

March 04 2024

STATE CLEARINGHOUSE

Haggerty, Nicole@Wildlife

From: Oswalt, Caitlyn@Wildlife
Sent: Monday, March 4, 2024 3:18 PM
To: marie.maniscalco@nevadacountyca.gov
Cc: Wilson, Billie@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA
Subject: CEQA Comments on Lake Wildwood Dredging PLN23-0161 - Mitigated Negative Declaration (MND)

Dear Marie Maniscalco,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Nevada County for the Lake Wildwood Dredging PLN23-0161 (Project) in Nevada County 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 in western Nevada County, within and adjacent to the Lake Wildwood lakebed in Penn Valley (APN 050-020-044); 12440 Bosa Drive, Rough and Ready, CA (APN 052-370-037); and 12186 Hilaire Road, Rough and Ready (APN 052-360-001).

The Project consists of the removal of approximately 20,000 to 50,000 cubic yards of sediment as often as every three years within Lake Wildwood, a perennial watercourse (APN 050-020-044), two perennial tributary watercourses, and within 50 feet of six intermittent tributary watercourses.

The Project description should include the whole action as defined in the CEQA Guidelines § 15378 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment stage area, spoils areas, adjacent infrastructure development, staging areas and access and haul roads if applicable.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations presented below to assist Nevada 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. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

1. **Comment 1:** Mitigation Measure 4F: *Drawdown Approach*.

Issue: Mitigation Measure 4F details a peak discharge of no more than 150 cubic feet per second (cfs) which would be maintained for 24 hours and estimated to produce a 12-foot drop in lake water levels by late October or early November or sooner.

Recommendation: CDFW recommends the County revises Mitigation Measure 4F from a peak discharge of no more than 150 cfs to a peak discharge of no more than 40 cfs. A sudden increase in flow of 150 cfs could attract Chinook salmon into Deer Creek. These salmon would normally spawn in the Yuba River; a river that supports the state and federally listed spring-run Chinook salmon, and the federally listed steelhead trout. Chinook salmon that are attracted and ascend into Deer Creek are subject to the following negative effects:

- Spawning substrate that is inadequate to support the number of Chinook salmon attracted into the creek. The length of creek accessible to the attracted salmon is less than 0.25 miles in length and is composed mostly of large boulders which provide little to no spawning habitat.
- Salmon stranded in pools, created by the increased flow and the large boulder substrate, then become stuck as a result of the sudden decrease in flow at the termination of the drawdown.
- Any salmon redds created, will potentially become dewatered as a result of the termination of the drawdown.
- Water temperatures in Deer Creek, post drawdown release, are potentially lethal to developing salmon eggs.

For accurate discharge of no more than 40 cfs, CDFW also recommends the installation of a floating pump powered by generators to deliver water to NID utilizing a pipeline. The pump will enable dewatering of the reservoir to begin earlier in the season to allow for a more protracted stable release of flow. In addition, the gradual ramping up of flows to a maximum of 40 cfs and an extended stepped decline to a

stable base flow, is desired. Ramping up in several step increases as well as longer periods of holding flows at each decreased step will provide an improvement from historical rapid fluctuations in the reservoir release (see attached). A lower peak attraction flow of up to 40 cfs will help deter migration cuing by Chinook salmon into lower Deer Creek from the Yuba River.

2. **Comment 2:** Mitigation Measure 4G: *Monitoring and Adaptive Management Program*.
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Issue 2.1: CEQA Guidelines § 15126.4 (a)(1)(B) states that formulation of mitigation measures should not be deferred until some future time. The Monitoring and Adaptive Management Program relies on future approvals or agreements as a means to bring identified significant environmental effects to below a level of significance. Because there is no guarantee that these approvals or cooperation with all of the involved entities will ultimately occur, the mitigation measures are unenforceable and do not reduce the impacts to biological resources to a less-than-significant level.

Recommendation 2.1: The Monitoring and Adaptive Management Program should describe when the mitigation measure will be implemented and indicate the measure's feasibility. Mitigation measures should not rely on uncertain, future approvals or agreements. CDFW recommends that the IS/MND include measures that are enforceable and do not defer the details of the mitigation to the future.

Issue 2.2: The Monitoring and Adaptive Management Program outlined in Mitigation Measure 4G does not include performance standards; this makes enforcement and evaluation of mitigation impossible.

Recommendation 2.2: The Monitoring and Adaptive Management Program should establish performance standards to evaluate the success of the proposed mitigation and must commit the Project Proponent to successful completion of the mitigation. This should include water quality measurements and monitoring of total suspended solids with samples collected 30 minutes after the arrival of initial surges of water at each sampling location after the valve is opened. Temperature monitoring should be done in the Yuba River above and below the confluence within Deer Creek using thermographs.

3. **Comment 3:** Mitigation Measure 4H: *Worker Environmental Awareness Training*.

Issue: Mitigation Measure 4H lists western pond turtle as the only species to be included in the Worker Environmental Awareness Training.

Recommendation: CDFW recommends that a Qualified Biologist be responsible for providing all Worker Environmental Awareness training. All individuals employed or otherwise working on the project site should be trained by the Qualified Biologist prior to performing any work on-site. Training should consist of an in-person presentation from the Qualified Biologist that includes a discussion of the biology of the habitats and species identified in the IS/MND and present at the site. The Qualified Biologist should also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations and project-specific protective

measures. Interpretation should be provided for non-English speaking personnel (if present).

4. **Comment 4:** Mitigation Measure 4I: *Western Pond Turtle Avoidance*

Issue: The IS/MND describes if turtles are observed, high-visibility flags will be used to alert crew of their presence and a biologist may safely move the turtles to the nearest suitable habitat if the turtles do not leave on their own. The IS/MND lacks a discussion on pre-construction surveys for western pond turtle.

Recommendation: CDFW recommends the following language be added to Mitigation Measure 4I to include survey details and minimize impacts to western pond turtle:

Prior to ground-disturbing and in-water activities, a Qualified Biologist should survey the project site where suitable habitat (including nest sites) occurs for western pond turtle. Surveys shall be performed within 30 days prior to starting project activities and should be performed within 500 feet upstream and downstream of the project activity where accessible. If detected during surveys, a site-specific avoidance, minimization, and/or relocation plan should be prepared and submitted to CDFW. The plan should be implemented by a Qualified Biologist with the proper handling permits and include daily construction monitoring.

5. **Comment 5:** Mitigation Measure 4J: *Landmark Oak Grove Compensation*

Issue: The Project would result in the removal of 1.5 acres of Landmark Oak groves. Removal of these trees could result in significant habitat loss for a variety of bird species. Mitigation Measure 4J proposes to compensate for this loss by contributing to the Bear Yuba Land Trust's "Oak Woodland Conservation Fund Plan" for the loss or disturbance of Landmark Oak Groves within Nevada County.

Recommendation: CDFW recommends that the IS/MND fully evaluate the impacts of tree removal on wildlife. CDFW also recommends the County propose mitigation for the impact of tree removal during project activities to ensure no net loss of habitat or fish and wildlife resource value occurs because of the Project. Mitigation would serve to offset the impacts of the tree removal and/or habitat loss. Mitigation may include restoring, enhancing, or preserving similar habitat types proposed for removal at higher ratios than those that were removed to compensate for tree removal and/or habitat loss. CDFW recommends that all mitigation measures be actionable and have established performance measures.

6. **Comment 6:** Mitigation Measure 4L: *Transplant 9 Sierra foothills brodiaea plants to compensate for the "take" of 3 plants.*

Issue: Prior to issuance of permits for work in the sediment disposal site, the IS/MND describes the transplantation of nine Sierra foothills brodiaea plants from the area of impact to suitable habitat areas on the project site to be determined by the project botanist.

Recommendation: The use of relocation, salvage, and/or transplantation as the sole mitigation measure for impacts to rare, threatened, or endangered species is generally experimental in nature and largely unsuccessful. Due to the experimental

nature of relocation, salvage, and transplantation, the IS/MND should consider a range of options to avoid, minimize, and mitigate impacts to rare, threatened, and endangered species. Additional options for mitigation include habitat restoration, conservation, and/or preservation.

7. **Comment 7:** Mitigation Measure 4M: *Avoid Impacts to Nesting Birds.*

Issue 7.1: Mitigation Measure 4M details a need for preconstruction nesting bird surveys if any trees greater than 20-inches diameter at breast height will be removed.

Recommendation 7.1: CDFW recommends this language be changed to include all project activities that could impact nesting birds including ground disturbance activities. The active nesting bird season should be changed to February 1 - August 31 to reflect the typical nesting season for birds. The Designated Biologist should survey a minimum radius of 500-feet (for migratory birds) and 1/2-mile (for raptors) around the Project area that can be accessed by the Project Proponent.

Issue 7.2: The IS/MND states if active nests are found, a buffer (protected area surrounding the nest, the size of which is to be determined by a qualified biologist) and monitoring plan shall be developed. Nest locations shall be mapped and submitted, along with a report stating the survey results, to the Nevada County Planning Department within one week of survey completion.

Recommendation 7.2: CDFW recommends that 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. CDFW should receive survey results if special status birds are found in the project area. 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.

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 MND for the Lake Wildwood Dredging PLN23-0161 to assist Nevada 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 Caitlyn Oswald, Environmental Scientist at (916) 358-4315 or caitlyn.oswalt@wildlife.ca.gov.

Sincerely,

Caitlyn Oswald

(She/Her)

Environmental Scientist | 916.358.4315

North Central Region – Region 2

California Department of Fish and Wildlife