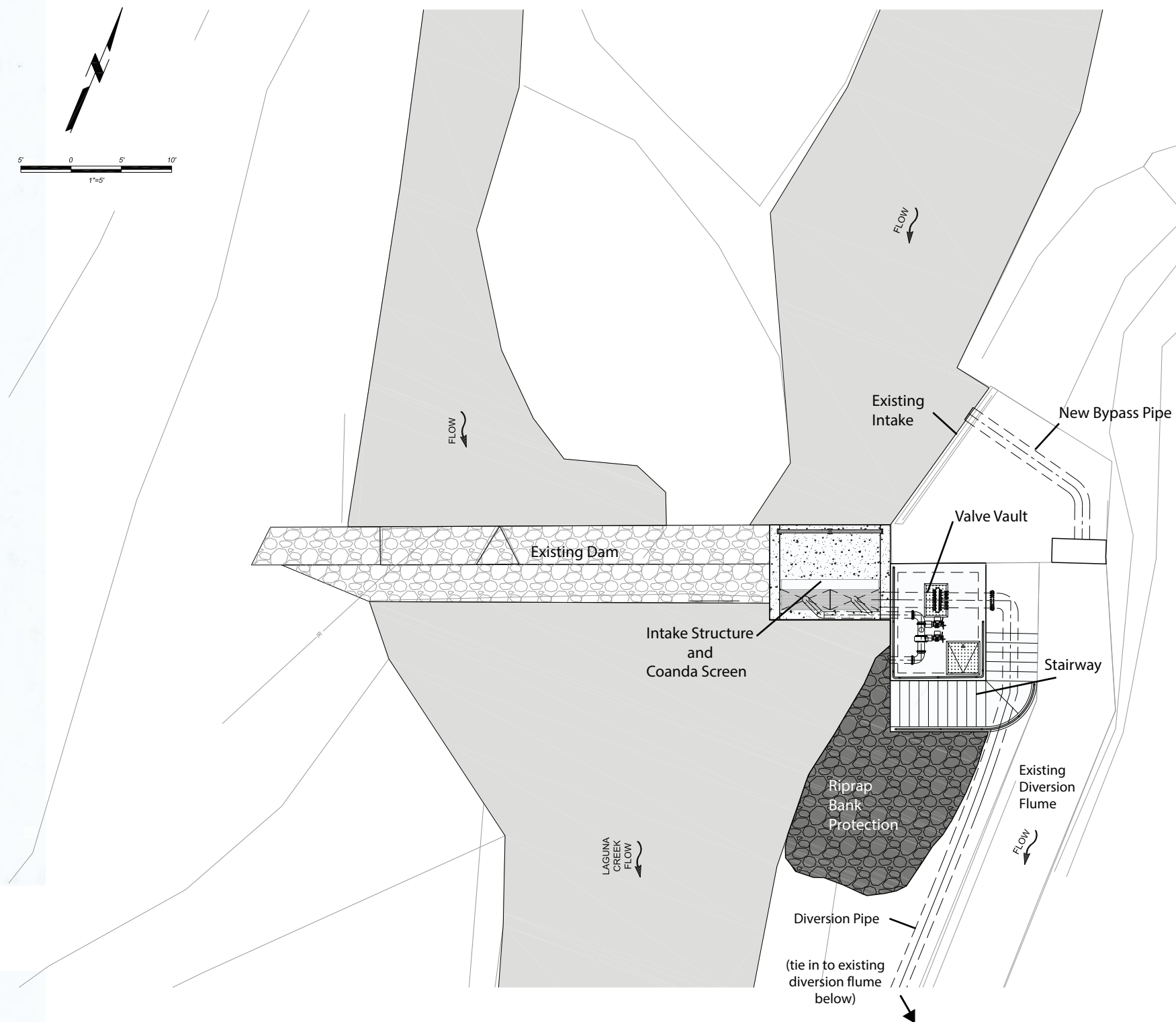
FIGURE 1

Project Location and Vicinity

Laguna Creek Diversion Retrofit Project - EIR Notice of Preparation



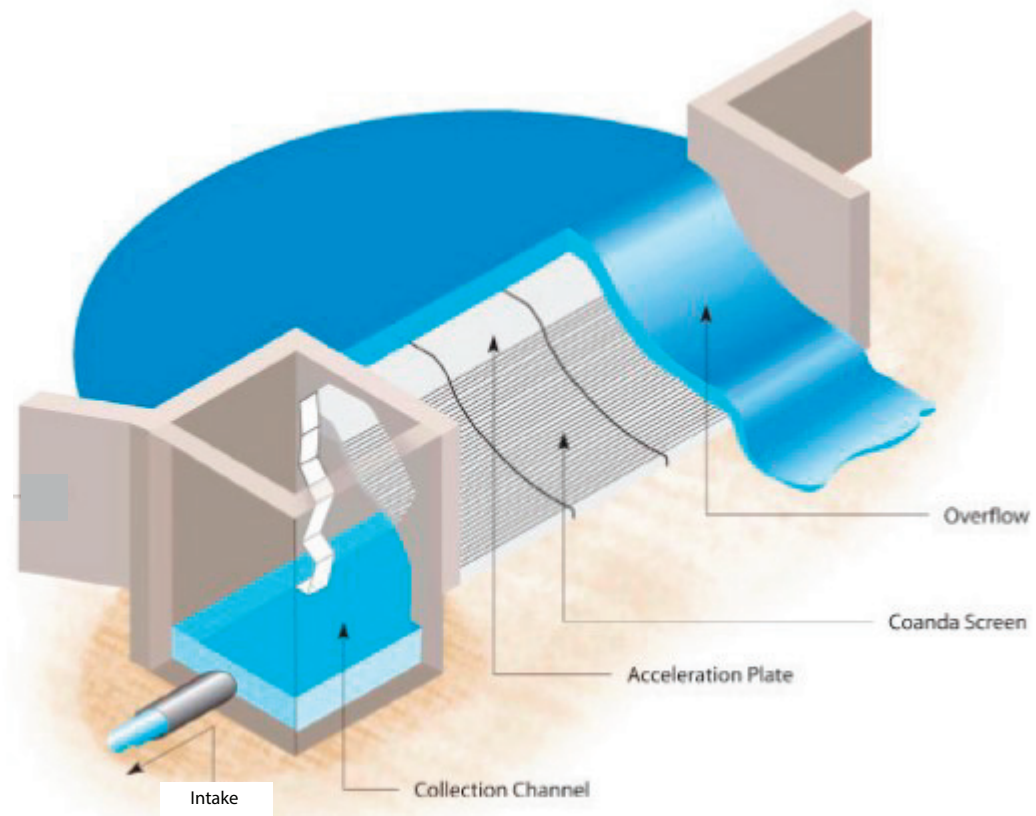
Existing Schematic for the Facility, circa 1964 (subsequent minor modifications not shown)



Proposed Improvements (Plan View)

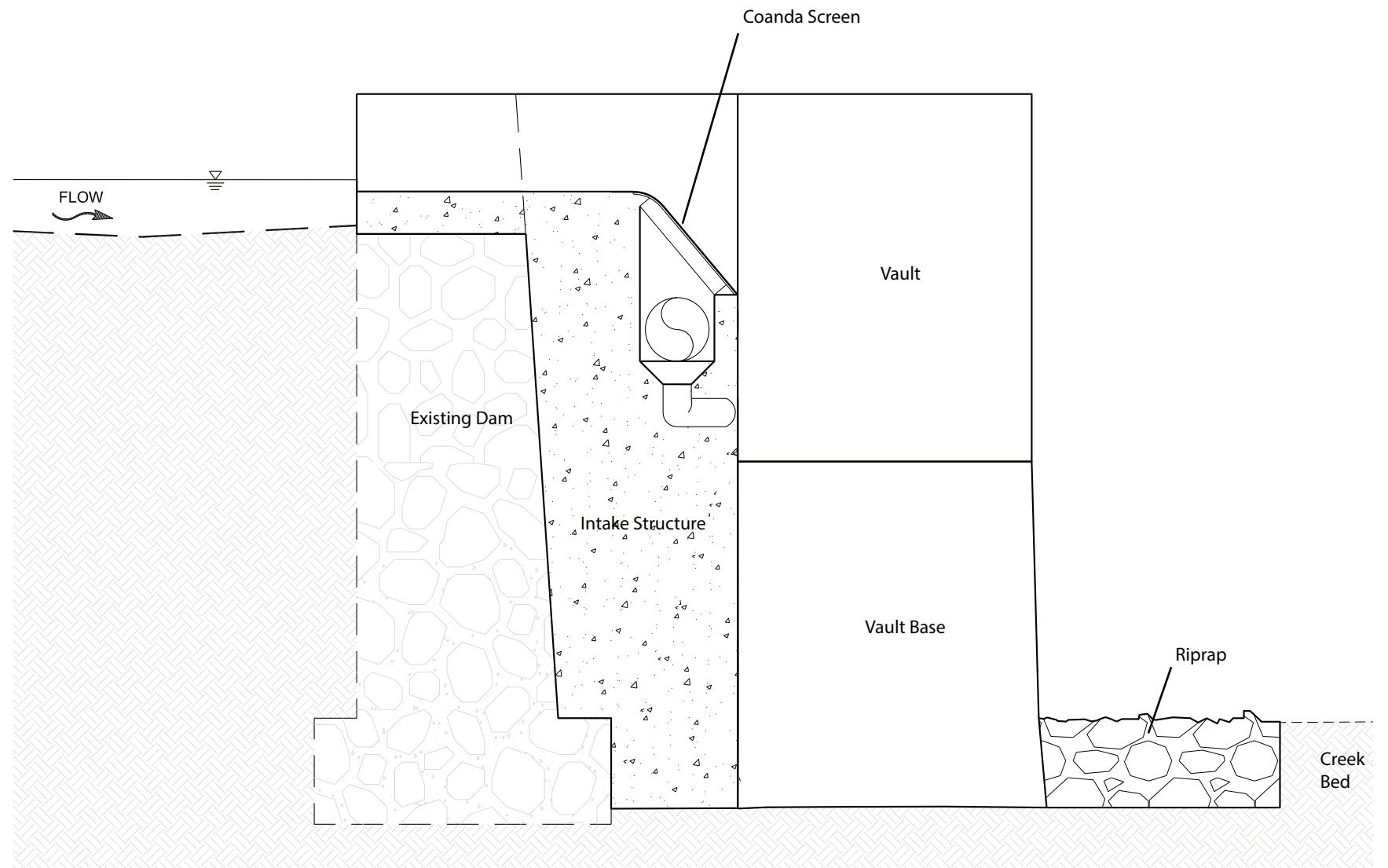
Source: City of Santa Cruz 2019

SOURCE: City of Santa Cruz 2019



Coanda Screen Examples Photo and Schematic Diagram

SOURCE: City of Santa Cruz 2019



Proposed Facility Improvements (Cross-section)

FIGURE 3

Coanda Screen Examples and Proposed Facility Improvements (Cross-section)

Laguna Creek Diversion Retrofit Project - EIR Notice of Preparation

Laguna Crk Diversion Retrofit Project-SCH202003456-MartinezMckinney-OEY040620

Hultman, Debbie@Wildlife [Debbie.Hultman@wildlife.ca.gov]

Sent: Tuesday, April 07, 2020 10:27 AM**To:** Jessica Martinez-McKinney**Cc:** state.clearinghouse@opr.ca.gov; Oey, Monica@Wildlife [Monica.Oey@wildlife.ca.gov]; Adair, Randi@Wildlife [Randi.Adair@wildlife.ca.gov]; Weightman, Craig@Wildlife [Craig.Weightman@wildlife.ca.gov]**Attachments:**Laguna Crk Diversion Retro~1.pdf (322 KB)

Ms. Martinez-Mckinney,

Please see the attached letter for your records. If you have any questions, contact Ms. Monica Oey, cc'd above.

Thank you,

Debbie Hultman | Assistant to the Regional Manager

California Department of Fish and Wildlife – Bay Delta Region

2825 Cordelia Road, Ste. 100, Fairfield, CA 94534

707.428.2037 | debbie.hultman@wildlife.ca.gov



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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 6, 2020

Ms. Jessica Martinez-Mckinney
Associate Planner II
City of Santa Cruz
212 Locust Street, Suite C
Santa Cruz, CA 95060
jmartinezmckinney@cityofsantacruz.com

Subject: Laguna Creek Diversion Retrofit Project, Notice of Preparation, SCH #202003456,
City and County of Santa Cruz

Dear Ms. Martinez-Mckinney:

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) prepared by the City of Santa Cruz for the Laguna Creek Diversion Retrofit Project (Project) located in the County of Santa Cruz. CDFW is submitting comments on the NOP regarding potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (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 (e.g., biological 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), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

The proposed Project will retrofit the existing Laguna Creek diversion structure to provide in-stream sediment transport past the diversion and be deposited downstream.

The proposed Project will include: a new intake structure and a Coanda screen; new valve control vault; streambank protection and armoring; new monitoring and control equipment; and modifications to the existing intake and sediment control bypass valves.

ENVIRONMENTAL SETTING

The special-status species that have the potential to occur in or near the Project area, include, but are not limited to:

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- California giant salamander (*Dicamptodon ensatus*) – a state species of special concern;
- California red-legged frog (*Rana draytonii*) – federally listed as threatened under the Endangered Species Act (ESA) and a state species of special concern; and
- Santa Cruz black salamander (*Aneides niger*) – a state species of special concern.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the City of Santa Cruz in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on biological resources.

COMMENT 1: Full Project Description of Project Features

The CEQA Guidelines (§§15124 and 15378) require that the draft Environmental Impact Report (EIR) incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's environmental impact.

To fully address the Project's impacts to biological resources, please include complete descriptions of the following features within the draft EIR:

- Detailed descriptions and cross sections of armored streambank and apron; and
- Operation and maintenance of the new system, including but not limited to, timing of sediment releases.

COMMENT 2: Species Baseline

CDFW recommends that the Project's draft EIR provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, or endangered species (CEQA Guidelines, §15380).

Habitat assessments and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project area.

COMMENT 3: Riprap

CDFW recommends exploring all other stabilization techniques (e.g., native vegetation plantings) before installing riprap. If riprap is deemed necessary, CDFW recommends planting riprap with native vegetation or identifying if riprap can be covered with sediment or stream simulation bed material to provide habitat for fish and wildlife.

Ms. Jessica Martinez-Mckinney
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Installation of riprap may have direct and cumulative adverse impacts on fish and wildlife resources within Laguna Creek. Riprap could alter stream flow (e.g., stream deflection), cause stream erosion, and decrease fish and wildlife habitat. If riprap is installed as part of the Project, please discuss these effects in the analysis and include mitigation to address significant impacts.

COMMENT 4: California Giant Salamander (CGS)

Issue: CGS live within and near streams in coastal forests of southern Santa Cruz County to southern Mendocino and Lake County (Kucera 1997). The Project area contains habitat for CGS, and there is potential for CGS to occur within the Project area. To reduce impacts to CGS to a level that is less-than-significant, avoidance and minimization measures are necessary.

Specific impact: Without appropriate avoidance and minimization measures for CGS, potentially significant impacts associated with Project activities include accidental entrapment, reduced reproductive success, and direct mortality of individuals.

Evidence impact would be significant: Aquatic adults and larvae are known to hide within spaces between streambed rocks and terrestrial adults are known to occur under surface litter and in underground tunnels (Kucera 1997). Project activities will occur within the streambed and streambank where CGS are potentially located. Additionally, noise, sediment removal, movement of workers, and temporary dewatering have the potential to significantly impact CGS.

Recommended Potentially Feasible Mitigation Measures

To evaluate potential impacts to CGS, CDFW recommends incorporating the following mitigation measures into the draft EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: CGS Pre-Construction Survey

CDFW recommends that a qualified wildlife biologist conduct focus surveys for CGS 48 hours prior to Project implementation.

Recommended Mitigation Measure 2: CGS Relocation

CDFW recommends that if CGS individuals are found at the Project area during the pre-construction survey or during Project activities, they should be allowed to move out of the area on their own. If a CGS is unable to move out of the project area on its own, a qualified wildlife biologist should relocate CGS out of the Project area into habitat similar to where it was found.

COMMENT 5: California Red-Legged Frog (CRLF)

Issue: CRLF primarily inhabit ponds but can also be found in other waterways, including marshes, streams, and lagoons, and the species will also breed in ephemeral waters (Thomson et al. 2016). The Project area contains habitat and CRLF have the potential to

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occur in the Project area. Avoidance and minimization measures are necessary to reduce impacts to CRLF to a level that is less-than-significant.

Specific impact: Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

Evidence impact would be significant: CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated. Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017). Project activities have the potential to significantly impact CRLF.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to CRLF, CDFW recommends incorporating the following mitigation measures into the draft EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 3: CRLF Pre-Construction Surveys

CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF in accordance with the U.S. Fish and Wildlife Service (USFWS) "Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog" (USFWS 2005) to determine if CRLF are within or adjacent to the Project area.

Recommended Mitigation Measure 4: CRLF Avoidance

CDFW recommends that initial ground-disturbing activities be timed to avoid the period when CRLF are most likely to be moving through upland areas (November 1 and March 31). When ground-disturbing activities must take place between November 1 and March 31, CDFW recommends a qualified wildlife biologist monitor construction activity daily for CRLF and ensure that Project activities avoid CRLF.

COMMENT 6: Santa Cruz Black Salamander (SCBS)

Issue: SCBS are found within mixed deciduous woodland, coniferous forests, and coastal grasslands within the Santa Cruz Mountains (Reilly and Wake 2015). They are typically found in moist soils such as under rocks and damp logs. The Project area contains habitat for SCBS and have the potential for SCBS to occur within the Project area. To reduce impacts to SCBS to a level that is less-than-significant, avoidance and minimization measures are necessary.

Specific impact: Without appropriate avoidance and minimization measures for SCBS, potentially significant impacts associated with the Project's activities include accidental entrapment, reduced reproductive success, and direct mortality of individuals.

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Evidence impact would be significant: SCBS is endemic to California and its range is restricted within the Santa Cruz Mountains (Reilly and Wake 2015). Project activities will occur within the Santa Cruz Mountains where SCBS have the potential to occur. Additionally, noise, sediment removal, movement of workers, and temporary dewatering have the potential to significantly impact SCBS.

Recommended Potentially Feasible Mitigation Measures

To evaluate potential impacts to SCBS, CDFW recommends incorporating the following mitigation measures into the draft EIR prepared for this Project, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 5: SCBS Pre-Construction Survey

CDFW recommends that a qualified wildlife biologist conduct a focus pre-construction survey for SCBS 48-hours prior to Project implementation.

Recommended Mitigation Measure 6: SCBS Relocation

CDFW recommends that if any SCBS are discovered at the Project area during the pre-construction surveys or during Project activities, they should be allowed to move out of the area on their own. If a SCBS is unable to move out of the Project area on its own, a qualified wildlife biologist will relocate SCBS out of the Project area into habitat similar to where it was found.

COMMENT 7: Nesting Birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground disturbing or vegetation disturbing activities must occur during the breeding season (February through September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act of 1918 or Fish and Game Code section 3503.

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures into the Project's draft EIR, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 7: Nesting Bird Surveys

CDFW recommends that a qualified avian biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every 14 days during Project activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project area to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified avian biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the qualified avian biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes

Ms. Jessica Martinez-Mckinney
City of Santa Cruz
April 6, 2020
Page 6 of 7

occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

Recommended Mitigation Measure 8: Nesting Bird Buffers

If continuous monitoring of identified nests by a qualified avian biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified avian biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. CDFW recommends that a qualified avian biologist advise and support any variance from these buffers.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit 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 Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species [CEQA section 21001(c), 21083, and CEQA Guidelines section 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 Fish and Game Code section 2080.

Lake and Streambed Alteration (LSA) Program

Notification is required, pursuant to CDFW’s LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will 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. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

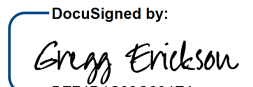
Ms. Jessica Martinez-Mckinney
City of Santa Cruz
April 6, 2020
Page 7 of 7

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's NOP. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Monica Oey, Environmental Scientist, at (707) 428-2088 or monica.oey@wildlife.ca.gov; or Ms. Randi Adair, Senior Environmental Scientist (Supervisory), at (707) 576-2786 or randi.adair@wildlife.ca.gov.

Sincerely

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse #202003456

REFERENCES

- Kucera, T. 1997. California Wildlife Habitat Relationships System. California Department of Fish and Wildlife California Interagency Wildlife Task Group. A004 pp.
- Reilly, S.B. and D.B. Wake. 2015. Cryptic Diversity and Biogeographical Patterns within the Black Salamander (*Aneides flavipunctatus*) Complex. Journal of Biogeography. Vol. 42: 280-291 pp.
- Thomson, R. C., A.N. Wright, and H.B. Shaffer. 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.
- United States Fish and Wildlife Service (USFWS). 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.
- USFWS. 2017. Species Account for California Red-legged frog. March 2017. 1 pp.

Laguna Creek Diversion Retrofit EIR NOP

Mosher, Matthew@CALFIRE [Matthew.Mosher@fire.ca.gov]

Sent: Tuesday, April 14, 2020 10:18 AM

To: Jessica Martinez-McKinney

Cc: Sampson, Richard@CALFIRE [Richard.Sampson@fire.ca.gov]

Attachments: Laguna Creek Diversion Ret~1.pdf (141 KB)

Hi Jessica,

Attached are CAL FIRE's comments on the Laguna Creek Diversion Retrofit EIR NOP.

Thanks,

Matthew Mosher

Environmental Scientist

CAL FIRE San Mateo – Santa Cruz Unit

6059 Highway 9

Felton CA, 95018

O.831.335.6722

C.831.212.3140

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-7772
Website: www.fire.ca.gov



Date: April 14, 2020

Laguna Creek Diversion Retrofit Project
EIR NOP

Jessica Martinez-McKinney, Associate Planner II
City of Santa Cruz Water Department
212 Locust Street, Suite C
Santa Cruz, CA 95060
jmartinezmckinney@cityofsantacruz.com

The Laguna Creek Diversion Retrofit Project EIR Notice of Preparation (NOP) has been reviewed by the Resource Management office of the San Mateo-Santa Cruz Unit of the California Department of Forestry and Fire Protection (CAL FIRE). Please see our comments below.

Tree Removal

The land proposed for this project can be classified as "Timberland" as defined under Public Resources Code (PRC) section 4526. The NOP specifies that limited tree removal would occur for widening of roads, compaction, grading and placement of aggregate. Based on the information provided, it is unclear if any commercial tree species would be removed as part of this project (ponderosa pine, Douglas fir, or coast redwood). A review of aerial imagery of the project site appears to show coast redwood occurring adjacent to the roads and the dam. A timber harvest plan, timberland conversion permit or conversion exemption would be required prior to the cutting of any commercial tree species. A consulting Registered Professional Forester could assist you in this determination.

Fire Hazard

This project has been identified as being adjacent to wildlands. PRC 4291 requires the creation of a 100' fire break or fire protection area around and adjacent to habitable buildings or structures. While the project does not include construction of habitable buildings or structures and thus is not required to incorporate defensible space, CAL FIRE still recommends creation of 100' of fire protection area around infrastructure associated with the diversion dam in order to provide protection of important infrastructure during wildfire.

Sudden Oak Death

Sudden Oak Death (SOD), *Phytophthora ramorum*, is commonly found in forests of the Santa Cruz Mountains. During tree removal operations for this project, care should be taken to prevent the spread of this disease. Numerous sources of information have been developed to identify and manage this pest. One such site, maintained by the California Oak Mortality Task Force is available on the internet: <http://nature.berkeley.edu/comtf/>

If you need any assistance or information, please contact me at the telephone number or e-mail address listed below.

Sincerely,

Signed Original, on File

Richard Sampson
Forester II – Unit Forester
Unit Environmental Coordinator
RPF #2422
(831) 335-6742
Richard.sampson@fire.ca.gov

By:
Matthew Mosher
Environmental Scientist

Cc:
Christopher Browder
Deputy Chief, Environmental Protection



NATIVE AMERICAN HERITAGE COMMISSION

March 17, 2020

Jessica Martinez-Mckinney, Associate Planner II
City of Santa Cruz
212 Locust Street, Suite C
Santa Cruz, CA 95060

Re: 2020030456, Laguna Creek Diversion Retrofit Project, Santa Cruz County

Dear Ms. Martinez-Mckinney:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines § 15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

CHAIRPERSON
Laura Miranda
Luiseño

VICE CHAIRPERSON
Reginald Pagaling
Chumash

SECRETARY
Merri Lopez-Keifer
Luiseño

PARLIAMENTARIAN
Russell Attebery
Karuk

COMMISSIONER
Marshall McKay
Wintun

COMMISSIONER
William Mungary
Paiute/White Mountain
Apache

COMMISSIONER
Joseph Myers
Pomo

COMMISSIONER
Julie Tumamait-Stenslie
Chumash

COMMISSIONER
[Vacant]

EXECUTIVE SECRETARY
Christina Snider
Pomo

NAHC HEADQUARTERS
1550 Harbor Boulevard
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West Sacramento,
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nahc@nahc.ca.gov
NAHC.ca.gov

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code §21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

- a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

- a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
- c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).
- e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
- f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

- a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
- b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
- c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:

- a.** A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
- b.** A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

- a.** Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
- b.** Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
- c.** Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Nancy.Gonzalez-Lopez@nahc.ca.gov.

Sincerely,



Nancy Gonzalez-Lopez
Staff Services Analyst

cc: State Clearinghouse

RE: Notice of Preparation: Laguna Creek Diversion Retrofit Project

Jessica Martinez-McKinney

Sent: Tuesday, March 17, 2020 2:57 PM**To:** MRT [marty@got.net]

Hi Marty -

Thank you for the clarification, sounds like this is not a formal comment, I didn't want to make an incorrect assumption one way or another.

To answer your question the Anadromous Salmonids HCP at this time has not been issued to the City of Santa Cruz. I am not in a position to share the HCP, since the draft documents are privileged and confidential. When it is finalized we would be happy to share it with you.

Thanks,

Jessica Martinez-McKinney*Associate Planner***City of Santa Cruz Water Department**

212 Locust St., Suite C / Santa Cruz, CA 95060

(831) 420-5322 (direct) | (831) 222-0069 (cell)

cityofsantacruz.com/water

From: MRT [marty@got.net]**Sent:** Tuesday, March 17, 2020 9:27 AM**To:** Jessica Martinez-McKinney**Subject:** Re: Notice of Preparation: Laguna Creek Diversion Retrofit Project

well since it's a question not a comment I am not sure how to answer.

Not intended to be a comment rather a request for documents that would inform comments.

Good job on the NOP BTW.

Marty

On Mar 17, 2020, at 7:46 AM, Jessica Martinez-McKinney <jmartinezmckinney@cityofsantacruz.com> wrote:

Hello and Good Morning Marty -

Since we are currently in the public review period for the Laguna Creek Diversion Retrofit Project NOP it would be helpful to know whether your email is a formal CEQA comment.

Many thanks and I hope you are well.

Jessica Martinez-McKinney*Associate Planner***City of Santa Cruz Water Department**

212 Locust St., Suite C / Santa Cruz, CA 95060

(831) 420-5322 (direct) | (831) 222-0069 (cell)

cityofsantacruz.com/water

From: MRT [marty@got.net]**Sent:** Monday, March 16, 2020 12:00 PM**To:** Jessica Martinez-McKinney**Subject:** Re: Notice of Preparation: Laguna Creek Diversion Retrofit Project

Hi Jessica,

Do you know where I can access the HCP and subsequent monitoring reports?

Thanks,
Marty

On Mar 16, 2020, at 10:06 AM, Jessica Martinez-McKinney
<jmartinezmckinney@cityofsantacruz.com> wrote:

Dear Interested Parties:

Please see the attached Notice of Preparation of an Environmental Impact Report and Public Scoping Meeting Notice for the Laguna Creek Diversion Retrofit Project.

Thank you,

Jessica Martinez-McKinney

Associate Planner

City of Santa Cruz Water Department

212 Locust St., Suite C / Santa Cruz, CA 95060

(831) 420-5322 (direct) | (831) 222-0069 (cell)

cityofsantacruz.com/water

RE: Public scoping meeting: Laguna Creek Diversion

Jessica Martinez-McKinney

Sent: Thursday, April 02, 2020 7:37 AM**To:** Tony Hoffman [tonyhoffman1955@gmail.com]

Good Morning Tony:

Thank you for reaching out regarding the Laguna Creek Diversion Retrofit Project. I'm sorry to hear that you experienced trouble logging into the phone call. I would like to share the presentation materials which are posted on our website [here](#). Other information is on the main Laguna page [at this link](#).

Tony, since we are in the public review period it would be helpful to know if your email is a formal CEQA comment, if so we will respond in the Draft Environmental Impact Report in the appropriate section. The draft Environmental Impact Report will be available for public review later this fall.

Regards,

Jessica Martinez-McKinney

Associate Planner

City of Santa Cruz Water Department

212 Locust St., Suite C / Santa Cruz, CA 95060

(831) 420-5322 (direct) | (831) 222-0069 (cell)

cityofsantacruz.com/water

Note: I am teleworking, however my availability has not changed. I can still be reached by either email or phone. Be well!

From: Tony Hoffman [tonyhoffman1955@gmail.com]

Sent: Wednesday, April 01, 2020 5:40 PM

To: Jessica Martinez-McKinney

Subject: Public scoping meeting: Laguna Creek Diversion

Greetings Jessica:

I tried to attend yesterday's online meeting regarding the Laguna Creek Diversion EIR. I could not get onto the meeting ... probably my fault.

Were there any significant concerns or issues?

I have one: when these guys come up around the dam, they put up survey stakes all over the place - and never take them down. So the area has little orange flags all around, some having been there for years. Could I request that the stakes and flags be removed after the project is over?

Tony Hoffman

I live on 3000 Smith Grade

RE:

Jessica Martinez-McKinney

Sent: Wednesday, March 18, 2020 1:58 PM

To: Patrick Orozco [yanapvoic97@gmail.com]

Hi Patrick -

Thank you very much for reaching out to me and for identifying these sites. We appreciate your feedback and will incorporate your comments in the project report.

In the meantime, I'd like to let you know that the sites you mentioned below are not within our project area and are not within a ¼-mile of the Area of Potential Effects.

Best,

Jessica Martinez-McKinney

Associate Planner

City of Santa Cruz Water Department

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From: Patrick Orozco [yanapvoic97@gmail.com]

Sent: Wednesday, March 18, 2020 11:51 AM

To: Jessica Martinez-McKinney

Subject:

HELLO JESSICA

I RECEIVED YOUR LETTER ON A EIR FOR LAGUNA CREEK. I KNOW OF THE INDIAN SITES THERE. SCR 58, 13,14,15,16,AND 17TH I ASK FOR NO DISTURBANCE ON THESE SITES. PATRICK OROZCO

From: Robert Vallone [robert.vallone@gmail.com]

Sent: Wednesday, April 15, 2020 1:53 PM

To: Jessica Martinez-McKinney

Subject: Feedback on proposed EIR for Laguna Creek Diversion Retrofit Project

Jessica,

As the owner of the property containing the Laguna Creek Dam and Diversion Facility (Parcel 062-101-03) I wanted to take this opportunity to formally comment on the Notice of Preparation (NOP) of an EIR for the project that you sent via mail on March 16, 2020, comments due 5pm 4/15/20.

Comments:

Thank you for providing the list of 11 environmental issues you anticipate covering in the upcoming EIR and in particular the detailed description of each issue and the potential impacts and mitigation issues for each one. Based on my careful review of this detailed information I am very satisfied that you and the water department have anticipated all of the potential impacts that I would have - in fact your list is even more thorough and contains issues and details that I had not previously considered. As such, I am quite confident that the upcoming EIR will adequately address all potential environmental issues.

I look forward to reviewing the EIR when it becomes available - is there a rough anticipated timeframe for it to be available for review?

In addition, I want to take this opportunity to thank you for the phone meeting we had on 3/20/20 where we reviewed the proposed project design in more detail and discussed the more detailed information you provided on the project and we reviewed the Draft 30p Design PDF in great detail. I really appreciate the time you spent to solicit, discuss, and understand my concerns about the construction phase of the proposed project. We are tracking those issues in a separate email thread, but I wanted to acknowledge and thank you for them here as well.

I am very impressed by the competence and professionalism of the Santa Cruz Water Department as represented in my communications with you. I am very confident and optimistic that the good spirit of communication, coordination and collaboration we have established will continue throughout the the proposed Laguna Creek Diversion Retrofit Project and beyond.

Thank you,

Robert Vallone

Owner 3030 Smith Grade Road

Parcel 062-101-03