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September 7, 2022

Ejaz Ahmad, Planner
County of Fresno, Department of Public Works and Planning
2220 Tulare St. 6th Floor
Fresno, California 93721



Subject: Initial Study (IS) Application No. 7878 and Unclassified CUP Application No. 3681 – Cold Spring Granite Company Academy Quarry Project (Project)
Early Consultation
SCH No.: 2020120355

Dear Mr. Ahmad:

The California Department of Fish and Wildlife (CDFW) received an Early Consultation (CON) from the County of Fresno, Department of Public Works and Planning for the above-referenced Project pursuant to 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, CDFW appreciates 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 Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

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 and 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

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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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.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: Cold Spring Granite Company

Objective:

The nature of the mining operation is an existing operation on a 142-acre property comprised of two parcels. This mining operations proposal is to allow additional time to continue the quarry operation for an additional 50 years beyond year 2021. With no changes proposed in the volume, intensity, hours of operation, or others of the existing operation than what was permitted by previously approved CUP No. 2477 and CUP No. 2928.

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Approximately 48.4-acres of the 142-acre Project site is occupied by an existing surface mining operation which includes a rock quarry, quarry wastewater runoff basin, paved dirt access roads, quarry buildings, and rock-processing infrastructure.

Location:

The project site is located on the south side of Tollhouse Road (Hwy 168) between Newmark Road and Sample Road approximately 10 miles northeast of the City of Clovis (14147 Tollhouse Road, Clovis). Along with the description above of the quarry site, the remainder of the site consists of grassland and scattered clusters of trees but no rock outcropping or historical buildings. The surrounding acreage beyond the 142-acre site is made up of grazing land and residential homes. (APN No's: 150-141-33 and 150-141-35 35. T12S, R22E, Sec 13.)

Timeframe:

The application (CUP 3681) would be modified to allow continuation of mining for 50 years (from 2021 to 2071).

COMMENTS AND RECOMMENDATIONS

CDFW previously offered comments and recommendations to assist Fresno County with this Project in a comment letter dated January 19, 2021. The Department would like to acknowledge that it has re-visited the information listed in the previous comment letter and reiterates our positions on revegetation post-use for wildlife, protection of resources on-site such as wetlands, and to request that the County consults with CDFW early if there are any additional changes, such as expanding the current disturbance area.

The Department recommends an evaluation of revegetation proposals closer to when that activity will occur, and to base the plan to do so on current climate conditions, and best available science at that time. CDFW would also like to review any revegetation plans when they are prepared at the close of the additional 50 years.

As with the previous comment letter, CDFW requests that the Cold Spring Granite Company adequately identifies and/or mitigates the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources within the additional 50 years.

Special-status resources that may utilize the Project site, may need to be evaluated and addressed prior to any future approvals that would allow ground-disturbing activities. The previous comment letter included concerns regarding potential impacts to special-status species including, but not limited to, the State threatened Swainson's hawk

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(*Buteo swainsoni*), the Federally and State threatened California tiger salamander (*Ambystoma californiense*), and the State species of special concern western pond turtle (*Actinemys marmorata*), American badger (*Taxidea taxus*), burrowing owl (*Athene cunicularia*), and western spadefoot (*Spea hammondi*). CDFW proposes that additional surveys should be conducted over the course of the additional 50-year timespan as ground disturbance continues within the project limits, and that a final survey to establish baseline conditions should be completed at the culmination of the 50 years prior to revegetation/restoration of the project site.

I. Environmental Setting and Related Impact

Swainson's Hawk (SWHA)

SWHA have the potential to nest within or near the Project site. The proposed Project will involve activities near large trees that may serve as potential nest sites. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities such as blasting include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will continue the current surface mining operation (granite quarry) activities which involve noise from heavy equipment, back up alarms, and blasting along with movement of workers for an additional 50 years. These factors could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA.

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to approval of the requested extension to operate. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

If expansion of any Project activities will take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project expansion. CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active nests until the breeding

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season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is warranted to comply with CESA.

California Tiger Salamander (CTS)

CTS are known to occur in the Project vicinity (CDFW 2022). Review of aerial imagery indicates the presence of several wetland/ponded features in the Project's vicinity that have the potential to support breeding CTS. In addition, the Project area or its immediate surroundings may support small mammal burrows, a requisite upland habitat feature for CTS. CTS may move onto the Project site during dispersal.

Aerial imagery shows that the proposed Project site has upland habitat types which may also contain features that may function as breeding habitat. Potential ground- and vegetation-disturbing activities associated with Project activities include: blasting, collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites due to dust from the Project area, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. In addition, depending on the design of any activity, the Project and its continued operation or expansion has the potential to result in creation of barriers to dispersal.

Up to 75% of historic CTS habitat has been lost to urban and agricultural development (Searcy et al. 2013). Loss, degradation, and fragmentation of habitat are the primary threats to CTS in both the Central and San Joaquin valleys. Contaminants and vehicle strikes are also sources of mortality for the species (CDFW 2015, USFWS 2017). The Project site is within the range of CTS and has suitable habitat (i.e., grasslands interspersed with burrows and vernal pools/ponds in the vicinity). CTS have been determined to be physiologically capable of dispersing up to approximately 1.5 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and have been documented to occur near the Project site (CDFW 2022). Given the presence of potential habitat within and adjacent to the Project site, ground-disturbing activities have the potential to significantly impact local populations of CTS.

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS "Interim Guidance on Site Assessment and Field

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Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander” (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW and the USFWS is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

If CTS protocol-level surveys are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. CDFW recommends that these surveys are repeated any time the disturbance area of the Project expands or there is the potential to eliminate small mammal burrows. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW an ITP in accordance with Fish and Game Code section 2081 subdivision (b).

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization would be warranted prior to initiating ground-disturbing activities to comply with CESA. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b). As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

Western Pond Turtle (WPT)

WPT are known to occur in the vicinity of the Project site (CDFW 2022). WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meter have also been reported (Thomson et al. 2016). Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with continued Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

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The Project site is across Highway 168 from two ponds that can be seen in aerial photos and could provide potential WPT habitat. Additionally, noise from blasting and back up alarms on heavy equipment as a result of continued Project activities have the potential to significantly impact WPT populations.

CDFW recommends that a qualified biologist conduct focused surveys for WPT ten days prior to the expansion of any Project activities beyond its current footprint. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project activities, they be allowed to move out of the area on their own.

American Badger (AMBA)

American badgers could utilize the habitat that occurs on the Project site (CDFW 2022). Badgers occupy sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e. ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). The Project site may support these requisite habitat features. Therefore, the Project has the potential to impact American badger.

Habitat loss is a primary threat to American badgers (Gittleman et al. 2001). The Project includes ground-disturbing activities that have the potential to impact local populations of American badger.

CDFW recommends that a qualified biologist conduct a habitat assessment well in advance of the expansion of any Project activities, to determine if the Project area or its immediate vicinity contain suitable habitat for the American badger. If suitable habitat is present, CDFW recommends that a qualified biologist conduct focused surveys for American badgers and their requisite habitat features (dens) to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Avoidance whenever possible is encouraged via delineation and observation of a 50-foot no-disturbance buffer around dens until it is determined through non-invasive means that individuals occupying the den have dispersed.

Burrowing Owl (BUOW)

BUOW may use adjacent suitable habitat or use available burrows at the Project site (CDFW 2022). BUOW inhabit open grassland or adjacent canal banks, ROWs, vacant lots, etc. containing small mammal burrows, a requisite habitat feature used

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by BUOW for nesting and cover. Review of aerial imagery indicates that much of the area within and surrounding the Project site contains annual grassland. Potentially significant direct impacts associated with subsequent quarry activities such as blasting include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

BUOW rely on burrow habitat year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). The Project site is bordered mainly by annual grassland. Therefore, subsequent ground-disturbing activities associated with the Project have the potential to significantly impact local BUOW populations. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA.

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of any Project expansion, to determine if the Project area or its vicinity contains suitable habitat for BUOW.

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

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Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found within these recommended buffers and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance, at a rate that is sufficient to detect BUOW if they return.

Western spadefoot (WESP)

Western spadefoot inhabit grassland habitats, breed in seasonal wetlands, and seek refuge in upland habitat where they occupy burrows outside of the breeding season (Thomson et al. 2016). Review of aerial imagery indicates that these requisite habitat elements occur adjacent to the Project site and habitat features, particularly small mammal burrows, may occur within the Project area.

Western spadefoot are known to occur in the area (CDFW 2022). Without appropriate avoidance and minimization measures for western spadefoot, potentially significant impacts associated with ground disturbance such as blasting at the quarry include; collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, water quality impacts to breeding sites, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Habitat loss and fragmentation resulting from agricultural and urban development is the primary threat to Western spadefoot (Thomson et al. 2016). The Project area is within the range of Western spadefoot, contains suitable upland habitat (i.e., grasslands interspersed with burrows) and adjacent breeding habitat (i.e., vernal pools/ponds). As a result, ground-disturbing activities associated with on-going work associated with the Project site have the potential to significantly impact local populations of this species.

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CDFW recommends that a qualified biologist conduct focused surveys for Western spadefoot and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance.

Avoidance whenever possible is encouraged via delineation and observance of a 50-foot no-disturbance buffer around burrows. If Western spadefoot are observed on the Project site, CDFW recommends that Project activities in their immediate vicinity cease and individuals be allowed to leave the Project site on their own accord. Alternatively, a qualified biologist with appropriate take authorization can move them out of harm's way and to a suitable location.

II. Editorial Comments and/or Suggestions

Nesting Birds: The Project contains and is adjacent to habitat that provides nesting habitat for birds. CDFW encourages that Project implementation occur during the bird non-nesting season. However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes sections referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife

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biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, California tiger salamander. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

Cumulative Impacts: CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by the long-term continued implementation of this Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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


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approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Fresno County Department of Public Works and Planning in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

cc: Patricia Cole (patricia_cole@fws.gov)
United States Fish and Wildlife Service

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California Department of Fish and Wildlife

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