



State of California  
Department of Fish and Wildlife

## Memorandum

Date: March 24, 2020

Governor's Office of Planning & Research

To: Ms. Arnica MacCarthy  
California Department of Transportation  
District 4  
111 Grand Avenue  
Oakland, CA 94612

**MAR 24 2020**

**STATE CLEARINGHOUSE**

DocuSigned by:  
  
8319407C9E5407...  
From: Mr. Gregg Erickson, Regional Manager  
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Marin State Route – 1 Capital Preventative Maintenance Project, Initial Study with Mitigated Negative Declaration, SCH #2020029081, Marin County

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of an Initial Study/Mitigated Negative Declaration (IS/MND) from the California Department of Transportation (Caltrans) for the Marin State Route – 1 Capital Preventative Maintenance Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### CDFW ROLE

CDFW is a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### REGULATORY REQUIREMENTS

#### *California Endangered Species Act*

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take<sup>1</sup> of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation

---

<sup>1</sup> Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Ms. Arnica MacCarthy  
California Department of Transportation

2

March 24, 2020

measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

#### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

#### *Migratory Birds and Raptors*

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** California Department of Transportation, District 4

**Objective:** The Project proposes to repair 27.8 noncontinuous miles of State Route (SR) -1 and is divided into two portions. The southern portion is located between post miles (PMs) 22.8 and 33.0. The northern portion is located between PM 45.0 and PM 50.5. The southern portion spans from Five Brooks to north of Point Reyes Station in unincorporated Marin County. The northern portion spans from the Town of Tomales to the Marin-Sonoma County line. The Project includes upgrades to existing SR-1 infrastructure, including pavement rehabilitation, curb ramp upgrades in the communities of Point Reyes Station and Tomales (to meet American with Disabilities Act (ADA) standards), replacement of guardrails and crash cushions, upgrading of drainage inlets, and replacement of aging culverts. The Project would also include improvements to crosswalks and signage in Point Reyes Station, and improvements to sidewalks in the town of Tomales. The purpose of this Project is to preserve and extend the life of the existing pavement on portions of SR-1 in Marin County.

**Location:** The Project is located along SR-1 in Marin County, California and is divided into two portions. The southern portion is located between post miles (PMs) 22.8 and 33.0. The northern portion is located between PM 45.0 and PM 50.5. The southern portion spans from Five Brooks to north of Point Reyes Station in unincorporated Marin County.

**Environmental Setting:** The northern portion of the 24.16 acre Biological Study Area (BSA) contains habitat which consists mainly of grassland and herbaceous vegetation species, with occasional stands of coast live oak (*Quercus agrifolia*) woodland, coyote brush (*Baccharis pilularis*), and thickets of wild rose and blackberry (*Rubus ursinus* and *R. armeniacus*). The grasslands in this region are grazed by livestock (primarily cattle or sheep) or are used for production of crops, such as hay. Olema Creek, Keys Creek, and Stemple Creek, as well as Estero de San Antonio cross or are adjacent to the BSA at several locations. Dense thickets of arroyo and red willow (*Salix lasiolepis* and *S. laevigata*) and other riparian species, including white alder (*Alnus rhombifolia*), California bay (*Umbellularia californica*), and blackberry, are adjacent to the creeks. Seasonal wetlands are next to or within the bed and banks of the creeks and Estero de San Antonio, and alongside SR-1, in roadside ditches and depressional terrain. The southern portion of the BSA is more heavily forested than the northern portion, with dense stands of coast live oak woodland, California bay, blackberry, poison oak (*Toxicodendron diversilobum*), and California hazelnut (*Corylus cornuta subsp. californica*). The IS/MND on page 3-20 notes that the Biological Resources Section provides a summary of the Natural Environmental Study (NES) but with the exception of a select group of special-status species, the summary does not provide enough detailed information on the methodology of protocol-level surveys for species with the potential to be present within the BSA. For example, page 3-28 notes dates and locations of surveys but does not describe the methodology used. CDFW recommends the protocols used to make determinations on the presence or absence of special-status plant and animal species be provided. Additionally, the IS/MND only includes a select group of special-status species and does not provide a complete list of all the species that have the potential to occur within the BSA of the Project or a rationale as to why the select group was chosen. In addition to the protocols and methodologies requested above, CDFW recommends that a list or table is used to note species common name, scientific name, state and federal listing status (as applicable), habitat type preference, and a determination on the potential to occur within the BSA.

#### *Tree Removal*

Page 3-26 of the IS/MND describes the potential number of trees contained within the BSA that may be trimmed or removed as a result of the Project. Page 3-26 notes that the trees larger than 2 inches diameter at breast height (DBH) were included. CDFW does not have standard for the minimum DBH to use when documenting trees. In order to evaluate the full impact of the Project, an evaluation of all trees, regardless of DBH, should be provided for the current phase as well as later phases. Please note, consultation with the California Department of Forestry and Fire Protection and CDFW may be required depending on the size and scope of trees removed. More information can be found in the Forest Practice Act and Forest Practice Rules<sup>2</sup>.

#### *Erosion Control*

Project Feature BIO-10 on page 3-33 of the IS/MND states, "To avoid wildlife entrapment, use coconut coir matting or tackified hydroseeding compounds." CDFW recommends the measure is updated to include a prohibition on the use of plastic monofilament netting and rock slope protection filter fabric. Erosion control filter fabric should not be employed as method of erosion control as it has the potential to prevent larger woody vegetation and trees from taking root in riparian and upland areas. In addition, CDFW considers the placement of filter-fabric, geo-textile and rock slope protection as a permanent impact and if these materials are being considered for

---

<sup>2</sup> <https://www.fire.ca.gov/programs/resource-management/forest-practice/>

the Project, the IS/MND should be updated to evaluate these materials as a permanent impact. In order to address these concerns, CDFW recommends updating Project Feature BIO-10 to:

Project Feature BIO-10: Erosion Control Matting: Plastic monofilament netting (i.e., erosion control matting), rock slope protection filter fabric, geo-textile or similar material will not be used. Acceptable substitutes would include coconut coir matting or tackifying hydroseeding compounds.

#### *Northern Spotted Owl*

The Biological Resources section of the IS/MND on page 3-24 identifies northern spotted owl (NSO) as a potential special-status species within the BSA and states that suitable NSO habitat is present within the southern portion of the Project area. The IS/MND also notes on page 3-24 that within 200 feet of post mile 23.2 known NSO occurrences have been recorded as recent as 2019. The Project may require over 220 working days to complete, with work occurring both day and night, and taking over 10 months to complete. The IS/MND should specifically describe the estimated number of work nights that could occur at specific locations where suitable NSO habitat has been identified. NSO is a threatened species pursuant to CESA and the federal Endangered Species Act. CDFW believes the Project will remove potential NSO habitat through tree removal and modification. These impacts are currently unidentified and not described adequately to determine if additional significant impacts will occur as a result of the Project. The IS/MND should determine the specific types of NSO habitat that will be impacted as a result of the Project, such as nesting, roosting and foraging habitat<sup>3</sup>. Foraging habitat impacts can also be considered significant because they have the potential to significantly reduced NSO's ability to forage and feed their young. The Project also has the potential to cause noise related construction activities within the BSA that could potentially disturb NSO during nesting season and interrupt breeding or lead to nest failure. Population levels and vital rates for NSO continue to decline<sup>4</sup>, so any reduction in successful nesting is a potentially significant impact.

CDFW recommends including a standalone measure for NSO that incorporates the following language to reduce potential impacts to NSO to less-than-significant:

Avoidance and Minimization Measure Occupied Northern Spotted Owl Habitat. If Project activities will occur during the NSO nesting season (February 1 to July 31), then a CDFW-approved Qualified Biologist shall conduct surveys for NSO following the U.S. Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (Revised) January 9, 2012<sup>5</sup>. Surveys shall be conducted in accordance with section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If NSO are detected during surveys, Project activities within 0.25 miles of a nest site shall be avoided until the end of the breeding season or until a Qualified Biologist determines the nest is no longer active. A Qualified Biologist should be familiar with NSO

---

<sup>3</sup> United States Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (Revised) January 9, 2012

<sup>4</sup> California Department of Fish and Wildlife. 2016. Report to the Fish and Game Commission: A Status Review of the Northern Spotted Owl (*Strix occidentalis caurina*) in California.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

<sup>5</sup> California Department of Fish and Wildlife. 2016. Report to the Fish and Game Commission: A Status Review of the Northern Spotted Owl (*Strix occidentalis caurina*) in California.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

ecology, have proven success identifying NSO aurally and visually, and have at least two seasons of experience surveying for NSO using the USFWS protocol.

If Project-generated sound will not exceed ambient nest conditions by over 20 decibels *and* total combined sound (ambient and Project-generated) during Project activities does not exceed 90 decibels, then noise impacts would likely be less-than-significant and surveys may not be necessary (USFWS 2006<sup>6</sup>). Pre-Project sound conditions should be accurately measured and documented to justify a no-survey outcome and the method of sound monitoring to determine if levels exceed 90 decibels should be adequately described to allow CDFW to comment on the methods.

If take of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*).

### *Bat Assessment*

Page 3-25, 3-37 and C-13 of the IS/MND discusses the potential for bats to occur within the vicinity of the Project and includes AMM BIO-6: Vegetation Removal Avoidance for Bats. The proposed Mitigation Measure AMM BIO-6 appears to adequately reduce potential impacts to tree-roosting bats to less-than-significant. However, additional impacts to roosting bats could occur if culverts planned for replacement are utilized by bats, specifically the 5-foot by 3-foot reinforced concrete box culvert at PM 24.16 has the potential to provide roosting habitat. Bats may roost in small cracks, crevices and fissures within culverts. Culvert replacement could result in death or disturbance to bats if they are roosting within the structure, a potentially significant impact. Bats are especially vulnerable during the spring/summer when maternity colonies are raising their pups, and during the winter when resources are less available, and bats may hibernate. Disturbance to bats during these periods could result in death to pups or adults. Page 3-25 notes, additional and alternative habitat is present in areas surrounding culvert replacement locations but does not address how potential loss of roosting habitat shall be reduced to less-than-significant.

CDFW recommends updating AMM BIO-6: Vegetation Removal Avoidance for Bats to the following in order to reduce potential impacts to roosting bats to less-than-significant:

AMM BIO-6: Avoidance for Roosting Bats. A Qualified Biologist shall conduct a suitable habitat assessment for potentially suitable bat roosting habitat, within potential tree habitat and anthropogenic structures between March 1 to April 1 or August 31 to October 15 prior to tree removal or construction related activities. If the habitat assessment reveals a given location has suitable roosting habitat, the appropriate exclusionary measures will be implemented prior to construction during the period between March 1 to April 15 or August 31 to October 15. Potential avoidance may include exclusionary blocking or filling potential cavities with foam, visual monitoring and/or staging Project work to avoid bats.

If the habitat assessment reveals suitable bat habitat in trees and tree removal is scheduled from April 16 through August 30 and/or October 16 through February 28, then presence/absence surveys shall be conducted two to three days prior to any tree removal or trimming. If presence/absence surveys are negative, then tree removal may be conducted

---

<sup>6</sup> Recovery Plan for the Northern Spotted Owl, USFWS, 2006  
<https://www.fws.gov/pacific/ecoservices/angered/recovery/pdf/NSO%20Final%20Rec%20Plan%20051408.pdf>

by following a two phased tree removal system. If presence/absence surveys indicate bat occupancy, then the occupied trees shall only be removed from March 1 through April 15 and/or August 31 through October 15 by following the two phased tree removal system. The two-phase system shall be conducted over two consecutive days. On the first day (in the afternoon), limbs and branches are removed by a tree cutter using chainsaws or other hand tools. Limbs with cavities, crevices, or deep bark fissures are avoided and only branches or limbs without those features are removed. On the second day, the entire tree shall be removed.

Bats shall not be disturbed without specific notice to and consultation with CDFW. If bats are found within trees or anthropogenic structures set for removal, new bat habitat shall be incorporated into the Project design in consultation with CDFW.

#### *Fish Passage Assessment*

The IS/MND, AMM BIO-7: Fish Passage Assessment on page 3-37 and page C-14 notes that during later phases of the Project a fish passage assessment will be conducted on the proposed culvert replacements to determine if the structure is a barrier to fish passage according to Senate Bill 857.

Senate Bill 857 (SB-857), which amended Fish and Game Code 5901 and added section 156 to the Streets and Highways Code states in section 156.3, "For any project using state or federal transportation funds programmed after January 1, 2006, [Caltrans] shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. [Caltrans] shall submit the assessment to the [Department of Fish and Wildlife] and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the [Department of Fish and Wildlife]."

AMM BIO-7 states that a fish passage assessment will be conducted at a later phase. A fish passage discussion section should be included in the IS/MND to address potentially significant impacts to fish passage. Additionally, fish passage consideration may affect Project design and result in additional impacts to habitat that were not evaluated in the IS/MND. The assessment should discuss the current status of the eight culvert replacement locations as noted in the California Fish Passage Assessment Database, as well as, provide images of the upstream and downstream ends of the eight locations. The updated IS/MND should also reference findings in the California Fish Passage Assessment Database for nearby post-mile assessments because the post mile system may be imperfect and mile markers could be inaccurate up to distances of a quarter mile, so a given database location may not match the physical, on the ground mile marker system.

#### *Special-Status Plants*

The IS/MND notes on page 3-26 that suitable habitat is not present for special-status plant species within the currently proposed 15.7-mile, multi-segment Project corridor. Page 3-28 also notes that protocol level surveys were conducted but as previously mentioned in the Natural Environmental Study/Technical Studies section of this letter, the methods of those protocol level surveys have not been provided. CDFW recommends that the protocol is provided and the NES



Ms. Arnica MacCarthy  
California Department of Transportation

7

March 24, 2020

be included as an appendix as it may contain much of the information requested by CDFW. Based on the IS/MND, it is difficult to conclude that special-status plants are absent. Potentially significant impacts to special-status plants, such as crushing and burying, are more likely to occur without sufficient survey information.

CDFW recommends including the following avoidance and minimization measure to reduce potential impacts to special-status plants to less-than-significant:

Avoidance and Minimization Measure Special-Status Plant Surveys. A Qualified Biologist shall conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site the season prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018<sup>7</sup>. If special-status plants are found during surveys, the IS/MND should outline how the Project would be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, compensatory mitigation should be implemented and the plan provided for CDFW review and approval.

A Qualified Biologist in this context should be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols.

If take of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*).

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or emailed to CNDDDB at the following email address: [cnddb@wildlife.ca.gov](mailto:cnddb@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

---

<sup>7</sup> <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

Ms. Arnica MacCarthy  
California Department of Transportation

8

March 24, 2020

## **CONCLUSION**

CDFW appreciates the opportunity to comment on the IS/MND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or [Robert.Stanley@wildlife.ca.gov](mailto:Robert.Stanley@wildlife.ca.gov); or Mr. Craig Weightman, Environmental Program Manager, at [Craig.Weightman@wildlife.ca.gov](mailto:Craig.Weightman@wildlife.ca.gov).

cc: State Clearinghouse (SCH #2020029081)