

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
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CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2019-008-01

Project: Green Diamond Resource Company - Forest Habitat Conservation Plan for California Timberlands
Location: Del Norte and Humboldt Counties, California
Applicant: Green Diamond Resource Company

Background

Green Diamond Resources Company (Green Diamond) has developed an approved fifty-year Forest Habitat Conservation Plan (FHCP)(Project) that supports the issuance of authorizations from the United States Fish and Wildlife Service (USFWS) that will enable Green Diamond to continue its forest management activities on commercial timberlands. The FHCP initially covers 357,412 acres within Humboldt and Del Norte counties in California. The FHCP analysis includes an adjustment area of 339,667 acres of which up to 15 percent can be added without requiring a major amendment to the FHCP. Green Diamond's current ownership upon notification for a consistency determination is 357,860 acres. A significant element worth noting is the designation of 44 productive and distributed Dynamic Core Areas representing approximately 10,252 acres that can be replaced for biological or economic purposes.

Green Diamond's FHCP 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, site preparation (prescribed burning, blasting and other slash treatment), early season continuous operations, 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). In particular, NSO could be incidentally taken as

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

a result of the Project activities that cause direct mortality from operations within or near occupied NSO nest sites or activity centers. The NSO is a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(5)(G).)

NSO individuals occupy the Project area and other unoccupied but suitable NSO habitat exists within the Project area. Because of the presence of NSO, dispersal and other movement patterns of the species, and the presence of other suitable habitat within the Project site, the USFWS determined that Project activities are expected to result in the incidental take of NSO.

Because the Project is expected to result in take of a species designated as threatened under the ESA, Green Diamond prepared a FHCP in support of an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the ESA. The ITP requires full implementation of, and compliance with, all conservation measures listed in the FHCP for avoidance, minimization, and mitigation for impacts to NSO, all of which the USFWS incorporated by reference as conditions of the ITP. In 2019 the USFWS issued a Biological Opinion (BO, Ref. No. AFWO-19B0005-19F0017). The BO describes the Project, requires Green Diamond to comply with terms of the BO and its associated incidental take permit (ITP), and incorporates additional measures.

The 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 FHCP/Candidate Conservation Agreement, other operational and policy management actions currently being implemented by Green Diamond, as well as the FHCP and ITP.

Under the FHCP and as described in the BO, the USFWS is authorizing incidental take through habitat modification (harm) of three NSO sites for every 100 active NSO sites per year, or two NSO sites for every 75-99 active NSO sites per year, or one NSO site for every 48-74 active NSO sites per year. If the number of known active NSO sites is 47 or less, then no incidental take is authorized. Take calculations will be measured by and confirmed through demographic and occupancy modeling, occupancy surveys, site monitoring, and habitat model validation.

On July 31, 2019, 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 ITS and the ITP, which requires implementation of and compliance with the BO and the FHCP, are consistent with CESA for purposes of the Project and the anticipated incidental take of NSO. (Cal. Reg. Notice Register 2019, No. 33-Z, p. 1154.)

permitting under Fish and Game Code section 2081, subdivision (b), "'take' ...means to catch, capture or kill").

Determination

CDFW has determined that the ITP and the BO, including the ITS, are consistent with CESA as to the Project and NSO because the mitigation measures contained in the ITP and BO, including the ITS, 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 ITP and BO, including the ITS, 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 ITP and BO, including the ITS, include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

All conservation measures described in the FHCP with minor modifications approved on August 20, 2019, are incorporated by reference as conditions in the ITP and BO, including the ITS, pursuant to part 402.14(i) of the Endangered Species Act regulations (50 C.F.R. (1986)). Such terms are non-discretionary, must be undertaken to be consistent with CESA, and are as follows:

- Green Diamond shall establish 44 NSO sites designated as Dynamic Core Areas, distributed among 11 owl management units as evenly as possible as described in the FHCP. Green Diamond shall retain, monitor, and protect an additional 12 productive NSO sites to accommodate potential adaptive management scenarios for the first five years of the FHCP; and one Dynamic Core Area will be added for every net 8,000 acres added from the adjustment lands area.
- Green Diamond will conduct a series of barred owl removal experiments. The barred owl management and removal program is mutually accepted by the USFWS and CDFW as a necessary conservation action for NSO and is the primary mitigation for direct take of NSO in the FHCP area. The barred owl experiments include removal, invasion, and co-existence elements, and will be vetted, authorized, and permitted through the CDFW scientific collection permit process (Fish & G. Code, § 1002) and Migratory Bird Treaty Act (16 U.S.C. §§ 703-712).
- Green Diamond shall conduct pre-harvest NSO surveys in all harvest units planned for harvest during the period when NSO may be initiating nesting, incubating eggs, brooding nestlings, or caring for recently fledged juveniles from February 21 through August 31. Known NSO nest sites will be protected with a 0.25-mile buffer.
- Green Diamond will detect, discourage, remove, and restore illegal cannabis cultivation and associated pesticide use.

- Green Diamond will retain and recruit targeted habitat elements using a scorecard for residual trees and retention of aggregate retention areas through their TREE Program. Known NSO nest trees will also be retained regardless of management or nesting history in the area.
- Green Diamond will ensure compliance with and effectiveness of the FHCP through a monitoring, reporting, and adaptive management program that includes review and approval by USFWS and CDFW. For the life of the FHCP, the adaptive management program includes early warning and critical warning triggers, accommodates demographic modeling or occupancy modeling scenarios, review and approval of habitat model validation, review and approval of barred owl experimental phases, and incorporates full participation by CDFW including selection of a scientific review panel if necessary.
- Green Diamond shall update a geodatabase of master owl information on NSO sites and habitat, and barred owl occurrences on the lands covered by the permit. The geodatabase is submitted to CDFW as a current condition of its scientific collection permits.
- Green Diamond will provide access to the USFWS and CDFW, upon notification and justification, and access to project-level and NSO activity center information. The intent is not to compel a standard regulatory requirement for individual timber harvesting plans. Instead the intent is to clarify any incorrect or misunderstood information relative to NSO site management. Green Diamond will also provide notification to the USFWS and CDFW of all proposed timber harvesting plans that may affect NSO on the covered lands.

Monitoring and Reporting Measures

Green Diamond will prepare and submit an annual report to the USFWS (see FHCP Implementation Commitment 3, Objective 5A) and CDFW by March 1 following the first full year after this FHCP's effective date and every year thereafter during this FHCP term. This reports will summarize Operating Conservation Program compliance, results of the Effectiveness Monitoring Measures and any scheduled field reviews conducted in the prior year. The annual report will also include the post-harvest completion forms. Each annual report shall also disclose necessary Green Diamond expenditures for implementing the FHCP Operating Conservation Program during the prior calendar year and Green Diamond's current-year budget for implementing the Operating Conservation Program.

The report will also include a list of protocols used, NSO detection probabilities, results of NSO THP surveys, recolonization of abandoned NSO sites, and a crosswalk list of all Green Diamond NSO sites by name and California Natural Diversity Database Master Owl number, site status, and barred owl influence. For a complete list of expected annual report items please refer to Implementation Commitment Three, Objective 5A of Section 5 of the FHCP. In addition, Green Diamond will submit an annual geodatabase to CDFW to manage the NSO database as a condition of its scientific collection permits.

Financial Assurances

Green Diamond will provide CDFW with a letter of credit in the sum of \$800,000 as financial assurance for full implementation of the FHCP. The significant investment in time and money by Green Diamond while implementing its 1992 Northern Spotted Owl Habitat Conservation Plan demonstrates the company's commitment to implement the terms and conditions of the FHCP. This investment includes the barred owl experiments, adaptive management, demographic and occupancy modeling, occupancy surveys, project level surveys, monitoring programs, model validation and annual reporting.

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 ITP and the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the ITP and the BO, including the ITS. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the USFWS amends or replaces the ITP or the BO, including the ITS, Green Diamond shall be required to 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)).

In making this determination, CDFW acknowledges that the ITP and BO, including the ITS, addresses NSO, a species designated as threatened under the ESA and CESA. (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(5)(G).) This species is known to occur within the Project site. The USFWS determined in the ITP and BO, including the ITS, that, for purposes of the ESA, mortality or injury to individual NSO is unlikely but that take in the form of harm could occur. The USFWS authorized such take under the ESA, requiring Green Diamond to implement various avoidance and minimization measures for the species. Green Diamond is aware that, for purposes of CESA, take of NSO as defined by state law is prohibited, except as authorized by the Fish and Game Code. (See generally Fish & G. Code, §§ 86, 2080.) CDFW's determination that the USFWS ITP and BO, including the ITS, are consistent with CESA is limited to NSO.

By:  _____

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Date: August 30, 2019