

## Memorandum

Governor's Office of Planning & Research

Date: June 14, 2019

**JUNE 14 2019**

To: Mr. Gavin McCreary  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, CA 95826

### STATE CLEARINGHOUSE

From: *Michael D. Thibault #585 FOR GREGG ERICKSON*  
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California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Former Mare Island Naval Shipyard Record of Decision/Final Remedial Action Plan for Investigation Area F1, Draft Negative Declaration, SCH #2019059075, Solano County

The California Department of Fish and Wildlife (CDFW) received a draft Negative Declaration (ND) for the Former Mare Island Naval Shipyard Record of Decision/Final Remedial Action Plan for Investigation Area F1 (Project). CDFW is submitting comments on the draft ND to inform the Department of Toxic Substances Control (DTSC), as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA) Section 15386 and is responsible for the conservation, protection, and management of the State's biological resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as the California Endangered Species Act (CESA) Permit, the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Agreement and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

#### REGULATORY REQUIREMENTS

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if "take" or adverse impacts to 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 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 Agreement*

CDFW requires an entity to notify CDFW before commencing any activity that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of a river or stream or use material from a streambed. Intermittent and/or ephemeral streams and drainages that are dry for periods of time or only flow during and immediately after periods of rainfall, respectively, are also subject to Fish and Game Code



section 1602; and CDFW may require an LSA Agreement with the applicant, pursuant to Section 1600 et seq. of the Fish and Game Code.

Issuance of an LSA Agreement is subject to CEQA. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. The CEQA document should identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring, and reporting commitments for completion of the Agreement. To obtain information about the LSA notification process, please access our website at <https://www.wildlife.ca.gov/conservation/lisa> or to request a notification package, contact CDFW's Bay Delta Regional Office at (707) 428-2002.

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.

### Environmental Setting

The Project site is located on the southeastern edge of Mare Island along Mare Island Strait (Napa River) in the City of Vallejo, Solano County. The Project site is 62 acres and is owned by the United States Navy (Navy). From 1857 to 1973 the Navy conducted several activities including: munitions manufacturing, handling, storage, testing, and disposal by offshore dumping, burning, or burying onshore. The Project site is inactive and includes 28 buildings, paved lots and roads, landscape vegetation, natural vegetation, and a tidal wetland (Subarea 6 – draft ND, Figure ES-2). Other habitat types found at or in the vicinity of Mare Island include intertidal mudflats, open marine water, non-tidal wetlands, active dredge ponds, and native and non-native grassland communities. The native and non-native grassland communities on-site provide nesting and foraging habitat for a variety of native species, including some special-status species such as northern harrier (*Circus cyaneus*), a Species of Special Concern (SSC), and white-tailed kite (*Elanus leucurus*), a fully protected species. The existing buildings on the Project site provide suitable nesting and roosting habitat for a variety of bird and bat species. The tidal wetland area of the Project site contains suitable habitat for the salt marsh harvest mouse (*Reithrodontomys raviventris*), California clapper rail (*Rallus longirostris obsoletus*), and California black rail (*Laterallus jamaicensis coturniculus*), all of which are State fully protected species.

### Project Description

The Project includes excavation, removal, and off-site disposal of 1,250 cubic yards of lead-contaminated soil from upland areas on the Project site, as well as dredging, removal, and off-site disposal of 3,600 cubic yards of metals-contaminated wetland sediment from Subarea 6. The excavated area within the wetland will be backfilled with imported sediment and the wetland will be restored to its current condition. The upland areas, referred to as Subarea 4 and Subarea 5 (draft ND, Figure ES-2), will be cleared of all existing buildings and asphalt, and will remain clear after the Project is complete to provide a fire control break and possible future reuse of the site.



## Comments and Concerns

### *Special-Status Plants*

The Project site contains suitable habitat for special-status plants, particularly Mason's Lilaeopsis (*Lilaeopsis maesonii*), a California Rare Plant Rank (CRPR) 1B.1 species. CRPR 1B.1 species are those that are rare, threatened, and endangered in California and elsewhere. The draft ND includes *Applicable or Relevant and Appropriate Requirements* (ARARs) that the Project must comply with in order to avoid and minimize impacts to sensitive species to a level of less-than-significant. ARAR-7 states that "*a qualified biologist who has been approved by the USFWS and CDFW-OSPR shall survey all access routes, staging, and storage areas, stockpile and dewatering areas, decontamination areas, and work areas prior to the start of any project activities, during the time of year when species are evident and identifiable.*" CDFW recommends using the survey protocol entitled, *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, dated March 2018. The survey protocol can be found here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols>.

Furthermore, ARAR-7 states "*if a special-status plant or stand of special-status plants is found, it will be flagged, and activities in the work area will be placed on hold pending further consultation with CDFW and USFWS.*" The draft ND should discuss all special-status plants that might occur on the Project site and therefore be impacted by Project activities. CDFW recommends that special-status plants be avoided to the greatest extent feasible. If take of special-status plants cannot be avoided, the draft ND should include Project specific mitigation measures to compensate for the loss of special-status plants populations on the site.

### *Stream Impacts*

ARAR-10 discusses protection measures for fish species and riparian habitats. The measure states, "*If this project conducts in-water excavation activities, they must occur within the in-water work windows (after August 1 and before October 15) established by the National Marine Fisheries Service, the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife (CDFW).*" The measure further states, "*Prior to in-water work beginning, a silt curtain shall be installed to exclude fish (including Sacramento splittail) from the work area and to protect water quality. The silt curtain shall be placed around the work area in the river prior to sediment excavation.*" Please note that in-water excavation activities may be subject to Fish and Game Code section 1602, and therefore may require an LSA Agreement prior to starting in-water activities. CDFW agrees that limiting in-water excavation activities between August 1 and October 15 is necessary to avoid impacting sensitive life stages of special-status fish, such as Delta smelt (*Hypomesus transpacificus*) and longfin smelt (*Spirinchus thaleichthys*). If work were to occur outside of these dates, a CESA ITP may be required.

### *Roosting Bats*

Abandoned buildings on the Project site contain suitable bat roosting habitat. Page 16 of the draft ND states, "*An active night roost for bats was observed in the outside stairwell of Building A266.*" Furthermore, the draft ND states, "*...bats of several species could potentially roost inside structures without showing signs of occupancy from the exterior of structures.*" CDFW recommends that a qualified bat expert conduct a bat habitat assessment to determine if any of the buildings on the Project site contain suitable bat roosting habitat. If potentially suitable bat roosting habitat is discovered in any of the structures on the Project site, the qualified bat expert shall conduct surveys during appropriate periods of bat activity to determine if bats are roosting in the buildings. If roosting bats or evidence of their presence is found in the buildings, the



qualified bat expert shall prepare a Bat Avoidance and Minimization Plan (Plan) in consultation with CDFW prior to starting Project activities. Please note that Fish and Game Code affords protection to all bats via Code §§ 2000, 3007, and 4150.

#### *Osprey (Pandion haliaetus)*

Osprey have become increasingly prevalent around the San Francisco Bay Area, including Mare Island. Osprey begin breeding around late February and osprey young fledge (i.e. leave the nest and catch food independently) typically in late July. Osprey have been observed nesting on top of snags, treetops, and man-made structures, such as, light poles, utility poles, barge cranes, and pilings. Additionally, osprey have high nest site fidelity (i.e. they return to the same nesting sites each year). This can cause human-wildlife conflict particularly in areas where osprey nesting affects business operations. Because multiple observations of nesting osprey have been made near the Project site in recent years, a qualified biologist shall conduct nest surveys to identify the location and status (i.e. active or inactive) of all nests within the Project area. If osprey are found nesting within the Project area, particularly on any buildings/structures that will be removed, those buildings/structures should be removed outside of the nesting season (August 1 – January 31) to avoid take, or when a qualified biologist has determined that a nest is no longer active or osprey young have fledged. Additionally, to compensate for loss of osprey nesting structures, the Project should construct suitable osprey nest structures/platforms as close as feasible to the previous nest structure but far enough away that the nest structure will not interfere with or be adversely impacted by future site development and/or reuse.

#### *Nesting Birds and Raptor Surveys*

ARAR-8 states that a qualified biologist will conduct pre-construction surveys for nesting birds and raptors “...within a reasonable time prior to commencement of any project activity.” The draft ND should be specific as to when surveys are to be conducted, as the current language leaves much to interpretation. CDFW recommends that surveys for nesting birds and raptors be conducted within 5 days prior to the start of Project activities in order to avoid having birds and/or raptors begin nesting between the time of the survey and the start of Project activities.

#### *Erosion Control Devices*

Erosion control devices can have a direct impact on wildlife (e.g. reptiles, amphibians). CDFW has documented several cases of wildlife becoming entangled in erosion control devices containing plastic monofilament (e.g. typical straw wattles) and; therefore, CDFW recommends that all erosion control devices be composed of biodegradable materials (e.g. coir logs, coconut fiber blanket).

#### **Environmental Data**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that 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), and notify Garrett Allen, Environmental Scientist, at [garrett.allen@wildlife.ca.gov](mailto:garrett.allen@wildlife.ca.gov) or by phone (707) 428-2076. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: [cnddb@wildlife.ca.gov](mailto: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>.

CDFW appreciates the opportunity to provide comments on the draft ND for the proposed Project and is available to meet with you to further discuss our concerns. If you have any questions, please contact Mr. Allen at (707) 428-2076 or at [garrett.allen@wildlife.ca.gov](mailto:garrett.allen@wildlife.ca.gov); or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at (707) 428-2090 or at [karen.weiss@wildlife.ca.gov](mailto:karen.weiss@wildlife.ca.gov).

cc: State Clearinghouse