

**Notice of Determination**

**To:**  
 Office of Planning and Research

*For U.S. Mail:*  
P.O. Box 3044  
Sacramento, CA  
95812-3044

*Street Address:*  
1400 Tenth Street  
Sacramento, CA95814

**From:**  
Department of Fish and Wildlife (CDFW)  
North Central Region  
1701 Nimbus Road  
Rancho Cordova, CA 95670

Contact: Suzanne Gilmore  
Phone: (916) 767-3513

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Lead Agency (if different than CDFW)  
**California Department of  
Transportation**  
**703 B Street**  
Marysville, California 95901  
Contact: Julia Green  
Phone: (916) 274-0570

**SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108**  
State Clearinghouse Number: SCH 2017072043.

Project Title: Bridge Scour Mitigation Project-Lagoon Creek (California Endangered Species Act Incidental Take Permit No. 2081-2018-071-02 (ITP)).

Project Location: The Bridge Scour Mitigation Project – Lagoon Creek (Project) is located on State Route (SR) 99 north and south bound bridge spans at postmiles (PM) 4.90, 4.98 and 5.05, within the County of Sacramento. The Project is located immediately south of the Arno Road offramp, at approximately 38°18'39.772 latitude, -121°19'16.426" longitude.

Project Description: This proposed Project involves replacement of three Lagoon Creek bridges; center, north, and south spans. Project activities include excavation, pile driving, dewatering, trench digging, road construction, clearing of riparian vegetation and other activities.

The Project is expected to result in incidental take of Giant garter snake (*Thamnophis gigas*) which is designated as a threatened species under the California Endangered Species Act and will result in permanent impacts to 0.014 acres of habitat. The ITP referenced above as issued by CDFW authorizes incidental take of species listed under CESA that may occur as a result of Project implementation.

This is to advise that CDFW, acting as [ the lead agency /  a responsible agency] approved the above-described project on June 17, 2019, and made the following determinations regarding the above described project:

1. The project [ will /  will not] have a significant effect on the environment (This determination is limited to effects within CDFW permitting authority as a responsible agency).
2. [ An environmental impact report /  A negative declaration] was prepared by the lead agency for the original project.
3. Additional mitigation measures [ were /  were not] made a condition of CDFW approval of the project.

- 4. A mitigation reporting or monitoring plan  was /  was not] adopted by CDFW for this project.
- 5. A Statement of Overriding Considerations  was /  was not] adopted by CDFW for this project.
- 6. Findings  were /  were not] made by CDFW pursuant to Public Resources Code § 21081(a). CDFW did, however, adopt findings to document its compliance with CEQA.
- 7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
  - Payment is submitted with this notice.
  - A copy of a receipt showing prior payment was submitted to CDFW.
- Responsible Agency statement: The MND prepared by the Lead Agency for the project is available to the General Public at the office location listed above for the Lead Agency. CDFW administrative record of proceedings is available at the CDFW office identified above.

Signature  Date: 6/17/19  
 Kevin Thomas, Regional Manager  
 Governor's Office of Planning & Research

Date Received for filing at OPR: JUL 08 2019

STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2018-071-02**

**California Department of Transportation, District 3  
Bridge Scour Mitigation Project – Lagoon Creek**

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**CEQA FINDINGS**

**INTRODUCTION:**

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Bridge Scour Mitigation Project – Lagoon Creek (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize California Department of Transportation, District 3 (Permittee) to incidentally take Giant garter snake (*Thamnophis gigas*) (hereafter, collectively referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.). The Giant garter snake is designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(C) and (b)(4)(E), respectively).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, California Department of Transportation (Caltrans). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) Caltrans analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2017072043) and approved the Project on February 2, 2018. In so doing, Caltrans imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by Caltrans, the Project involves replacement of three existing Lagoon Creek bridges; center, north, and south spans. The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site will result in the permanent loss of 0.054 acres of habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved

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<sup>1</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the Caltrans' prior analysis, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Mitigated Negative Declaration fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

**FINDINGS:**

CDFW has considered the Mitigated Negative Declaration adopted by Caltrans as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by Caltrans, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist, Biological Monitor or resident engineer shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall accommodate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP due to a conflict with Project construction, then the Designated Biologist shall notify the CDFW representative immediately

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- B. Permittee shall ensure that a CDFW-approved qualified biologist conducts an education program for all persons employed on the Project prior to performing Covered Activities
- C. The Permittee will acquire and/or permanently preserve 1.65 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity
- D. Compliance monitoring will be reported monthly and annual reports will be sent to CDFW by January 31 of each year
- E. Non-compliance will be reported to CDFW within 24 hours during the construction phase
- F. No work within the active channel shall be initiated unless the appropriate avoidance and minimization measure have been installed within the Project Area as required by the terms of this ITP and verified in writing as functioning
- G. The amount and duration of impact hammer activities shall be minimized. Use of the impact hammer shall be limited to daylight hours to allow movement of fish that may be present in the Project vicinity to pass the Project Area during the night time hours
- H. Permittee will prepare and submit a final mitigation report within 30 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

*The Mitigation Monitoring and Reporting Program is adopted.*

*The Project is approved.*

DATE: 6/17/19

By: 

Kevin Thomas, Regional Manager  
North Central Region  
DEPARTMENT OF FISH AND WILDLIFE

Governor's Office of Planning & Research

JUL 08 2019

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