



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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June 28, 2024

Elizabeth Wada, Associate Civil Engineer
City of Belmont, Public Works Department
1 Twin Pines Lane
Belmont, CA 94002
EWada@belmont.gov

Subject: Twin Pines Stormwater Detention Basin Project, Draft Environmental Impact Report, SCH No. 2023100139, City of Belmont, San Mateo County

Dear Ms. Elizabeth Wada:

The California Department of Fish and Wildlife (CDFW) has reviewed the City of Belmont (City) Draft Environmental Impact Report (EIR) for the Twin Pines Stormwater Detention Basin Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect fish and wildlife resources of the State. Please be advised, by law, that CDFW may be required to carry out or approve aspects of the Project through the exercise of 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. (*Id.*, § 1802.) 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 over the Project pursuant to the Fish and Game Code. For example, the Project may be subject to CDFW's Lake and Streambed

¹ 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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Alteration (LSA) regulatory authority, if the Project impacts the bed, channel or bank of any river, stream or lake within the State (Fish & G. Code, § 1600 et seq.). Likewise, to the extent the Project 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.

REGULATORY REQUIREMENTS

California Endangered Species Act

A CESA Incidental Take Permit (ITP) must be obtained from CDFW 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. Under CESA, “take” means “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” (Fish & G. Code, § 86.) CDFW’s issuance of an ITP is subject to CEQA and to facilitate permit issuance, any project modifications and mitigation measures must be incorporated into the CEQA document analysis, discussion, and 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. Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064 & 15065.) In addition, pursuant to CEQA, the Lead Agency cannot approve a project unless all impacts to the environment are avoided or mitigated to less-than-significant levels, or the Lead Agency makes and supports Findings of Overriding Consideration (FOC) for impacts that remain significant despite the implementation of all feasible mitigation. FOC under CEQA, however, do not eliminate the Project proponent’s obligation to comply with the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et seq., for Project activities affecting river, lakes or streams and associated riparian habitat. **The draft EIR identifies that the Project location contains stream corridors, floodplains, and riparian habitat that could be impacted by the Project (p. 3.3-7).** Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); or deposit or dispose of material where it may pass into a river, lake, or stream. Work within ephemeral streams, drainage ditches, washes, watercourses with a subsurface flow, and floodplains is generally subject to notification requirements. In addition, infrastructure installed beneath such

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aquatic features, such as through hydraulic directional drilling, is also generally subject to notification requirements. Therefore, any impact to the mainstems, tributaries, or floodplains or associated riparian habitat caused by the proposed Project will likely require an LSA Notification. CDFW may not execute a final LSA Agreement until it has considered the final EIR and complied with its responsibilities as a responsible agency under CEQA.

Migratory Birds and Raptors

CDFW has authority over actions that may result in the disturbance or destruction of active bird nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include section 3503 (regarding unlawful take, possession, or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION AND LOCATION SUMMARY

Proponent: City of Belmont

Objective: The Project objectives are to develop cost effective infrastructure to reduce flooding onto properties in the lower reaches of the Belmont Creek watershed downstream of Twin Pines Park (DEIR 2024).

Location: City of Belmont, 1 Twin Pines Lane, Belmont, California. Cross Streets Twin Pines Lane east of Ralston Avenue, and south of 6th Avenue (Accessor Parcel Numbers (APNs): 045-170-080, 045-181-250, 045-181-230, and 045-181-280).

Timeframe: TBD

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT 1: Riparian Mitigation

Issues: Measure Bio-6 identifies basic success criteria that will be used to support development of a riparian habitat mitigation and monitoring plan. However, the measure relies on CDFW consultation during a permitting process to determine final mitigation plans, ratios and other details needed to mitigate Project impacts to riparian habitat.

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Recommendations: To streamline future CDFW permitting processes, Bio-Measure 6 should be updated to describe the scope of actions that will be taken to mitigate temporary and permanent impacts to the bed, bank, channel and associated riparian and wetland vegetation. All Project temporary stream impacts should be restored to approximate pre-Project conditions. Project permanent stream impacts should prioritize using an “in-kind” and “on-site” approach to the extent possible. CDFW supports mitigation planning to include actions within Bellmont Creek such as removing failing hardscape infrastructure and replanting native vegetation or other similar approaches. If “off-site” mitigation will be necessary, the location of proposed mitigation should be determined in advance of CDFW permit application submittal.

COMMENT 2: San Francisco Garter snake

Issue: The draft EIR acknowledges fully protected species may occur in the Project area including San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), a state fully protected species.

Fully protected species, such as San Francisco garter snake, may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research;
- Efforts to recover a fully protected, endangered, or threatened species, live capture and relocation of a bird species for the protection of livestock; or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process.

Recommendations to reduce impacts to less than significant: If San Francisco garter snake is present as determined by a qualified biologist during a pre-construction survey, no ground-disturbing activities shall commence, and consult with CDFW to determine the next steps.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to prepare

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subsequent CEQA documents or to make supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (d) & (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online here: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found here: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


CDFW anticipates that the proposed Project, will have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (See: Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR in order to assist the City of Belmont in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jason Teichman, Environmental Scientist at 707-210-5104 or Jason.Teichman@wildlife.ca.gov or Wesley Stokes, Senior Environmental Scientist, (Supervisory), at 707-944-5554 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2023100139)