



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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October 3, 2019

Governor's Office of Planning & Research

OCT 03 2019

STATE CLEARINGHOUSE

Mr. Derek Rayner
City of Calistoga
414 Washington Street
Calistoga, CA 94515

Subject: Calistoga Riverside Ponds Relocation Project, Draft Mitigated Negative Declaration, SCH #2019089100, City of Calistoga, Napa County

Dear Mr. Rayner:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Mitigated Negative Declaration (MND) for the Calistoga Riverside Ponds Relocation Project (Project). CDFW is submitting comments on the draft MND to inform City of Calistoga, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

Regulatory Requirements

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to California freshwater shrimp (*Syncaris pacifica*) or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Lake and Streambed Alteration Agreement

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed. Ephemeral and/or intermittent streams and drainages (that are dry for periods of time or only flow during periods of rainfall) are also subject to Fish and Game Code section 1602; and CDFW may require an LSA

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Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code. The Project includes impacts to the bed, bank, and channel, including to the riparian corridor, of the Napa River, Simmons Creek, and the Oat Hill Mine Ditch. Please note that an LSA Agreement will be required for this Project.

Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the LSA Agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lsa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

Project Description and Environmental Setting

The Project is located within the Dunaweal Wastewater Treatment Plant (WWTP) and Sewer Treatment Ponds site, which extends from the WWTP entrance on Dunaweal Lane 0.6 miles westward between the Napa Valley Vine Trail (Vine Trail) berm to the north, and the Oat Hill Mine Ditch and Napa River to the south. The WWTP facility is located between Dunaweal Lane and Simmons Creek, a tributary to the Napa River. The four existing sewage treatment ponds are immediately east of the Napa River, between the Oat Hill Mine Ditch to the north and Simmons Creek to the south. Topography throughout the Project site is relatively flat except for where slopes descend to the Napa River. The Project site is surrounded by riparian and perennial stream habitats, and agricultural and urban land use areas.

The proposed Project will (1) protect the riverside ponds from flooding by raising pond berm elevations above the 100-year water surface elevation in the Napa River, (2) reduce the amount of ponds from four to two, (3) line the ponds to prevent percolation into the soil and groundwater, (4) protect WWTP headwork structures along Simmons Creek by realigning a portion of Simmons Creek away from headwork structures, (5) remediate erosion occurring along the south bank of the Oat Hill Mine Ditch by installing approximately 225 linear feet of buried rock at the toe, and (6) install valve controls to better automate stormwater discharges from the ponds into the Napa River. The Project will remove approximately 86 trees, including some large riparian species.

Comments and Concerns

California freshwater shrimp

Channel dewatering may be required prior to conducting bank stabilization activities in the Oat Hill Mine Ditch and channel realignment in Simmons Creek, and as a result, fish rescue and relocation would be necessary. California freshwater shrimp (CFS), an endangered species under CESA, and other special-status aquatic species could occur in streams on the Project site. Mitigation Measure BIO-5 (MM BIO-5) is proposed to minimize impacts on CFS and special-status fish species to a level of less-than-significant. While CDFW agrees with this measure, it recommends that MM BIO-5 be revised to specify that a CESA ITP must be obtained from CDFW prior to handling and relocating CFS.

Oak woodland and tree removal

Approximately 0.1 acres of riparian woodland habitat will be permanently lost as a result of the Project, including the removal of 86 riparian trees, primarily valley oak (*Quercus lobata*), California bay (*Umbellularia californica*), coast live oak (*Quercus agrifolia*), and ash (*Fraxinus* sp.), ranging in size from 3 inches to 48 inches in diameter at breast height (dbh). Mitigation Measure BIO-8 requires that tree removal be mitigated at a 1:1 replanting ratio. As proposed, this is a significant impact. CDFW recommends that removal of native trees (not oak trees) be replaced by planting native trees on-site at a 3:1 ratio, and that removal of non-native trees be replaced by replanting with native trees on-site at a 1:1 ratio. Removal of oak trees should be mitigated at higher ratios, particularly removal of old-growth oak trees (i.e. greater than 15 inches dbh). Old-growth oak trees provide a diversity of ecological benefits; and because oak trees have slow growth rates, it would take several decades for planted oaks to grow to a size that could provide the same ecological benefits that old-growth oaks provide. Due to this, CDFW recommends that oak trees be replanted at the following ratios in order to reduce impacts to a level of less-than-significant:

- *4:1 replacement for impacted oaks 5-10 inches in diameter*
- *5:1 replacement for impacted oaks 10-15 inches in diameter*
- *Trees greater than 15 inches in diameter are considered old-growth oaks and should be mitigated at a ratio of 15:1*

Planted trees should be irrigated for at least the first two years either via hand-watering or drip irrigation; and they should be monitored for a minimum of five years to ensure the plantings achieve at least 80% survival. CDFW recommends that cages be placed around planted oak trees to avoid deer browse and that weeding occur within and around caged oak trees, until the trees become well-established. Once the oaks become a sufficient size the cages should be removed. If tree plantings have not achieved at least 80% survival after 5 years of monitoring, new trees should be planted; and they should be monitored for an additional 5 years to ensure a minimum of 80% survival.

Invasive Species Management

The draft MND states that American bullfrog (*Lithobates catesbeianus*) and red-eared slider (*Trachemys scripta*) were observed in the four storage ponds on the Project site. Both species are non-native and invasive; and are a threat to California natives, particularly sensitive species

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such as western pond turtle (*Emys marmorata*), foothill yellow-legged frog (*Rana boylei*), and California red-legged frog (*Rana draytonii*). Western pond turtle was also observed on the Project site, and the continued presence of invasive species could have a significant impact on the population. Additionally, the Project's close proximity to the Napa River is concerning because both bullfrogs and red-eared sliders can disperse great distances and thus invade the Napa River and its tributaries. In order to prevent significant impacts, CDFW recommends that the draft MND include a mitigation measure requiring that an Invasive Species Management Plan be prepared for CDFW review and approval at least 30 days prior to the start of construction.

Erosion Control Devices

Erosion control devices can have a direct impact on wildlife, particularly reptiles and amphibians. CDFW has documented several cases where reptiles and amphibians have become tangled/trapped in erosion control devices containing plastic monofilament (e.g. typical straw wattles). The Erosion Control Plan (ECP) for the Project includes the use of straw wattles. CDFW recommends that the ECP be revised so that all erosion control devices used on-site will be composed of biodegradable materials (e.g. coir logs, coconut fiber blanket, jute netting).

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, CDFW recommends the feasible mitigation measures described above be incorporated as enforceable conditions into the final CEQA document for the Project.

CDFW appreciates the opportunity to provide comments on the draft MND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at (707) 428-2076 or garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse