

State of California
Department of Fish and Wildlife



Memorandum

Governor's Office of Planning & Research

Date: March 17, 2022

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To: Terry Ash
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STATE CLEARINGHOUSE

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Erin Chappell

From: Erin Chappell, Regional Manager

California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: CAL FIRE Chalk Mountain Communications Tower and Facilities Replacement Project, Draft Environmental Impact Report, SCH No. 2021100197, Santa Cruz County

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Environmental Impact Report (EIR) prepared by the California Department of General Services (DGS) for the CAL FIRE Chalk Mountain Communications Tower and Facilities Replacement Project (Project), located in Santa Cruz County. CDFW is submitting comments on the draft EIR 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 § 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.

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 (Pub. Resources Code, §§ 21001(c), 21083, and CEQA Guidelines §§ 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, § 2080.

Lake and Streambed Alteration Program

The Project has the potential to impact resources including but not limited to Cascade Creek. Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code, § 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. CDFW considers work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA (Pub. Resources Code §§ 21000 et seq.) as the responsible agency.

PROJECT DESCRIPTION

The Project consists of the replacement of CAL FIRE's existing Chalk Mountain communication tower and facility. The existing communications facility was damaged in the CZU Lightning Complex fire in August and September 2020. For this Project, CAL FIRE would replace the existing 60-foot-tall wood pole with an 80-foot tube braced galvanized steel structure that is capable of supporting multiple input, multiple output (MIMO) panel antennas. The Project would also replace the existing metal vault with a larger, climate-controlled vault to house telecommunications equipment covering an area of approximately 700 square feet. The Project would replace the generator, fuel system, and install a new solar photovoltaic (PV) system covering an area of approximately 650 square feet. The Project is expected to take about 2 years to complete. Construction activities may include grading, excavation, pouring of concrete foundations, and erecting the new tower by use of a crane or helicopter.

COMMENTS AND RECOMMENDATIONS

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

COMMENT 1: Project Timing

Issue: The draft EIR does not include measures to avoid or minimize work during wet weather or during the winter rain season. While there are no wetlands, streams, or lakes

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at the Project site, Cascade Creek runs along the access road and provides suitable habitat for California red-legged frog (*Rana draytonii*), Santa Cruz black salamander (*Aneides niger*), and California giant salamander (*Dicamptodon ensatus*) which may be present in the area and active during wet weather.

The draft EIR also describes the access road as a maintained unpaved road but does not indicate if the road is built to a standard intended for year-round use. Rural roads designed for seasonal use only that are utilized during wet weather can increase the potential for sediment input to occur to a stream. Limiting the project to dry weather only can greatly reduce potential for sediment transport, erosion and impacts to amphibians and other sensitive species.

Evidence the impact would be significant: Amphibians such as those listed above are more active seasonally during wet weather conditions and in the winter. California red-legged frog often travel to upland habitat during periods of wet weather and can travel up to a mile over the course of the wet season (U.S. Fish and Wildlife Service (USFWS), 2002). Santa Cruz black salamanders and California giant salamanders are mostly nocturnal but can forage on the ground during the day under wet weather (California Herps, 2021). Access road utilization during wet weather can result in direct impacts to amphibians on the roadway through vehicle related mortality.

On forest lands, roads can be a major source of erosion and sedimentation (Weaver et al., 2015). Driving equipment over the road during wet conditions can increase the potential for erosion and transfer sediment into the stream (Beschta, 1978; Seyedbagheri, 1996; Richardson et al., 2001). Sediment in streams can directly impact aquatic life by making the water cloudy which decreases the ability of organisms to photosynthesize (Mallery, 2010).

Recommendation: CDFW recommends DGS include a measure to prohibit work during the winter and wet weather.

Recommended Measure 1: All work shall begin on or after June 15 and all work shall be completed by October 15 of each year. Project activities shall be restricted to dry weather during the work period. Project activities shall be timed with awareness of precipitation forecasts and potential increases in stream flow and amphibian activity. Project activities including access route travel near the stream and riparian corridor shall cease when the National Weather Service (NWS) 24-hour weather forecast indicates a 40 percent chance or higher of precipitation of at least 0.10-inch of precipitation. All necessary erosion control measures shall be implemented prior to the onset of precipitation. Project activities halted due to precipitation may resume after a dry out period of 24-hours and when the NWS 24-hour weather forecast indicates less than a 40 percent chance of precipitation. If the rain event is more than a 0.25-inch per hour rain event, work shall not recommence until there is a dry out period of 24 hours after the rain event ceases.

COMMENT 2: Marbled Murrelet Mitigation Measures

Issue: The draft EIR does not provide an adequate assessment of potential impacts to marbled murrelets nor does it provide appropriate mitigation to demonstrate that potential impacts to marbled murrelets will be reduced to less-than-significant. The Project has potential to impact breeding marbled murrelets from auditory and visual disturbance generated during project activities in proximity to suitable murrelet nesting habitat. In addition, the draft EIR survey requirements for special-status nesting birds are not adequate to detect the presence of marbled murrelets within the Project area and may result in false negative survey results. Marbled murrelets can be difficult to detect in and around their breeding areas, in part due to their small size, rapid flight, cryptic plumage and crepuscular behaviors. Utilizing a standard nesting bird survey not designed for murrelet detection may result in false negative survey results.

Evidence the impact would be significant: The marbled murrelet (*Brachyramphus marmoratus*), a small pacific seabird, is listed as state endangered pursuant to Fish and Game Code 2050 *et seq.*, and federally threatened pursuant to Title 16, United States Code 1531 *et seq.* The draft EIR discloses the project area and access road are within designated critical habitat for the marbled murrelet, the recent 2020 CZU Wildfire may have removed suitable mature habitat for marbled murrelet, and it is unknown how long it will take for the vegetation to return and support nesting.

CDFW concurs with the determination that the 2020 CZU Wildfire has burned a significant amount of suitable marbled murrelet nesting habitat within Big Basin State Park. However, the draft EIR does not disclose the existing habitat conditions for the marbled murrelet or whether a habitat assessment was conducted in proximity to the project area and access road. There is a potential for existing suitable nesting habitat present in the areas surrounding the Project area and access road that may have survived the impacts of the wildfire. Recent post wildfire marbled murrelet surveys within Big Basin State Park have determined that murrelets continue to use and are present within the park during the breeding season and that successful breeding and chick fledgling has occurred in burned areas (CDFW Communication and File Information). Inadequate assessment of potential suitable habitat within the project area may result in impacts to an already impacted species. Therefore, any remaining living trees within the vicinity of the Project area and access road should be assessed for suitable marbled murrelet breeding habitat.

Disturbance of occupied nests resulting from Project activities could result in nest abandonment and take of eggs or nestlings. Without appropriate avoidance and minimization measures for marbled murrelets, project activities may create elevated sound levels or result in close visual proximity of human activities at sensitive locations (e.g., nest trees), with the potential to significantly impact and disrupt normal murrelet behavior patterns. Such disturbances can cause a murrelet to be flushed from an active nest, an adult murrelet to abandon or delay a feeding attempt of a dependent juvenile, or other essential behaviors necessary for successful breeding.

Recommendation: To evaluate and avoid potential impacts to marbled murrelet and to reduce impacts to less-than-significant, CDFW recommends incorporating the following mitigation measures into the draft EIR, and that these measures be made conditions of approval for the project.

Recommended Measure 2 Marbled Murrelet Habitat Assessment: In areas where marbled murrelet nesting habitat or designated critical habitat may be present, CDFW recommends a qualified biologist conduct a habitat assessment prior to the start of Project activities. The habitat assessment shall include a visual inspection of suitable nesting habitat features within 0.25 miles of the Project area and access road that occur within forested unburned, low, or moderate burn severity areas as these burn severities may result in habitat still considered suitable. Suitable habitat characteristics shall be defined as mature and old-growth coniferous forest stands, and younger coniferous forest stands having platforms with a relatively flat surface at least 10 cm in diameter and 10 m high in the live crown of a coniferous tree. Platforms can be created by a wide bare branch, moss or lichen covering a branch, mistletoe, witches' brooms, and other deformities, or structures such as squirrel nests (Evans Mack, 2003). Habitat features found during the assessment shall be identified, flagged, or marked for avoidance and retention as a sensitive area and shall be communicated to CDFW.

If no suitable marbled murrelet nesting habitat is identified within 0.25 miles of the Project area and access road, then no specific marbled murrelet mitigation measures are required.

Recommended Measure 3 Marbled Murrelet Surveys: If any suitable marbled murrelet nesting habitat is identified during the habitat assessment, CDFW recommends a qualified biologist conduct protocol level audio-visual murrelet surveys following the *Pacific Seabird Group Methods for Surveying Marbled Murrelets in Forests: A Revised Protocol for Land Management and Research* (Evans Mack, 2003) available online at <http://www.pacificseabirdgroup.org>, which may entail two years of surveys. Protocol level surveys shall be utilized to determine the presence of nesting murrelets within 0.25 miles of the Project area and access road and whether Project activities will have an impact on marbled murrelets.

Recommended Measure 4 Murrelet Audio and Visual Disturbance Buffers: If conducting two-year protocol level surveys is not feasible, or if nesting marbled murrelets are detected during surveys, CDFW recommends a qualified biologist develop appropriate avoidance disturbance buffers around suitable habitat identified within 0.25 miles of the Project area and access road to be implemented during Project activities that occur during the murrelet breeding season (March 24 to September 15). Appropriate audio and visual disturbance buffers shall follow USFWS' *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Although the cover letter indicates that the guidance is valid only to the southern limit of the Russian River

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watershed, CDFW recommends use of the guidance document throughout the entire murrelet range including San Mateo and Santa Cruz counties.

If the determined audio and visual disturbance buffers around the identified suitable nesting habitat do not incorporate the project area and access road footprint, then no specific marbled murrelet mitigation measures are required.

CDFW staff is available to provide further guidance and consultation on appropriate avoidance and mitigation measures for the marbled murrelet.

COMMENT 3: Special-Status Bird Avoidance and Minimization

Issue: The draft EIR proposes to implement Applicant Proposed Measures (APMs) B-3 Special-Status Bird Avoidance and Minimization which states, “To avoid or minimize potential impacts to marbled murrelet, golden eagle, long-eared owl, and other migratory birds from construction, during the nesting season (February 15 through August 15), a nesting bird survey shall be conducted by a qualified avian biologist prior to initiating construction activities.” The draft EIR incorrectly identifies the nesting and breeding season raptor species such as the golden eagle, and for the marbled murrelet. The breeding season is defined by the earliest known nesting and latest known fledging dates. In California, the marbled murrelet breeding season is defined as March 24 to September 15 and is used by regulatory agencies to avoid adverse effects to the species (Evans Mack, 2003). The golden eagle breeding season can vary by latitude and elevation, but it generally ranges from January 1 to August 31 (Pagel et al., 2010). By proposing to start nesting bird survey on February 15 and conclude nesting bird surveys by August 15, the Project has the potential to neglect nesting marbled murrelets and golden eagles that may be present within proximity to the Project area and access road late into the nesting season, resulting in false negative survey results.

Recommendation: To reduce impacts to marbled murrelets and golden eagles to less-than-significant, CDFW recommends the draft EIR be revised to define the specific nesting season for the marbled murrelet as March 24 – September 15 and for golden eagles as January 1 – August 31. Additionally, CDFW recommends the draft EIR propose separate mitigation measures specifically for the marbled murrelet. Additional detailed information regarding this recommendation can be found in the recommendation in CDFW Comment 2.

COMMENT 4: Inconsistent Language

Issue: To mitigate potential impacts to critical habitat for marbled murrelet, the draft EIR proposes to implement APMs B-2 (Pre-Construction Survey of Project Site and Access Road) and B-4 (Pre-Construction Surveys and Construction Monitoring) on pages C.3-13. The above language in the draft EIR incorrectly titles and references both APMs B-2 and B-4 as mitigation for the marbled murrelet. The proposed APM B-2 should be correctly titled as Pre-Construction Surveys and Construction Monitoring. The proposed APM B-4 is titled Implement Best Management Practices to Minimize Impacts to

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Jurisdictional Areas and refers to implementing best management practices to prevent potential impacts to drainages, waters, and wetlands, which is not applicable to marbled murrelet impacts.

Recommendation: CDFW recommends the draft EIR be revised to identify the appropriate Applicant Proposed Measures that will be implemented to mitigate any potential impacts to the marbled murrelet.

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.

Thank you for the opportunity to comment on the Project's draft EIR. If you have any questions regarding this letter or for further coordination with CDFW, please contact Ms. Serena Stumpf, Environmental Scientist, at (707) 337-1364 or Serena.Stumpf@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at Wesley.Stokes@wildlife.ca.gov.

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