

Haggerty, Nicole@Wildlife

From: Tran, Harvey@Wildlife
Sent: Friday, September 29, 2023 3:14 PM
To: sstowers@sjgov.org
Cc: Kearns, Zachary@Wildlife; Wildlife R2 CEQA; Stanfield, Melissa@Wildlife; Sheya, Tanya@Wildlife
Subject: Project Tracking # 2023-0313-0000 - Site Approval No. PA-2200144 CDFW draft ISMND CEQA comments **Governor's Office of Planning & Research**

September 29 2023

Good afternoon Stephanie:

STATE CLEARINGHOUSE

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study/Mitigated Negative Declaration (ISMND) from San Joaquin County for the Site Approval No. PA-2200144 (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

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 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 Agreement (LSAA) 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

This Project is located on the west side of S. Austin Rd., 1.5 miles south of Arch Airport Road, east of Stockton, San Joaquin County. The Project proposes to expand the existing landfill gas to energy (LFGTE) facility at the Forward Inc. landfill with a new renewable natural gas facility and pipeline. The Project includes:

1. A new processing and metering station on APN 181-150-08.
2. On-site pipeline connecting the new processing and metering station and the existing LFGTE plant and landfill flares on APN 201-060-02, crossing APN 181-150-08, 181-150-18, 115-007-09, & 201-060-05, and Little John Creek.
3. Off-site pipelines along Newcastle Road connecting the new processing and metering station and the existing PG&E distribution pipeline at Newcastle Road and McKessen Avenue (private road).
4. A new PG&E compressor station on APN 177-260-42 (at the southwest corner of Pock Lane and Arch Airport Road).
5. Off-site pipelines along Arch Airport Road between the new PG&E compressor station and existing PG&E distribution pipeline at Pock Lane.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist San Joaquin County 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 recommends the following items be addressed in the draft CEQA document:

Comment 1: MM BIO-2 Species Specific Avoidance and Minimization Measures E, Nesting and Migratory Birds

Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests, and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

To address this comment, CDFW recommends the draft ISMND change its avoidance and minimization measures regarding active nests and nesting birds found within the Project area. Recommended Project-specific avoidance and minimization measures include: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The ISMND should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project area. One example is nest buffer radius which can be determined by monitoring the active nests and determining the distance that activities will disturb the non-listed nesting birds. While some non-listed birds may tolerate disturbance within 100 feet of construction activities, other birds may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish & Game Code. A 500-foot exclusion buffer may be sufficient; however, that buffer may need to be increased based on the non-listed birds' tolerance level to the disturbance. It is the Project proponent's responsibility to confirm the buffer is sufficient to avoid take/nest failure. CDFW recommends a final preconstruction survey be required no more than 7 calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1).

CDFW recommends MM BIO-2 Species Specific Avoidance and Minimization Measures E, Nesting and Migratory Birds be reworded as follows to increase the efficacy of the measure:

E. Nesting and Migratory Birds. To avoid and minimize impacts on nesting and migratory birds and to comply with the federal Migratory Bird Treaty Act **and Fish and Game Code** pre-construction surveys **for nesting birds** will be conducted and construction avoidance measures will be implemented if necessary. ~~Riparian vegetation, grassland, agricultural and ruderal habitats and trees~~ All Project areas, including access roads and staging areas, shall be surveyed prior to construction to evaluate nesting bird habitat.

1. If work is scheduled to take place between February 1 and August 31, a pre-construction nesting bird survey will be conducted by a qualified biologist within ~~14~~ **7** days of construction, covering a ~~minimum~~ **100** radius of ~~500~~ **100** feet for ~~non-listed raptors~~ **non-listed passerines** and ~~100 feet for non-listed passerines~~ **500 feet for non-listed raptors** at all locations. Preconstruction surveys will need to be done in phases as work along the alignment based on project phasing will not be occurring concurrently. If there is a break in construction activities of more than 7 days during the nesting season a new preconstruction survey must be conducted.

2. If an active bird nest is found within these buffers, species-specific measures shall be prepared by a qualified biologist and implemented to prevent abandonment of the active nest. If an active nest is present, a minimum exclusion buffer of 100 feet **or 500 feet (for raptors)** shall be maintained during construction, depending on the species and location. The buffer shall be kept in place until after the nesting season or the qualified biologist confirms the young have fledged, are foraging independently, and the nest is no longer active for the season. The extent of these buffers shall be determined by the Designated Biologist and will depend on the species present, the level of noise or construction disturbance, line of sight between the nest and the disturbance, ambient levels of noise and other disturbances, and other topographical or artificial barriers.
3. The perimeter of the ~~nest setback zone~~ **exclusion buffer** shall be fenced or adequately demarcated with stakes and flagging at 20-foot intervals, and construction personnel and activities restricted from the area. A survey report by a qualified biologist verifying that no active nests are present, or that the young have fledged, shall be submitted prior to initiation of ~~grading activities~~ **in the nest setback zone exclusion buffer**.
4. The qualified biologist shall serve as a biological monitor during those periods when construction activities occur near ~~active nest areas~~ **the perimeter of the exclusion buffer(s)** to ensure that no inadvertent impacts on these nests occur. The qualified biologist will have stop work authority in the event construction activities result in disturbance to an active nest.

Comment 2: c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?, pages 47-48.

The draft ISMND states that no “direct impacts to jurisdictional resources would occur as part of the project” and that “no tree removal or major limb pruning is foreseen” in the riparian zone. The draft ISMND also states that “indirect impacts could occur during construction activities that may result in hazardous contaminants to enter the creek”.

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

- substantially divert or obstruct the natural flow of any river, stream or lake;
- substantially change or use any material from the bed, channel or bank of any river, stream, or lake;
- or deposit debris, waste, or other materials where it may pass into any river, stream or lake.

Therefore, please note that the activity of depositing or disposing of material where it may pass into any river, stream, or lake does not need to be located in the bed, bank, channel, or riparian to be subject to LSAA notification. While the bridge structure may be located outside the channel and beyond the floodplain, the activity of constructing the bridge may result in fill falling down the slope and entering the channel. According to the attached design plan on Figure 4, it shows the south bridge abutment excavation limit going down the slope where fill may fall down into the 15-16 feet wide floodplain and possibly further into the channel, especially during a normal rain event.

To address this comment, CDFW recommends the draft ISMND incorporates into the appropriate ISMND section(s) the need for the Project applicant to submit a notification of Lake or Streambed Alteration prior to Project commencement. For more information on CDFW’s LSAA program including the online permitting portal, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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 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 ISMND for the Site Approval No. PA-2200144 to assist San Joaquin County 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 Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@wildlife.ca.gov or Zach Kearns, Environmental Scientist at (916) 358-1134 or zachary.kearns@wildlife.ca.gov.

Thank you.

Harvey Tran

Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Region 2 - North Central Region
Habitat Conservation Program
(916) 358-4035