



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

OCT 14 2019

STATE CLEARINGHOUSE

October 14, 2019

Ms. Debbie Hight, Deputy Director of Public Works
Town of Yountville, Public Works Department
6550 Yount Street
Yountville, CA 94599

Subject: Hopper Creek Multi-Use Pedestrian Path, Draft Negative Declaration,
SCH #2019099039, Town of Yountville, Napa County

Dear Ms. Hight:

California Department of Fish and Wildlife (CDFW) personnel have reviewed the draft Negative Declaration (ND) for the Hopper Creek Multi-Use Pedestrian Path (Project). CDFW is submitting comments on the draft ND to inform Town of Yountville, 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

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any 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>.

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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 Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code. The Project includes construction of an approximately 79-foot-long prefabricated clear span steel bridge over Hopper Creek, and an approximately 450-foot-long concrete pedestrian path paralleling the creek near the top of bank; and therefore, an LSA Agreement from CDFW will be needed prior to starting Project activities.

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 agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lisa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

Migratory birds and raptors

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 site is located between Oak Circle and Mission Street along Hopper Creek in the Town of Yountville, Napa County. Hopper Creek is an intermittent stream that is a tributary to Dry Creek, and thence the Napa River.

The Project will construct an approximately 5-foot-wide and 450-foot-long concrete path along Hopper Creek from Oak Circle Park to Mission Street. Additionally, an approximately 79-foot-long prefabricated, precast steel bridge will span Hopper Creek. Helical screw-in type anchors for bridge support will be installed approximately 5 feet outside the top of bank. The Project will result in some disturbance to riparian vegetation and will remove one redwood tree.

Comments and Concerns

Foothill yellow-legged frog (Rana boylei; FYLF)

FYLF is currently a candidate threatened species under CESA, meaning the Project must avoid take of the species or a CESA ITP must be obtained from CDFW. The Project will result in

minor riparian vegetation removal and excavation, and because FYLF have historically been observed in Hopper Creek. CDFW recommends that a qualified biologist conduct pre-construction surveys for FYLF using a CDFW reviewed and approved survey methodology. If FYLF are found during surveys, CDFW should be contacted as soon as possible to determine appropriate avoidance and minimization measures. Presence of FYLF near the Project site may require a CESA ITP prior to starting Project activities.

Roosting bats

The Project includes removing two trees, including one redwood tree (*Sequoia sempervirens*), which could provide suitable bat roosting habitat. The draft ND includes *Roosting Bat Protection Measures*, which includes having a qualified biologist conduct a pre-construction survey within 30 days of the start of Project Activities, to determine whether or not bats are roosting within or adjacent to the project area. If bats are found, the Project proposes to have a qualified biologist perform bat exclusion. CDFW has a couple of concerns with these measures: 1) Conducting bat presence surveys in trees containing suitable bat roosting habitat is often times infeasible because the cavities, crevices, or deep bark fissures that could support roosting bats are at a level that cannot be observed from the ground, and 2) bat exclusion from trees is often times infeasible and ineffective. CDFW recommends that a qualified biologist perform a bat habitat assessment at least 30 days prior to the start of Project activities looking at all trees proposed for removal to determine if any of the trees contain suitable bat roosting habitat. If any of the trees contain suitable bat roosting habitat (e.g. cavities, crevices, deep bark fissures), then those trees should be removed using a two-day phased removal method during appropriate seasonal periods of bat activity, as described below:

*On day 1, under the supervision of a qualified bat biologist who has documented experience overseeing tree removal using the two-day phased removal method, branches and small limbs **not** containing potential bat roosting habitat (e.g. cavities, crevices, exfoliating bark) shall be removed using chainsaws only. On day 2, the next day, the rest of the tree shall be removed.*

All trees shall be removed during seasonal periods of bat activity: Prior to maternity season – from approximately March 1 (or when night temperatures are above 45°F and when rains have ceased) through April 15 (when females begin to give birth to young); and prior to winter torpor – from September 1 (when young bats are self-sufficiently volant) until about October 15 (before night temperatures fall below 45°F and rains begin)."

Please also note that Fish and Game Code affords protection to all bats via code sections 2000, 3007, and 4150. Bats are considered non-game mammals and therefore a project cannot cause take of any bats without a permit.

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). Because of the Project's proximity to Hopper Creek, erosion control materials should be implemented throughout all phases of construction to prevent the deposition of fine sediment into the creek. All erosion control material should be free of plastic monofilament, and

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CDFW recommends that biodegradable erosion control materials (e.g. coir logs, coconut fiber blanket, jute netting) be used to the greatest extent feasible in order to minimize impacts to fish and wildlife.

CDFW appreciates the opportunity to provide comments on the draft ND 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 at 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