From: "Marcia Grefsrud" <MGrefsrud@dfg.ca.gov>
To: Skeeler@energy.state.ca.us
Date: 2/17/2010 12:44 PM
Subject: Fwd: RE: MEP, 1602 Application Form Question

>>> Marcia Grefsrud 2/16/2010 5:04 PM >>>

Hi Todd,
Since the groundbreaking is proposed for a year from now we have time to come to a solution that is best for the owls. The consultation is done separate from the 1602 and separate from CESA. Owls are a species of special concern and usually addressed in the CEQA process.

The California Burrowing Owl Consortium survey protocol specifies a multi-phase approach, which is recommended in order to adequately evaluate burrowing owl use of an area.

Avoidance of take of individual burrowing owls and their nests is currently mandated under FGC Sections 86, 3503, 3503.5 and 3513. Therefore prior to construction there should be a plan in place to avoid impacts. This includes pre-construction surveys and buffer zones to protect the owls from direct disturbance, 250 feet from occupied burrows during the breeding season and 160 feet from occupied burrows during the non-breeding season.

Pre-construction surveys (usually initiated during the non-breeding season) are necessary for assessing owl presence at a site within a short time period before site modification is scheduled to begin. Pre-construction surveys are supplemental to the existing breeding season survey protocol (4 survey visits spread evenly during the peak of the breeding season, from April 15-July 15), and should not be used in place of it without consulting with DFG in advance. The pre-construction surveys are intended to document if colonizing owls have recently moved onto the site, or if burrow locations of resident owls have changed, or if young of the year are still present and have not yet fledged or dispersed.

Initial pre-construction surveys should be conducted outside of the owl breeding season (January 15 to August 31) but as close as possible to the date that ground-disturbing activities will begin, to avoid the problem of waiting until March or April when the project would be delayed if owls are detected. Generally, initial pre-construction surveys should be conducted no more than 30 days prior to ground-disturbing activities. The time lapse between surveys and site disturbance should be as short as possible and will be determined by DFG based on specific project conditions but generally should not exceed seven days. Additional surveys are necessary when the initial disturbance is followed by periods of inactivity or the development is phased spatially and/or temporally over the project area.

The number of pre-construction surveys necessary to accurately detect current owl presence and owl locations will be driven by a number of interacting criteria such as: 1) the time period that has elapsed since the last breeding survey was completed; 2) height and density of vegetation that may obscure owl presence; 3) topographical conditions that may obscure owl presence; 4) time of year (e.g., in the winter, owls are more cryptic and spend more time in their burrows); 5) time of day and weather conditions when surveys are conducted; 6) long-term history of owl use at the site; 7) size of the parcel and degree of coverage by walking or by intensive observations via spotting scope, and 8) tolerance of owls to human presence. Generally, at a minimum, four survey visits on at least four separate days will be necessary.

Biologists conducting pre-construction surveys should expend enough effort, based on the above criteria, to assure with a high degree of certainty that take of owls will not occur once site modification and grading activities begin. The full extent of pre-construction survey efforts must be described and mapped in detail (e.g., dates, time periods, area(s) covered, and methods employed) in a biological report. Current vegetation and topographical conditions and their corresponding effect on visibility should also be

described. The report should be submitted to DFG for review.

DFG's concurrence with the pre-construction survey results will depend on the level of detail that is provided in the Consultant's biological report that summarizes the methods, results, and level of survey effort. DFG has a responsibility to give input regarding measures that would result in avoiding take and minimizing unavoidable impacts to owls.

Exclusion of owls from burrows during the non-breeding season, usually by installation of one-way doors, has been used to avoid take and allow for development or other projects to proceed (as approved under CEQA). Because owls are dependent on burrows for survival and reproduction, excluding them from nesting, roosting, and satellite burrows on a project site may actually lead to direct or indirect take. For these reasons, in order to avoid or minimize take, owls must be provided, and must be documented to actually use, compensatory burrows in proximity (generally within 100 meters) to the exclusion site.

Exclusion from burrows, when necessary, must be conducted during the non-breeding season (generally September 1-January 15). It requires constant monitoring and exclusion of owls and squirrels and removal of any surrogate burrows (including open pipes or debris piles that are potential owl refugia) at the project site. The impacted site should continue to be made inhospitable to burrowing owls and fossorial mammals (by allowing vegetation to grow tall, heavy disking, installation of one-way doors in burrow entrances, or immediate and continuous grading) until development is complete. Monitoring of the site must be conducted to determine if owls or host burrowers re-inhabit the site during any phase of project development.

DFG will work with you to develop a site-specific plan for owl exclusion when exclusion is absolutely necessary, and will provide guidance on making the compensatory habitat attractive to owls (e.g., ensure multiple burrows are available, vegetation is short, perches are present, prey is abundant, and human disturbance is limited; and take actions to minimize predation on burrowing owls).

Compensation
Habitat compensation, management, monitoring, and reporting should be provided..

Projects impacting owls and owl habitat should mitigate all project-specific and cumulative impacts to nesting, foraging, wintering, dispersal, and migration habitat (i.e., breeding and non-breeding season) under the California Environmental Quality Act, to below a level of significance. The standard of 6.5 acres does not adequately compensate for habitat loss. Mitigation should be based on the acreage of any suitable habitat disturbed or destroyed, with consideration of number of owls present and significance of the area for all burrowing owl life history stages.

Lands intended for burrowing owl conservation need to be of sufficient size to ensure ecological sustainability with minimum long-term maintenance needed by humans (e.g., rely on native grazers, compatible livestock grazing practices, burrow excavation by native animals, and, where feasible, controlled burns).

Other factors influencing the suitability of conservation land include existing or future wind turbine and wind leases in the area and the number of ground squirrels on site.

If you have any questions please feel free to call.
Marcia

>>> <Todd.Ellwood@CH2M.com> 2/10/2010 12:47 PM >>>
Thank you Marcia.

You may recall that we are avoiding most of the drainages along the proposed water line by going under the culverts, with the exception of two: 1 with obvious bed and bank (you confirmed jurisdiction during

our site visit) and the other not so obvious. The less obvious potential CDFG feature is a shallow, very ephemeral roadside swale (connected to a culvert) that feeds into a downstream alkali wetland feature. The culvert here conveys roadside stormwater only to the wetland area located outside the right of way. We'll be trenching around this culvert with a backhoe or smaller machine. The work area is within the existing disturbed road right of way. I attached 2 photos showing this questionable swale feature. For scale, the culvert diameter is 24 inches and there's about 5.5 feet between the culvert and the right of way fence. Do I need a 1602 permit for it?

Finally, the 1602 application inquires about a CEQA filing fee. Since this is a California Energy Commission project, I am not aware of a CEQA filing fee being required by the CEC. A colleague of mine said that CDFG waives the CEQA filing fee for CEC projects and replaces it with the 1602 application fee for each drainage crossing. Is this correct?

Best,
Todd

-----Original Message-----
From: Marcia Grefsrud [mailto:MGrefsrud@dfg.ca.gov]
Sent: Wednesday, February 10, 2010 9:18 AM
To: Ellwood, Todd/SFO
Subject: Re: MEP, 1602 Application Form Question

Hi Todd,
Just the crossing. You should put that work period as something realistic, like June 1-October 15.
Marcia

>>> <Todd.Ellwood@CH2M.com> 2/10/2010 9:13 AM >>>
Hi Marcia,

I am currently entering information into a 1602 SAA application and need some clarification on Boxes 4c (Project Term), 4d (Seasonal Work Period) and 4e (Number of Work Days). Most of the MEP project will avoid streambed, except at one crossing along the water pipeline. Does "project term", "seasonal work period", and "number of working days" pertain to just the stream crossing work, or the entire MEP project?

Thank you for your patience regarding all my questions over the last few weeks.

Todd