

Haggerty, Nicole@Wildlife

From: Taylor, Brooks@Wildlife
Sent: Friday, May 10, 2024 3:23 PM
To: thad@bcr cd.org
Cc: Boyd, Ian@Wildlife; Wildlife R2 CEQA; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: Colby Mountain Recreation Project CEQA Review

May 6, 2024

Thad Walker
District Manager
Butte County Resource Conservation District
150 Chuck Yeager Way, Suite A
Oroville, CA 95965
Thad@bcr cd.org

Governor's Office of Planning & Research

May 10 2024

STATE CLEARINGHOUSE

Subject: Colby Mountain Recreation Project
NEGATIVE DECLARATION (ND)
SCH No. 2024040637

Dear Thad Walker:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an ND from Butte County Resource Conservation District (BCRCD) for the Colby Mountain Recreation Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. 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.

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 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 the Almanor Ranger District of the Lassen National Forest with project activities occurring in Butte, Plumas, and Tehama Counties, California.

The Project consists of the construction of 34.77 miles of non-motorized multi-use trails and 0.92 miles of pedestrian only use trails. New infrastructure constructed to support the new trail system will include one new bridge spanning an unnamed stream, two new vault style bathrooms, one new well, and one new parking lot constructed near the hub of the new trail system.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist BCRC 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, CDFW concludes that a Negative Declaration is appropriate for the Project.

Comment 1:

Issue: The Decision Memo appended to the ND identifies Integrated Design Features that are resource protection measures that are incorporated into the project and are in addition to best management practices and standards and guidelines for the Lassen Land and Resource Management Plan. However, the environmental document is designated as a ND and states that there will not be any potentially significant impacts associated with the development of the project.

Recommendation: General measures in documents like these, including, but not limited to Lake and Streambed Alteration (LSA) Agreements and California Endangered Species Act (CESA) Incidental Take Permits, are typically required to avoid, minimize, and/or mitigate impacts caused by projects that could significantly affect the environment. CDFW believes that these measures should be considered mitigation under CEQA when the ND analyzes the effects of the project with these measures in place. CDFW also recommends this document be identified as a “Mitigated Negative Declaration” considering the incorporation of measures that serve to avoid, minimize, and reduce/eliminate the effects of the Project to a point where no significant effect on the environment would occur. Subsequently, the Initial Study/Negative Declaration checklist should be updated to reflect which environmental factors would have impacts determined to be less than significant with mitigation incorporated.

Comment 2: California Endangered Species Act

Issue: The Project area as shown in the ND includes habitat for State-listed species including, but not limited to, Foothill yellow-legged frog (*Rana boylei*), Sierra Nevada yellow-legged frog (*Rana sierrae*), and Northern Spotted Owl (*Strix occidentalis caurina*).

Recommendation: If during the environmental analysis for the Project, it is determined that the Project may have the potential to result in "take", as defined in the Fish & G. Code, section 86, of a

State-listed species, the environmental document shall disclose an Incidental Take Permit (ITP) or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081) may be required prior to starting construction activities. The environmental document must include all avoidance and minimization to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures shall be proposed to fully mitigate the impacts to State-listed species (Cal. Code Regs., tit. 14, § 783.2, subd.(a)(8)).

If it is determined that take of a State-listed species is likely or reasonably anticipated the environmental document should identify that mitigation is being incorporated to reduce the affects of the project to a less than significant level, per Comment 1 above.

CDFW encourages early coordination to determine appropriate measures to offset Project impacts and facilitate future permitting processes and to coordinate with the U.S. Fish and Wildlife Service to coordinate specific measures if federally-listed species are present within the Project limits.

Comment 3: Lake and Streambed Alteration Program

Issue: CDFW is primarily concerned with the project impacts to Waters of the State which may be impacted by Project activities, specifically where trail crossings and bridge construction may impact stream channels and riparian habitat.

Recommendation: 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:

1. Substantially divert or obstruct the natural flow of any river, stream or lake;
2. Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or
3. Deposit debris, waste or other materials where it may 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. It may also apply to work undertaken within the flood plain of a body of water.

If upon review of an entity's notification, CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a Lake and Streambed Alteration (LSA) Agreement will be issued which will include reasonable measures necessary to protect the resource. CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if one is necessary, the environmental document should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources. Notifications for projects involving (1) sand, gravel or rock extraction, (2) timber harvesting operations, or (3) routine maintenance operations must be submitted using paper notification forms. All other LSA Notification types must be submitted online through CDFW's Review/EPIMS Permit Information Management System (EPIMS).

Please note that other agencies may use specific methods and definitions to determine impacts to areas subject to their authorities. These methods and definitions often do not include all needed information for CDFW to determine the extent of fish and wildlife resources affected by activities subject to Notification under Fish and Game Code section 1602. Therefore, CDFW does not

recommend relying solely on methods developed specifically for delineating areas subject to other agencies' jurisdiction (such as United States Army Corps of Engineers) when mapping lakes, streams, wetlands, floodplains, riparian areas, etc. in preparation for submitting a Notification of an LSA.

CDFW relies on the lead agency environmental document analysis when acting as a responsible agency issuing an LSA Agreement. CDFW recommends lead agencies coordinate with us as early as possible, since potential modification of the proposed Project may avoid or reduce impacts to fish and wildlife resources and expedite the Project approval process.

The following information will be required for the processing of an LSA Notification and CDFW recommends incorporating this information into any forthcoming CEQA document(s) to avoid subsequent documentation and Project delays:

1. Mapping and quantification of lakes, streams, and associated fish and wildlife habitat (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the Project, including impacts from access and staging areas. Please include an estimate of impact to each habitat type.
2. Discussion of specific avoidance, minimization, and mitigation measures to reduce Project impacts to fish and wildlife resources to a less-than-significant level. Please refer to section 15370 of the CEQA Guidelines.

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 ND for the Colby Mountain Recreation Project to assist BCRC 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 Brooks Taylor at (916) 907-3782 or brooks.taylor@Wildlife.ca.gov.

Sincerely,

Brooks Taylor
Senior Environmental Scientist
North Central Region (R2)
(916) 907-3782

