



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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GAVIN NEWSOM, Governor  
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February 4, 2020

Governor's Office of Planning & Research

**FEB 04 2020**

**STATE CLEARINGHOUSE**

Bahar Heydari, Associate Environmental Planner  
California Department of Transportation  
Division of Environmental Analysis  
1750 East 4<sup>th</sup> Street, Suite 100  
Santa Ana, CA 92705

**Subject: Comments on the Initial Study with Proposed Mitigated Negative Declaration for the State Route 133 Operational Improvements Project (SCH# 2020010158)**

Dear Ms. Heydari:

The Department of Fish and Wildlife (Department) has reviewed the Initial Study and proposed Mitigated Negative Declaration (IS/MND) for the State Route 133 (SR-133) Operational Improvements Project (Project) dated January 2020. The comments provided herein are based on the information provided in the IS/MND; the Natural Environment Study (Minimal Impacts) [NESMI] dated December 31, 2019; two Department site visits dated September 24, 2019, and October 23, 2019; and our knowledge of sensitive and declining habitats.

The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (§§ 15386 and 15281, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA; Fish and Game Code § 2050 *et seq.*) and Fish and Game Code Section 1600 *et seq.*

The Project would develop operational improvements on southbound (SB) SR-133 from the southbound Interstate (I)-5/southbound SR-133 connector to southbound SR-133/northbound I-405 connector. The Project includes adding an auxiliary lane on SB SR-133 from SB I-5 connector to 300 feet south of San Diego Creek and adding a second travel lane on the SB SR-133/NB I-405 connector. The Project would also widen the San Diego Creek Left Bridge and San Diego Creek off-ramp bridge and replace rock slope protection (RSP) six feet below the top of the pile cap between the piers/abutments footings of both bridges. The RSP would extend 40 feet upstream and 10 feet downstream of the bridges. These are two of a series of three bridges for SR-133 that cross San Diego Creek immediately north of the I-405 connector.

San Diego Creek is a tributary to the Upper Newport Bay Ecological Reserve, which outlets to the Pacific Ocean. The Biological Study Area (BSA) is primarily heavily urbanized. However, the Project may result in temporary and permanent impacts to San Diego Creek, Cooper's hawk (*Accipiter cooperii*), migratory and non-game birds, special status bat species, and federally endangered southern California steelhead (*Oncorhynchus mykiss*) habitat.

The Department provides the following specific comments and recommendations to assist Caltrans in avoiding and/or minimizing potential impacts to sensitive wildlife and vegetation communities identified in the IS/MND:

1. The NESMI section "Agency Coordination and Professional Contacts" includes a September 4, 2019 site visit with a Department representative. However, the document

does not record a second site visit which occurred on October 23, 2019, with Department staff including the South Coast Region's anadromous fisheries biologist, as further discussed below in item 3. The primary objective of this second visit was to look at crossings on San Diego Creek for a different upcoming project on the I-405. However, while there, staff also inspected the SR-133 bridge crossings.

The Department recommends the Final IS/MND include the second site visit and a discussion of the Department's observations and recommendations that were made therein.

2. According to the NESMI, Caltrans obtained historic records of steelhead within San Diego Creek from National Marine Fisheries Service via email. However, this information is not included in the IS/MND and the records are not discussed or presented as part of the Environmental Document.

The Department recommends the Final IS/MND includes a discussion of the records request and the information provided.

3. As noted in the IS/MND, "Caltrans is required by Senate Bill (SB) 857 to assess and remediate barriers to fish passage at stream crossings along the State Highway System that currently or historically supported anadromous fish" (page 2-7). The document concludes that, "...due to extensive modification and lack of historic evidence of anadromous fish passages within the creek, this project isn't expected to affect fish passage within the BSA[.]" On the Department's October 23, 2019, site visit, staff inspected San Diego Creek, including bridge structures at this location and immediately upstream. The Department's expert staff determined that, although flood control management in the applicable stream segment resulted in a heavily manipulated stream with a uniform streambed profile, the infrastructure does not constitute a complete barrier to steelhead.

The Department determined and communicated to Caltrans that this creek should be considered a historic steelhead stream. This is the Department's expert opinion, based on: a) on the proximity to Upper Newport Bay; b) the presence of freshwater clam shells of different age classes, indicating persistence of water in the system; c) the historic characteristics of the San Diego Creek system; and, d) suitable habitat available upstream. Additionally, historically, the Newport estuary was connected to the Santa Ana River, which is a National Marine Fisheries Service Core 1 stream, and therefore it is highly likely that steelhead utilized San Diego Creek.

Ideas to improve fish passage were discussed in the field on the October 23, 2019, site visit. The existing bridge is supported by pier walls that appear to run the length of all three bridges. The Department suggested that, when extending the bridge, rather than extending the pier walls, which contribute to sheer velocity and scour, Caltrans should consider an alternate column-shaped support. Additionally, the Department discussed creating a low-flow channel with a thalweg in one of the pier bays. To minimize the potential for additional fish barriers at the San Diego Creek bridges, the Department recommends that Caltrans work closely and early with the Department to develop fish passage-compliant designs for the widening of the bridge and revetment of the piers and footings.

4. The IS/MND states that suitable bat roosting habitat exists within the BSA, although no evidence of bat presence was observed during baseline surveys (page 2-9). The Department concurs with minimization measures to protect bats from impact if present prior to construction. The Department recommends that the measures be revised to include the following:
  - a. specify the assessment and surveys will include a 500-foot buffer area around the project footprint;
  - b. the assessment and surveys should be conducted by biologists with expertise in handling, surveying, and identifying southern California bat species, especially those associated with highway infrastructure;
  - c. report findings to the Department prior to implementing any related measures; and,
  - d. if bats are found, develop a bat mitigation and monitoring plan for Department approval prior to commencing construction.
5. The final paragraph of the Jurisdictional Delineation Report indicates that Drainages 1, 2, and 3, although they have bed and bank features, are not subject to Fish and Game Code section 1600 et al. because they do not support aquatic life, riparian vegetation, or stream-dependent terrestrial wildlife. Caltrans cites the 1994 Field Guide to Lake and Streambed Alteration Agreement. This determination is incorrect because that guidance is obsolete and cannot be applied to determine if a stream is subject to Fish and Game Code section 1600 et al.

The Department recommends Caltrans reconsider the applicability of Fish and Game Code section 1600 et al. by considering the most current publication of the Code and applying the language in section 1602(a): “[a]n entity shall not 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...” Please note that this language does not include assessment of species or habitats.

Thank you for the opportunity to comment on the IS/MND. The Department requests an opportunity to review and comment on any response that Caltrans has to our comments. If you have any questions regarding this letter, please contact Simona Altman at (858) 467-4283 or email [simona.altman@wildlife.ca.gov](mailto:simona.altman@wildlife.ca.gov).

Sincerely,



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South Coast Region

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February 4, 2020  
Page 4 of 4

cc: California Department of Fish and Wildlife  
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