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STATE CLEARING HOUSE

From: Oswalt, Caitlyn@Wildlife
Sent: Monday, October 31, 2022 4:23 PM
To: Trails@Parks
Cc: Wildlife R2 CEQA; Wood, Dylan@Wildlife; Moeszinger, Patrick@Wildlife; Wilson, Billie@Wildlife
Subject: CEQA Comments for IS-ND FLSRA and FPSHP RTMP; SCH# 2022090416

Dear Mr. Jason Spann,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Completion of an ND from California Department of Parks and Recreation for the Road and Trail Management Plan (Plan) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code.

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 & 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. (Fish & G. Code., § 1802.) Similarly for purposes of CEQA, CDFW provides, 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. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the California Department of Parks and Recreation in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENTS

1. On page 13, Section 2.6, Tier 1 Environmental Review, it states that the IS/ND is tiered off two separate CEQA documents. These documents include the Folsom Lake State Recreation Area & Folsom Powerhouse State Historic Park General Plan/Resource Management Plan and associated environmental impact report (EIR), as well as the

Road and Trail Change-in-Use Evaluation Process and associated program environmental impact report (PEIR). This CEQA document should only be directly tiered off one document. Please clarify the tiering process of this IS/ND and how each document relates to each other.

2. The CEQA document is declared to be an Initial Study with proposed Negative Declaration. CEQA allows for a “Mitigated Negative Declaration” in which mitigation measures are proposed to reduce potentially significant effects to less than significant (14 CCR § 15369.5). Since the Project would have impacts that would require mitigation to bring them down to less than significant, then declaring the CEQA document to be an Initial Study with a proposed Mitigated Negative Declaration would be more appropriate. To address this comment, CDFW recommends changing the CEQA document from an “Initial Study with proposed Negative Declaration” to an “Initial Study with a proposed Mitigated Negative Declaration”.
3. Table 4.3-1, PLANTS-1, WILDLIFE-1 describes pre-screening for potential locations of new construction or site alteration activities. It states if avoidance of impacts to populations of special status species is not possible mitigation will be used as required and appropriate. Under a Negative Declaration the proposed project cannot have a significant effect on the environment that it would require mitigation to reduce the impacts to less than significant. If mitigation will be required for later tiered CEQA documents, consider changing this CEQA document to a Mitigated Negative Declaration.
4. The Affected Environment section on page 60 of the IS/ND is based off the Folsom Lake State Recreation Area & Folsom Powerhouse State Historic Park General Plan/Resource Management Plan, published in June 2010. CDFW recommends using current conditions as the baseline for this IS/ND. This can be achieved through conducting a new Biological Assessment to ensure the biological baseline of this project is current. A current Biological Assessment will provide more accurate data for each project using this tiered IS/ND.
5. Tables 4.3-2 and 4.3-3 on pages 62, 64, and 65 list the special-status plant and animal species that have the potential to occur within the boundaries of the Plan Area. This table is based on data provided in June 2010. A recent biological survey will produce a more accurate biological baseline. For this reason, CDFW recommends updating Tables 4.3-2 and 4.3-3 with more recent data.
6. Page 67 section a, the IS/ND stated that to reduce impacts to less than significant the following measures were recommended within the IS/ND, GEN-4, BIO-3 through BIO-5, BIO-12 through BIO-17, and BIO-19 through BIO-21. Measure BIO-19 is for the flagging, fencing, and the monitoring of special-status plants. This type of measure is considered mitigation as without its implementation, significant impacts could occur to special status plant species. CDFW recommends changing section a from less than significant to less than significant with mitigation.
7. Page 68 section c, states “all permit/agreement conditions would be implemented, reducing any potential impacts to a less-than-significant level.” Measures for biological resources that rely on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance are considered deferred mitigations. CEQA Guidelines §15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. Because there is no guarantee that these approvals or cooperation with all of the involved entities will ultimately occur, the mitigation measures are unenforceable and do not reduce the impacts to biological resources to a less-than-significant level. CDFW recommends forming mitigation measures that are actionable and enforceable.
8. The IS/ND has identified lakes, perennial, intermittent, and ephemeral rivers, streams, and other hydrologically connected aquatic features. The IS/ND did not analyze all potential temporary, permanent, direct, indirect and/or cumulative impacts to the above-mentioned aquatic features and associated biological resources/habitats that may occur because of the Plan. Therefore, the IS/ND should propose appropriate avoidance, minimization and/or mitigation measures to reduce impacts to a less-than-significant level including but not limited to Plans impacts to water temperature, water nutrient concentrations, and turbidity.

9. The IS/ND has identified Project activities that will require notification to CDFW pursuant to Section 1602 of the Fish and Game Code. Notification is required for any activity that may do one or more of the following:
- a. Substantially divert or obstruct the natural flow of any river, stream, or lake;
 - b. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
 - c. Deposit debris, waste, or other materials where it may pass into any river, stream, or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW will determine if the Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. The Project as currently proposed in the IS/MND will require an LSA Agreement. An LSA Agreement will include measures necessary to protect existing fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, the IS/MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, minimization, mitigation, and monitoring and reporting commitments.

ENVIRONMENTAL DATA

CEQA requires that information developed in mitigated 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 field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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 approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the IS/ND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Caitlyn Oswalt, Environmental Scientist at (916) 358-4315 or caitlyn.oswalt@wildlife.ca.gov.

Sincerely,

Caitlyn Oswalt

(She/Her)

Environmental Scientist | 916.358.4315
North Central Region – Region 2
California Department of Fish and Wildlife