



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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www.wildlife.ca.gov**GAVIN NEWSOM, Governor****CHARLTON H. BONHAM, Director**

December 11, 2024

Randall Adams, Planner

County Santa Cruz

701 Ocean Street, 4th Floor

Santa Cruz, CA 95060

Randall.Adams@santacruzcountyca.gov

Subject: Application Number 231264 - Watsonville Slough Community Harvest Project, Mitigated Negative Declaration, SCH No. 2024110411, Santa Cruz County

Dear Randall Adams:

The California Department of Fish and Wildlife (CDFW) has reviewed the Mitigated Negative Declaration (MND) from the Santa Cruz County Planning Department (County) for the Application Number 231264 - Watsonville Slough Community Harvest Project (Project) pursuant to the California Environmental Quality Act (CEQA).¹ CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish & G. Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 & 15204).

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 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 these 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

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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Game Code. As proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (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.), related authorization as provided by the Fish and Game Code will be required.

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 any Project activities that will 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, washes, watercourses with a subsurface flow, and floodplains are generally subject to notification requirements. CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project. CDFW may not execute a final LSA Agreement until it has complied with CEQA (Pub. Resources Code § 21000 et seq.) as the Responsible Agency.

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Raptors and Other Nesting Birds

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

PROJECT DESCRIPTION SUMMARY

Proponent: Land Trust of Santa Cruz County (Applicant)

Description and Location: The proposed Project is located at 275 Lee Road on the west side of Lee Road and Highway 1 within the southern portion of unincorporated southern Santa Cruz County. The Project site is bounded by Lee Road on the east, Harkins Slough Road on the north and agricultural and rural lands on the west and south. The proposed project would result in structural and site improvements to support operation of the proposed Community Harvest Program at the Watsonville Slough Farm that is owned and managed by the Land Trust of Santa Cruz County (Land Trust). A reconstructed barn, new restrooms, picnic areas, parking improvements, trails and several other minor improvements are proposed to support the Program. In addition, the Project includes the development of four agricultural worker residential units.

SPECIES POTENTIAL

Threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to the species listed below and in Table 1:

- California red-legged frog (*Rana draytonii*; FT)
- Western pond turtle (*Emys marmorata pallida*; SSC)
- San Francisco dusky-footed woodrat (*Neotoma fuscipes annectens*; SSC)
- Burrowing owl (*Athene cunicularia*; SSC)
- Tricolored blackbird (*Agelaius tricolor*; ST)
- Golden eagle (*Aquila chrysaetos*; SFP)
- Bald eagle (*Haliaeetus leucocephalus*; SFP)

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- White-tailed kite (*Elanus leucurus*; SFP)
- American peregrine falcon (*Falco peregrinus*; SFP)
- Nesting birds
- Roosting bats

FT = Federally Threatened; ST = State Threatened; SFP = State Fully Protected;
SSC = State Species of Special Concern

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the County 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: Fully Protected Species

Fully protected species, such as bald eagle, golden eagle, American peregrine falcon, and white-tailed kite, 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 incidental take permit 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.

COMMENT 2: Tricolor Blackbird

Issue: Although this species has not been known to breed in the area since 2008, if the number of tricolored blackbird breeding on the Central Coast continues to increase, this species may breed in or near the Study Area in the future (Biotic Assessment for the WSF Community Harvest Program, page 43). CDFW recommends the MND include

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tricolored blackbird surveys and avoidance if tricolored blackbird are seen breeding in or near the Project Study Area.

Recommended Mitigation Measure 1 – Tricolored Blackbird Surveys: CDFW recommends that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting tricolored blackbird no more than 10 days prior to the start of implementation to evaluate presence/absence of tricolored blackbird nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts

Recommended Mitigation Measure 2 – Tricolored Blackbird Avoidance and Mitigation: If an active tricolored blackbird nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=99310&inline>". CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged and are no longer reliant upon the colony or parental care for survival. It is important to note that tricolored blackbird colonies can expand over time and for this reason, the colony may need to be reassessed to determine the extent of the breeding colony within 10 days prior to Project initiation. In the event that a tricolored blackbird nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code Section 2081(b), prior to any ground-disturbing activities.

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://wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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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. (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 MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions and coordination pertaining to this letter should be directed to Alexis Harrison, Environmental Scientist, at (707) 815-2779 or Alexis.Harrison@wildlife.ca.gov; or Wes Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486
Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024110411)
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