



State Water Resources Control Board

John Davidson, Senior Planner
City of San Jose
200 East Santa Clara Street, Tower 3
San Jose, CA 95113-1905

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STATE CLEARING HOUSE

Dear Mr. Davidson:

INITIAL STUDY / MITIGATED NEGATIVE DECLARATION (IS/MND); CITY OF SAN JOSE (CITY); SPRECKLES SANITARY SEWER FORCE MAIN SUPPLEMENT & PUMP STATION REHABILITATION PROJECT, FILE NO. PP11-104 (PROJECT); SANTA CLARA COUNTY; STATE CLEARINGHOUSE NO. 2012032067

We understand the City maybe pursuing Clean Water State Revolving Fund (CWSRF) financing for this Project. As a funding agency and a State agency with jurisdiction by law to preserve, enhance, and restore the quality of California's water resources, the State Water Resources Control Board (State Water Board) is providing the following information and comments for the environmental document prepared for the Project.

Please provide us with the following documents applicable to the proposed Project if seeking CWSRF or other State Water Board funding: (1) 2 copies of the draft and final IS/MND, (2) the resolution adopting the IS/MND making California Environmental Quality Act (CEQA) findings, (3) all comments received during the review period and the City's response to those comments, (4) the adopted Mitigation Monitoring and Reporting Program, and (5) the Notice of Determination filed with the Santa Clara County Clerk and the Governor's Office of Planning and Research State Clearinghouse. In addition, we would appreciate notices of any hearings or meetings held regarding environmental review of any projects to be funded by the State Water Board.

The CWSRF Program is partially funded by the U.S. Environmental Protection Agency and requires additional "CEQA-Plus" environmental documentation and review. Four enclosures are included that further explain the CWSRF Program environmental review process and the additional federal requirements. The State Water Board is required to consult directly with agencies responsible for implementing federal environmental laws and regulations. Any environmental issues raised by federal agencies or their representatives will need to be resolved prior to the State Water Board approval of a CWSRF funding commitment for the proposed Project. For further information on the CWSRF Program, please contact Mr. Ahmad Kashkoli, at (916) 341-5855.

It is important to note that prior to a CWSRF funding commitment, projects are subject to provisions of the Federal Endangered Species Act (ESA), and must obtain Section 7 clearance from the United States Fish and Wildlife Service (USFWS), and/or National Marine Fisheries Service (NMFS) for any potential effects to special status species. Please be advised that the State Water Board will consult with USFWS, and/or NMFS regarding all federal special status species the Project has the potential to impact if the Project is to be funded under the CWSRF Program. The City will need to identify whether the Project will involve any direct effects from construction activities or indirect effects, such as growth inducement, that may affect federally listed threatened, endangered, or candidate species that are known, or have a potential to occur on-site, in the surrounding areas, or in the service area, and to identify applicable conservation measures to reduce such effects.

In addition, CWSRF projects must comply with federal laws pertaining to cultural resources, specifically Section 106 of the National Historic Preservation Act. The State Water Board has responsibility for ensuring compliance with Section 106 and the State Water Board's Cultural Resources Officer (CRO) must consult directly with the California State Historic Preservation Officer (SHPO). SHPO consultation is initiated when sufficient information is provided by the CWSRF applicant. If the City decides to pursue CWSRF financing, please retain a consultant that meets the Secretary of the Interior's Professional Qualifications Standards (www.cr.nps.gov/local-law/arch_stnds_9.htm) to prepare a Section 106 compliance report.

Note that the City will need to identify the Area of potential Effects (APE), including construction and staging areas and the depth of any excavation. The APE is three-dimensional and includes all areas that may be affected by the Project. The APE includes the surface area and extends below ground to the depth of any Project excavations. The records search request should be made for an area larger than the APE. The appropriate area varies for different projects but should be drawn large enough to provide information on what types of sites may exist in the vicinity. Please contact the CRO, Ms. Cookie Hirn, at (916) 341-5690, to find out more about the requirements, and to initiate the Section 106 process.

Other federal requirements pertinent to the Project under the CWSRF Program include the following:

- A. Compliance with the federal Clean Air Act: (a) Provide air quality studies that may have been done for the Project; and (b) if the Project is in a nonattainment area or attainment area subject to a maintenance plan; (i) provide a summary of the estimated emissions (in tons per year) that are expected from both the construction and operation of the Project for each federal criteria pollutant in a nonattainment or maintenance area, and indicate if the nonattainment designation is moderate, serious, or severe (if applicable); (ii) if emissions are above the federal de minimis levels, but the Project is sized to meet only the needs of current population projections that are used in the approved State Implementation Plan for air quality, quantitatively indicate how the proposed capacity increase was calculated using population projections.
- B. Compliance with the Coastal Zone Management Act: identify whether the Project is within a coastal zone and the status of any coordination with the California Coastal Commission.

- C. Protection of Wetlands: Identify any portion of the proposed Project area that should be evaluated for wetlands or United States waters delineation by the United States Army Corps of Engineers (USACE), or require a permit from the USACE, and identify the status of coordination with the USACE.
- D. Compliance with the Farmland Protection Policy Act: Identify whether the Project will result in the conversion of farmland. State the status of farmland (Prime, Unique, or Local Statewide Importance) in the Project area and determine if this area is under a Williamson Act Contract.
- E. Compliance with the Migratory Bird Treaty Act: List any birds protected under this Act that may be impacted by the Project and identify conservation measures to minimize impacts.
- F. Compliance with the Flood Plain Management Act: Identify whether or not the Project is in a Flood Management Zone and include a copy of the Federal Emergency Management Agency flood zone maps for the area.
- G. Compliance with the Wild and Scenic Rivers Act: Identify whether or not any Wild and Scenic Rivers would be potentially impacted by the Project and include conservation measures to minimize such impacts.

Following are specific comments on the City's IS/MND:

- 4. The mitigation measure listed on page 3 of the MND (IV. Biological Resources 2. b) 4.), regarding badgers, states, "Pre-construction surveys for burrowing owls should also be used to determine the presence of badgers... a construction free buffer of up to 300 feet or a suitable distance or a suitable distance specified by the resource agencies (i.e., CDFG) should be established around the den." Mitigation measures should include specific, feasible actions that will improve adverse environmental conditions, be measurable to allow monitoring, and must be enforceable. The mitigation measure listed above does not include specific feasible actions that will improve adverse environmental conditions. Instead the MND lists measures that *should* be incorporated into the Project. In the Final MND, please include the exact mitigation measures that *shall* be incorporated into the Project. For more information on mitigation measures please refer to CEQA Guidelines Section 15005, Article 1 and Section 15370, Article 20.
- 5. The Initial Study, Chapter 3, page 29-30, indicates the potential for Red-Tailed Hawk, and Red Shouldered Hawk to occur within the project vicinity is low, yet Appendix B, Special Status Species Database, indicates a moderate potential for these species to occur within the Project vicinity. Please include mitigation measures for the following birds of prey species: Red-tailed hawk, *Buteo jamaicensis*; Red-shouldered hawk, *Buteo lineatu*; Swainson's hawk, *Buteo swainsoni*; and Northern harrier, *Circus cyaneu*.
- 6. Please consult with the California Department of Fish and Game and USFWS regarding nesting seasons for the special status species listed with a high or moderate potential of occurring within the Project area, and potential noise impacts to the bird of prey species within or adjacent to the Project area. Since noise is an element that can alter and, therefore, impair bird behavior (e.g., cause nest abandonment), please provide a discussion of potential noise impacts and significance criteria.

Mr. John Davidson

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Thank you for the opportunity to review the City's IS/MND. If you have any questions or concerns, please feel free to contact me at (916) 341-6983 or by email at SStewart@waterboards.ca.gov, or contact Ahmad Kashkoli at (916)341-5855 or by email at AKashkoli@waterboards.ca.gov.

Sincerely,



Susan Stewart
Environmental Scientist

cc: State Clearinghouse
(Re: SCH# 2012032067)
P. O. Box 3044
Sacramento, CA 95812-3044

Enclosures (4)

1. SRF & CEQA-Plus
2. Quick Reference Guide to CEQA Requirements for State Revolving Fund Loans
3. Instructions and Guidance for "Environmental Compliance Information"
4. Basic Criteria for Cultural Resources Reports

May 11, 2012

Susan Stewart
California State Water Resources Board
P.O. Box 100
Sacramento, CA 95812-0100

**RE: *Spreckles Sanitary Sewer Force Main Supplement & Pump Station Rehabilitation
Project IS/MND, SCH No. 2012032067***

Dear Ms. Stewart:

Thank you for your comments on the IS/MND for the above-referenced project. To clarify, the City is not seeking Clean Water State Revolving Funds (SRF) financing for this project. Because the project will not be utilizing SRF financing or any other sources of federal funding, additional CEQA Plus and associated federal review is not required. The IS/MND meets all necessary CEQA requirements for the project as proposed.

With regards to your specific concerns on the IS/MND, please see responses below, corresponding to your numbered comments:

4. The IS/MND inadvertently uses the term “should” rather than “shall.” However, the project will be subject to the protocol set forth in the Mitigation and Monitoring Report, which requires that the mitigation be implemented in full.
5. Although the text of the IS/MND identified the potential for red-tailed hawk and red shouldered hawk as low and the Appendix showed the potential as moderate, impacts to these species were specifically addressed and mitigation identified. Page 37 of the IS/MND states:

“...Several special-status wildlife species have the potential to occur onsite or in the immediate vicinity of the project, including the following: Alameda song sparrow, American badger, burrowing owl, California black rail, California clapper rail, northern harrier, red-tailed hawk, red-shouldered hawk, salt marsh harvest mouse, salt marsh wandering shrew, salt marsh common yellowthroat, Swainson’s hawk, and white-tailed kite. Construction activities including vegetation removal, grading, trenching and drilling within all areas of the project may potentially result in impacts to nesting avian species protected by CDFG Code, State and Federal ESA, and the Migratory Bird Treaty Act...”

Mitigation 3 in the IS/MND calls for “focused preconstruction surveys for nesting birds no more than 14 days prior to initiation of construction activities in areas that may provide suitable nesting habitat within 300 feet of construction activities. If active nests are found, a suitable construction buffer shall be established by the qualified biologist (typically 300 feet) and no

work shall occur within that buffer until September 30. Alternatively, a qualified biologist can conduct weekly nest checks to gauge nestling/fledgling status, and construction may proceed once fledglings have dispersed from the nest provided written concurrence is obtained from CDFG. No active nest shall be impacted or removed. For activities that occur outside of the nesting season (generally October 1 through February 1), preconstruction surveys are not required. This mitigation measure applies to all nesting birds within or immediately adjacent to the project site; including those listed in the preceding impact section.”

6. Please refer to the response above regarding nesting birds. The IS/MND did identify impacts from construction activities, which included noise, although not explicitly stated.

Again, thank you for your comments. If you have any questions, please contact me.

Sincerely,



John Davidson
City of San Jose Planning Division
Environmental Review Section
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408-535-7895