



STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

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July 20, 2026

Jason Hoorn, Senior Natural Resources Planner
Marin County Open Space District
1600 Los Gatos Drive, Suite 275
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**Subject: Buck Gulch Falls Creek Restoration and Trail Improvement Project,
Mitigated Negative Declaration, SCH No. 2026061011, Marin County**

Dear Jason Hoorn:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Marin County Open Space District (District) for the Buck Gulch Falls Creek Restoration and Trail Improvement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the District, as the Lead Agency, of our concerns regarding potentially significant impacts to biological resources associated with the Project, and recommended mitigation measures, as further described below and in **Attachment 1**. CDFW appreciates the District's efforts to improve stream habitat as part of the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), 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. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

¹ 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.

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PROJECT DESCRIPTION SUMMARY

Proponent: Marin County Open Space District

Objective: The Project involves improvements to the existing trails and restoring stream habitat by decommissioning, restoring, converting, and improving trail segments throughout the Project area. The Project purpose is to implement the District's Road and Trail Management Plan to provide the public with safe multi-use trail systems, reduce environmental impacts, and provide safe year-round systems of trails and roads. The Project would install two clear span bridges, install one puncheon trail and one boardwalk, improve conditions along nearly 2,240 feet of existing trail, realign 850 feet of trail segments away from eroding streambanks, change use of the Buck Gulch Falls Trail from hiker/equestrian only to hiker only use, install four fill slope walls to retain the trail alignment near the waterfall viewing area, install new fencing and signage at the waterfall viewing area, decommission and restore 850 feet of trails, and restore 19,500 square feet of eroding streambanks and riparian areas along Arroyo de San Jose Creek. The Project would improve hydrologic function along trails and reduce erosion issues into streams.

Location: The Project is located in an unincorporated area of Novato, Marin County, State of California, with an approximate centroid of 38.062162° Latitude, -122.587209° Longitude.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed or candidate species under CESA, either during construction or over the life of the Project.² **The Project has the potential to impact Northern spotted owl (*Strix occidentalis caurina*, NSO), a CESA listed as threatened species, as further described below.** Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065.). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead

² "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (Fish & G. Code, § 86).

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Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code section 1600 et seq., is required 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. **The Project would impact Arroyo de San Jose and unamend tributaries, thank you for stating in the MND that the Project will obtain an LSA Agreement from CDFW prior to Project construction (MND pages 18 and 107).** 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.

Raptors and Other Nesting Birds

CDFW 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 sections 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). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends in **Attachment 1**, CDFW concludes that a MND is appropriate for the Project.

I. Mitigation Measure and Environmental Setting Related Impact Shortcomings

Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

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COMMENT 1: Northern Spotted Owl, MND pages 24, 72, 73, 90, 96, 10, 103, and 209

Issue, specific impacts, why they may occur and be potentially significant: The MND does not adequately evaluate and mitigate potential impacts to NSO. The Project is within the yearlong range of the species, the MND identifies that there is suitable habitat for nesting NSO adjacent to the Project area and within 0.25-mile (MND pg. 90), and there is one California Natural Diversity Database (CNDDDB)/CDFW Spotted Owl Observations Database (<https://wildlife.ca.gov/Data/CNDDDB/Spotted-Owl-Info>) documented occurrences of NSO within 200 feet of the Project area. The MND describes that Point Blue conducted a survey for NSO in 2023 and 2024 and documented an activity center 0.12-mile south of the Project area and the survey states “Noise created during construction from the use of construction equipment could impact northern spotted owls within the habitat near the proposed project site near the trailhead at Fairway Drive” (MND pg. 90, 101). The MND includes Mitigation Measure BIO-2 and Table BIO-2 requiring nesting bird surveys to be conducted within seven days of the start of Project activities and implementing a buffer of 0.25-mile for NSO if a nest is detected, however the measure does not require protocol level NSO surveys which were developed to promote consistent and scientifically rigorous procedures to survey for NSO. Protocol level surveys include but are not limited to six visits covering all spotted owl habitat within 0.25 mile from the Project area, complete visits spaced at least seven calendar days apart, at least three of the complete visits conducted before June 30, therefore the survey methodology in MM BIO-2 may not detect nesting NSO and does not adequately mitigate potential impacts to the species.

If NSO nesting within 0.25-mile of the Project go undetected due to inadequate surveys, NSO could be impacted by Project activities resulting in nest abandonment and loss of eggs, or reduced health and vigor and loss of young. NSO is CESA listed as a threatened species and is also listed under the federal Endangered Species Act (ESA), and therefore is considered to be a threatened species pursuant to CEQA Guidelines section 15380. Therefore, if an active NSO nest is disturbed by the Project, the Project may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: CDFW recommends that the MND include the mitigation measure below to reduce potential impacts to NSO to less-than-significant and comply with CESA and Fish and Game Code section 3500 et seq.

Mitigation Measure BIO-1 (Northern Spotted Owl Habitat Assessment and Surveys): A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO

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nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS' *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (revised) January 9, 2012, unless otherwise approved in writing by CDFW. Surveys shall be conducted in accordance with Section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If breeding NSO are detected during surveys, CDFW shall be immediately notified and a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.

Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, *Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California*, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW.

If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP and also consult with USFWS pursuant to the federal ESA.

Please be advised that an LSA Agreement for the Project, if issued, will likely include the above recommended mitigation measure as applicable and additional measures to protect fish and wildlife resources.

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 CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

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CONCLUSION

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

Questions regarding this letter or further coordination should be directed to Jordan Beaton, Environmental Scientist, at Jordan.Beaton@wildlife.ca.gov or (707) 980-5172; or Melanie Day, Senior Environmental Scientist (Supervisory), at Melanie.Day@wildlife.ca.gov or (707) 210-4415.

Sincerely,

DocuSigned by:
Erin Chappell
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Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1. Draft Mitigation and Monitoring Reporting Plan

ec: Office of Land Use and Climate Innovation, State Clearinghouse (SCH No. 2026061011)

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ATTACHMENT 1

Draft Mitigation and Monitoring Reporting Plan

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
BIO-1	<u>Northern Spotted Owl Habitat Assessment and Surveys</u>: A qualified biologist shall provide an assessment of potential NSO nesting habitat within the Project area and a 0.25-mile radius and obtain CDFW's written acceptance of the assessment. Alternatively, if the assessment is not completed, or if it concludes that NSO nesting habitat is present, then no Project activities within 0.25 miles of potential NSO nesting habitat shall occur between February 1 and July 31 unless a qualified biologist approved in writing by CDFW conducts NSO surveys following the USFWS' <i>Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls</i>, dated (revised) January 9, 2012, unless otherwise approved in writing by CDFW. Surveys shall be conducted in accordance with Section 9 of the survey protocol, <i>Surveys for Disturbance-Only Projects</i>. If breeding NSO are detected during surveys, CDFW shall be immediately notified and a 0.25-mile no-disturbance buffer zone shall be implemented around the nest until the end of the breeding season, or a qualified biologist determines that the nest is no longer active, unless otherwise approved in writing by CDFW. The Project shall obtain CDFW's written acceptance of the qualified biologist and survey report prior to Project construction occurring between February 1 and July 31 each year.	Prior to Ground Disturbance and for the Duration of Project Construction	Project Applicant

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	Alternate buffer zones may be proposed to CDFW after conducting an auditory and visual disturbance analysis following the USFWS guidance, <i>Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California</i>, dated October 1, 2020. Alternative buffers must be approved in writing by CDFW. If take of NSO cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP and also consult with USFWS pursuant to the federal ESA.		
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