



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



January 22, 2020

Governor's Office of Planning & Research

**JAN 23 2020**

## STATE CLEARINGHOUSE

Cindy Chambers  
County of San Luis Obispo  
976 Osos Street  
San Luis Obispo, California 93401

**Subject: Whale Rock Quarry Reclamation Plan Amendment Minor Use Permit –  
Negranti/DRC2007-00016 (Project)  
Negative Declaration (ND)  
SCH No. 2019120326**

Dear Ms. Chambers:

The California Department of Fish and Wildlife (CDFW) received a Negative Declaration (ND) from the County of San Luis Obispo for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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, CDFW appreciates 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 Fish and Game Code.

While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

### 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

---

<sup>1</sup> 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.

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 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 required. Please be advised that issuance of a Lake or Streambed Alteration Agreement (LSAA) (Fish & G. Code, § 1602) or an Incidental Take Permit (ITP) (Fish & G. Code, § 2081(b)) is a discretionary approval that will require the appropriate level of CEQA environmental review to support CDFW's Responsible Agency authority. If inadequate or no environmental review occurs, CDFW will not be able to issue the LSAA or the ITP until CEQA for the project is complete.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Jon Negranti and Jane Buffuna

**Objective:** The Project proposes a Reclamation Plan Amendment/Minor Use Permit for the Whale Rock Quarry to cover expanded surface mining area and activities within a 229.73-acre area of vested mining rights on two parcels totaling 234 acres (APNs 046-201-028 and 073-093-008). The proposed mine expansion will occur in four phases, over approximately 200 years, with Final Reclamation of the mining area anticipated to be completed by 2220.

**Location:** The Project is located at 1424 Old Creek Road, approximately 1.3 miles northeast of the community of Cayucos.

**Timeframe:** The mining expansion is proposed in four phases spanning approximately 200 years.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the County of San Luis Obispo 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 CEQA document prepared for this Project.

There are many special-status biological resources present within and adjacent to the Project area that may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW has concerns about the Project-related impacts that could result from activities occurring in close proximity to the adjacent water impoundment, the unnamed stream that is a tributary to Willow Creek within the Project site, upland grassland habitat, and the associated impacts to species that utilize these habitats. In particular, CDFW is concerned about potential impacts to special-status species such as the State species of special concern California red-legged frog (*Rana draytonii*) and western pond turtle (*Actinemys marmorata*). CDFW acknowledges that surveys were conducted for special-status wildlife in 2018, but the ND provides insufficient detail about the methods used for wildlife surveys for CDFW to conclude that special status wildlife will not be impacted by the Project. In order to adequately assess any potential impact to biological resources, CDFW recommends focused biological surveys be conducted by a qualified wildlife biologist during the appropriate survey period(s) in order to determine whether any special status species may be present within the Project area. Properly conducted biological surveys, and the information assembled from them, are essential to identify the need for additional protocol-level surveys and/or any mitigation, minimization, and avoidance measures for Project-related impacts to CESA listed species and other species of concern. CDFW may be consulted on biological survey methods and results may be submitted to CDFW.

### I. Environmental Setting and Related Impact

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?**

#### COMMENT 1: California Red-Legged Frog (CRLF)

**Issue:** CRLF have been documented to occur adjacent to the Project site (CDFW 2020). CRLF primarily inhabit ponds but can also be found in other waterways including marshes, streams, and lagoons. The species will also breed in ephemeral waters (Thomson et al. 2016). Review of aerial imagery indicates the presence of

several ponded wetland features within the vicinity of the Project Area that may be suitable to support CRLF. As a result, the Project has the potential to impact CRLF.

**Specific impact:** Without appropriate avoidance and minimization measures for CRLF, potentially significant impacts associated with the Project's activities include burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs, larvae and/or young, and direct mortality of individuals.

**Evidence impact is potentially significant:** CRLF populations throughout the State have experienced ongoing and drastic declines and many have been extirpated (Thomson et al. 2016). Habitat loss from growth of cities and suburbs, invasion of nonnative plants, impoundments, water diversions, stream maintenance for flood control, degraded water quality, and introduced predators, such as bullfrogs are the primary threats to CRLF (Thomson et al. 2016, USFWS 2017). All of these impacts have the potential to result from the Project. Therefore, Project activities have the potential to significantly impact CRLF.

#### **Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to CRLF associated with the Project, CDFW recommends conducting the following evaluation of the Project Area and editing the ND to include the following measures specific to CRLF, and that these measures be made conditions of approval for the Project.

#### **Recommended Mitigation Measure 1: CRLF Habitat Assessment**

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of Project implementation, to determine if the Project Area or its immediate vicinity contain suitable habitat for CRLF.

#### **Recommended Mitigation Measure 2: CRLF Surveys**

If suitable habitat is present, CDFW recommends that a qualified wildlife biologist conduct surveys for CRLF within 48 hours prior to commencing work (two night surveys immediately prior to construction or as otherwise required by the USFWS) in accordance with the USFWS *"Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog"* (USFWS 2005) to determine if CRLF are within or adjacent to the Project area.

#### **COMMENT 2: Western Pond Turtle (WPT)**

**Issue:** There are WPT documented in the water impoundment next to the Project site (CDFW, 2020). WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016).



**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

**Evidence impact is potentially significant:** The Project involves ground-disturbing activities adjacent to the adjacent water impoundment. Additionally, noise, vegetation removal, movement of workers, and ground disturbance as a result of Project activities have the potential to significantly impact WPT populations.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site, editing the ND to include the following measures specific to WPT, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 3: WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT no more than ten days prior to Project implementation. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

**II. Editorial Comments and/or Suggestions**

**Lake and Streambed Alteration:** The ND stated that a Streambed Alteration Agreement would not be required since no "jurisdictional water features" were observed during surveys of the biological study area. CDFW has reviewed aerial imagery that indicates there is a water impoundment adjacent to the Project and an unnamed stream, that is a tributary to Willow Creek, within the Project site. Other ephemeral stream features may also be present within or adjacent to the Project site that may be affected by Project activities. Ground-disturbing activities that have the potential to change the bed, bank, and channel or alter riparian habitat of these features may be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent, such as the unnamed stream within the Project site, as well as those that are perennial in nature.

For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593. It is important to note, CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement. If inadequate, or no environmental review, has occurred, for the Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be able to issue the Final LSAA until CEQA analysis for the project is complete. This may lead to considerable Project delays.

**Water Pollution:** Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or Project-related erosion. Potential impacts to biological resources that utilize the adjacent water impoundment and the unnamed stream that is a tributary to Willow Creek include the following: increased sediment input from road or structure runoff; and deleterious runoff associated with development activities and implementation. The Regional Water Quality Control Board and U.S. Army Corps of Engineers also have jurisdiction regarding discharge and pollution to Waters of the State.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, CRLF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and NDs 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 (CNDDB). The CNDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDB at the following email address:

[CNDDB@wildlife.ca.gov](mailto:CNDDB@wildlife.ca.gov). The types of information reported to CNDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals>.



## FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist the County of San Luis Obispo in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 254, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,



for

Julie A. Vance  
Regional Manager

cc: United States Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, California 93003

Regional Water Quality Control Board  
Central Valley Region  
1685 "E" Street  
Fresno, California 93706-2020

United States Army Corps of Engineers  
San Joaquin Valley Office  
1325 "J" Street, Suite #1350  
Sacramento, California 95814-2928

ec: Linda Connolly, CDFW  
Ken Spencer, CDFW

### **Literature Cited**

CDFW. 2020. Biogeographic Information and Observation System (BIOS).  
<https://www.wildlife.ca.gov/Data/BIOS>. Accessed January 10, 2020.

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and Reptile Species of Special Concern. California Department of Fish and Wildlife and University of California Press.

USFWS, 2005. Revised Guidance on Site Assessment and Field Surveys for the California Red-legged Frog. March 2005. 26 pp.

USFWS, 2017. Species Account for California Red-legged frog. March 2017. 1 pp.