

Jan 09 2024

Haggerty, Nicole@Wildlife

STATE CLEARINGHOUSE

From: Tran, Harvey@Wildlife
Sent: Tuesday, January 9, 2024 11:14 AM
To: bbollinger@folsom.ca.us
Cc: Wildlife R2 CEQA; Wood, Dylan@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: Folsom/Placerville Rail Trail Project Mitigated Negative Declaration Comment - CDFW CEQA comments PT 2023-0459-0000 SCH 2023120398

To Brett Bollinger:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study/Mitigated Negative Declaration (ISMND) from the City of Folsom, Parks and Recreation Department for the Folsom/Placerville Rail Trail Project (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 proposed Project is located within the City of Folsom (City) in Sacramento County. The Project would complete segments of Class I Trail within the existing City trail system between the Willow Creek Humbug Trail on the west to Iron Point Road on the east. The Project would complete segments of Class I Trail between Iron Point Road to Broadstone Parkway (approximately 0.5 miles), and from Scholar way to the north where the trail will connect with the existing Humbug Willow Creek Trail (approximately 1.0 mile). The new Class I Trail would be constructed of asphalt, would be 12-foot wide and would have 2-foot decomposed granite shoulders or similar material buffering both sides of the paved trail. Some portions of the Class I Trail may be elevated to accommodate drainage.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Folsom 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-3: Nesting birds, page 65

The draft MND has a mitigation measure for nesting birds that states that a preconstruction survey will be conducted between February 1 and August 31 for migratory birds no sooner than fourteen (14) days prior to any ground

disturbance or other construction activities, includes a 50-250-foot buffer for nesting birds, and includes species relocation. CDFW recommends that the nesting bird preconstruction survey be done no more than seven (7) calendar days before the start of tree removal. The reason for the shorter timeframe is that some bird species (e.g., Anna's hummingbirds) can build nests in a week and are common in urban and suburban areas like the Project area. In addition, CDFW also recommends that the buffer radius around an active nest not be limited to a maximum of 250 feet. Some bird species require greater buffer distance like Swainson's hawk which may require at least 0.25-mile buffer. CDFW recommends that the qualified biologist determine the buffer radius after observing the nest during construction and adjusting the distance to match the nesting birds' tolerance level. CDFW also does not recommend the relocation of active nests and nesting birds as the action of taking or possessing any migratory nongame bird as designated in the federal Migratory Bird Treaty Act is considered illegal (Fish & G. Code, § 3513).

To address this comment, CDFW recommends the draft ISMND modify the Mitigation Measure MM-BIO-3 to shorten the survey window, include a flexible buffer radius as determined by the qualified biologist based on field observations, and removing the bird relocation option. An example measure is provided below:

"Nesting Bird Survey. If Project-related activities are scheduled between February 1 to August 31 (the typical nesting season), a focused survey for nests shall be conducted by a qualified biologist no greater than seven (7) calendar days prior to the beginning of Project-related activities. The qualified biologist shall survey a minimum radius of 500-foot (for migratory birds) and 1/2-mile (for raptors) around the Project area that can be accessed by Project proponent. If no active nests are found, Project activities may proceed as scheduled.

Active Nests. If an active nest is found, active nests should be avoided, and a no disturbance or destruction buffer shall be determined and established by a qualified biologist. The buffer shall be kept in place until after the breeding nesting season or the qualified 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 qualified 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.

Project Delay. If a lapse in Project-related work of seven (7) calendar days or longer occurs, the qualified biologist shall complete another focused survey before Project work can be reinitiated.

Project Proponent Responsibility. It is the Project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year."

Comment 2: MM-BIO-5: Bats, page 66.

The draft ISMND includes a mitigation measure to survey for bats before construction commences. However, few details on how the survey will be conducted were provided. No survey distance from the Project area, number of surveys, the timing of the surveys, and what survey information would be collected were provided in the measure.

To address this comment, CDFW recommends that the draft ISMND includes a more detailed preconstruction survey measure for bats before construction commences to confirm the presence and absence of the species. The additional measure should be incorporated into the appropriate ISMND section(s). An example measure is provided below:

"Bat Survey. If suitable roosting habitat is present or within 500 feet of the Project area, the qualified biologist shall conduct a pre-activity roosting bat survey no more than thirty (30) calendar days prior to the start of Project activities and document the survey results in a report. The survey shall at a minimum include a day survey and an evening emergence survey at potential roost structures and trees. The emergence survey shall begin forty-five minutes before sunset and continue until two hours after sunset. The report shall clearly state whether roosting bats were detected. If bats were observed, the report shall include the species of bats, type of roost, and approximate colony size. If bats are observed during pre-activity surveys, a Bat Management and Monitoring Plan shall be developed prior to the start of Project activities.

If pre-activity surveys had a negative result, the qualified biologist shall conduct a follow-up bat survey no more than seven (7) calendar days prior to the construction start date, to determine whether bats have moved into or adjacent to the Project area. The results of the follow-up survey and the survey methodology shall be written into report prior to the

start of Project activities. If bats are detected and may be impacted by the proposed work, a Bat Management and Monitoring Plan shall be prepared along with the survey report.

Bat Management and Monitoring Plan. The qualified biologist shall prepare a Bat Management and Monitoring Plan if roosting bats are identified during the pre-activity or pre-construction surveys and may be impacted by the proposed work. The Bat Management and Monitoring Plan shall include detailed measures to avoid and minimize impacts to roosting bats in and near the Project area including:

1. Establishing an appropriate no-disturbance buffer around bat roosts during maternity (April 15 to August 31) or hibernation (October 15 to March 1) seasons;
2. Installing exclusion devices (e.g. one-way doors, lights and fans, foam or steel wool, etc.) either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½-inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½-inch in 24 hours);
3. Scheduling tree trimming and/or tree removal either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½-inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½-inch in 24 hours). Additionally, trees shall be removed in two steps over a period of two days. On the first day, all branches that do not contain roosting habitat shall be removed. The remaining portion of the tree shall be removed on the second day. All branch removal will be conducted using chainsaws or similar handheld equipment. Tree trimming and/or tree removal may occur outside of this work window after confirmation that the suitable habitat is not occupied.”

Comment 3: MM-BIO-7 and MM-BIO-8: Western Pond turtle, page 66.

The draft ISMND includes mitigation measures to survey for western pond turtle before construction commences and what procedures to follow if the turtle is encountered during construction. However, the survey measure lacks details on survey distance from the Project area. In addition, the measures state that the qualified biologist may relocate the turtle if it is found in the Project area but lacks details on the methodology (capture and handle methods, predetermined relocations spots, how to handle injured and dead individuals, any data collected on captured/relocated individuals, etc.).

To address this comment, CDFW recommends that the draft ISMND includes more detailed preconstruction survey and relocation measures for the western pond turtle before construction commences to confirm the presence and absence of the species and procedures to relocate them if necessary. The additional measure should be incorporated into the appropriate ISMND section(s). Example measures are provided below:

“Western Pond Turtle Survey. Project proponent shall retain a qualified biologist to survey the Project area and 300 feet around it where suitable habitat occurs for the western pond turtle. Surveys shall be performed no more than forty-eight (48) hours prior to starting Project activities within areas that can be accessed by Project personnel. The results of the survey and the survey methodology shall be compiled into a report prior to the start of Project activities. If any western pond turtle is identified during surveys or during Project activities at or within 50 feet of the Project area, all construction shall stop within 50 feet of the turtle and the turtle shall be allowed to leave the Project area unharmed. Western Pond Turtle Relocation Plan. If would like to relocate western pond turtle away from the Project area, Project proponent shall prepare a Relocation Plan. The Plan shall include, but not be limited to: (1) a discussion of the species and habitat features; (2) a schedule for survey and monitoring species presence; (3) methods to capture, handle, and relocate individuals or habitat features out of the Project area; (4) names and qualifications of biologists who will handle the species, including the appropriate handling authorizations; (5) specifications for Wildlife Exclusion fencing, if appropriate, which may be installed to exclude the wildlife species from the Project area; (6) details regarding the use of coverboards which will be employed accessory to the exclusion fencing; (7) description and maps of where the salvaged individuals or habitat features will be relocated to; and (8) identification of a wildlife rehabilitation center or veterinary facility where injured individuals of the will be taken. The Plan should also provide Project proponent’s plan to respond to an atypical detection of individual(s), such as being detected under construction vehicles, being detected inside construction materials (pipes), being detected in an uncovered pit, etc. Project proponent shall move wildlife to the

nearest appropriate site outside of the Project area. Project proponent shall maintain a Wildlife Relocation Record that includes, at a minimum: the date of capture and of relocation; the method of capture, location of relocation in relation to the Project area; and the number, age-class and species captured and relocated. The Wildlife Relocation Record shall also quantify the number and species of Project- and relocation-related mortality.”

Comment 4: 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?, page 68.

The draft ISMND states that none of the Project activities will occur within Willow Creek, but Project activities, such as erosion, could result in sedimentation of the area. The draft ISMND further states that the area includes a wetland area that receives backflow from Willow Creek adjacent to the northeast corner of the Project area during high water flows.

Section 1602 of the Fish and Game Code 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 that could 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. Watercourses with subsurface flow often influence vegetation communities (riparian). Please note that the 3rd bullet point above is related to the ISMND’s Project activities that can cause erosion and result in sedimentation of the creek. Therefore, CDFW recommends that the Project proponent notify for the Project activities that may affect the creek and the wetland area that receives backflow the creek and is hydrologically connected. Further information on CDFW’s Notification and our online permitting portal can be found at <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource based on a Project notification under Fish and Game Codes Section 1602, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources.

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 Folsom/Placerville Rail Trail Project to assist the City of Folsom 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 email or further coordination should be directed to Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@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