



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



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Governor's Office of Planning & Research

August 10, 2020

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Robert Hingtgen  
County of San Diego  
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## STATE CLEARINGHOUSE

**Subject: Comments on the Draft Environmental Impact Report for Otay Hills Aggregate Mining and Inert Debris Engineered Landfill Operation Project, SCH #2005051151, San Diego County**

Dear Mr. Hingtgen:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced Draft Environmental Impact Report (DEIR) for the Otay Hills Aggregate Mining and Inert Debris Engineered Landfill Operation (Project). The Project's supporting documentation includes the *Biological Technical Report, Otay Hills Aggregate Mining and Inert Debris Engineered Landfill Operation Project, County of San Diego, Helix Environmental Planning, Inc., June 2020* (BTR). Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### CDFW's 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 & Game Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (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 state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). A responsible agency is a public agency with discretionary approval authority over a project for which a lead agency has already prepared a negative declaration, mitigated negative declaration, or an EIR (CEQA Guidelines, §§ 15366, 15381). In general, a responsible agency complies with CEQA by considering the environmental analysis prepared by the lead agency and by reaching its own conclusions on whether and how to approve the project involved (CEQA Guidelines, § 15096, subd. (a)). With respect to the Project, CDFW would serve as a responsible agency under CEQA because of its authority under the Natural Community Conservation Planning Act (NCCPA), and the need to prepare a

Major Amendment to the South County Segment of the County's Multiple Species Conservation Program (MSCP) Subarea Plan in order for this Project to be completed.

In addition, CDFW may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & Game Code, § 1600 et seq.). Likewise, CDFW could also serve as a responsible agency 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 & Game Code, § 2050 et seq.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & Game Code, §1900 et seq.), if such species are not already covered under CDFW's NCCP permit for the County's MSCP Subarea Plan.

### **Project Description and Summary**

**Objective:** The Project would result in the development of a construction aggregate quarry and inert debris engineered landfill operation on an impact area of 105 acres of a 410-acre site. The duration of the Project would be approximately 120 years and would include site preparation, extraction and processing of construction aggregate, concrete batch production, cement-treated base production, asphalt batch production, backfilling the pit with inert debris, and reclamation of the extraction areas. Approximately 305 acres of the site would be designated as MSCP Hardline Preserve and the project requires a Major Amendment to the MSCP Subarea Plan and issuance of an amended Section 10(a)(1)(B) permit. The maximum depth of aggregate extraction activities would be 525 feet from the existing grade.

**Location:** The project is in the East Otay Mesa Specific Plan Area within the Otay Subregional Planning Area of the unincorporated southern portion of San Diego County. The project footprint is located 0.5 mile east of the intersection of Otay Mesa Road and Alta Road. The Specific Plan Amendment proposes to amend the East Otay Mesa Specific Plan by changing the current land use designations as follows: change 33 acres of Mixed Industrial to Conservation/Limited Use; change 78 acres of Rural Residential to Mixed Industrial; and, change 189 acres of Rural Residential to Conservation/Limited Use.

### **Comments and Recommendations**

CDFW offers the comments and recommendations below to assist the County in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

#### **Comment #1: Discussion of MSCP Covered Species**

Issue #1: The EIR identifies many sensitive species which are covered species under the County's MSCP. Not mentioned, however, is the northern harrier (*Circus hudsonius [cyaneus]*), which is both a MSCP Covered Species and a CDFW Species of Special Concern. Although they are not expected to nest in the Project area, one individual was reportedly observed foraging at the Project site and this species is known to nest elsewhere in the general region.

No mitigation measures for northern harrier were identified in the BTR or within the CEQA document.

*Specific impacts:* Northern harriers would be adversely affected by a loss of foraging habitat, which would be offset through conservation of habitat consistent with the requirements of the County's MSCP. Additionally, while CDFW believes the northern harrier has only a low potential to nest onsite, the MSCP conditions of coverage for this species require that active nests be avoided by a minimum buffer distance of 900 feet. In order to ensure this condition will be met, preconstruction surveys should be performed to determine the potential presence of nesting northern harriers onsite or in proximity to construction activities.

*Recommendation:* The EIR should be updated to clarify that the loss of habitat used by northern harrier for foraging, and potential nesting, is being offset consistent with the requirements of the MSCP. In addition, to avoid potential impacts to nesting northern harriers, a mitigation measure should be added to require preconstruction biological monitoring to determine the presence of any breeding northern harriers within the project site and adjacent areas. Construction activities should not be permitted within 900 feet of an active harrier nest without specific approval by the County and the Wildlife Agencies (jointly, CDFW and the U.S. Fish and Wildlife Service).

### **Filing Fees**

The Project, as proposed, could 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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

### **Conclusion**

We appreciate the opportunity to comment on the Project to assist the County in adequately analyzing and minimizing/mitigating impacts to biological resources. CDFW requests an opportunity to review and comment on any response that the County has to our comments and to receive notification of any forthcoming hearing date(s) for the Project. Questions regarding this letter and further coordination on these issues should be directed to Holly Smit Kicklighter, Senior Environmental Scientist (Specialist), at [Holly.Smitkicklighter@wildlife.ca.gov](mailto:Holly.Smitkicklighter@wildlife.ca.gov) (858) 627-3997.

Sincerely,



David Mayer  
Environmental Program Manager

ec: CDFW - Susan Howell – San Diego  
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