

Oswalt, Caitlyn@Wildlife



From: Oswalt, Caitlyn@Wildlife
Sent: Friday, January 13, 2023 5:01 PM
To: Canfield, Dan@Parks
Cc: Wilson, Billie@Wildlife; Griffith, Kaylee@Wildlife; Seapy, Briana@Wildlife, Wildlife R2 CEQA
Subject: CEQA Comments for MDSHP Pit Drainage Runoff Sediment Control Best Management Practices Plan IS-MND; SCH# 2022110416

Dear Mr. Dan Canfield,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Completion of an MND from the California Department of Parks and Recreation for the Malakoff Diggins State Historic Park (MDSHP) Pit Drainage Runoff Sediment Control Best Management Practices Plan (Project) pursuant to 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.

PROJECT DESCRIPTION SUMMARY

The Project site is located approximately 9 miles northeast of Nevada City in Nevada County, California.

The Project consists of Best Management Practices (BMPs) aimed to minimize, abate, or control sediment discharge from the Hiller Tunnel. These BMPs include coarse sediment management in the eastern portion of the Pit using a grade control structure and brush barriers to capture and retain gravel and sand. Constructing an interceptor swale in the south-central portion of the Pit to redirect flows from the eastern portion of the Pit away from the Hiller Tunnel and

to the northwest into the Pit Lake to allow for additional fine sediment settling. Enhancement of the Pit Lake to increase its sediment settling capacity with construction of a soldier pile wall to manage surface water discharge to the Hiller Tunnel. The removal of boardwalk and a trail realignment of an approximately 1,200-foot segment of new pedestrian trail around the southernmost perimeter of the southwest portion of the Pit.

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.

CDFW is primarily concerned with the Project impacts to existing fish and wildlife resources including Scadden Flat checkerbloom (*Sidalcea stipularis*), Olive-sided Flycatcher (*Contopus cooperi*), Little willow flycatcher (*Empidonax traillii brewsteri*), Yellow-breasted chat (*Icteria virens*), Yellow (Brewster's) warbler (*Setophaga petechia brewsteri*), Ringtail (*Bassariscus astutus*), Foothill yellow-legged frog (*Rana boylei*), California Spotted Owl (*Strix occidentalis occidentalis*), Long-eared owl (*Asio otus*), Northern Goshawk (*Accipiter gentilis*), Golden eagle (*Aquila chrysaetos*), Bald eagle (*Haliaeetus leucocephalus*), Western pond turtle (*Emys marmorata*), Bat species, and other aquatic and terrestrial plant and wildlife species. CDFW is also concerned with impacts from the discharge of water on riparian habitat, impacts to downstream aquatic resources. CDFW provides the following comments for the California Department of Parks and Recreation's consideration:

COMMENTS

1. The Project includes the potential use of anionic polyacrylamide flocculants as a soil stabilizer in certain areas of the Pit to reduce sediment entrainment in stormwater flows to enhance fine sediment settling within the Pit. Please provide additional details on the success criteria that will be used for the pilot study, the approximate frequency of flocculant log replacement, and approximate decomposition rates of polyacrylamides and their decomposition byproducts. Describe the potential effects anionic polyacrylamide flocculants and their byproducts could have on fish and wildlife resources over the lifetime of this project. CDFW recommends these impacts be addressed within the IS/MND.
2. Please describe if natural flocculants were considered for this project. Compared to chemical flocculants, natural flocculants are safe and stable shear polymers that are sufficiently biodegradable, and do not produce side effects from the waste produced. Natural flocculants, which are derived from polysaccharides and natural polymers are a more environmentally friendly option compared to chemical flocculants. The use of natural flocculants has the advantages of renewability, biodegradability, and nontoxicity on the environment. CDFW recommends the California Department of Parks and Recreation consider using natural flocculants in replacement of anionic polyacrylamide flocculants.
3. Scadden Flat checkerbloom (*Sidalcea stipularis*) has a moderate potential to occur within the project area due to the presence of cattail marsh which could support this species and known associated species. The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 et seq.) prohibits the take or possession of State-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an Incidental Take Permit (ITP) or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b). Plant species not listed as rare, threatened, endangered, or candidates for listing under the California Endangered Species Act (CESA) or NPPA may nevertheless meet the definition of rare or endangered provided in CEQA (Cal. Code Regs., tit. 14, § 15380, subd. (b)). CDFW recommends the IS/MND include species specific measures to minimize and fully mitigate the impacts to any state-listed species the Project has potential to take.

4. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. Take of state-listed rare and/or endangered species due to Project activities may only be permitted through an ITP, Restoration Management Permit (RMP), or other authorization issued by CDFW. CDFW recommends that an ITP be obtained where the Project has the potential to result in take of a species listed as candidate, threatened, or endangered under CESA, and cannot be fully avoided, either through construction or over the life of the Project. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, CDFW recommends the IS/MND include species specific measures to minimize and fully mitigate the impacts to any state-listed species the Project has potential to take.

Furthermore, an RMP may be issued if the project is implementing a restoration project that is voluntary. The RMP can authorize take of endangered, threatened, and candidate species pursuant to CESA as well as fully protected species (FPS) pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515 that are associated with management of CESA-listed species or FPS for restoration purposes that result in net benefits for the Covered Species. CDFW recommends the IS/MND state detailed species-specific restoration activities, species-specific survey and monitoring efforts, and specific details on how the project will benefit each species. Additionally, the IS/MND should describe the short-term and long-term restoration goals for the project site. Early consultation with CDFW is recommended to determine RMP eligibility under the Cutting the Green Tape initiative.

5. The following fully protected species are either present or have moderate potential to occur within the Project area, Ringtail (*Bassariscus astutus*), Golden eagle (*Aquila chrysaetos*), and Bald eagle (*Haliaeetus leucocephalus*). Project activities described in the IS/MND should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends the IS/MND fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the California Department of Parks and Recreation include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts and avoid take of fully protected species.
6. The IS/MND 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/MND 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