

**Attachment 6:
California Department of Fish and Game CEQA
comments**

From: Quillman, Gabriele@Wildlife [<mailto:Gabriele.Quillman@wildlife.ca.gov>]
Sent: Friday, March 29, 2019 5:12 PM
To: Jason Burke
Cc: Wildlife R2 CEQA
Subject: CDFW's Comments on the IS/MND for the Tahoe Valley Stormwater and Greenbelt Improvement Project (SCH 2019029152)

Hillary Roverud
Deputy Planning Director
City of South Lake Tahoe
1901 Airport Road
South Lake Tahoe, CA 96150

Subject: INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION
TAHOE VALLLEY STORMWATER AND GREENBELT IMPROVEMENT PROJECT,
STATE CLEARINGHOUSE NO. 2019029152

Dear Ms. Roverud:

The California Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Initial Study and Mitigated Negative Declaration (IS/MND) for the Tahoe Valley Stormwater And Greenbelt Improvement Project (project) [SCH No. 2019029152]. The Department is responding to the MND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code [Fish & G. Code] sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines section 15386), and as a potential Responsible Agency regarding any discretionary actions (CEQA Guidelines section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (Fish & G. Code sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (Fish & G. Code sections 2080 and 2080.1).

Project Location and Description

The project site is located in the southwest portion of the City of South Lake Tahoe in El Dorado County, California; within a 320-acre area that is bisected by US Highway 50 and State Route 89.

The project proposal includes a number of improvements to stormwater facilities, bicycle and pedestrian paths, and recreational amenities. Proposed stormwater improvements include retrofitting existing drainage systems and installing a series of new stormwater collection, conveyance, and infiltration facilities. Pedestrian and bicycle improvements include constructing pedestrian pathways and a Class I shared-use trail. Recreational improvements include construction of passive seating areas, an interpretive trail, and play areas.

Comments and Recommendations

The Department offers the comments and recommendations presented below to assist the City of South Lake Tahoe (City; the CEQA Lead Agency) in adequately identifying and mitigating the project's significant, or potentially significant, impacts on biological resources.

Lake and Streambed Alteration

Based on the IS/MND's description of some of the proposed stormwater facility improvements, including modification of existing basins and construction of new basins within the on-site stream area, it is likely that project activities will require notification to the Department pursuant to Fish & G. Code section 1602.

Fish & G. Code section 1602 requires an entity to notify the Department prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, the Department determines if the proposed project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. The Department may suggest ways to modify your project that would eliminate or reduce harmful impacts to fish and wildlife resources.

The Department's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, the Department recommends that the final IS/MND fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with the Department is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

The draft IS/MND mentions that the project may impact riparian vegetation and wetlands but defers analysis of these impacts to a future delineation that will be prepared as part of a permit application package (Mitigation Measure Bio-1). Because these impacts have not yet been analyzed, the IS/MND does not contain sufficient information about the extent of the potential impacts to support its conclusion that the impacts will be less than significant. Without knowing the extent of the streams, riparian habitat and wetlands present on-site or the extent of the potential impacts to streams, riparian habitat and wetlands, the Department cannot concur that the project will have less than a significant impact on these resources. In order to support this conclusion, the Department recommends that the IS/MND be revised to include the following:

1. A map showing the extent of all on-site streams, including episodic, intermittent, and ephemeral streams, and their associated riparian/wetland habitats.
2. An estimate of the area of stream, wetland, and riparian habitat that will be impacted by project activities, including both temporary and permanent impacts. We recommend

this estimate be supported by adding a map of the project's proposed footprint overlaid on the stream, wetland, and riparian habitat delineation.

3. Mitigation measures to avoid, minimize, and/or reduce the significance of the impacts.

Special-Status Species

The IS/MND contains an analysis of the project's potential impacts to only four special-status species: Sierra Nevada yellow-legged frog (*Rana sierrae*), North American wolverine (*Gulo gulo luscus*), Lahontan cutthroat trout (*Oncorhynchus clarkia henshawi*), and willow flycatcher (*Empidonax traillii*). The CNDDDB query in Appendix C includes occurrence data for several special-status species that are not analyzed in the IS/MND, including northern goshawk (*Accipiter gentilis*), long-eared owl (*Asio otus*), broad-nerved hump moss (*Meesia uliginosa*), marsh skullcap (*Scutellaria galericulata*), and several others. It is not clear whether the potential for these species to occur within the project area was considered.

Please note that the CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database, and the absence of a confirmed occurrence within the boundaries of a project area is not evidence of a species' absence. The CNDDDB query in Appendix C appears to be restricted to the project area and its immediate vicinity only. To get a more complete list of special-status species that may occur in the area, the Department recommends using the CNDDDB QuickView tool to load a list of special-status species that have been observed in the 9-quad area surrounding the project. The CNDDDB QuickView tool can be accessed at <https://www.wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>.

In order to support the IS/MND's conclusion that the project will have a less than significant impact on listed and special-status species, the Department recommends that the IS/MND be revised to include the following:

1. A comprehensive list of special-status species with the potential to occur in the wider area around the project site
2. An analysis of each of the special-status species' potential to occur within the project area
3. An analysis of the project's potential impacts on each of the special-status species
4. Mitigation measures to avoid, minimize, and/or reduce the significance of the impacts

Nesting Bird Surveys

Migratory non-game native bird species are protected under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish & G. Code also afford protective measures as follows: 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 Fish & G. 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 Fish & G. Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

The IS/MND's Biological Protection Measures require a pre-construction nesting bird survey no more than 14 days prior to initiating construction if construction begins between March 15 and August 31. The Department recommends that this survey be scheduled no more than three (3) days prior to starting construction. Many bird species may initiate nest-building and begin laying eggs very rapidly, and some bird species may construct a nest in as few as two or three days. A preconstruction survey timed 14 days before initiation of project activities may miss some instances of nesting due to the length of time between the survey and the start of construction.

Please note that the MBTA and Fish & G. Code apply regardless of the time of year. 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.

Further Coordination

The Department appreciates the opportunity to comment on the IS/MND for the Tahoe Valley Stormwater And Greenbelt Improvement Project (SCH No. 2019029152), and requests that the City address the Department's comments prior to adopting the MND. If you have any questions about these comments, please contact me at (916) 358-2955 or gabriele.quillman@wildlife.ca.gov.

Sincerely,

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