



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](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 30, 2020

Governor's Office of Planning & Research

**Oct 30 2020**

## **STATE CLEARINGHOUSE**

Ms. Angela Chavez  
County of San Mateo  
455 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063  
[achavez@smcgov.org](mailto:achavez@smcgov.org)

Subject: Grading Remediation Project, Mitigated Negative Declaration, SCH No. 2020100030, San Mateo County

Dear Ms. Chavez:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) prepared by the County of San Mateo for the Grading Remediation Project (Project), located in San Mateo County. CDFW is submitting comments on the MND regarding potentially significant impacts to biological resources associated with the Project.

### **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources (e.g., biological 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), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

### **PROJECT DESCRIPTION AND LOCATION**

The Project is located approximately two miles from the intersection of Rapley Ranch Road and Skyline Boulevard (California State Route 35) at 70 Langley Hill Road, in the San Mateo County, California; Assessor's Parcel Number 078-190-180. The parcel is approximately 40 acres.

In 2012/2013, the property owner developed an approximately two-acre portion of the property to create a private retreat/campground without appropriate permits. The proposed Project will remediate the unpermitted work by removing four footbridges and three tent cabin platforms. The proposed Project will also relocate a driveway. The Project also includes the legalization of a man-made pond. The proposed grading remediation includes 3,680 cubic yards of earthwork (1,840 cubic yards of cut and 1,840 cubic yards of fill).

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## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the County of San Mateo in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on biological resources.

### **COMMENT 1: Fish and Game Code 5937 and 5901**

**Issue:** The MND biological assessment identifies that a dam is located within the Project site. Per Fish and Game Code Section 5901, it is unlawful to construct or maintain in any stream a device (e.g., dam) that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream. Per Fish and Game Code section 5937, dam owners are required to pass sufficient water at all times to keep fish in good condition. Fish is defined under Fish and Game Code Section 43 as a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals.

**Recommendation:** CDFW recommends that the dam, associated pond (reservoir), and any affected/nearby stream channels be further evaluated by a qualified professional such as an engineer and/or hydrologist. The qualified professional should provide technical assessment of the following, to identify any additional biological and hydrological impacts: a) stream channel and streamflow connectivity, b) potential interruption of aquatic resource passage, c) hydrological impairment to streamflow based on an appropriate time scale, d) stability and erosion and e) water quality. The technical assessment and/or results should be incorporated into the MND.

### **COMMENT 2: Pond Water Supply**

**Issue:** Water supplied to the artificial pond is described as filled by both a spring that naturally flows into it and a spring that is diverted into the pond. Water diverted from the springs may be comprised of streamflow.

**Recommendation:** A qualified professional such as a hydrologist should evaluate the springs and provide technical documentation in the MND of the following: a) the location of the springs in relation to any defined stream channel(s) and if the springs divert natural streamflow and b) detailed information about the rate, timing and volume of water diverted from the springs with respect to any seasonal variation of water production from the springs.

### **COMMENT 3: Fish and Game Code 6400**

**Issue:** The MND identifies that ponds are located within the Project site. Per Fish and Game Code 6400, it is unlawful to place or plant any live fish, any fresh or salt water animal, or any aquatic plant, within any waters of the state unless it is first submitted for inspection to, and written permission is obtained from CDFW.

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**Recommendation:** CDFW recommends that the Project not plant any fish, animal, or plant within the pond to prevent introduction of non-native species and establishment of species in an artificial environment. In addition, the pond should be surveyed by a qualified biologist to determine if any fish, animal, or plant occurs in the Project pond. Results of the survey should be disclosed in the MND. For any non-native species that occur in the Project pond, an appropriate management plan should be prepared by the qualified biologist in consultation with CDFW.

#### **COMMENT 4: Foothill Yellow-Legged Frog Status**

**Issue:** The MND identifies that the foothill yellow-legged frog (FYLF; *Rana boylei*) as a state species of special concerns. However, on December 11, 2019, the Fish and Game Commission listed the Southwest/South Coast, West/Central Coast, and East/Southern Sierra clades of FYLF as endangered and listed the Northeast/Northern Sierra and Feather River clades as threatened. The clade found within San Mateo County is the West/Central Coast clade.

**Recommendation:** CDFW recommends that the state listing status of FYLF be revised to indicate that the Southwest/South Coast, West/Central Coast, and East/Southern Sierra clades of FLYF are state endangered, and the Northeast/Northern Sierra and Feather River clades are state threatened within the MND.

#### **COMMENT 5: Foothill Yellow-Legged Frog – Endangered State Species**

**Issue:** The FYLF clade in San Mateo County (West/Central Coast clade) is listed as a state endangered species.

**Evidence impact would be significant:** The Project may lead to ground-disturbing activities that involve noise, groundwork, use of heavy machinery, and movement of workers that could affect FYLF throughout the Project site.

#### **Recommended Mitigation Measure 1: Foothill Yellow-Legged Frog Avoidance**

CDFW recommends that the Project completely avoid impacts to FYLF. CDFW also recommends a full-time biological monitor actively observe all Project vegetation removal and ground-disturbing activities. If FYLF is found within or adjacent to the Project site, CDFW recommends that Project activities immediately stop and that CDFW is contacted to determine if take<sup>1</sup> can be voided. If take cannot be avoided, take authorization through acquisition of an Incidental Take Permit (ITP) issued by CDFW pursuant to Fish and Game Code Section 2081(b) is necessary to comply with CESA.

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<sup>1</sup> Take is defined by Fish and Game Code § 86 as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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### **COMMENT 6: San Francisco Garter Snake Status**

**Issue:** The MND identifies that San Francisco garter snake (SFGS; *Thamnophis sirtalis tetrataenia*) is a state and federally listed as an endangered species. However, per Fish and Game Code 5050, SFGS is also a state fully protected species.

**Recommendation:** CDFW recommends that the state listing of SFGS is revised to a state endangered and fully protected species. The MND should also include a description of fully protected species and the restrictions associated with the classification.

### **COMMENT 7: San Francisco Garter Snake – State Fully Protected Species**

**Issue:** SFGS, a state fully protected species, has the potential to occur within the Project area. CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code §§ 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited. CDFW cannot authorize incidental take of fully protected species unless the take is for scientific purposes pursuant to Fish and Game Code Section 2081(a) or for species recovery.

**Evidence impact would be significant:** The Project has the potential to disturb, injure, or kill SFGS during Project construction, including use of heavy equipment. Exclusion fencing are not always fully effective for snakes and can cause mortality or injury by capturing SFGS within exclusion fencing and coverboards.

**Recommended Mitigation Measure 2: San Francisco Garter Snake Full Avoidance.** CDFW recommends that the Project completely avoid impacts to SFGS by having a full-time biological monitor actively observe all vegetation removal and ground-disturbing activities. Vegetation removal should be done using hand tools. If work would occur in different portions of the Project site, such that the biological monitor would not be able to fully monitor all activities, additional monitors may be needed.

## **REGULATORY REQUIREMENTS**

### **California Endangered Species Act**

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

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CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, and CEQA Guidelines section 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code, section 2080.

### **Lake and Streambed Alteration Program**

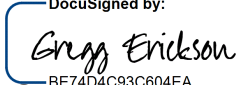
Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code, section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; 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 notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.

### **FILING FEES**

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, section 711.4; Pub. Resources Code, section 21089). 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.

Thank you for the opportunity to comment on the Project's MND. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Monica Oey, Environmental Scientist at [monica.oey@wildlife.ca.gov](mailto:monica.oey@wildlife.ca.gov) or (707) 428-2088; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at [wesley.stokes@wildlife.ca.gov](mailto:wesley.stokes@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

ec: State Clearinghouse