

4/6/2020 late

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Subject: CDFW's comments on the DSEIR for the Hidden Falls Regional Park Trails Expansion Project (SCH No. 2007062084)
Date: Wednesday, May 20, 2020 11:37:23 AM

Governor's Office of Planning & Research

MAY 20 2020

STATE CLEARINGHOUSE

Dear Ms. Herrington:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DSEIR from the County of Placer (County) for the Hidden Falls Regional Park Trails Expansion Project (Project) 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, 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.) As a Trustee Agency, CDFW provides 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 comments 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.), related authorization as provided by the Fish and Game Code may be obtained. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

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The proposed trail expansion areas are located northeast, east and west of the existing Hidden Falls Regional Park (HFRP) and south of the Bear River in Placer County, approximately 40 miles northeast

of Sacramento.

The County is proposing to expand the HFRP trail network onto approximately 2,765 additional acres of land owned by the Placer Land Trust (where the County holds trail easement rights), owned by the County or where the County owns easements. Approximately 30 miles of trails (including existing and proposed trails) within the expansion areas would be added to the approximately 30 miles of existing trails within the existing park boundary. Three new parking areas and an additional overflow area within the existing HFRP parking area are also proposed, as well as other amenities such as bridges, overlooks, picnic benches and tables, restrooms, drinking fountains, and equestrian amenities.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the 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.

Placer County Conservation Program

The Placer County Conservation Program (PCCP) is expected to be approved and implemented this year. Participation in the PCCP is not mandatory for projects that are approved before the PCCP is adopted. However, if the PCCP is approved before the Project begins, the County may choose to use the PCCP to mitigate for the Project's impacts on Covered Species and natural communities included in the PCCP. In order to use the PCCP for mitigation, the Project will need to comply with the PCCP's avoidance and mitigation measures and pay the full mitigation fees.

CEQA Guidelines section 15125 (d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans). Because the PCCP is close to being implemented and because the DSEIR proposes participation in the PCCP as a potential mitigation strategy, CDFW recommends that the DSEIR include a discussion of the Project's consistency with the PCCP and how the County will ensure that implementation of the Project does not impede the PCCP's ability to meet its biological goals and objectives.

Mitigation Measures 12.1 – 12.5 and 12.7 each include a version of the following paragraph referring to the specific Mitigation Measure in which it is included:

“In the event the Placer County Conservation Program is adopted prior to submittal of Improvement Plans for this project or prior to the project's own State and federal permits being obtained for effects associated with listed species and their habitats, waters of the State, and waters of the U.S., then Mitigation Measure 12-1 may be replaced with the PCCP's mitigation fees and conditions on covered activities to address this resource impact and avoidance and minimization measures as set forth in the PCCP implementation document. If PCCP enrollment is chosen and/or required by the State and federal agencies as mitigation for one or more biological resource area impacts, then the PCCP mitigation shall apply only to those species and waters that are covered by the PCCP.”

Following consultation with PCCP Administration, CDFW recommends that this paragraph be altered to read as follows:

In the event the Placer County Conservation Program is adopted prior to submittal of Improvement Plans for this Project or prior to the Project's own State and federal permits being obtained for effects associated with listed species and their habitats, waters of the State, and waters of the U.S., then Mitigation Measure 12-1 may be replaced with the PCCP's mitigation fees and conditions on covered activities to address this resource impact and avoidance and minimization measures as set forth in the PCCP implementation document to the extent compliance with the PCCP provides equal or greater mitigation or reduction in the significance of impacts. If PCCP enrollment is chosen and/or required by the State and federal agencies as mitigation for one or more biological resource area impacts, then the PCCP avoidance, minimization, and mitigation measures shall apply only to those species, habitat types, and waters that are covered by the PCCP.

Foothill Yellow-Legged Frog

Table 12-3 identifies foothill yellow-legged frog (*Rana boylei*; FYLF) as a state candidate for listing under CESA. However, the Feather River and Northern Sierra clades of FYLF are now listed as threatened under CESA. Please update the DSEIR accordingly.

Based on the information in the DSEIR, construction of trails across drainages that could support FYLF may cause take of FYLF adults, larvae, and/or egg masses (Fish & G. Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill"). FYLF is a PCCP covered species and, if the PCCP is adopted, the Project may acquire take authorization for FYLF by participating in the PCCP. If the Project does not participate in the PCCP, the Project may comply with CESA by avoiding take or obtaining a CESA Incidental Take Permit. While Mitigation Measure S12-4 includes measures to minimize the impacts on FYLF, it does not propose a clear plan to either completely avoid take or obtain take authorization. CDFW recommends that the DSEIR clearly describe either how take will be avoided if take authorization will not be obtained. Mitigation Measure S12-4 also states that FYLF "may be moved from the project area only with CDFW approval". Please note that capture and relocation is considered "take" and that CDFW cannot approve it for FYLF unless the project has the appropriate take authorization

Mitigation Measure S12-4 states: "Before any work in Raccoon Creek, the County shall determine, in consultation with CDFW, whether aquatic habitat at work sites would support foothill yellow-legged frog..." CDFW recommends that the County conduct habitat assessments at the proposed creek crossing locations, and any other construction areas within potential FYLF habitat, and include the results in the DSEIR. Please note that habitat for FYLF includes terrestrial areas adjacent to streams. FYLF have been observed as far as 50 meters away from water (Nussbaum et al. 1983). CDFW recommends that Mitigation Measure S12-4 be changed to include all areas within 50 meters of Raccoon Creek or any other flowing stream as potential FYLF habitat. FYLF movement through and use of upland habitat is poorly understood (CDFW 2018), and construction activities may impact FYLF as they are dispersing through upland areas that would not be considered typical FYLF habitat. Therefore, to avoid impacts, CDFW recommends that Mitigation Measure S12-4 require avoidance measures such as surveys in all areas where FYLF might be present, even temporarily.

Mitigation Measure S12-4 requires pre-construction FYLF surveys if work is proposed within potential FYLF habitat. CDFW recommends that surveys be conducted in accordance with CDFW's Considerations for Conserving the Foothill Yellow-Legged Frog (2018), available here: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=157562&inline>. Surveys should include at least one Visual Encounter Survey (VES) during the breeding and/or oviposition period (generally April – June), a tadpole survey four to eight weeks after the breeding survey(s), a subadult survey in late summer/early fall (generally late August to early October), and final VES within 3 to 5 days prior to starting work.

Nesting Bird Surveys and Protection

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders *Falconiformes* or *Strigiformes* (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

The DSEIR's Mitigation Measure S12-5 requires a pre-construction nesting bird survey in the construction area and within 500 feet of the Project footprint no more than two weeks prior to initiating construction if construction begins between February 15 and August 31. This measure may not be adequate to avoid impacts to nesting birds because the survey may be conducted too long before the start of construction.

Many bird species may initiate nest-building and begin laying eggs very rapidly, and some of the bird species that nest in the area may construct a nest in as few as two or three days (Baepler 1968, Newman 1970, and Badyaev 2012). Furthermore, not all birds construct nests. Some species lay eggs directly on the ground, while others use existing structures such as cavities in trees or rocks. A preconstruction survey timed two weeks before initiation of Project activities has a high likelihood of missing some instances of nesting due to the length of time between the survey and the start of construction. Therefore, CDFW recommends that nesting bird surveys be completed by a qualified biologist familiar with local bird species within three (3) days prior to commencing Project activities.

Mitigation Measure S12-5 also requires implementation of measures to avoid disturbing active golden eagle nests located within 0.25 mile of public trails or roads that will be used during construction. These nests may be overlooked if nesting bird surveys are only conducted within 500 feet of the construction site. In addition, the DSEIR's Appendix I lists other fully protected bird species including white-tailed kite (*Elanus leucurus*), American peregrine falcon (*Falco peregrinus anatum*), and California black rail (*Laterallus jamaicensis coturniculus*) as having the potential to nest within the Project site. CDFW is concerned that Project activities may disturb these species' nesting activities, and that a 500-foot buffer may not be sufficient to prevent disturbance in all cases. CDFW recommends that surveys for golden eagle, white-tailed kite, American peregrine falcon, and

California black rail nests be conducted in all areas within 0.25 mile of the construction site and its access routes, and that the DSEIR include specific measures to avoid disturbing these species' nests.

Please note that Fish and Game Code protections for nesting and migratory birds apply regardless of the time of year, and a few bird species (e.g., Anna's hummingbird) may nest during the winter and fall months. CDFW recommends that Mitigation Measure S12-5 be amended to state that if an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

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 DSEIR to assist 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 Gabriele Quillman, Environmental Scientist at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

Gabriele (Gabe) Quillman

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