



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Ecosystem Conservation Division
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



January 17, 2014

Neal D. Ewald, Vice President
Green Diamond Resource Company
California Timberlands Division
P.O. Box 1089
Arcata, CA 95518-1089

Dear Mr. Ewald:

REQUEST FOR CONSISTENCY DETERMINATION FOR NORTHERN SPOTTED
OWL HABITAT CONSERVATION PLAN FOR CALIFORNIA TIMBERLANDS
(2080-2013-010-01)

On December 31, 2013, the California Department of Fish and Wildlife (CDFW) received notification from Green Diamond Resource Company (Green Diamond) that on November 26, 2007, the United States Fish and Wildlife Service (Service) issued a Biological Opinion (Service Ref. No. 8-14-2007-3085; BO) for the Green Diamond Resource Company Northern Spotted Owl Habitat Conservation Plan (Project) referenced above. (See Cal. Reg. Notice Register 2014, No. 3-Z, p. 75.) The BO describes the Project and sets forth a series of measures to minimize and mitigate the incidental take of northern spotted owl (NSO; *Strix occidentalis caurina*), a species designated as candidate pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq). (See Cal. Code Regs., tit. 14, § 670. 1, subd. (e)(2).)

Green Diamond's notification includes a request, pursuant to Fish and Game Code Section 2080.1, that CDFW determine that the BO, including its Incidental Take Statement (ITS), and ITP (Service Ref. No. TE767798-2), which includes the requirement to fully implement the HCP is consistent with CESA as to the Project.

CDFW has determined that the BO and its related ITS, the ITP, and the HCP are consistent with CESA with respect to the Project. A copy of the CDFW determination is enclosed for your records (See also Fish & G. Code, § 2080.1, subd. (d).).

If you have questions regarding CDFW's consistency determination, please contact Joe Croteau, Environmental Program Manager at (530) 842-0882, or joe.croteau@wildlife.ca.gov.

Sincerely,

Sandra Morey
Deputy Director

Neal D. Ewald, Vice President
Green Diamond Resource Company/California Operations
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Enclosure

ec: California Department of Fish and Wildlife

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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
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**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2013-010-01**

Project: Green Diamond Resource Company Amended Northern Spotted Owl Habitat Conservation Plan
Location: Del Norte and Humboldt Counties, California
Applicant: Green Diamond Resource Company

Background

Green Diamond Resource Company (Green Diamond) is currently implementing a thirty-year Habitat Conservation Plan (HCP) (Project) that covers forest management activities including timber operations on Green Diamond's commercial timberlands. Green Diamond's timberlands covered by the company's HCP cover a total of 406,962 acres within Humboldt, Del Norte, and Trinity Counties, California.

Green Diamond's HCP covers timber operations and related management activities including, but not limited to: felling and bucking timber, yarding timber, loading and other landing operations, salvaging timber products, transporting timber and rock products for forest constructing and maintaining forest roads, constructing and operating rock pits, water drafting for dust abatement and fire suppression, maintaining equipment, conducting site preparation (prescribed burning and other slash treatment), planting, pre-commercial thinning and pruning, commercial thinning, and collecting and transporting minor forest products such as burls, stumps, boughs, and Christmas trees.

The Project activities described above are expected to incidentally take¹ northern spotted owl (*Strix occidentalis caurina*; hereafter NSO), a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and a candidate² under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). In particular, NSO could be incidentally taken as a result of the Project activities that cause direct or indirect mortality from timber harvest within or near occupied NSO nest sites or activity centers, removing or reducing the quality of occupied owl habitat, displacing NSO from

¹ Pursuant to Fish and Game Code section 86, "Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 CAL.4th 459,507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take'... means to catch, capture or kill").

² The species' status may change following the decision of the Fish and Game Commission to designate the species as threatened or endangered but if there is such a designation, the species will remain a Covered Species. (Cal. Code Regs., tit. 14, § 670. 1, subd. (e)(2).)

suitable habitat, into unsuitable or already occupied habitat; however, a substantial area of unoccupied but suitable NSO habitat has been and is projected to be available on the Green Diamond ownership for displaced owls to occupy.

NSO individuals occupy the Project site and other unoccupied but suitable NSO habitat occurs within the Project site. Because of the presence of NSO on site, dispersal and other movement patterns of the species, and the presence of other suitable habitat within the Project site, the United States Fish and Wildlife Service (Service) determined that Project activities are expected to result in the incidental take of NSO.

According to Service, the Project will result in temporary loss of 1,864 acres of occupied NSO habitat. Based on current forest conditions within the Project site, the potential habitat loss constitutes only 0.8 percent of the NSO habitat determined by Green Diamond to be potential nesting and roosting (i.e., forest 31 years or older), and only 0.6 percent of the habitat determined by Green Diamond to be prime nesting and roosting habitat (i.e., forest 46 years or older).

Because the Project was expected to result in take of a species designated as threatened under the federal ESA, Green Diamond prepared an HCP in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the ESA. The Service and Green Diamond signed the Implementing Agreement (IA) on September 17, 1992. On August 24, 2006, Green Diamond submitted an application to the Service to amend its 1992 ITP. On December 10, 2007, the Service issued amended ITP No. TE767798-2. The amended ITP requires full implementation of, and compliance with, all conservation measures listed in the HCP for avoidance, minimization, and mitigation for impacts to NSO, as well as compliance with the terms and conditions in the associated IA, all of which were incorporated by reference as conditions of the amended ITP. On November 26, 2007, the Service issued an internal biological opinion (Service Ref. No. 8-14-2007-3085) (BO) for the proposed Project based on the following documents: (1) compliance with the Green Diamond Aquatic Habitat Conservation Plan, (2) the January 2007, Draft Environmental Assessment; (2) the August 30, 2006, Green Diamond Resource Company Northern Spotted Owl Habitat Conservation Plan Phase One Comprehensive Review; (3) the January 3, 2007, Proposed First Amendment Implementation Agreement (IA Amendment); (4) and the August 24, 2006, Proposed Amendments to the Habitat Conservation Plan for the Northern Spotted Owl on the California Timberlands of Green Diamond Resource Company (HCP Amendment). The amended BO describes the Project, requires the Applicant to comply with terms of the amended BO and its associated incidental take statement (ITS), and incorporates additional measures.

The amended ITP requires Green Diamond to conduct timber harvesting and related operations in accordance with existing State and Federal regulations, including the California Forest Practice Rules, the Green Diamond Aquatic HCP/Candidate Conservation Agreement, other operational and policy management actions currently being implemented by Green Diamond, as well as the company's NSO HCP and ITP.

On December 31, 2013, the Director of the California Department of Fish and Wildlife (CDFW) received notification from Green Diamond requesting a determination pursuant to Fish and Game Code section 2080.1, that the amended ITP, which requires implementation of and compliance with the amended BO, amended IA, and amended HCP, is consistent with CESA for purposes of the Project and the anticipated incidental take of NSO (Cal. Reg. Notice Register 2014, No. 3-Z, p. 75).

Determination

CDFW has determined that the amended BO, its associated ITS, and amended ITP, which includes the requirement to fully implement the amended HCP, are consistent with CESA as to the Project and the anticipated incidental take of NSO, because the mitigation measures contained in the original 1992 HCP, the amended ITP, amended IA, the conditions in the amended HCP, data provided in annual reports submitted since the approval of the 1992 HCP, other operational and policy management actions currently implemented by Green Diamond, as well as the conditions in the environmental assessment and the associated finding of no significant impact (See 40 C.F.R. § 1508.13), meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of NSO will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the amended ITP and amended HCP will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of NSO. The mitigation measures in the amended ITP, amended IA, and amended HCP include, but are not limited to, the following:

- Green Diamond shall maintain a 20,310-acre "Special Management Area" in the Upper Mad River subarea including parts of the "Wiggins" ranch. Green Diamond shall not take Spotted Owls in the Special Management Area. Within those portions of the Special Management Area that are not designated set-asides in the HCP, Green Diamond may carry on any activity that does not result in take.
- To minimize and monitor the impacts of incidental take within the Project site, Green Diamond agreed to survey for NSO in each area where timber harvest is planned, and delay harvest of spotted owl nest sites and primary activity centers until after the nesting season.
- Green Diamond shall maintain records of surveys and actual instances of take, and will notify the Service should any of several events occur on the Project site. These events include direct harm to any spotted owl, any catastrophic event that destroys spotted owl sites or habitat, any unexpected shift in the number or distribution of spotted owl sites, and the accidental death or injury of a spotted owl, or the finding of a dead or injured spotted owl.

- Green Diamond shall continue to gather additional data on spotted owl behavior and habitat needs as provided in the HCP, and shall update its GIS database regularly to include the most current information on spotted owl site and habitat on the lands covered by the permit.
- To protect existing owl sites in select areas, and to promote development of suitable owl habitat following harvest in other areas, Green Diamond established 39 set asides, representing 13,252 acres, in which timber harvesting is not allowed for the term of the permit.
- Where feasible, Green Diamond shall plan timber harvests to retain resource values that would provide a core for future spotted owl habitat, using measures described in the HCP, and identifying site-specific measures in timber harvest plans.
- Where feasible, Green Diamond shall comply with "Overall Resource Management" measures specified in the HCP, to the extent that those measures are stricter than the California Forest Practice Rules. These measures include canopy and ground cover retention requirements along Class I and Class II streams, and retaining a variety of tree sizes and species within Watercourse and Lake Protection Zones (WLPZ).
- Implement on the lands covered by the amended ITP new research on the habitat overlap and interactions between NSO and barred owls (*Strix varia*). This research would address a recent, substantial threat to NSO, competition by barred owls, and is expected to contribute to NSO conservation by providing information that would inform future management decisions for the NSO, both on the Project site and elsewhere in the species' range.
- Because barred owls can reduce the probability of detecting NSO, the following measures are part of the NSO survey protocol: a) When timber harvest plan (THP) units occur within 0.5 miles of a historic spotted owl nest site or activity center that is occupied by barred owls, Green Diamond will conduct at least one stand search protocol visit to assess site occupancy by spotted owls. Biologists will conduct a thorough visit of the stand by walking the THP unit and suitable habitat within a 500-foot buffer area surrounding the unit, and will look for sign of owls (i.e., roosts with whitewash, pellets, feathers, etc.) and will not attempt to elicit vocal responses from spotted owls; b) If barred owls occupy a spotted owl territory, and the spotted owls have not been detected within the owl site for at least three breeding seasons, Green Diamond will seek technical assistance from the Service to determine the time period and survey effort necessary to preclude the site from consideration for potential displacement.

Monitoring and Reporting Measures

At the end of each year, Green Diamond will prepare an annual report and submit it to the Service for review. As stated in the 1992 HCP, copies of the report will also be made available to CDFW. The report will:

- Specify actual instances of owl displacement over the preceding year, including the number of NSO sites removed, the number of NSO displaced, and any inadvertent harm or injury to individual owls;
- Determine the proportion of habitat lost within owl sites for several areas influence (e.g., within 1000-foot, 0.5-mile, and 0.7-mile radii);
- Compare actual and estimated levels of owl displacement for the past year;
- Estimate levels of owl displacement for the upcoming year;
- Estimate the current number of owl sites and amount of owl habitat on the property and note any significant changes from the previous year;
- Report pre- and post-harvest estimates of snags and residual trees in timber harvest plan areas;
- Report the results of the nest and set-aside monitoring efforts; and
- Assess the efficacy of the conservation measures to date based on thresholds specified in the IA.

Financial Assurances

- Prior to initiating Project activities, Green Diamond will provide CDFW with performance security in the form of a letter of credit in the amount of \$700,000, as a financial assurance for implementation of the NSO HCP..

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of NSO, provided Green Diamond implements the Project as described in the BO, ITS, amended ITP, IA and HCP, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and its associated ITS, as well as the HCP and ITP. If there are any substantive changes to the Project (e.g., amendments replacements, or termination of the Service's ITS, HCP, IA, or ITP as amended to date), Green Diamond shall obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subds. (b) and (c)).

By: Sandra Morey

Date: 1/17/14

Sandra Morey, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Consistency Determination
No. 2080-2013-010-01