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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

November 22, 2022

**NOV 23 2022**

## STATE CLEARING HOUSE

Ms. Summer Burlison  
San Mateo County Planning & Building Department  
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Redwood City, CA 94063  
[sburlison@smcgov.org](mailto:sburlison@smcgov.org)

Subject: Peter's Creek Bridges Project, Mitigated Negative Declaration,  
SCH No. 2022100515, San Mateo County

Dear Ms. Burlison:

The California Department of Fish and Wildlife (CDFW) has reviewed the draft Mitigated Negative Declaration (MND) for Peter's Creek Bridges Project (Project), pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW is submitting comments on the draft MND as a means to inform the County of San Mateo as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

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. (*Id.*, § 1802). Similarly, for 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 (LSA) 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.), the Project proponent may seek related take authorization as

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<sup>1</sup> 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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provided by the Fish and Game Code. Pursuant to our jurisdiction, CDFW has the following concerns, comments, and recommendations regarding the Project.

## **PROJECT LOCATION AND DESCRIPTION**

The Project is located along Slate Creek Road (Peter's Creek), South Skyline area, Assessor's Parcel Number 085-070-070. The Project includes the removal and reconstruction of an existing bridge (Bridge 1) and the construction of a new bridge (Bridge 2) crossing Peter's Creek. The bridges will be clear span structures that are 50 feet by 11.5 feet (Bridge 1) and 100 feet by 8.7 feet (Bridge 2) in span.

Replacement Bridge 1 will replace an existing old railroad flat car bridge and will be fire truck rated. New Bridge 2 will be located between two high banks about 800 feet upstream of Bridge 1. A short area of the roadway to the location of Bridge 2 will be temporarily expanded to provide a minimum width of 12 feet for equipment and material. Additionally, a large stump in the access road to Bridge 2 will be removed and the access way re-graded.

The Project proposes a total of 1,563 cubic yards (cy) of grading (1,048 cy cut and 515 cy fill) and the removal of 18 trees, including 16 trees ranging in size from 5 inches in diameter to 10 inches in diameter, one 35-inch diameter Douglas-fir and one 28-inch diameter redwood. The bridges will serve maintenance and recreation users. Footings/foundations for the bridges will be outward of top-of-bank and above the ordinary high water line. However, temporary water diversions within the creek bed will be necessary for construction access and for equipment to work at the sites. Construction will occur during the dry season and is expected to take two to three months for each bridge, with the bridges to be constructed sequentially as improvement to Bridge 1 is needed in order for construction vehicles and equipment to access the site for Bridge 2. Additionally, some minor realignment of trail segments around these bridges is proposed.

## **REGULATORY AUTHORITY**

### **Lake and Streambed Alteration Agreement**

The Project has the potential to impact stream resources including mainstems, tributaries, drainages and floodplains associated with varied aquatic resource types within the Biological Study Area (BSA) including but not limited to Peters Creek. If work is proposed that will impact the bed, bank, channel or riparian habitat, including the trimming or removal of trees and riparian vegetation, please be advised that the proposed Project may be subject to LSA notification. CDFW requires an LSA notification, pursuant to Fish and Game Code § 1600 et. seq., for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, bank or channel or deposit or dispose of material where it may pass into a river, lake or

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stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements.

### **Fish and Game Code § 5901**

Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, 1<sup>3/8</sup>, 1<sup>1/2</sup>, 1<sup>7/8</sup>, 2, 2<sup>1/4</sup>, 2<sup>1/2</sup>, 2<sup>3/4</sup>, 3, 3<sup>1/2</sup>, 4, 4<sup>1/8</sup>, 4<sup>1/2</sup>, 4<sup>3/4</sup>, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream. Fish are defined as a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals (Fish and Game Code § 45).

### **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. CEQA requires a Mandatory Finding of Significance if a Project is likely to substantially impact threatened or endangered species (CEQA Guidelines §§ 21001 subd. (c), 21083, 15380, 15064 and 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. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

### **Fully Protected Species**

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take, except for collecting these species for necessary scientific research and relocation of a fully protected bird species for the protection of livestock. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general Project except under the provisions of a Natural Communities Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding for scientific research purposes. “Scientific Research” does not include an action taken as part of specified mitigation for a Project, as defined in Section 21065 of the Public Resources Code.

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## COMMENTS AND RECOMMENDATIONS

### COMMENT 1: Project Design Analysis and Coordination

**Issue:** CDFW believes the MND does not sufficiently disclose or analyze potentially significant impacts to some fish and wildlife resources. CDFW is also concerned the proposed Project design to grade and construct the second bridge within Peter's Creek may not be the least environmentally impactful alternative. Site specific information is needed to ensure bridges are designed to meet the flow capacity of a given system, protect fish passage in fish bearing systems and to ensure potential barriers are remediated.

**Recommendation 1 – Design Coordination:** Early coordination with Habitat Conservation and the CDFW Conservation Engineering Branch is recommended to provide review and analysis of any proposed structures or Project elements with the potential to impact fish and wildlife resources. CDFW Conservation Engineering Branch should be provided engineered drawings and design specification planning sheets during the initial design process, prior to design selection and re-initiating design consultation at 30% design at minimum and through the permitting process for review and comment.

**Recommendation 2 - Bridge and Stream Crossing References:** CDFW recommends utilizing the design principles outlined in the California Salmonid Stream Habitat Restoration Manual, Part XII (CDFW, 2009) and NOAA Fisheries Service Guidelines for Salmonid Passage at Stream Crossings (National Marine Fisheries Service, 2001) into stream crossing designs. CDFW strongly recommends the above manuals are included and referenced when designing the structure and creek work aspect of the Project. Such designs allow natural stream flow and sedimentation processes to continue for long term dynamic channel stability.

### COMMENT 2: Marbled Murrelet

**Issue:** The MND has not sufficiently disclosed or adequately analyzed the potentially significant impacts to marbled murrelet (*Brachyramphus marmoratus*). The proposed Project is located within the breeding range of the marbled murrelet. The Project within designated Critical Habitat for marbled murrelet (<https://ecos.fws.gov/ecp/species/4467#crithab>). CDFW is aware of known suitable habitat approximately within the Project vicinity. During the breeding season, marbled murrelets will use this flyway of Peter's Creek to travel twice a day (dawn and dusk) to and from the ocean to breeding habitat in the forest. According to the Project description, in-water construction activities will be conducted between August 1 to October 1 which is prior to the end of the marbled murrelet breeding season (September 15). Equipment such as backhoes, excavators, front loaders, and skid

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steers, fit the “High” (81-90 dB) to “Very High” (91-100 dB) category within the U.S. Fish and Wildlife Service’s (USFWS) sound categories.

**Evidence of Impacts:** The marbled murrelet is a small seabird which uses coastal redwood forests from Santa Cruz to Del Norte counties during the breeding season (March 24 to September 15). The marbled murrelet 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. Marbled murrelets have been documented nesting in mature, old-forests as well as younger forest stands with late-seral elements such as large trees with limbs >6 inches wide or limb defects. Nesting chronology of the marbled murrelet varies greatly between nesting seasons and geographic areas (McShane *et al.* 2004). In California, evidence suggests that murrelet juveniles typically fledge prior to September 10; however, this is based on a small number of records (Hamer and Nelson 1995). Adult murrelets flying past the Project area to nest sites located further upstream during parental feeding of young may therefore experience noise and visual disturbance from construction activities. Most adult murrelet flights to deliver food to the young occur before sunrise (two-thirds), while some occur at dusk (one-third), and occasionally during the day (Hamer and Nelson 1995).

**Recommendation 1 – Avoidance of Marbled Murrelet Noise Deterrent:** CDFW strongly recommends the Project does not include any noise deterrents for marbled murrelets since murrelets are sensitive to sounds. Additional sounds such as noise deterrents may impact murrelets and the different life cycles such as feeding of young or fledglings. CDFW strongly encourages the Project performs early consultation with CDFW to reduce impacts to murrelets.

**Recommendation 2 – Marbled 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 the 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 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.

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

**Recommendation 3 – Construction Activities Occurring Daily:** CDFW recommends that construction activities be prohibited within two hours of official sunrise and sunset to avoid visual and noise disturbance during peak hours of adult murrelet flights from the ocean to the nest trees.

**Recommendation 4 – Avoid Attracting Predators:** CDFW recommends that measures be taken to avoid attracting predators of murrelets as result of construction activities at the Project. Ravens, crows and jays, which have large home ranges, are known predators of marbled murrelet eggs and nestlings (Marzluff and Neatherlin 2006). CDFW recommends that the biological monitor instruct the work crew that all garbage and food scraps shall be packed out and disposed of in animal-proof containers. Workers, when feasible, should consume food inside their vehicles. These measures shall also apply for construction activities occurring during the marbled murrelet breeding season outside the seasonal disturbance buffer.

## CONCLUSION

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California's fish and wildlife resources. Likewise, we appreciate 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 the Fish and Game Code.

Questions regarding this letter or further coordination should be directed to Mr. Will Kanz, Environmental Scientist, at (707) 337-1187 or [Will.Kanz@wildlife.ca.gov](mailto:Will.Kanz@wildlife.ca.gov); or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or [Wesley.Stokes@wildlife.ca.gov](mailto:Wesley.Stokes@wildlife.ca.gov).

Sincerely,

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

cc: State Clearinghouse #2022100515

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