

Haggerty, Nicole@Wildlife

From: Hosea, Robert@Wildlife
Sent: Wednesday, June 7, 2023 9:36 AM
To: TraceyFerguson@countyofplumas.com
Cc: Wildlife R2 CEQA
Subject: California Department of Fish and Wildlife Comments on IS/MND for Hat Creek Construction Site Development Permit SDP 8-22/23-01, Temporary Asphalt Production Plant

Tim Evans, Senior Planner
Plumas County Planning Department
555 Main Street, Quincy, CA



Dear Mr. Evans:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) from Plumas County for the Hat Creek Construction Site Development Permit SDP 8-22/23-01 (project) in the County of Plumas 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, plants, and their habitats. 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 (Fish & G. 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 (Id., § 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 may also act 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The project site is located at 7600 Industrial Way near the town of Portola, in Plumas County, CA at Latitude 39.800536° North and Longitude 120.499456° West.

The project consists of the temporary installation of an asphalt plant, lime slurry mix plant and associated infrastructure such as diesel fuel storage facilities and water diversion operations for the purpose of making and providing asphalt for planned road repair and construction projects in the area.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist the Plumas County Planning Department in adequately identifying and/or mitigating the project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed project with respect to impacts on biological resources. CDFW recommends that the IS/MND address the following:

PERMITTING REQUIREMENTS

The IS/MND notes that water for plant operations may be supplied by the local utility district or through diversion of water from the Middle Fork of the Feather River under riparian water rights as a result of the property being immediately adjacent to the river. Diversion of any water from Humbug Creek or the Middle Fork of the Feather River would require the project proponent to notify the California Department of Fish and Wildlife under Section 1602 of the Fish and Game Code. This requirement is supported in the June 4, 2015, Appellate Court Ruling in the case of the Siskiyou County Farm Bureau v. California Department of Fish and Wildlife. The IS/MND incorrectly states that no permits are required to divert project-related water from the river.

OVERALL POTENTIAL ENVIRONMENTAL IMPACTS

The IS/MND states that the temporary asphalt plant and lime slurry mix plant will operate for at least three (3) years, yet all environmental analyses are based only on projected production tonnages for two (2) years. The IS/MND should accurately address the actual years and days of operation and environmental impact analyses should be based on accurate data for the planned duration of operations, two (2) years or three (3) years, or longer. The IS/MND notes repeatedly that the property for the project is zoned for Heavy Industrial use which is the appropriate classification of the project (construction and operation of an asphalt production plant). However, the IS/MND at no point evaluates the potential environmental impacts to the streamside riparian habitat or to the Middle Fork of the Feather River, which abuts the property, from spills of petroleum-based materials or lime slurry associated with this plant. It does not discuss implementation of appropriate safety measures such as secondary spill containment structures or impermeable surfaces for fueling and servicing of operational equipment, that could reduce the potential environmental impacts from a spill to a level of less than significant. The soils on the project site are characterized as "moderately high to highly permeable" which could allow for spilled materials such as diesel fuel to readily enter the soils and potentially migrate through the subsurface to where they could enter the waters of the river.

The IS/MND does not evaluate the potential impacts for installed lighting structures for nighttime operation of the plant or actual nighttime operations to activities of crepuscular and nocturnal wildlife species that may be present in the vicinity or feeding in the area immediately above the project site.

The IS/MND discusses diversion of potentially significant amounts of water from the Middle Fork of the Feather River under riparian water rights, but it does not analyze the potential impacts to downstream river flows, or entrainment of fish and larval amphibians as a result of these diversions. CDFW requests that the IS/MND be revised further analyze and discuss mitigation measures to reduce impacts to water quality,

wildlife species affected by night-time lighting, and river flows and aquatic species from water diversions to less than significant levels.

SURVEY WILDLIFE AND SPECIAL STATUS PLANT PRESENCE

The IS/MND relies on a single survey reported to have been conducted in April of 2021. The Biological Resources Assessment provided as Attachment C in the IS/MND (prepared in January of 2023) states that the site survey was conducted in July of 2019, not April of 2021. Due to the drought conditions present in most of California, including in the area of the proposed project, at the time of the survey, this single survey may not be representative of current conditions or native plant and wildlife species presence at the site. Additionally, the Biological Resources Assessment was conducted during the day and did not include efforts to determine the presence of, or use of the site by, crepuscular or nocturnal species. The IS/MND does not address any potential impacts to these groups of animals from the project, including the impacts from proposed lighting of the plant to facilitate nighttime operations. The timing of the single survey is such that Spring and potentially early Summer blooming plant species would not necessarily be present or identifiable and as such it is not reliable to rule out their presence within the project boundaries or the immediate vicinity of the project where they could serve as forage species for Western bumblebees (*Bombus occidentalis*).

BAT SURVEYS

CDFW recommends the Biological Resources Assessment to be revised to include bat surveys. The project site is described as open grassland and ruderal habitat with a narrow riparian corridor immediately adjacent to a flowing river and supports montane wetland and riparian habitat as well as nearby forested areas. These habitats would readily support a prey base for various species of bats. The IS/MND calls for the installation of lighting structures to facilitate use of the asphalt plant at night to accommodate supplying asphalt to nearby road projects. The presence of significant lighting structures on the project site could have a significant adverse impact on the foraging behavior of any bat species present in the area. Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). CDFW recommends the following to reduce impacts to a less than significant level:

- **Habitat Assessment.** A qualified biologist with education and experience in bat biology and identification, conducts a habitat assessment for potentially suitable bat roosting and foraging habitat within six months of Project activities. If the habitat assessment reveals suitable bat roosting and/or foraging habitat, then a qualified bat biologist should conduct a presence/absence survey during the peak activity periods. If bats are present, then the qualified biologist should prepare a Bat Impact Minimization and Avoidance Plan.
- **Bat Avoidance Plan.** The bat avoidance plan should identify: 1) the location of any roosting sites; 2) an estimate of the number of bats present at the time of assessment; 3) species of bats present; 4) the type of roost (e.g., day/night, maternity, hibernaculum, bachelor); and 5) species specific measures to-avoid and minimize impacts to both feeding and roosting bats. The bat avoidance plan should evaluate the length of time of disturbance, equipment noise, potential feeding behavior disruption, and type of habitat present at the project.
- **No Disturbance Buffer.** If during the habitat assessment the qualified bat biologist identifies a bat roost within the project boundary that is not proposed for demolition or removal, then a no disturbance buffer should be established around the roost in consultation with CDFW. The width of

the buffer should be determined by the qualified bat biologist based on the bat species, specific site conditions, and level of disturbance. The buffer should be maintained until the qualified bat biologist determines that the roost is no longer occupied.

- Replacement Structures. If any bat roosts are identified and impacts to these roosts cannot be avoided through modification of the proposed project, replacement roost structures (bat houses or other structures) placed outside of the impact area predicted for the project are recommended to accommodate the bat species impacted by the project. Replacement roost structures should be in place for a minimum of one full year prior to implementing the project. The replacement structures should be monitored to document bat use. Ideally, the project would not be implemented unless and until replacement roost structures on site are documented to be acceptable and used by the bat species of interest.
- Roost Removal Timing. If the project will result in the loss or modification of the original roost structure, it should be implemented outside hibernation and maternity seasons, Nov 1 – Feb 1 and April 1 – August 31 respectively and when the qualified bat biologist has confirmed that roosts are not occupied.
- Bat Exclusion. If an active bat roost is found in a tree or structure that must be removed, or in a structure that will experience significant changes in disturbance levels such as an increase in vehicular traffic levels or air-borne chemicals or particulate levels, the qualified bat biologist should prepare a Bat Exclusion Plan for the passive exclusion of the bats from the roost. CDFW recommends that exclusion devices are installed either (1) between March 1 and March 31, prior to parturition of pups; or (2) between September 1 and October 31 prior to hibernation (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½ inch in 24 hours). The qualified bat biologist should confirm the absence of bats prior to the start of the project.

NESTING MIGRATORY BIRD SPECIES

The IS/MND notes that no removal of riparian vegetation present on the project site is planned and as such, the project would result in no impact to nesting migratory bird species. However, a number of migratory bird species are known to establish nests on various soil substrates ranging from exposed patches of gravel (e.g., Killdeer (*Charadrus vociferus*)), to areas of grassland where various waterfowl species and resident gamebird species may establish nests in areas of dense grass with occasional scrub/brush vegetation. CDFW recommends appropriate timing of nesting bird surveys be considered prior to a decision that the proposed project would have no significant impact. CDFW recommends nesting bird surveys to be performed during the typical nesting bird season, between February 1 and August 31. The IS/MND should also consider that nesting birds may be indirectly impacted by other disturbances including, but not limited to, noise, dust, and vibration regardless of vegetation removal.

WILLOW FLYCATCHER (*Empidonax traillii*)

The IS/MND notes the presence of limited willow habitat on the property that could be utilized as a foraging substrate for Willow Flycatcher (*Empidonax traillii*). The biological survey conducted to support the IS/MND is four years old and may not represent the current conditions present on the site. Prior to a final determination

of less than significant impact, CDFW supports conducting appropriately timed surveys for presence of the species and the subsequent development of appropriate impact avoidance plans.

STATE LISTED CESA SPECIES

WESTERN BUMBLEBEE (*Bombus occidentalis*)

The Western bumblebee (WBB) is currently a candidate species under the CESA. As a candidate species, it receives the same legal protections afforded to endangered or threatened species. Occurrences of WBB have been documented in the California Natural Diversity Database within the species' known flight range of the project. The IS/MND and its supporting documentation excludes the presence of WBB based on a determination that the soils within the site of the asphalt plant are too compacted to allow for the presence of burrowing rodents and thereby the ability of WBB queens to establish nests or overwintering sites. WBB queens can, and do, overwinter under leaf litter on slopes in areas with shrubby vegetation or trees as would be expected within the riparian corridor on the project site, adjacent to the Middle Fork of the Feather River. The IS/MND does not make clear in its discussions of site conditions if the areas deemed unsuitable are simply the area within the property where the asphalt plant itself is proposed to be placed, or the area proposed for placement of aggregate stockpiles to supply the plant in addition to the plant structures, or the entirety of the property.

CDFW recommends WBB specific surveys be conducted to determine if this species is present within the project site. Timing of the surveys must be appropriate to make a valid determination of presence or absence. If present, the IS/MND must analyze the potential significant impacts and propose additional avoidance, minimizations, and mitigation measures to reduce impacts to a less-than-significant level. Measures may include, but are not limited to, the following: avoidance of nesting sites, timing of grading or placement of aggregate stockpiles, or planting of pollinator forage plant species.

SIERRA NEVADA RED FOX (*Vulpes vulpes necator*)

The IS/MND states Sierra Nevada red fox (SNRF) (*Vulpes vulpes necator*) would not be present within the project area. However, a search of CNDDDB records and a review of mapped data through CDFW's Biogeographic Information and Observation System (BIOS) indicates that the project site falls within a mapped polygon for occurrence of the species. The IS/MND should include discussions of potential impacts of the project to this species and assess any measures deemed necessary to reduce impacts to less than significant. █

SIERRA NEVADA YELLOW-LEGGED FROG (*Rana sierrae*)

The Biological Resource Assessment (Attachment C) used to support the IS/MND notes that frogs of the genus *Rana* were observed onsite during the survey, but no attempt appears to have been made to determine if the observed frogs were in fact *Rana sierrae* or not. A search of the CDFW CNDDDB and BIOS indicates a known occurrence of *R. sierrae* near the project site on the Middle Fork of the Feather River. The IS/MND states that it is unlikely that this species is present on the project and that no mitigation is necessary as the proposed project will be "at least three (3) meters from the river." This distance is not adequate to protect aquatic and semi-aquatic life stages of *R. sierrae* and other amphibian and fish species from environmental impacts associated with spills of such materials as diesel fuel, liquid asphalt, or lime slurry. CDFW requests that a new survey be conducted of the project site, at the appropriate time of year to determine the presence of adult and/or larval life stages for *R. sierrae* and that the potential environmental impacts to aquatic and semi-aquatic species be re-evaluated with attention to the potential damage from chemical or process material spills as well as potential entrainment from diversion of water from the river.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports 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 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 effect on fish and 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 sections 21092 and 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670.

CDFW appreciates the opportunity to comment on the IS/MND for the Hat Creek Construction Site Development Permit SDP 8-22/23-01 and recommends that the Plumas County Planning Department address CDFW's comments and concerns. CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts.

If you have any questions regarding the comments provided in this email, or wish to schedule a meeting, and/or site visit, please contact Robert Hosea, Environmental Scientist at (530) 708-1199 or by email at robert.hosea@wildlife.ca.gov.

Sincerely,
Robert (Bob) Hosea
Environmental Scientist
Habitat Conservation Program
North Central Region
California Department of Fish and Wildlife
(530) 708-1199