



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 27, 2022

Dana Morrison
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Subject: Clover Flat Landfill Use Permit Major Modification and Viewshed Project,
Notice of Preparation of a Draft Environmental Impact Report,
SCH No. 2022070526, Napa County

Dear Mr. Morrison:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Clover Flat Landfill Use Permit Major Modification and Viewshed Project (Project). CDFW is providing Napa County, as the lead agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (Cal. Code Regs., tit. 14, § 15082, subd. (b)).

CDFW ROLE

CDFW is a trustee agency with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a responsible agency if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act, Fish and Game Code section 1600 et seq., and other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife resources. CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT HISTORY, LOCATION, AND DESCRIPTION

History

According to the NOP, the Project's ground-disturbing activities would be limited to those that are necessary to resolve the outstanding violations in a citation the County issued to Clover Flat Landfill, LLC (CFL) (Citation No. CE19-00167-1). CDFW does not have a copy of the citation, but it appears from the NOP that Clover Flat Landfill expanded its Solid Waste Facility Permit (SWFP) boundary without proper authorization

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from the County. CFL is also the subject of an enforcement action by the San Francisco Bay Regional Water Quality Control Board (RWQCB) and the Napa County District Attorney's Office related to significant alterations to the bed, bank, and channel of an unnamed stream by CFL, channel and bank erosion causing excessive amounts of sediment to enter the stream, and landfill leachate discharging into this and another unnamed stream. CDFW prepared a Resource Impact Assessment (RIA) in December 2019 and a Natural Resources Damage Assessment (NRDA) in May 2020 that describes the impacts to the two unnamed streams and associated biological resources on CFL's property. CDFW and RWQCB have been working with CFL and its consultants to develop a Restoration Mitigation and Monitoring Plan (RMMP) to address these impacts, including ongoing temporal impacts from loss of habitat. The remediation work will include some reconstruction of one of the unnamed streams, that appears to be part of the Project. If so, the county should work with CDFW and RWQCB to make sure the Project and the remediation plan are consistent as to the reconstruction work.

Location and Description

The Project site is the Clover Flat Landfill, located in northern Napa County at 4380 Silverado Trail, approximately 3 miles east of the City of Calistoga. The Clover Flat Landfill property is located on Assessor Parcel Numbers 020-120-020 and 020-120-021. Clover Flat Landfill lies in a steep canyon in the mountains of the east Napa Valley on lands owned by the Vista Corporation. The Project site is within the County's Agricultural Watershed zoning district and has a General Plan land use designation of Agriculture, Watershed, and Open Space.

The Project would expand the SWFP boundary to include all ancillary landfill activities such as storage areas, roads, basins, stormwater conveyance systems, and stockpiles. The SWFP boundary would increase from 79 acres to approximately 115 acres, but actual operations would remain the same, except for the addition of operations on Monday with gate hours from 9:00 a.m. to 4:00 p.m. for a maximum number of 275 self-haul vehicles. The Project does not propose any increase in accepted waste tonnage, height, shape, volume, or waste types.

The Project would include construction of a new proposed grade of the soil stockpile that would require cut and fill activities, alignment adjustments to the soil stockpile access road on the new proposed stockpile grade, reconstruction of the main and tributary stream channels, construction of an offsite swale, Viewshed Corridor landscape screening of upland areas, boulder step pool and boulder cascade stream channel treatments, implementation of erosion control measures in the vicinity of the road, and revegetation within the setback of an unnamed intermittent stream that runs along the eastern perimeter of the site.

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The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (Cal. Code Regs., tit. 14, §§ 15124, 15378). Please include a complete description of the following Project components in the Project description:

- The NOP states that the SWFP boundary would increase from 79 acres to approximately 115 acres. It is unclear if the expansion area only encompasses the area where unauthorized activities previously occurred, or if it also includes areas that are not currently in use for landfill activities. CDFW recommends the project description clearly describe the current use and potential future use of the expansion area, as well as what its prior use was before the violation.
- Land use changes resulting from, for example, rezoning certain areas or from expanding the SWFP boundary.
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes.
- Area and plans for any proposed buildings/structures, ground disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features.
- Construction schedule, activities, equipment, and crew sizes.
- "Reconstruction of the main and tributary stream channels," as stated in the NOP, so CDFW can determine if this work overlaps with some of the work CFL will need to complete under the RMMP.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals protected under CESA, either during construction or over the life of the Project. 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-protected species, such as those identified in Attachment 1, early consultation is

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encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP.

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; Cal. Code Regs., tit. 14, §§ 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 CESA.

Lake and Streambed Alteration Agreement

CDFW requires notification, pursuant to Fish and Game Code section 1602, for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity 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 the notification requirement in section 1602. Because it appears the Project will include reconstructing a stream or streams, CDFW recommends including in the EIR a mitigation measure requiring notification under Fish and Game Code section 1602 and compliance with any Lake or Streambed Alteration (LSA) Agreement CDFW issues. The LSA agreement will require the Project to include compensatory mitigation for temporary and permanent impacts to streams and associated riparian zones at the Project site.

If CDFW issues any permits for the Project, as a responsible agency under CEQA, it will consider the environmental impact report for the Project the county certifies. CDFW may not execute a final LSA agreement until it has complied with CEQA as a responsible agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully protected species, including any listed in Attachment 1, may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, 5515).

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ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360). It is unclear in the NOP if the Project will retroactively evaluate impacts that resulted from the unauthorized activities cited in the County’s violation, for which the Project appears to be addressing in part.

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including but not limited to all rare, threatened, or endangered species (Cal. Code Regs., tit. 14, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site. For sensitive natural communities see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances local agencies may require.

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project. Fully protected, threatened or endangered, candidate, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include but are not limited to those listed in Attachment 1.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

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Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>)¹, must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. Visits to nearby reference sites and more than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special-status plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

IMPACT ANALYSIS AND MITIGATION MEASURES

The EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (Cal. Code Regs., tit. 14, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas, such as oak (*Quercus* sp.) woodlands. This should include encroachments that may occur in the future by allowing for expansion of the SWFP boundary as well as encroachments that have occurred that in the area that is cited in the county's violation;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

¹ California Rare Plant Rank (CRPR) 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/cnps-rare-plant-ranks>).

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The EIR should also identify closely related past, present, and reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (Cal. Code Regs., tit. 14, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable. A contribution to a significant cumulative impact, e.g., reduction of available habitat for a special-status species, should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the Project on the environment (Cal. Code Regs., tit. 14, §§ 15021, 15063, 15071, 15126.2, 15126.4, 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

EDITORIAL COMMENTS

CDFW recommends the EIR provide a description of all impacts that resulted from the unauthorized activities described in the citation the county issued CFL. If the purpose of the Project is to retroactively approve grading activities, it would be appropriate for the EIR to consider the impacts that have already occurred, including the loss of oak woodland, and address how those impacts will be remediated.

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 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/Plantsand-Animals>.

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FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. 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.

If you have any questions, please contact Alicia Bird, Environmental Scientist, at (707) 980-5154 or Alicia.Bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77F9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Special-Status Species

ec: State Clearinghouse # 2022070526

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Attachment 1: Special-Status Species

Species Name	Common Name	Status
Herpetofauna		
<i>Rana draytonii</i>	California red-legged frog	FT, SSC
<i>Rana boylei</i>	foothill yellow-legged frog	SSC
<i>Emys marmorata</i>	western pond turtle	SSC
Birds		
<i>Falco peregrinus anatum</i>	American peregrine falcon	FP
<i>Progne subis</i>	purple martin	SSC
<i>Accipiter striatus</i>	sharp-shinned hawk	WL
<i>Falco mexicanus</i>	prairie falcon	WL
Mammals		
<i>Antrozous pallidus</i>	pallid bat	SSC
<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	SSC
Invertebrates		
<i>Bombus caliginosus</i>	obscure bumble bee	ICP
<i>Bombus occidentalis</i>	western bumble bee	ICP
Fish		
<i>Oncorhynchus mykiss irideus</i> pop. 8	steelhead - central California coast DPS	FT
Plants		
<i>Astragalus claranus</i>	Clara Hunt's milk-vetch	FE, SE
<i>Lasthenia burkei</i>	Burke's goldfields	FE, SE
<i>Limnanthes vincularis</i>	Sebastopol meadowfoam	FE, SE

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<i>Arctostaphylos stanfordiana</i> ssp. <i>decumbens</i>	Rincon Ridge manzanita	CRPR 1B.1
<i>Ceanothus confusus</i>	Rincon Ridge ceanothus	CRPR 1B.1
<i>Navarretia leucocephala</i> ssp. <i>bakeri</i>	Baker's navarretia	CRPR 1B.1
<i>Sidalcea hickmanii</i> ssp. <i>napensis</i>	Napa checkerbloom	CRPR 1B.1
<i>Amorpha californica</i> var. <i>napensis</i>	Napa false indigo	CRPR 1B.2
<i>Ceanothus divergens</i>	Calistoga ceanothus	CRPR 1B.2
<i>Ceanothus purpureus</i>	holly-leaved ceanothus	CRPR 1B.2
<i>Centromadia parryi</i> ssp. <i>parryi</i>	pappose tarplant	CRPR 1B.2
<i>Harmonia hallii</i>	Hall's harmonia	CRPR 1B.2
<i>Hesperolinon sharsmithiae</i>	Sharsmith's western flax	CRPR 1B.2
<i>Layia septentrionalis</i>	Colusa layia	CRPR 1B.2
<i>Leptosiphon jepsonii</i>	Jepson's leptosiphon	CRPR 1B.2
<i>Lupinus sericatus</i>	Cobb Mountain lupine	CRPR 1B.2
<i>Spergularia macrotheca</i> var. <i>longistyla</i>	long-styled sand-spurrey	CRPR 1B.2
<i>Trifolium hydrophilum</i>	saline clover	CRPR 1B.2
<i>Brodiaea leptandra</i>	narrow-anthered brodiaea	CRPR 1B.2
<i>Juncus luciensis</i>	Santa Lucia dwarf rush	CRPR 1B.2
<i>Puccinellia simplex</i>	California alkali grass	CRPR 1B.2

FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under ESA; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; ICP = California Terrestrial and Vernal Pool Invertebrate of Conservation Priority ²; SSC = state Species of Special Concern; CRPR = California Rare Plant Rank

² The list of California Terrestrial and Vernal Pool Invertebrates of Conservation Priority was collated during CDFW's Scientific Collecting Permit rulemaking process: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157415&inline>