



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: Public Works

**Prepared by: April Miller,
Director of Public Works**

City Manager Approval: _____

File No.: 08.02.277

TOPIC: ROTARY MANOR CULVERT REPLACEMENT

SUBJECT: RESOLUTION ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND) AND ASSOCIATED MITIGATION MONITORING AND REPORTING PROGRAM FOR THE ROTARY MANOR CULVERT REPLACEMENT PROJECT; AUTHORIZATION TO STAFF TO PROCEED WITH FINAL DESIGN AND PROCUREMENT OF REGULATORY ENVIRONMENTAL PERMITS

RECOMMENDATION:

Adopt the Resolution Adopting the Initial Study/Mitigated Negative Declaration (IS/MND) and Associated Mitigation Monitoring and Reporting Program for the Rotary Manor Culvert Replacement Project; Authorization to Staff to Proceed with Final Design and Procurement of Regulatory Environmental Permits

BACKGROUND:

Rotary Manor, located at 1821 Fifth Avenue, is a senior community housing facility. A reinforced concrete box culvert exists underneath this property and conveys flows along a historic waterway representing the upper reaches of present-day San Rafael Creek. This culvert transitions from a reinforced concrete box to a corrugated metal pipe (CMP) and outlets into an open creek all within the Rotary Manor property.

In January 2016, Public Works was notified of a sinkhole on the Rotary Manor property. Upon inspection, it was identified that the CMP portion of the culvert is in need of replacement. To begin design of this project, City staff solicited proposals from multiple firms with strong backgrounds in roadway, drainage, and environmental design. On December 16, 2019, the professional services agreement for the design of this culvert replacement was awarded to Coastland Civil Engineering, Inc. The proposed design will include full replacement of the culvert as well as restoration of landscape and decorative features of the Rotary Manor gardens.

ANALYSIS:

As part of the design of the culvert replacement, an Initial Study/Mitigated Negative Declaration was prepared per California Environmental Quality Act (CEQA) guidelines. City staff initiated a public review period for this document from Oct. 26 – Nov. 30, 2022. Notification of this public review period was posted in the Marin IJ and mailed to all occupants and owners within a 300 ft radius of the project site.

FOR CITY CLERK ONLY

Council Meeting: _____

Disposition: _____

1. Resolution re Adoption of the Mitigated Negative Declaration

An Initial Study was prepared to determine the potential environmental impacts the proposed project could have on biological resources, cultural resources, tribal cultural resources, and noise, and to make mandatory findings of significance. Findings suggest the project impacts would be mitigated to a less-than-significant level through implementation of recommended mitigation measures as required in the included Mitigation Monitoring and Reporting Program (MMRP).

A Notice of Public Hearing and Intent to Adopt the Initial Study/Mitigated Negative Declaration was published in the Marin IJ on October 24, 2022 (Attachment 2) and was mailed to residents/businesses residing within 300 feet of the project site (Rotary Manor @ 1821 Fifth Ave). As required by CEQA Guidelines Section 15073, a minimum 30-day public review period was provided for the Initial Study/Mitigated Negative Declaration. A hard copy of the document was also made available at the Department of Public Works (111 Morphew St.).

The Initial Study/Mitigated Negative Declaration is on the City's website, and can be accessed for review at: <https://www.cityofsanrafael.org/rotary-manor-culvert-replacement/>. The MMRP are attached to this staff report (Attachment 3). The formal public review period closed on November 30, 2022 with the City receiving one comment letter from the State Department of Fish and Wildlife (CDFW) (Attachment 4). CDFW's comment letter recommends three different mitigation measures be added to the MMRP including (1) acquiring of 401 and 404 water quality certifications and biological surveys for (2) certain special-status plants and (3) foothill yellow-legged frogs. As part of the Initial Study, a biological survey was completed at the site to determine what biological communities existed at the project site and specifically identified the species commented on by CDFW as having an unlikely chance of being impacted by the project. Regardless, since a permit from CDFW is required before this project can be constructed, City staff will continue to work with CDFW to address these comments and any additional ones that arise as part of the permit review process.

As shown in Table 1 taken from page 14 of the document, the project could potentially have impacts on biological, tribal, and other cultural resources. Therefore, the document includes several measures to be implemented during construction to mitigate these impacts. The measures include, in part, preconstruction survey for western pond turtle, environmental awareness training provided by a qualified biologist, and procedures to be followed if cultural resources are encountered.

Table 1: Potentially Significant Impacts Requiring Mitigation Measures

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Greenhouse Gas	<input type="checkbox"/>	Public Services
<input type="checkbox"/>	Agricultural Resources	<input type="checkbox"/>	Hazards/Hazardous	<input type="checkbox"/>	Recreation
<input type="checkbox"/>	Air Quality	<input type="checkbox"/>	Hydrology/Water	<input type="checkbox"/>	Transportation
<input checked="" type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Land Use/Planning	<input checked="" type="checkbox"/>	Tribal Cultural Resources
<input checked="" type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Utilities and Service Systems
<input type="checkbox"/>	Energy	<input checked="" type="checkbox"/>	Noise	<input type="checkbox"/>	Wildfire
<input type="checkbox"/>	Geology/Soils	<input type="checkbox"/>	Population/Housing	<input checked="" type="checkbox"/>	Mandatory Findings of Significance

The recommended resolution would adopt the MMRP in accordance with CEQA Guidelines and clear this project for construction from the environmental clearance standpoint except for necessary permits required from environmental regulatory agencies. It is anticipated that permits will be required from the following agencies: California Fish and Wildlife (CDFW); U.S. Army Corps of Engineers; San Francisco Regional Water Quality Control Board (SFRWQCB); and Marin County.

2. Motion Directing Staff to Proceed with Final Design and Environmental Permitting

With City Council approval of the recommended resolution, staff recommends that the City Council authorize staff to proceed with final design work and procurement of environmental regulatory permits.

FISCAL IMPACT: No immediate fiscal impact is associated with the approval and adoption of the Mitigated Negative Declaration.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as presented and move to authorize staff to proceed with final design work and procurement of environmental regulatory permits.
2. Adopt the resolution with modifications.
3. Decline to approve the resolution, which will result in the project being unable to move forward.
4. Defer action and request staff to provide further information or modifications at a future Council meeting.

RECOMMENDED ACTION:

Adopt the Resolution Adopting the Initial Study/Mitigated Negative Declaration (IS/MND) and Associated Mitigation Monitoring and Reporting Program for the Rotary Manor Culvert Replacement Project; Authorization to Staff to Proceed with Final Design and Procurement of Regulatory Environmental Permits.

ATTACHMENT:

1. Resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program

2. Public Hearing Notices
3. Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program
4. Comment letter from State Department of Fish and Wildlife

RESOLUTION NO. _____

RESOLUTION ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (IS/MND) AND ASSOCIATED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR THE ROTARY MANOR CULVERT REPLACEMENT PROJECT; AUTHORIZATION TO STAFF TO PROCEED WITH FINAL DESIGN AND PROCUREMENT OF REGULATORY ENVIRONMENTAL PERMITS; CITY PROJECT NO. 11371

WHEREAS, the City has determined it is necessary to replace the Rotary Manor Culvert and has retained consultants to design the project and prepare construction drawings, City Project No. 11371; and

WHEREAS, the construction plans are approximately 90% completed for the Project's proposed culvert replacement and, pursuant to the California Environmental Quality Act (CEQA) Guidelines, it was determined that, for purposes of CEQA, the improvements are defined as a "project" subject to environmental review; and

WHEREAS, pursuant to CEQA Guidelines Section 15063, an Initial Study was prepared to determine the potential environmental impacts of the Project; and

WHEREAS, as demonstrated in the preparation of the Initial Study, the proposed Project would result in no significant environmental impacts for which mitigation is recommended to reduce; and

WHEREAS, consistent with CEQA Guidelines Section 15070, the Initial Study supports and recommends the adoption of a Mitigated Negative Declaration; and

WHEREAS, pursuant to CEQA Guidelines Section 15073, on October 24th, 2022, the City published a Notice of Public Hearing and Intent to Adopt the Initial Study/Mitigated Negative Declaration which was made available for a 30-day public review period. One comment letter was received from the State Department of Fish and Wildlife; and

WHEREAS, on December 5th, 2022, the City Council held a duly noticed public hearing to review the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and considered all oral and written public testimony.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby adopts the Mitigated Negative Declaration and the Mitigation Monitoring

and Reporting Program for the Rotary Manor culvert replacement Project, City Project No. 11371, based on the following findings:

1. The Initial Study/Mitigated Negative Declaration has been prepared in accordance with CEQA Guidelines by the consultant. As a result of this consultation, mitigation measures required to address potential impacts have been incorporated into the Mitigated Negative Declaration.
2. As prescribed by CEQA Guidelines Section 15073, a public review period of a minimum of 30 days was observed for public comment (30-days observed commencing on October 26th, 2022 and closing on November 30th, 2022).
3. The Mitigated Negative Declaration has been presented to the City Council who has reviewed and considered the information in the Initial Study for adopting a Mitigated Negative Declaration. Further, the City Council finds that the Initial Study is adequate and complete to support the adoption of a Mitigated Negative Declaration.
4. The City Council has exercised its independent judgment in evaluating the Initial Study and has considered the comments received during the public review period and public hearing. Based on this review, the City Council has determined that a) there is no substantial evidence that the Project will have a significant impact on the environment; and b) revisions have been made to the Project or have been included in the Project as conditions of approval which reduce the potentially significant impacts related to biological resources, cultural resources, noise, and air quality for which mitigation measures are required; and c) result in either no environmental impacts or impacts that are deemed to be less-than-significant in other topic areas listed in the Initial Study Checklist.

I, **LINDSAY LARA**, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City on the 5th day of December 2022, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

File No.: 08.02.277



NOTICE OF PUBLIC HEARING AND INTENT TO ADOPT AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION – CITY COUNCIL

You are invited to review and attend the City Council hearing on the following proposed project:

PROJECT: Rotary Manor Culvert Replacement Project. Located in the southeast yard of Rotary Manor at APN 010-291-71. Project calls for the replacement of an existing corrugated metal pipe culvert with a new reinforced concrete box culvert. City File No: 08.02.277.

*Consistent with the provisions of the California Environmental Quality Act (CEQA) Guidelines, this project is subject to environmental review and an Initial Study/Mitigated Negative Declaration has been prepared. The Initial Study and supportive appendices have been posted on the City of San Rafael website and can be accessed via the following link: <https://www.cityofsanrafael.org/rotary-manor-culvert-replacement/>. A hard copy of the Initial Study is available for review at the Department of Public Works, 111 Morphew Street, San Rafael. **A 30-day public review period is being observed for review and comment on the Initial Study/Mitigated Negative Declaration, commencing on Wednesday, October 26th, 2022 and closing on Wednesday, November 30th, 2022.** All written comments on the Initial Study must be submitted to the City by November 30th, 2022. The City Council will then hold a public hearing on the matter on the date listed below.*

MEETING DATE/TIME/LOCATION: Monday, December 5, 2022 at 7:00 p.m. City Council Chambers, 1400 Fifth Ave at D St, San Rafael, CA

FOR MORE INFORMATION: Visit the project webpage at <https://www.cityofsanrafael.org/rotary-manor-culvert-replacement/> or contact Raed Al-Zaher, Project Manager at (415) 482-2682 or Raed.Al-Zaher@CityofSanRafael.org. You can also come to the Public Works office, located at 111 Morphew Street to look at the environmental document. The office is open from 8 a.m. to 4 p.m. Monday to Friday. You can also view the staff report after 4:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>.

WHAT WILL HAPPEN: You can comment on the project. The City Council will consider all public testimony and decide whether to approve or deny the application.

IF YOU WANT TO COMMENT: You can send written correspondence by email to the address above, or by mail/hand delivery to the Public Works Department, City of San Rafael, 111 Morphew St, San Rafael, CA 94901.

At the above time and place, all written correspondence received will be noted and all interested parties will be heard. If you challenge in court the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered at, or prior to, the above referenced public hearing (Government Code Section 65009 (b) (2)).

Judicial review of an administrative decision of the City Council must be filed with the Court not later than the 90th day following the date of the Council's decision. (Code of Civil Procedure Section 1094.6)

Any records relating to an Agenda Item, received by a majority or more of the board or commission less than 72 hours before the meeting, shall be available for inspection in the CDD Dept, at 1400 Fifth Ave, Third Floor, San Rafael, CA

Sign Language and interpretation and assistive listening devices may be requested by calling (415) 485-3066 (voice), emailing Lindsay.lara@cityofsanrafael.org, or using the California Telecommunications Relay Service by dialing "711" at least 72 hours in advance. Copies of documents are available in accessible formats upon request.

Public transportation to City Hall is available through Golden Gate Transit, Line 22 or 23. Para-transit is available by calling Whistlestop Wheels at (415) 454-0964.

To allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting/hearing, individuals are requested to refrain from wearing scented products

Marin Independent Journal

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2070419

CITY OF SAN RAFAEL
1400 FIFTH AVENUE
CITY CLERK, ROOM 209
SAN RAFAEL, CA 94901

PROOF OF PUBLICATION (2015.5 C.C.P.)

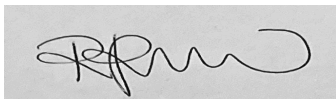
STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

10/24/2022

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 8th day of November, 2022.



Signature

PROOF OF PUBLICATION

Legal No. **0006707804**

CITY OF SAN RAFAEL

NOTICE OF PUBLIC HEARING AND INTENT TO ADOPT AN INITIAL STUDY/MITIGATED NEGATIVE DECLARATION CEQA Public Review Period: October 26, 2022 to November 30, 2022

You are being informed of the availability of a Draft Initial Study/Mitigated Negative Declaration for public review and invited to attend the City Council hearing on the following project:

DATE/TIME/PLACE: Monday, December 5, 2022 at 7:00 P.M.
City Hall Council Chambers, 1400 Fifth Avenue, San Rafael, CA 94901

COVID-19 ADVISORY NOTICE: Consistent with State of California and County of Marin health orders, the San Rafael City Council has determined that the following hearing will be physically open to the public, but that the public may participate either by attending the meeting in person or by teleconference by visiting <https://www.cityofsanrafael.org/departments/public-meetings/> for the call-in phone number and meeting ID listed on the agenda (or using Zoom app to connect to this meeting ID).

PROJECT: Rotary Manor Culvert Replacement Project. Located in the southeast yard of Rotary Manor at APN 010-291-71. Project calls for the replacement of an existing corroded corrugated metal pipe culvert with a new reinforced concrete box culvert. City File No: 08.02.277.

Consistent with the provisions of the California Environmental Quality Act (CEQA) Guidelines, this project is subject to environmental review and an Initial Study/Mitigated Negative Declaration has been prepared. The Initial Study and supportive appendices have been posted on the City of San Rafael website and can be accessed via the following link: <https://www.cityofsanrafael.org/rotary-manor-culvert-replacement/>. A hard copy of the Initial Study is available for review at the Department of Public Works, 111 Morphew Street, San Rafael. A 30-day public review period is being observed for review and comment on the Initial Study/Mitigated Negative Declaration, commencing on Wednesday, October 26th, 2022 and closing on Wednesday, November 30th, 2022. All written comments on the Initial Study must be submitted to the City by November 30th, 2022. The City Council will then hold a public hearing on the matter on the date listed above.

WHAT WILL HAPPEN:

You can comment on the project. The City Council will consider all public testimony and decide whether to approve or deny the application.

IF YOU CANNOT ATTEND:

You can send written correspondence by email to the address below, or by mail/hand delivery to the Public Works Department, City of San Rafael, 111 Morphew St, San Rafael, CA 94901.

FOR MORE INFORMATION:

Visit the project webpage at <https://www.cityofsanrafael.org/rotary-manor-culvert-replacement/> or contact **Raed Al-Zaher**, Project Manager at (415) 482-2682 or Raed.Al-Zaher@CityofSanRafael.org. You can also come to the Public Works office, located at 111 Morphew Street, to look at the file for the proposed project. The office is open from 8 a.m. to 4 p.m. Monday thru Friday. You can also view the staff report after 4:00 p.m. on the Friday before the meeting at <http://www.cityofsanrafael.org/meetings>

SAN RAFAEL CITY CLERK

/s/ Lindsay Lara
Lindsay Lara
CITY CLERK
6707804 October 24, 2022

ROTARY MANOR CULVERT REPLACEMENT PROJECT MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) has been prepared pursuant to CEQA Guidelines (California Code of Regulations, Title 14), which state the following:

In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both.

Table 3 below presents the potentially significant impacts and proposed mitigation measures identified in the Rotary Manor Culvert Replacement Project IS/MND, the timing of implementation of the mitigation measures (i.e., when the measure will be implemented), the City of San Rafael staff or individual responsible for ensuring implementation of each mitigation measure, and the City of San Rafael staff member or individual responsible for monitoring the mitigation measures.

Table 3: Mitigation Monitoring and Reporting Program

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
Biological Resources				
Impact IV.a: Sensitive or special-status species	<p>Mitigation Measure BIO-1: A qualified biologist shall conduct worker environmental awareness training for personnel working on earthmoving and/or construction activities. Personnel shall be required to attend the training, which shall describe the Federal and State statues protecting threatened, endangered, and special-status species that may be encountered on-site; minimization and conservation measures; legal protection of species; and other related issues.</p>	<p>Implementation Responsibility: Qualified biologist Implementation Timing: Prior to construction</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____ Date _____</p>
	<p>Mitigation Measure BIO-2: If construction activities are initiated during the nesting season (February 1 – August 31), a nesting bird survey shall be conducted by a qualified biologist within 7 days prior to the start of construction within the project site and the immediately surrounding area. If active nests are present, exclusion buffers appropriate to the species shall be established by the qualified biologist to prevent impacts to nesting birds. Buffers shall be maintained until the biologist determines that young</p>	<p>Implementation Responsibility: Qualified biologist Implementation Timing: Within 7 days prior to the start of construction during nesting bird season</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____ Date _____</p>

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	<p>have fledged, or the nest becomes inactive.</p>			
	<p>Mitigation Measure BIO-3: The City and their contractor shall implement the following measures to reduce or avoid impacts to western pond turtle:</p> <ul style="list-style-type: none"> • A pre-construction survey for western pond turtle shall occur within 48 hours prior the start of construction activities within the aquatic habitat in the vicinity of the project site. • If a western pond turtle is observed in areas of active construction, construction shall cease, and a qualified biologist will be notified. Construction may resume when the biologist has inspected and determined that the western pond turtle has moved away from the area of active construction. 	<p>Implementation Responsibility: Construction contractor and qualified biologist</p> <p>Implementation Timing: 48 hours prior to the start of construction activities and during construction</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____</p> <p>Date _____</p>
Cultural Resources				
Impact V.a: Historical resource	<p>Mitigation Measure CUL-1: If previously unidentified cultural resources are encountered during project construction, the contractor shall avoid altering the materials and their stratigraphic context.</p>	<p>Implementation Responsibility: Construction contractor and qualified</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____</p> <p>Date _____</p>

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	<p>A qualified professional archaeologist shall be contacted to evaluate the situation. Project personnel shall not collect cultural resources. Prehistoric resources include, but are not limited to, chert or obsidian flakes, projectile points, mortars, pestles, and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or abode foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.</p>	<p>professional archaeologist</p> <p>Implementation Timing: During construction</p>		
<p>Impact V.b: Archaeological resource</p>	<p>Mitigation Measure CUL-1: If previously unidentified cultural resources are encountered during project construction, the contractor shall avoid altering the materials and their stratigraphic context. A qualified professional archaeologist shall be contacted to evaluate the situation. Project personnel shall not collect cultural resources. Prehistoric resources include, but are not limited to, chert or obsidian flakes, projectile points, mortars, pestles, and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials.</p>	<p>Implementation Responsibility: Construction contractor and qualified professional archaeologist</p> <p>Implementation Timing: During construction</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____</p> <p>Date _____</p>

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	Historic resources include stone or abode foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.			
Impact V.c: Human remains	Mitigation Measure CUL-2: Although unlikely, if human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist must be notified immediately so that an evaluation can be performed. If the remains are deemed to be ancestral Native American, the County Coroner shall contact the NAHC. The NAHC will designate the Most Likely Descendant (MLD), who has legal jurisdiction as the proper treatment and disposition of remains. The City (lead agency) shall consult with the MLD to solicit their recommendations regarding treatment of the remains.	Implementation Responsibility: Construction contractor, County Coroner, qualified archaeologist, and the City of San Rafael Department of Public Works Implementation Timing: During construction	Monitoring Responsibility: City of San Rafael Department of Public Works	Initials _____ Date _____
Noise				
Impact XIII.a: Temporary increase in ambient noise levels	Mitigation Measure NOISE-1: The City shall incorporate the following practices into the construction documents to be implemented by the project contractor:	Implementation Responsibility: City of San Rafael Department of Public Works and construction contractor	Monitoring Responsibility: City of San Rafael Department of Public Works	Initials _____ Date _____

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	<ul style="list-style-type: none"> • Construction hours shall be limited to 7:00 A.M. to 5:00 P.M. Monday through Friday, unless otherwise approved in writing by the Director of Public Works. • Notify businesses, residences, and noise-sensitive land uses adjacent to construction sites of the construction schedule in writing. Designate the City's construction manager as responsible for responding to any local complaints about construction noise. The construction manager shall determine the cause of the noise complaints (for example starting too early, or a bad muffler) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the construction manager at the construction site. • Maximize the physical separation between noise generators and noise receptors. Such separation includes, but is not limited to, the following measures: <ul style="list-style-type: none"> ▪ Use heavy-duty mufflers for stationary equipment and barriers 	<p>Implementation Timing: Prior to and during construction</p>		

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	<p>around particularly noisy areas of the site or around the entire site;</p> <ul style="list-style-type: none"> ▪ Where feasible, use shields, impervious fences, or other physical sound barriers to inhibit transmission of noise to sensitive receptors; ▪ Locate stationary equipment to minimize noise impacts on the community; and ▪ Minimize backing movements of equipment. <ul style="list-style-type: none"> • Use quiet construction equipment whenever possible. • Impact equipment (e.g., jack hammers and pavement breakers) shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically-powered tools. Compressed air exhaust silencers shall be used on other equipment. Other quieter procedures, such as drilling rather than using impact equipment, shall be used whenever feasible. • Prohibit unnecessary idling of internal combustion engines. 			

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
Tribal Cultural Resources				
Impact XVIII.a.i and a.ii: Historical resources and tribal cultural resources	<p>Mitigation Measure CUL-1: If previously unidentified cultural resources are encountered during project construction, the contractor shall avoid altering the materials and their stratigraphic context. A qualified professional archaeologist shall be contacted to evaluate the situation. Project personnel shall not collect cultural resources. Prehistoric resources include, but are not limited to, chert or obsidian flakes, projectile points, mortars, pestles, and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic resources include stone or abode foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.</p>	<p>Implementation Responsibility: Construction contractor and qualified professional archaeologist</p> <p>Implementation Timing: During construction</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____</p> <p>Date _____</p>
	<p>Mitigation Measure CUL-2: Although unlikely, if human remains are encountered, all work must stop in the immediate vicinity of the discovered remains and the County Coroner and a qualified archaeologist must be notified immediately so that an evaluation can be performed. If the remains are deemed to</p>	<p>Implementation Responsibility: Construction contractor, County Coroner, qualified archaeologist, and City of San Rafael Department of Public Works</p>	<p>Monitoring Responsibility: City of San Rafael Department of Public Works</p>	<p>Initials _____</p> <p>Date _____</p>

Environmental Impact	Mitigation Measures	Implementation Responsibility & Timing	Monitoring Responsibility	Performance Objective
	<p>be ancestral Native American, the County Coroner shall contact the NAHC. The NAHC will designate the Most Likely Descendant (MLD), who has legal jurisdiction as the proper treatment and disposition of remains. The City (lead agency) shall consult with the MLD to solicit their recommendations regarding treatment of the remains.</p>	<p>Implementation Timing: During construction</p>		



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

2825 Cordelia Road, Suite 100

Fairfield, CA 94534

(707) 428-2002

www.wildlife.ca.gov

GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



November 29, 2022

Raed Al-Zaher, Project Manager

City of San Rafael

111 Morphew Street

San Rafael, CA 94901

Raed.Al-Zaher@cityofsanrafael.org

Subject: Rotary Manor Culvert Replacement Project, Mitigated Negative Declaration, SCH No. 2022100506, City of San Rafael, Marin County

Dear Mr. Al-Zaher:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the City of San Rafael (City) for the Rotary Manor Culvert Replacement Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the City, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

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

PROJECT DESCRIPTION SUMMARY

Proponent: Rotary Manor Culvert Replacement Project

Objective: Replace a corrugated metal culvert conveying San Rafael Creek with a reinforced box culvert.

Location: 1821 Fifth Avenue, San Rafael, CA 94901, Marin County, with an approximate centroid of 37.975294, -122.539173 (NAD 83).

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Timeframe: Construction of the proposed Project would take approximately 3.5 months in 2023.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA Notification requirements. **As described in the MND (page 62), the Project would impact San Rafael Creek, and therefore an LSA Notification would be required, as further described below.** CDFW would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below which are also included in Attachment 1, Draft Mitigation and Monitoring Reporting Plan, CDFW concludes that an MND is appropriate for the Project.

I. Project Description and Related Impact Shortcoming

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by CDFW or the U.S. Fish and Wildlife Service (USFWS)?

Comment 1: Riparian habitat and LSA Notification, Page 62

Issue: The MND does not include a mitigation measure ensuring that impacts to riparian habitat will be reduced to less-than-significant by requiring compliance with LSA Notification requirements.

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Specific impacts, why they may occur and be potentially significant: The Project may substantially adversely affect riparian habitat by removing riparian habitat, resulting in the loss or degradation of this vulnerable habitat type. The MND states that the Project will require an LSA Agreement and 401 and 404 water quality certifications, and that restoration and other permit conditions required by these permits will reduce impacts to less-than-significant (Page 62); however, obtaining the above permits is not required in an enforceable mitigation measure.

Recommended Mitigation Measure: To reduce potential impacts to riparian vegetation to less-than-significant and comply with LSA requirements pursuant to Fish and Game Code section 1600 et seq., CDFW recommends including the mitigation measure below.

Lake and Streambed Alteration. The Project shall submit an LSA Notification to CDFW prior to the start of Project activities and comply with all conditions of the LSA Agreement, if issued. The Project shall also obtain 401 and 404 water quality certifications pursuant to the Clean Water Act and comply with these permits.

II. Environmental Setting and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 2: Napa false indigo (*Amorpha californica* var. *napensis*), bent-flowered fiddleneck (*Amsinckia lunaris*), Koch's cord moss (*Entosthodon kochii*), and other special-status plants, Pages 28 and 30-47.

Issue: The species table on pages 30 through 47 includes several special-status plant species with an "unlikely" Occurrence Potential despite the presence of habitat. The table states that Napa false indigo has an occurrence two miles southwest of the Project site, bent-flowered fiddleneck has an occurrence 4 miles west of the Project site, and Koch's cord moss has an occurrence 8.6 miles northwest of the Project site.

Amorpha species related to Napa false indigo are spread downstream in river systems, and *Amsinckia* species related to bent-flowered fiddleneck can be carried long distances by humans and animals (DiTomaso 2000). In both cases, it appears that the potential exists for these species to occur at the Project site despite the barrier of urbanization.

Bryophytes including mosses such as Koch's cord moss are less affected by urbanization and habitat degradation than vascular plants (McCune et al. 2020), and locally and regionally uncommon bryophytes may be found in areas highly disturbed by

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human activity, including urban centers (Sabovljevic and Grdovic 2009, Zarnowiec 1996). Based on the ability of related species to persist in urban environments, this species of moss may be present at the Project site.

Specific impact, why the impact would occur, and evidence impact would be significant: Special-status plants may be impacted by ground-disturbing activities and vegetation removal. For example, vehicle, equipment and foot traffic may bury, excavate, crush, trample, or disturb special-status plants. Soil disturbance may result in permanent loss of special-status plants.

Napa false indigo is a California Rare Plant Rank (CRPR) 1B.2 species, bent-flowered fiddleneck is a CRPR 1B.2 species, and Koch's cord moss is a CRPR 1B.3 species. Plants with a CRPR of 1B are rare throughout their range, endemic to California, and are seriously or fairly threatened. Most plants that are ranked 1B have declined significantly over the last century (CNPS 2021). Napa false indigo and bent-flowered fiddleneck have the additional threat rank of 0.2, indicating that 20 to 80 percent of their occurrences are threatened (CNPS 2021).

Impacts to special-status plants including Napa false indigo, bent-flowered fiddleneck, and Koch's cord moss may result in local population declines or extirpation of the species. Insufficient mitigation may result in prolonged temporal or permanent impacts to a special-status plant species' range, distribution, and population in the State. Therefore, if special-status plants such as Napa false indigo, bent-flowered fiddleneck, and Koch's cord moss would be directly or indirectly impacted by the Project, impacts would be potentially significant.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce impacts to special-status plants to less-than-significant, CDFW recommends including the below mitigation measure.

Pre-Project Special-Status Plant Surveys. Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants in all areas that will be directly or indirectly impacted by the Project. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities². The survey reports shall be submitted to CDFW prior to the start of construction. Project

² CDFW, 2018. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>

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activities shall not proceed until CDFW has provided written approval of the survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a minimum 3:1 mitigation to impact ratio including permanent protection of habitat through a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.

COMMENT 3: Foothill yellow-legged frog (Northwest/North Coast Clade) (*Rana boylei*), Page 54

Issue: The MND does not include a survey requirement for foothill yellow-legged frog. The MND identifies that the Project is over four miles from current known occurrences of the species and that the Project site is surrounded by urban habitat that may present a movement barrier. However, foothill yellow-legged frog may disperse through or into the Project site via San Rafael Creek or tributaries.

Specific impacts, why they may occur and be potentially significant: If present at the Project site, foothill yellow-legged frogs could be crushed or entombed by soil or equipment during construction. The Northwest/North Coast Clade of foothill yellow-legged frog is a California Species of Special Concern (SSC). The SSC designation is given to species native to California satisfying one or more of the following criteria: 1) is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role; 2) is listed as Federally-, but not State threatened or endangered; 3) meets the State definition of threatened or endangered but has not formally been listed; 4) is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; or 5) has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for State threatened or endangered status. Therefore, if foothill yellow-legged frog is present at the Project site, impacts to foothill yellow-legged frog would be potentially significant.

Recommended Mitigation Measure: For an adequate environmental setting and to reduce potential impacts to foothill yellow-legged frog to less-than-significant, CDFW recommends including the mitigation measures below.

Foothill Yellow-Legged Frog Survey Methodology. A Qualified Biologist shall provide a foothill yellow-legged frog survey methodology to CDFW for review and written approval no less than 30 days prior to beginning Project activities, unless CDFW approves otherwise in writing. No Project activities shall begin until foothill yellow-legged frog surveys have been completed using a method approved by CDFW. Survey

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methodology shall target all life stages and shall have an adaptive management approach based on the stream conditions at the time of surveys (i.e., whether ponded or flowing water is present, or whether the stream has been completely dry for less than 30 days). Surveys within and adjacent to the Project activity area shall include searching suitable habitat including but not limited to cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed and 500 feet upstream and downstream of the Project activity area. Surveys should be conducted at different times of day and under variable weather conditions if possible.

Foothill Yellow-Legged Frog Surveys. Prior to starting Project activities, a Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology (see above Mitigation Measure). If foothill yellow-legged frogs, their eggs, or any other special-status species, are found, CDFW shall be notified immediately and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the survey shall be submitted to CDFW for written acceptance prior to starting Project activities. If the Project has collected data that the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project, then the Project may request CDFW written approval that a survey methodology and surveys for foothill yellow-legged frogs are not necessary.

Please be advised that an LSA Agreement issued for the Project would likely include the above recommended mitigation measures, as applicable.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Alex Single, Environmental Scientist, at (707) 799-4210 or Alex.Single@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022100506)

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Attachment 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-4	<i>Lake and Streambed Alteration.</i> The Project shall submit an LSA Notification to CDFW prior to start of Project activities and comply with all conditions of the LSA Agreement, if issued. The Project shall also obtain 401 and 404 water quality certifications pursuant to the Clean Water Act and comply with these permits.	Prior to Ground Disturbance and continuing over the course of the Project	Project Applicant
BIO-5	<i>Pre-Project Special-Status Plant Surveys.</i> Prior to the start of Project activities, a Qualified Biologist shall conduct a habitat assessment for special-status plants in all areas that will be directly or indirectly impacted by the Project. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys and associated reporting shall be conducted according to CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities. The survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If impacts to special-status plants cannot be avoided, the Project shall provide habitat compensation at a minimum 3:1 mitigation to impact ratio including permanent protection of habitat through	Prior to Ground Disturbance	Project Applicant

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	a conservation easement and funding and implementing a long-term management plan, prior to Project activities, unless otherwise approved in writing by CDFW.		
BIO-6	<p><i>Foothill Yellow-Legged Frog Survey Methodology.</i> A Qualified Biologist shall provide a foothill yellow-legged frog survey methodology to CDFW for review and written approval no less than 30 days prior to beginning Project activities, unless CDFW approves otherwise in writing. No Project activities shall begin until foothill yellow-legged frog surveys have been completed using a method approved by CDFW. Survey methodology shall target all life stages and shall have an adaptive management approach based on the stream conditions at the time of surveys (i.e., whether ponded or flowing water is present, or whether the stream has been completely dry for less than 30 days). Surveys within and adjacent to the Project activity area shall include searching suitable habitat including but not limited to cavities under rocks, within vegetation such as sedges and other clumped vegetation, and under undercut banks, no less than 50 feet from the streambed and 500 feet upstream and downstream of the Project activity area. Surveys should be conducted at different times of day and under variable weather conditions if possible.</p>	Prior to Ground Disturbance	Project Applicant
BIO-7	<p><i>Foothill Yellow-Legged Frog Surveys.</i> Prior to starting Project activities, a Qualified Biologist shall conduct surveys for foothill yellow-legged frog using a CDFW-approved methodology (see above Mitigation Measure). If foothill yellow-legged frogs, their eggs, or any other special-status species, are found, CDFW shall be notified immediately and construction shall not occur without written approval from CDFW allowing the Project activities to proceed. If foothill yellow-legged frog egg masses are observed in a stream that is scheduled for dewatering, dewatering shall not occur until an egg mass relocation plan is approved in writing by CDFW and implemented. In the event adult foothill yellow-legged frogs are observed, a temporary wildlife exclusion fence shall be installed, if requested by CDFW, to prevent frogs and/or other special-status species from entering the work site. The results of the survey shall be submitted to CDFW for written acceptance prior to starting</p>	Prior to Ground Disturbance	Project Applicant

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	<p>Project activities. If the Project has collected data that the stream has been completely dry for greater than 30 days prior to starting Project activities, and no water or moist areas within the streambed exist within 500 feet upstream and downstream of the Project, then the Project may request CDFW written approval that a survey methodology and surveys for foothill yellow-legged frogs are not necessary.</p>		
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