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Governor's Office of Planning & Research

Nov 05 2021

STATE CLEARINGHOUSE

November 4, 2021

Mr. Jeremy Sarrow
Napa County Flood Control and Water Conservation District
804 First Street
Napa, CA 94559
Jeremy.Sarrow@countyofnapa.org

Subject: Bale Slough – Bear Creek Tributary Restoration Project, Mitigated
Negative Declaration, SCH No. 2021090589, Napa County

Dear Mr. Sarrow:

California Department of Fish and Wildlife (CDFW) personnel reviewed the Mitigated Negative Declaration (MND) for the Bale Slough – Bear Creek Restoration Project (Project). CDFW is submitting comments, as a Responsible Agency, on the MND to inform the Napa County Flood Control and Water Conservation District (District), as Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is also a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for the conservation, protection, and management of the State's biological resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386).

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) 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. **The Project has the potential to result in take of Swainson's hawk (*Buteo swainsoni*), a CESA listed as threatened species, as described in further detail below.** Issuance of a CESA ITP 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 to obtain a CESA ITP.

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CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings and a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

CDFW requires a Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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. **The Project would impact Bear Creek, Bale Slough, and associated riparian habitat; therefore, CDFW recommends that the MND includes a mitigation measure requiring the Project to submit an LSA Notification to CDFW and comply with the LSA Agreement if issued by CDFW, as further described below.** CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT LOCATION AND ENVIRONMENTAL SETTING

The Project is located along a 3-mile reach of Bear Creek and Bale Slough approximately 5 miles northwest of the Town of Yountville and approximately 3.25 miles southeast of the City of St. Helena in Rutherford, Napa County, State of California; approximate center coordinates: Latitude 38.467546^o, -122.423224^o.

Bear Creek occurs upstream of Highway 29 and flows from west to east from the Mayacamas Mountain Range to immediately downstream of Highway 29 where it transitions to Bale Slough, flowing in a southeasterly direction for approximately 1.1 miles before entering the Napa River immediately downstream of Rutherford Road. The upper part of the Bear Creek watershed is perennial and primarily undeveloped with productive riparian habitat. As Bear Creek transitions to the Napa Valley Floor, it becomes intermittent and becomes a braided channel system with seasonal wetlands. Bale Slough downstream of Highway 29 consists of a relatively straight, confined channel with long pools, few riffles, and steep banks. Vegetation communities within the Project reach consist predominantly of valley oak (*Quercus lobata*) riparian forest,

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mixed willow (*Salix* spp.) riparian forest, and Eucalyptus (*Eucalyptus* sp.) monoculture; and the entire Project reach is surrounded by vineyard development.

PROJECT DESCRIPTION

The Project would improve salmonid and riparian habitat along Bear Creek and Bale Slough for Central California Coast steelhead trout (*Oncorhynchus mykiss*), a Federal Endangered Species Act listed as Threatened species, and Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*), a California Species of Special Concern (SSC). The Project area would be divided into three groups (i.e., Groups A, B, and C) and 14 individual restoration sites. Where necessary, existing vineyard grapevines would be removed from the Project area. Group A would remove 2.2 acres of vineyards and Group B would remove 0.9 acres. The Project would restore portions of approximately 6,000 linear feet of stream between Highway 29 and Rutherford Cross Road, creating and/or restoring over 15 acres of wetland and riparian habitat throughout the proposed reach. The Project activities would include: 1) channel widening, floodplain restoration and addition of large wood structures in Groups A, B, and C; 2) stabilization of actively eroding banks and expansion of the riparian corridor in Groups A and B; 3) agricultural berm setbacks in Groups A and B; and 4) expansion of existing wetland and re-connection to adjacent floodplains in the alluvial floodplain west of Highway 29 (Group C).

COMMENTS AND RECOMMENDATIONS

Lake and Streambed Alteration

The Project would impact Bear Creek, Bale Slough, and associated riparian habitat, as described above. CDFW recommends that the MND include the below mitigation measure requiring the Project proponent to submit an LSA Notification to CDFW and comply with the LSA Agreement if issued by CDFW, to reduce impacts to less-than-significant.

Prior to starting Project activities, the Project proponent shall submit a Notification of Lake or Streambed Alteration (LSA) to CDFW through the Environmental Permitting Information Management System (<https://wildlife.ca.gov/Conservation/Environmental-Review/EPIMS>). The Project proponent shall comply with the Final LSA Agreement, if issued, including but not limited to complying with all pre-Project LSA Agreement requirements.

Swainson's Hawk

The MND states that there is moderate potential for Swainson's hawk, a CESA listed as threatened species, to nest within mature trees on the Project site. The nearest

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documented occurrence of Swainson's hawk is approximately one-mile southeast of the Project area along the Napa River. If Project activities that will modify habitat or result in elevated noise levels or visual disturbances compared to ambient conditions must occur during the breeding season for Swainson's hawk (i.e., typically March 1 through September 15), then the Project could substantially adversely affect Swainson's hawk nesting within 0.5 miles of Project activities. Therefore, CDFW recommends that language pertaining to Swainson's hawk in Environmental Commitment 16 (EC-16) in the MND be replaced with the following mitigation measure to reduce impacts to Swainson's hawk to less-than-significant:

If Project construction work is scheduled during the Swainson's hawk nesting season (i.e., March 1 through September 15), a qualified biologist shall conduct focused surveys for active Swainson's hawk nests prior to beginning construction. The qualified biologist(s) conducting surveys shall follow the Swainson's hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley, dated May 31, 2000 (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>). If an active Swainson's hawk nest is found during surveys, a minimum project construction avoidance buffer distance of 0.5 miles shall be established around the nest until a qualified biologist determines that the young have fledged, or the nest is no longer active, unless otherwise approved by CDFW in writing. A qualified biologist shall monitor the nest(s) during project activities, unless otherwise approved by CDFW in writing. If the qualified biologist observes potential nest-disturbance behavior displayed by nesting Swainson's hawk, the qualified biologist shall stop work immediately and contact CDFW within 24 hours. If the project cannot avoid take of Swainson's hawk, the Project proponent shall obtain a CESA Incidental Take Permit from CDFW prior to starting or resuming work.

California Red-Legged Frog

A search of unprocessed data in the California Natural Diversity Database shows an occurrence of California red-legged frog (CRLF; *Rana draytonii*), a federal Endangered Species Act listed as threatened species and an SSC, from 2019 approximately 5.3 miles southwest of the Project area, and from 2010 approximately 6 miles northwest of the Project area. Additionally, because the Project occurs within the range of the species, CRLF could occur within the Project reach. Therefore, CDFW recommends that Environmental Commitment 18 (EC-18) in the MND be revised to include the following measure to reduce potential impacts to CRLF to less-than-significant:

At least two weeks prior to the commencement of ground-disturbing activities, the Project area and nearby vicinity, including a minimum 500-foot radius surrounding the Project area, shall be assessed by a qualified biologist for the presence of California red-legged frog individuals and habitat features. Habitat features include both aquatic

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habitat such as plunge pools and ponds and terrestrial habitat such as burrows. The results of the habitat feature assessment shall be submitted to CDFW for written acceptance prior to starting Project activities. If habitat features are identified in the Project area they shall be flagged for avoidance with a feature-specific buffer distance determined by the qualified biologist, unless otherwise approved in writing by CDFW. If California red-legged frogs are encountered during the assessment or Project activities, the Project shall not proceed or all work shall cease, and CDFW shall immediately be notified. Work shall not proceed until the frog, through its own volition, moves out of harm's way and CDFW has provided permission in writing to proceed with the Project, which may include additional avoidance and minimization measures. If California red-legged frog is encountered or may be impacted, the project shall consult with U.S. Fish and Wildlife Service pursuant to the federal Endangered Species Act.

Foothill Yellow-Legged Frog

The Project is within the range of the Northwest/North Coast clade of foothill yellow-legged frog (FYLF, *Rana boylei*), an SSC, and the MND identifies documented occurrences of FYLF in the upper headwaters of Bear Creek approximately 1.6 miles upstream of the Group C Project reach. The Project may result in injury or mortality to FYLF through crushing, killing, or injuring individuals from vehicles, equipment, and workers during Project activities. Therefore, CDFW recommends that EC-18 in the MND be revised to include the following mitigation measure to reduce potential impacts to FYLF to less-than-significant:

A qualified biologist shall conduct a habitat suitability assessment in the vicinity of the Project to determine where FYLF may occur in or adjacent to the Project area, including 500 feet upstream and downstream of the Project area and 50 feet from the streambed, where appropriate. If suitable habitat is identified, the qualified biologist shall provide a FYLF survey methodology to CDFW for review and approval a minimum of two weeks prior to Project construction. No Project activities shall begin until FYLF surveys have been completed using a method approved by CDFW in writing. The survey methodology shall target all life stages and include wet and dry stream surveys as possible. Surveys within the Project area shall include searching cavities under rocks and logs, within vegetation such as sedges and other clumped vegetation, and under undercut banks. Surveys should be conducted during different times of day and under variable weather conditions if possible. The qualified biologist shall also conduct a pre-construction survey for the species within 24 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for FYLF, with detections. If any FYLF are found, the qualified biologist shall prepare an avoidance, minimization, and relocation plan, obtain CDFW's written acceptance of the plan, and then implement the plan.

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Western Pond Turtle

The MND identifies that western pond turtle (WPT, *Actinemys marmorata*) has the potential to occur in the Project reach. The nearest documented occurrence is within Conn Creek approximately 1.1 miles west of the Project site. WPT is an SSC and can move more than four miles up or down stream (Holland 1994); therefore, the Project area is within the mobility range of this observation. The species may also survive outside of aquatic habitat for several months in uplands up to several hundred feet from aquatic habitat (Purcell et al. 2017; Zaragoza et al. 2015).

The Project may result in loss of western pond turtle adults, young, or their nests, or disturbance to this species from construction activities. Therefore, CDFW recommends that EC-18 in the MND be revised to include the following mitigation measure to reduce potential impacts to WPT to less-than-significant:

A qualified biologist shall conduct a habitat suitability assessment of the Project site to determine where western pond turtles may occur in or adjacent to the Project sites. In areas of suitable habitat, the qualified biologist shall conduct a preconstruction survey for the species within 48 hours prior to construction activities before construction equipment mobilizes to the Project area. The qualified biologist shall have a minimum of two years conducting habitat assessments and surveys for western pond turtles, with detections. If any pond turtles are found, the qualified biologist shall prepare a relocation plan, obtain CDFW's written acceptance of the plan, and then implement the plan. Construction activities shall avoid all pond turtles and their nests including an appropriate buffer as determined by the qualified biologist.

Roosting Bats

The MND states that the Project area provides suitable habitat for special-status bat species including pallid bat (*Antrozous pallidus*) and Townsend's big-eared bat (*Corynorhinus townsendii*), both SSC. Specifically, these species may utilize structures in the vicinity of the Project area or hollow trees within the Project area. Environmental Commitment 19 (EC-19) in the MND requires that a qualified biologist survey the Project areas for evidence of bat use, including roost trees and structures, 2 weeks prior to starting Project activities, and that a mitigation program addressing compensation, exclusion methods, and roost removal procedures be developed prior to Project implementation if roosting bats or evidence thereof are detected during surveys. CDFW generally agrees with EC-19 but recommends the following language be added to reduce potential impacts to special-status bat species to less-than-significant:

Prior to any tree removal, a qualified bat biologist shall conduct a habitat assessment for bats. The habitat assessment shall be conducted a minimum of 30 to 90 days prior to tree removal and shall include a visual inspection of potential roosting features (e.g., cavities,

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*crevices in wood and bark, or exfoliating bark for colonial species, and suitable canopy for foliage-roosting species). If suitable habitat trees are found, they shall be flagged or otherwise clearly marked, and shall be removed only during seasonal periods of bat activity (i.e., from approximately March 1 through April 15 (prior to the maternity season) or September 1 through October 15 (prior to winter torpor). Bat habitat trees shall be removed using the following two-step removal process: On day 1, in the afternoon and under the supervision of a qualified biologist, all tree limbs **not** containing suitable bat roosting habitat (e.g., cavities, crevices, deep bark fissures) shall be removed using chainsaws only. The next day, the rest of the tree shall be removed. If tree removal must occur outside of the above seasonal periods, a qualified biologist shall submit a survey methodology to CDFW for review and written approval, and upon receiving CDFW's approval, shall conduct night emergence surveys or a complete examination of roost features to establish absence of roosting bats. If bats are discovered roosting in trees during the surveys, CDFW shall be consulted with prior to beginning tree removal; and tree removal shall not begin without CDFW's written permission.*

Nesting Birds

EC-16 in the MND requires that a qualified biologist conduct a nesting bird survey within two weeks prior to starting Project activities during the general nesting bird season and provide no-disturbance buffers around all active nests until the young have fledged. CDFW generally agrees with this measure, however, we recommend that a survey be completed no more than 7 days prior to starting Project activities to reduce the likelihood of a bird nesting within the Project site between the time of the survey and the start of work, thus causing unforeseen delays to the start of work; and that the general nesting bird season be revised to February 1 to August 31. CDFW recommends that the language pertaining to nesting birds in EC-16 be replaced with the following mitigation measure to reduce impacts to nesting birds to less-than-significant:

If Project activities are scheduled during the general nesting season for migratory birds and raptors (i.e., February 1 to August 31), a qualified biologist shall conduct a survey for active nests located within a minimum 500-foot radius of the Project site. The survey shall be conducted no more than 7 days prior to beginning Project activities. The survey shall include thoroughly searching for cavity nesters, canopy nesters, as well as bank nesters. More than one qualified biologist may be needed to adequately search the Project site and surrounding area. If an active nest is found, the qualified biologist who conducted the survey shall determine appropriate buffer distances from all active nests and shall consult with CDFW on these distances. No-disturbance buffers shall be demarcated in the field with high visibility fencing or flagging. If appropriately distanced no-disturbance buffers cannot be adhered to during Project activities, a qualified biologist shall monitor the nest(s) during Project activities each day for one week, and weekly thereafter, to ensure that the nest(s) is/are not being disturbed by Project activities, unless otherwise approved by CDFW in writing. If the qualified biologist

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observes potential nest-disturbance behavior being displayed by nesting birds, the qualified biologist shall stop all work immediately and shall contact CDFW within 24 hours. In this event, work shall not resume without CDFW's written permission. Nest monitoring shall occur as described above until the qualified biologist determines that the nest is no longer active. If a delay in Project activities greater than 7 days occurs during the nesting season, a qualified biologist shall conduct another focused survey and consult with CDFW if active nests are found, prior to resuming work.

The above recommended mitigation measures would likely be required under the LSA Agreement for the Project, as applicable, if issued by CDFW.

ENVIRONMENTAL DATA

CEQA requires that information developed in EIRs 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 online field survey form and other methods for submitting data can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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, § 711.4; Pub. Resources Code, § 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.

CDFW appreciates the opportunity to provide comments on the MND 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 Garrett.Allen@wildlife.ca.gov; or Ms. Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:


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Stephanie Fong
Acting Regional Manager
Bay Delta Region

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REFERENCES

- Holland, Dan C. 1994. The western pond turtle: habitat and history. Unpublished final report, U. S. Dept. of Energy, Portland, Oregon.
- Purcell, Kathryn L.; McGregor, Eric L.; Calderala, Kathryn. 2017. Effects of drought on western pond turtle survival and movement patterns. *Journal of Fish and Wildlife Management*. 8(1): 15-27.
- Zaragoza, George; Rose, Jonathan P.; Purcell, Kathryn.; Todd, Brian. 2015. Terrestrial habitat use by western pond turtles (*Actinemys marmorata*) in the Sierra Foothills. *Journal of Herpetology*. 49(3): 437-441.