
From: Wood, Dylan@Wildlife <Dylan.A.Wood@wildlife.ca.gov>
Sent: Friday, July 24, 2020 2:49 PM
To: MacDonald, Alex@Waterboards
Cc: Wildlife R2 CEQA; OPR State Clearinghouse
Subject: Comments on the MND for the Aerojet waste Consolidation Project (SCH: 2020060543)

7/24/2020

Dear Mr. MacDonald:

Governor's Office of Planning & Research

RE: AEROJET WASTE CONSOLIDATION PROJECT (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND) SCH# 2020060543

Jul 24 2020

STATE CLEARINGHOUSE

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the Central Valley Regional Water Quality Control Board, Central Valley Sacramento Region 5 (the Board) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.^[1]

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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project proposes to construct, fill and close consistent with Title 27 requirements a Class II Landfill to be known as the Aerojet Waste Consolidation Unit (AWCU) on top of ±50-acres of within the existing Aerojet-owned ±250-acre White Rock North Dump (WRND) parcel. It will dispose of up to

1,000,000 CYs of waste soil that meets the Class II waste requirements and inert construction debris (together referred to as Transfer Material) in the AWCU. Transfer Material would be generated from future remediation projects located within the proposed AWCU Service Area which comprises approximately 7500 acres of Aerojet access-controlled property. This would include accepting transfer material from the Aerojet Landfill consistent with the approved Aerojet Landfill Clean Closure Plan. The Aerojet Landfill is an existing approximately 180-acre, non-operating, closed landfill owned by Aerojet located within the proposed AWCU Service Area approximately 2.3 miles north of the proposed WRND parcel. To facilitate the revised Aerojet Landfill disposal location, the Project also includes amending the 2015 County-approved Aerojet Landfill to replace the identified offsite haul route with the Aerojet Landfill Haul Route identified in the initial study. Phase 2 WRND Cap and Closure: Cap and close the remainder of the existing pre-regulation ±100-acre WRND in accordance with Title 27 requirements (±50 acres plus any remaining portion of the ±50-acre AWCU area not filled with Transfer Material). Entitlements: The current ±250-acre WRND parcel, inclusive of the ±100-acre former dump is zoned M1, which does not include landfill activities. To bring the parcel into compliance with its current use and to construct the AWCU on the parcel, incorporation of the WRND parcel into the SPA is required. Therefore, Project entitlements include amending the Aerojet Special Planning Area (SPA) chapter of the Sacramento County zoning code to add the WRND parcel into the SPA “Industrial Zone.”

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Board 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 or facilitate an effective environmental review process. Where CDFW recommends specific revisions to the MND, deletions are marked with a strikethrough (~~example~~) while additions are marked as underlined (example).

Comment 1: The MND defers mitigation for potential impacts to Biological Resources.

Section 15126.4, subdivision (a)(1)(B) of the CEQA Guidelines states that formulation of mitigation measures should not be deferred until some future time. The MND includes mitigation measures for biological resources that rely on future approvals/agreements/processes that are not specific as a means of bringing identified significant environmental effects to a level of less than significant. CEQA requires that any activity resulting in loss of habitat, decreased reproductive success, or other negative effects on population levels of fish and wildlife species should be addressed in the MND. If it is not possible to avoid impacts to special-status species, the DEIR must identify feasible mitigation that reduces project impacts to a level of less than significant.

To address this comment, CDFW recommends the Board revise the MND to include measures that are enforceable and do not defer the details of the mitigation to the future. This would include proposing an appropriate response strategy in the event preconstruction surveys reveal potentially affected fish and wildlife species rather than broadly stating “consultation will be initiated with CDFW to determine appropriate avoidance measures.” CDFW has provided specific recommendations for certain biological resources below, but the Board is encouraged to address this issue throughout the document.

Comment 2: Revisions needed to mitigate nesting birds to a level of less-than-significant.

The MND identifies potentially significant impacts to nesting birds as a result of construction, work-related, or fill activities. The MND proposes Environmental Stewardship Measure ESM-5 to mitigate this potential impact; however, ESM-5 is too generalized in scope and may not fully capture potential bird activity at or adjacent to the project site. For instance, the survey methodology described in the

Swainson's Hawk Technical Advisory Committee's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*, recommends "window surveys" from a vehicle. These types of surveys are typically suitable for identifying nesting behavior for larger raptors but may not be effective for identifying smaller birds which may nest in the grassland areas on or near the Project area. Likewise, the MND does not cite specific enforceable objectives such as a survey radius or response procedure. It should also be noted that the MND discloses that the Project area represents suitable habitat for a wide range of bird species with varying levels of protection. Any proposed mitigation measures should reflect and address this range of potential impacts.

To address this comment, CDFW recommends splitting ESM-5 into three separate measures that fully encompass potential species that may be encountered in the event Project activities occur during the nesting season:

Fully Protected Species

"If equipment staging, site preparation, grading, excavation or other project-related activities are scheduled during the white-tailed kite nesting season (typically between February 1 and September 15), a focused survey for white-tailed kite nests on the site and within 0.25 mile of the site will be conducted by a qualified biologist no greater than 15 days prior to the start of project activities (including clearing and grubbing). If white-tailed kites are present, the qualified biologist shall prepare and implement a site-specific avoidance plan based on the species, physical site characteristics, and proposed activities. The avoidance plan should include measures to avoid impacting white-tailed kite including, but not limited to appropriate no-disturbance buffers with appropriate flagging or staking and behavior-based monitoring by a biologist. CDFW recommends having the qualified biologist continuously monitor any active nest(s) to detect behavioral changes resulting from project activities. If behavioral changes occur, the work causing that change should stop until the qualified biologist implements additional avoidance and minimization measures in consultation with CDFW. Any no-disturbance buffers shall remain in place until the breeding season has ended or until the qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. If a lapse in project-related work of fifteen (15) days or longer occurs, the qualified biologist shall perform a new focused survey, and if nests are found, perform the tasks described in this measure.

If no active nests are found during the focused survey, nothing further will be required. If a lapse in project-related activities of 14 days or longer occurs, another focused survey is required before project activities can be reinitiated.

If potential impacts are identified during the course of the project, project personnel shall fully avoid impacts to fully protected species."

CESA-listed Species:

"If equipment staging, site preparation, grading, excavation or other project-related activities are scheduled during the Swainson's hawk nesting season (typically March 1 through September 15) surveys for active nests of such birds shall be conducted by a qualified biologist in accordance with the typical survey protocol: Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee 2000). Surveys shall be conducted at the appropriate radius and time periods listed in the survey protocol. Since the project spans over multiple years, a new survey shall be conducted for each nesting season to capture any new Swainson's hawk nests that may be established.

If Swainson's hawk is present, the qualified biologist shall prepare and implement a site-specific avoidance plan based on the species, physical site characteristics, and proposed activities. The

avoidance plan should include measures to avoid impacting Swainson's hawk including, but not limited to appropriate no-disturbance buffers with appropriate flagging or staking and behavior-based monitoring by a biologist. CDFW recommends having the qualified biologist continuously monitor any active nest(s) to detect behavioral changes resulting from project activities. If behavioral changes occur, the work causing that change should stop until the qualified biologist implements additional avoidance and minimization measures in consultation with CDFW. Any no-disturbance buffers shall remain in place until the breeding season has ended or until the qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival.

If no active nests are found during the focused survey, nothing further will be required. If a lapse in project-related activities of 14 days or longer occurs, another focused survey is required before project activities can be reinitiated.

If an active Swainson's hawk nest is found during project surveys, the project shall demonstrate compliance with CESA. If during consultation it is determined that implementation of the project as proposed may result in take of Swainson's hawk, the project may consult with CDFW and may seek related take authorization as provided by the Fish and Game Code."

Other Migratory and Non-Migratory Birds:

"In each year in which project activities would occur during the breeding season (generally February 1 through September 15), the Board, Aerojet, or the Contractor will retain a qualified wildlife biologist with knowledge of the relevant species to conduct nesting surveys no greater than 15 days prior to the start of project activities (including clearing and grubbing). Surveys will include a search of suitable nesting habitat in the project area including staging and stockpile areas. The minimum survey radii surrounding the work area shall be the following: i) 250 feet for passerines; ii) 500 feet for small raptors such as accipiters; iii) 1,000 feet for larger raptors such as buteos. If nesting birds are present, the qualified biologist shall prepare and implement a site-specific avoidance plan based on the species, physical site characteristics, and proposed activities. The avoidance plan should include measures to avoid impacting nesting birds including, but not limited to appropriate no-disturbance buffers with appropriate flagging or staking and behavior-based monitoring by a biologist. CDFW recommends having the qualified biologist continuously monitor any active nest(s) to detect behavioral changes resulting from project activities. If behavioral changes occur, the work causing that change should stop until the qualified biologist implements additional avoidance and minimization measures in consultation with CDFW. Any no-disturbance buffers shall remain in place until the breeding season has ended or until the qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival.

If no active nests are detected during these surveys, no additional measures are required. If a lapse in project-related activities of 14 days or longer occurs, another focused survey will be required before project activities can be reinitiated.

Comment 3: BIO-1 revisions needed to mitigate Special-Status Plants Species to a level of less-than-significant.

CDFW has identified several areas where BIO-1 is too broad and additional specifics can be provided to more encompassing surveys and response in the event special-status plants are found.

To address this comment, CDFW recommend incorporating the following:

- Define survey procedure as *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (CDFW 2018) or the most recent agency approved survey protocol.

- Propose compensatory mitigation in the event special-status plants are found within the Project area. Compensation make take the form of permanent protection, enhancement, or restoration of suitable habitat, or purchase of credits at an approved mitigation or conservation bank.
- Establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented and explain why the measure is feasible.
- Include the following text specifically for CESA-listed species: *In the event, take of CESA-listed plants cannot be avoided the project proponent may seek related take authorization as provided by the Fish and Game Code.*

Comment 4: BIO-2 revisions needed to mitigate American Badger to a level of less-than-significant.

BIO-2 describes both preconstruction surveys for American badger (*Taxidea taxus*) and subsequent consultation with CDFW if evidence of the species is found. This measure does not provide specific, enforceable mitigation, while relying on later consultation with CDFW does not necessarily guarantee measures will be implemented.

To address this comment, CDFW recommends the preconstruction section be revised to incorporate the following:

Retain a qualified biologist to conduct a pre-construction survey for American badger no greater than 15 days prior to the start of project activities. The survey shall include all suitable habitat in the project area and within a 500-foot radius around the project area including staging and stockpile. The survey effort should be focused on identifying actively used burrows or other signs of presence for the species such as recent scat, tracks, etc. If American badger is present, the qualified biologist shall prepare and implement a site-specific avoidance plan based on the species, physical site characteristics, and proposed activities. The avoidance plan should include measures to American badger, but not limited to appropriate no-disturbance buffers with appropriate flagging or staking, behavior-based monitoring by a biologist, and exclusion zones/fencing with an active movement corridor between any burrows and adjacent suitable habitat. If no evidence (e.g., sign, scat, burrows) of American badger presence is found, no further measures are necessary.

Comment 5: BIO-4 and BIO-5 revisions needed to mitigate impacts to federally listed species to a level of less than significant.

As stated in Comment 1, the MND should not defer specific mitigation to later approvals. The MND states for both BIO-4 and BIO-5 that the “findings of the protocol surveys would dictate mitigation, avoidance, and/or minimization measures through Section 7 consultation with USFWS.” This statement does not allow for adequate analysis on effectiveness of this mitigation measure during CEQA review.

To address this issue, CDFW recommends outlining the specific anticipated mitigation measures for minimizing impacts to the respective species- vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). CDFW recommends also including discussing preserving or permanently protecting species habitat to compensate for temporary and permanent impacts (or as determined through consultation with USFWS and implementation of resulting mitigation requirements).

Compensation make take the form of permanent protection, enhancement, or restoration of suitable habitat, or purchase of credits at a USFWS-approved bank or conservation.

Comment 6: BIO-6 revisions needed to mitigate western spadefoot toad to a level of less than significant.

As stated in Comment 1, the MND should not defer specific mitigation to later consultation with CDFW. If western spadefoot toad is encountered during surveys, CDFW recommends a qualified biologist develop a site-specific avoidance, minimization, and/or relocation plan should ensure that any measures in the approved plan are in place prior to construction and implemented during construction. If any breeding sites are identified, these habitats should be avoided. The plan may include establishing temporary no disturbance areas where the individuals are found, exclusion fencing for construction areas (with suitable refuge opportunities), and biological monitoring for Project activities. To the extent relocation is needed, relocation sites should be identified and minimum qualifications (i.e. CDFW Scientific Collecting Permit) for those handling the species should be established.

Comment 7: BIO-7 revisions suggested to improve analysis of Waters of the State.

As stated in the MND, "if applicable, Aerojet shall also obtain a Section 1602 Permit from the California Department of Fish and Wildlife." CDFW recommends the MND provide additional detail on whether a "Section 1602 Permit" would be "applicable" to the Project.

To address this comment, CDFW recommends the MND provide discussion of whether or not the Project meets the notification requirement of Section 1602 of the Fish and Game Code. [Fish and Game Code section 1602](#) requires a person or entity to notify the CDFW before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake.

Please note that "any river, stream, or lake" may include tributaries that are dry for periods of time as well as those that flow year-round. Activities subject to this requirement may also include staging areas, haul routes, or other access related to the Project. If you are not certain a particular activity requires notification, CDFW recommends you notify. More information can be found at <https://wildlife.ca.gov/Conservation/LSA>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental documents 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 types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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 MND to assist the Board in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Dylan Wood, Environmental Scientist at 916-358-2384 or dylan.a.wood@wildlife.ca.gov.

Sincerely,

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California Department of Fish and Wildlife

Environmental Scientist

(916) 358-2384



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[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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