

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2019-042-02**

**California Department of Transportation
Liberty Road/SR-88 Safety Improvements Project**

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 Liberty Road/SR-88 Safety Improvement Project (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).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize the California Department of Transportation (Permittee) to incidentally take California tiger salamander (*Ambystoma californiense*) (hereafter, 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 Covered Species is designated as a threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G)).

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. (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) The California Department of Transportation analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2018052029) and approved the Project on August 7, 2018. In so doing, the California Department of Transportation 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 the California Department of Transportation, the Project involves the upgrade of the intersection of SR-88 and Liberty Road from a two-way stop to a single lane roundabout. The Project will include ground disturbance by clearing, removing existing pavement and concrete, constructing new pavement and concrete curb and gutter, extending and/or replacing culverts, major grading, and excavation using a variety of heavy equipment. Clearing and grubbing of non-native annual grassland vegetation, wetland vegetation, and vernal pools within the newly proposed right of way is necessary

¹ The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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to accommodate the roundabout of SR-88. Approximately 144 cubic yards of asphalt will be used to cover fill material over wetland habitat. Vehicle and equipment staging will occur within cleared and grubbed area behind species exclusionary fence. Utility relocation will be required and potholing may be needed to determine the location and depth of the underground utilities. The Project site is within the range of the Covered Species and may support individuals of the species. Development of the Project site will result in the permanent loss of 0.0089 acres of aquatic habitat and 1.86 acres of upland habitat, and the temporary loss of 0.095 acres of aquatic habitat and 3.36 acres of upland 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 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 California Department of Transportation's 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 the California Department of Transportation as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by the California Department of Transportation, 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

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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. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology and natural history of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- B. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated annually for long-term or permanent employees and include training for any personnel performing maintenance on completed portions of the Project.
- C. No more than 24-hours prior to the commencement of initial ground disturbance, the Designated Biologist shall survey for the Covered Species within 200-feet of suitable habitat. If a Covered Species is found, the Designated Biologist shall delay installation of the exclusion barrier until the Designated Biologist relocates the Covered Species out of the Project Area.
- D. Permittee shall ensure the Capture Biologist prepares a Covered Species Relocation Plan (Relocation Plan) for Covered Activities. The Relocation Plan shall include the name(s) of the Capture Biologist who will relocate the Covered Species; pre-construction habitat assessment methodology; identification of refuge

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areas along the exclusion fencing, capture, handling, and relocation methods; a map and description of the relocation area(s) for captured Covered Species, including relative location, quality of habitat, non-native species or the potential for Covered Species-barred tiger salamander hybrids to be present, identified upland burrows determined to be suitable for Covered Species placement, distance to aquatic habitat, and potential barriers for movement; written permission from the landowner to use their land as a relocation site; and identification of a wildlife rehabilitation center or veterinary facility that routinely evaluates or treats Covered Species. Permittee shall submit the Relocation Plan to CDFW at least 30 days prior to the beginning of any Covered Activities.

- E. To cover permanent and temporary impacts and financial amount needed to implement the Conditions of Approval within this ITP, the Permittee shall purchase 0.31 acres of Covered Species aquatic credits and 15.84 acres of Covered Species upland credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities.
- F. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.
- G. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- H. No later than 45 days after Project completion, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be

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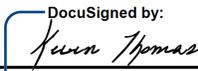
changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

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: 5/19/2020

By: 

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