

**From:** [OPR State Clearinghouse](#)  
**To:** [Christine Asiata](#)  
**Subject:** FW: CDFW's Comments on the Initial Study and Negative Declaration for the Lake Tahoe Boulevard Class 1 Bicycle Trail Project (SCH No. 2019079110)  
**Date:** Wednesday, August 14, 2019 4:54:19 PM

Governor's Office of Planning & Research

**AUG 14 2019**

## STATE CLEARINGHOUSE

**From:** Quillman, Gabriele@Wildlife <Gabriele.Quillman@wildlife.ca.gov>

**Sent:** Wednesday, August 14, 2019 4:29 PM

**To:** rcarlson@cityofslt.us

**Cc:** Wildlife R2 CEQA <R2CEQA@wildlife.ca.gov>; OPR State Clearinghouse <State.Clearinghouse@opr.ca.gov>

**Subject:** CDFW's Comments on the Initial Study and Negative Declaration for the Lake Tahoe Boulevard Class 1 Bicycle Trail Project (SCH No. 2019079110)

Dear Mr. Carlson:

The California Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Initial Study and Negative Declaration (IS/ND) for the Lake Tahoe Boulevard Class 1 Bicycle Trail Project (project) [SCH No. 2019079110]. The Department is responding to the ND as a Trustee Agency for fish and wildlife resources (California Fish and Game Code [FGC] sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines section 15386), and as a potential Responsible Agency regarding any discretionary actions (CEQA Guidelines section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (FGC sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (FGC sections 2080 and 2080.1).

### Project Location and Description

The project site is located within the City of South Lake Tahoe in El Dorado County, California; between Vikings Way and the US Highway 50 and State Route 89 intersection referred to as the "South Wye.

The City of South Lake Tahoe Department of Public Works proposes to construct a Class 1 shared-use trail on Lake Tahoe Boulevard from Vikings Way to the South Wye, along with intersection crossing improvements at both ends. Improvements will include the installation of a landscaped buffer zone, ADA-compliant ramps, lighting, realignment and reconstruction of sections of curb and gutter, and realigning and restriping of existing lanes.

### **Comments and Recommendations**

The Department offers the comments and recommendations presented below to assist the City of South Lake Tahoe (City; the CEQA Lead Agency) in adequately identifying and mitigating the project's significant, or potentially significant, impacts on biological resources.

## Nesting Bird Surveys

-  
Migratory non-game native bird species are protected under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the FGC also afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders *Falconiformes* or *Strigiformes* (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Biological Resource Protection Measure BIO-1 requires a pre-construction nesting bird survey no more than 14 days prior to initiating construction if construction begins between March 15 and August 15. This measure is not adequate to avoid impacts to nesting birds, both because the survey may be conducted too long before the start of construction, and because the identified nesting season end too early for some bird species.

Many bird species may initiate nest-building and begin laying eggs very rapidly, and some of the bird species that nest in the area construct nests in fewer than 14 days. For example, willow flycatchers (*Empidonax traillii*) have been documented constructing nests in four days (Holcomb, 1974a). Furthermore, not all birds construct nests. Some species lay eggs directly on the ground, while others use existing structures such as cavities in trees or rocks. A preconstruction survey timed 14 days before initiation of project activities may miss some instances of nesting due to the length of time between the survey and the start of construction. In addition, some bird species nest later than August 15. Willow flycatchers for example may not fledge until the end of August (Campbell et al. 1997b). Therefore, the Department recommends that nesting bird surveys be completed by a qualified biologist familiar with local bird species within three (3) days prior to commencing project activities, if project activities commence between February 1 and August 31. If nesting birds are identified on or near the project site, the qualified biologist should impose species-specific avoidance measures, which may include the use of avoidance buffers, sound walls, monitoring of project-related noise, and/or changes in project phasing.

Please note that the MBTA and FGC apply regardless of the time of year, and a few bird species may nest during the winter and fall months. If an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

## Lake and Streambed Alteration

For any activity that will substantially divert or obstruct the natural flow of or substantially change or use any material from the bed, channel or bank of any river, stream, or lake, or deposit or dispose of

debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, the project applicant (or “entity”) must provide written notification to the Department pursuant to section 1602 of the FGC. Please note that removal of riparian vegetation may constitute a substantial change to the bank of a river, stream, or lake.

Based on this notification and other information, the Department then determines whether a Lake or Streambed Alteration (LSA) Agreement is required. The Department’s issuance of an LSA Agreement is a “project” subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential direct and indirect impacts to the lake, stream and/or associated fish and wildlife resources and provide adequate avoidance, mitigation, and monitoring and reporting commitments. The Department recommends entities notify pursuant to FGC 1602 as early as possible, since modification of the proposed project may avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

The following information will be required for the processing of a Notification of Lake or Streambed Alteration and the Department recommends incorporating this information into the IS/ND to avoid project delays and facilitate the timely issuance of a Lake and Streambed Alteration Agreement:

- 1) Identification and mapping of any perennial, intermittent, and ephemeral rivers, streams, and lakes within the Project footprint and any associated fish and wildlife habitats (e.g., riparian habitat, freshwater wetlands, etc.) that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type)
- 2) Proposal of mitigation measures to avoid, minimize, and mitigate impacts to fish and wildlife resources.

The IS/ND does not specify whether the project will include any activities requiring notification to the Department pursuant to section 1602 of the FGC. However, Vegetation Protection Measure VEG-2 refers to the removal of riparian vegetation. Removing riparian vegetation may constitute a substantial change to the bank of a river, stream, or lake and therefore may trigger the need to submit a Lake or Streambed Alteration Notification.

Please note that the formulation of mitigation measures should not be deferred to future projects (i.e., the issuance of a Lake or Streambed Alteration Agreement). While it is not always possible to devise complete, specific, and fully detailed mitigation measures while the project is still in the early planning stages, it is not appropriate to adopt an ND unless the lead agency is reasonably certain that the proposed project will have no significant impacts on the environment. Such certainty is not possible if the formulation of mitigation measures is deferred until after the adoption of the ND, and the lack of public review of the mitigation plan deprives the public of the opportunity to comment on the mitigation plan’s adequacy, feasibility, and enforceability. Therefore, if the project has the potential to impact a stream or its associated fish and wildlife habitat (e.g. wetland and riparian habitat), the Department recommends that the ND be revised to describe and quantify the project’s foreseeable impacts, and to include a specific mitigation proposal to avoid or offset the impacts.

### Further Coordination

The Department appreciates the opportunity to comment on the IS/ND for the Lake Tahoe Boulevard Class 1 Bicycle Trail Project (SCH No. 2019079110), and requests that the County address the Department's comments prior to adopting the ND. If you have any questions pertaining to these comments, please contact me at (916) 358-2955 or [gabriele.quillman@wildlife.ca.gov](mailto:gabriele.quillman@wildlife.ca.gov).

Sincerely,

Gabriele (Gabe) Quillman  
California Department of Fish and Wildlife – North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95816  
(916) 358-2955

### Literature Cited

-  
Campbell, R. W., N. K. Dawe, I. McTaggart-Cowan, J. M. Cooper, G. W. Kaiser, M. C. E. McNall, and G. E. J. Smith (1997b). The Birds of British Columbia. Volume 3. Passerines: Flycatchers Through Vireos. University of British Columbia Press, Vancouver, British Columbia, Canada.

Holcomb, L. C. (1974a). The influence of nest building and egg laying behavior on clutch size in re-nests of the Willow Flycatcher. *Bird-Banding* 45:320-325.