



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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December 16, 2019

Governor's Office of Planning & Research

DEC 16 2019

STATE CLEARINGHOUSE

Mr. Rocky Vogler, Chief Engineer
North Marin Water District
99 Rush Creek Place
Novato, CA 94945

Subject: Old Ranch Road Tank No. 2, Initial Study/Mitigated Negative Declaration,
SCH #2019119046, City of Novato, Marin County

Dear Mr. Vogler:

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of an Initial Study/Mitigated Negative Declaration (IS/MND) from the North Marin Water District (NMWD) for the Old Ranch Road Tank No. 2 (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 ROLE

CDFW is a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of northern spotted owl (*Strix occidentalis caurina*) or any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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 subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Migratory Birds and Raptors

CDFW also has jurisdiction 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). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory raptors are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: North Marin Water District (NMWD)

Objective: The Project would construct a 100,000-gallon water tank on a new building pad and a new paved access road, with a total footprint of 0.63 acres. The Project will remove 71 trees: 62 oaks (*Quercus* spp.), 4 madrones (*Arbutus menziesii*), and 5 California bay trees (*Umbellularia californica*).

Location: The Project is located off Old Ranch Road near the City of Novato, Marin County. The Project site occurs near Latitude 38° 5' 1.83" N, Longitude 122° 36' 2.64" W, Assessor's Parcel Numbers 146-310-05, 146-310-23, and 146-310-44.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist NMWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Northern Spotted Owl

The IS/MND does not disclose northern spotted owl (*Strix occidentalis caurina*; NSO) as a potential sensitive species in the Project area and currently does not discuss the Project's potential impacts to NSO; no Mitigation Measures or pre-construction surveys are proposed. Northern spotted owl is a threatened species pursuant to CESA and the federal Endangered Species Act and is known to occur in the vicinity of the Project. A recent search of the Spotted Owl Observations Database² returned positive detections of an individual NSO within approximately 0.5 miles of the Project, as well as an NSO site (MRN0104) less than one mile from the Project. In addition, the *Northern Spotted Owl Connectivity Modeling for the California Bay Area Linkage Network*³ identifies the Project area as potential nesting/roosting habitat for NSO. Due to the classification of the area as potential breeding habitat and the proximity of these occurrences to the Project, the Project has the potential to significantly adversely impact NSO.

CDFW recommends including the following Mitigation Measures to reduce potential impacts to NSO to less-than-significant:

1. No Project activities shall occur during NSO nesting season (February 1 to July 31), except as provided in number 2 below. If Project activities must occur during NSO nesting season, a CESA Incidental Take Permit (ITP) may be warranted. CDFW recommends applying for a CESA ITP at least six months prior to the commencement of Project activities.
2. Prior to Project activities, a Qualified Biologist shall conduct NSO surveys following the U.S. Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities that May Impact Northern Spotted Owls* (2012) within 1.3 miles of the Project area. This may entail two years of six-visit surveys. If breeding NSO are detected during surveys, a Qualified Biologist should prepare an avoidance and minimization plan in consultation with CDFW that includes suitable buffer distances from all active nest sites. If suitable buffer distances from Project activities cannot be established in order to avoid disturbance, the Project should either wait until August 1 or until a Qualified Biologist has determined 1) NSO young have fledged or 2) the nest is no longer active, whichever comes first. Alternatively, the Project proponent can get a CESA ITP from CDFW prior to the start of Project activities.

A Qualified Biologist should be familiar with NSO ecology, have proven success identifying NSO aurally and visually, and have at least two seasons of experience surveying for NSO using the USFWS protocol.

²The Spotted Owl Observations Database is governed by the California Natural Diversity Database (CNDDDB) license agreement, but is maintained as a separate database. Reviewing CNDDDB alone excludes all NSO data. More information is available online: www.wildlife.ca.gov/Data/CNDDDB/Spotted-Owl-Info

³California Bay Area Linkage Network layers are available on CDFW's Biogeographic Information and Observation System online mapping tool (<https://www.wildlife.ca.gov/Data/BIOS>). More information about these layers are available in the report *Critical Linkages: Bay Area and Beyond* (http://www.scwildlands.org/reports/CriticalLinkages_BayAreaAndBeyond.pdf).

3. The Project shall mitigate for the 0.63 acres of permanently removed habitat by preserving like habitat of equal or greater habitat value at a ratio of 2:1. If the mitigation lands will be on-site, the draft MND should include a detailed map showing the preserved land and it should specify that the preserved land area will be protected in perpetuity under a conservation easement or deed restriction.

Sensitive Natural Communities and Oak Woodland

The IS/MND states that “sensitive natural community types are absent from the site and vicinity of proposed construction” and therefore does not anticipate significant impacts and does not propose mitigation (page 30). CDFW maintains a list of Sensitive Natural Communities with over 1,500 vegetation associations identified as sensitive (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>). This includes over 200 associations involving oak species. CDFW recommends that NMWD revise the analysis of potential impacts to sensitive natural communities, including providing a map of the sensitive communities at the Project site. The Marin County Open Space District undertook a vegetation mapping exercise in 2008 which is available as a layer titled *Vegetation – Marin County Open Space District* on CDFW’s BIOS mapping tool. This may provide an initial identification of natural communities on the Project site that should then be field verified.

Regardless of the specific vegetation association, the Project site appears to be composed of oak woodland that will be removed by Project activities. The IS/MND identifies 62 oaks, 4 madrones, and 5 California bay trees that will be removed without any mitigation. Removal of old-growth oak trees, i.e., native oak trees that are greater than 15 inches in diameter, is a significant impact. Old-growth oaks and other hardwoods provide food and shelter for a variety of native species; and because the trees will be removed for a permanent access road and tank building pad, this is a permanent loss of habitat.

CDFW recommends including the following Mitigation Measures to reduce potential impacts to oak woodland to less-than-significant:

1. Mitigate for removed trees at the following replacement ratios:
 - a. 3:1 replacement for trees 5-10 inches diameter at breast height (DBH)
 - b. 5:1 replacement for trees 10-15 inches DBH
 - c. 15:1 replacement for trees greater than 15” DBH

Replacement plantings shall consist of 5-gallon saplings and locally-collected seeds, stakes, or other suitable nursery stock as appropriate, and shall be native species to the area adapted to the lighting, soil, and hydrological conditions at the replanting site. If acorns are used for replanting, each planting will include a minimum of three acorns planted at an approximately 2-inch depth to minimize predation risk. Large acorns shall be selected for plantings. Replacement oaks shall come from nursery stock grown from locally-sourced acorns, or from acorns gathered locally, preferably from the same watershed in which they are planted. Planted trees shall be irrigated for at least the first two years either via hand-watering or drip irrigation.

The NMWD shall monitor and maintain, as necessary, all plants for a minimum of five years to ensure successful revegetation. Planted trees and other vegetation shall each have a minimum of 80 percent survival at the end of five years. If revegetation survival and/or cover requirements do not meet established goals, NMWD is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice, to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for five years after planting.

Some portion of native trees could be planted on-site at the staging area after Project activities are complete.

2. Submit a Restoration and Mitigation Plan to CDFW for review and acceptance. This plan will identify the specific locations for tree planting and verify the aforementioned Mitigation Measure.

Special-status Plants

The IS/MND states that a "systematic survey for rare plants was conducted on June 24, 2019, and a follow-up field reconnaissance survey was conducted...on August 29, 2019." (page 24). A partial list of identified plant species is included on page 25. Because the systematic survey was conducted in late June, it may have occurred outside of the blooming period for special-status plants that have the potential to occur on-site.

CDFW recommends including the following Mitigation Measures to reduce potential impacts to special-status plants to less-than-significant:

1. A Qualified Biologist shall conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018. The protocol can be found here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>. If special-status plants are found during surveys, the IS/MND should outline how the Project would be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, the IS/MND should outline mitigation if impacts may still occur.

A Qualified Biologist in this context should be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols.

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)].

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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 emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist NMWD in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at (707) 428-2075 or amanda.culpepper@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH #2019119046)