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Governor's Office of Planning & Research

Jun 15 2020

**From:** [Oswalt, Caitlyn@Wildlife](mailto:Oswalt.Caitlyn@Wildlife)  
**To:** [taylor@cityofslt.us](mailto:taylor@cityofslt.us)  
**Cc:** [OPR State Clearinghouse](#); [Wildlife R2 CEQA](#)  
**Subject:** CDFW CEQA Comments for Ruby Way – Overlook Court Drainage and Erosion Control Project IS/ND; SCH# 2020059029  
**Date:** Monday, June 15, 2020 11:46:39 AM

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STATE CLEARINGHOUSE

Dear Mr. Taylor:

RUBY WAY – OVERLOOK COURT DRAINAGE AND EROSION CONTROL PROJECT (PROJECT)  
NEGATIVE DECLARATION (ND)  
SCH# 2020059029

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an ND from City of South Lake Tahoe for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

#### **CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

#### **PROJECT DESCRIPTION SUMMARY**

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The objective of the Project is to keep sediment off the road surfaces, eliminate flooding, and prevent fine sediment from reaching Lake Tahoe. Primary Project activities include replacing and upgrading drainage infrastructure, stabilizing steep erodible road shoulders and drainage channels

that are vulnerable to erosion, trapping sediment in maintainable drainage structures, routing additional stormwater down the old Wildwood Avenue right-of-way to reduce stormwater flowing to Ruby Way, and providing more opportunities to detain runoff and allow infiltration.

**Location:** City of South Lake Tahoe, El Dorado county, within the cross streets of the Pioneer Trail area: Wildwood Avenue, David Lane, Ruby Way, Lucinda Avenue, Overlook Court.

**Project Work Window:** May 1 – October 15

## **COMMENTS AND RECOMMENDATIONS**

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CDFW offers comments and recommendations to assist City of South Lake Tahoe in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

### *Migratory Birds and Birds of Prey*

Migratory nongame native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) (16 U.S.C., §§ 703-712). CDFW implemented the MBTA by adopting the Fish & G. Code section 3513. Fish & G. Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the environmental document. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc.

All measures to protect nesting birds should be performance-based. While some birds may tolerate disturbance within 250 feet of construction activities, other birds may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. The CDFW recommends including performance-based protection measures for avoiding all nests protected under the MBTA and Fish and Game Code. Below is an example of a performance-based protection measure:

Should construction activities cause the nesting migratory bird or raptor to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, then increase the exclusionary buffer such that activities are far enough from the nest to stop this agitated behavior by the migratory bird or raptor. The exclusionary buffer should remain in place until the chicks have fledged or as otherwise determined by a qualified biologist.

### *General Comments*

The City shall preserve, protect, and avoid impacts to natural, undisturbed habitats that provide movement corridors for sensitive wildlife species. If corridors are adversely affected, damaged habitat shall be replaced with habitat of equivalent value or enhanced to enable the continued movement of species.

## **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 found at the following link:

[http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB\\_FieldSurveyForm.pdf](http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf). The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link:

[http://www.dfg.ca.gov/biogeodata/cnddb/plants\\_and\\_animals.asp](http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp).

## **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 & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the ND to assist City of South Lake Tahoe in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Caitlyn Oswalt Environmental Scientist at 916-358-4315 or [Caitlyn.Oswalt@wildlife.ca.gov](mailto:Caitlyn.Oswalt@wildlife.ca.gov).

Sincerely,

*Caitlyn Oswalt*

Environmental Scientist | 916.358.4315

North Central Region – Region 2

California Department of Fish and Wildlife