

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, CA 95814

From:
California Department of Fish and Wildlife (CDFW)
Bay Delta Region
2825 Cordelia Road, Suite 100, Fairfield, CA 94534
Contact: Jeanette Griffin
Phone: (209) 234-3447

Lead Agency (if different than CDFW)
Contra Costa County
255 Glacier Drive, Martinez, CA 94553
Contact: Claudia Gemberling
Phone: (925) 313-2192

RECEIVED
MAR 26 2019
Office of the Dr-G
General Counsel

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108
State Clearinghouse Number: 2016082079

Project Title: Kirker Pass Road Northbound Truck Climbing Lane Project [California Endangered Species Act (CESA) Incidental Take Permit No. 2081-2018-024-03 (ITP)]

Project Location: The Kirker Pass Road Northbound Truck Climbing Lane Project (Project) is located on Kirker Pass Road south of Highway 4, between Clearbrook Drive in the City of Concord, and the northernmost Hess Road intersection towards the City of Pittsburg, Contra Costa County.

Project Description: The Project includes construction of a northbound truck-climbing lane and paved shoulders for future Class II bike lanes. The Project will improve circulation for motorists and bicyclists along this stretch of road. The road is used by commuters and has heavy truck traffic. With sustained grades steeper than 8 percent, trucks are unable to match the speed of other vehicles on the roadway, causing significant congestion and impacted traffic flow. Project elements include the following: roadway widening for the truck climbing lane; paved shoulders for future Class II bike lanes; relocation of drainage features; retaining wall construction; installation of signage and striping; construction of two bioretention areas; roadway conforms due to change in grade; and relocation of other existing roadside features. An open grade asphalt concrete overlay will be placed along the southbound and northbound lanes.

The Project will result in impacts to 1.37 acres of California tiger salamander (Ambystoma californiense) habitat including temporary impacts to 0.32 acres; the Project will permanently remove 1.05 acres of California tiger salamander habitat. The Project is expected to result in incidental take of California tiger salamander, which is designated as a threatened species under CESA. 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 / [X] a responsible agency] approved the above-described project on 1-9-19 and made the following determinations regarding the above described project:

- 1. The project [] will / [X] will not] have a significant effect on the environment (This determination is limited to effects within CDFW's permitting jurisdiction as a responsible agency).
2. [] An environmental impact report / [X] A negative declaration] was prepared by the lead agency for the original project.
3. Additional mitigation measures [X] were / [] were not] made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan [X] was / [] was not] adopted by CDFW for this project.
5. A Statement of Overriding Considerations [] was / [X] was not] adopted by CDFW for this project.
6. Findings [] were / [X] 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.
[X] A copy of a receipt showing prior payment was submitted to CDFW.
[X] Responsible Agency statement: The Negative Declaration 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's administrative record of proceedings related to the incidental take permit is available to the public for review at CDFW's regional office.

Signature Gregg Erickson Governor's Office of Planning & Research Date: 1-9-19
Gregg Erickson, Regional Manager

MAR 29 2019

STATE CLEARINGHOUSE

Date Received for filing at OPR:

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-024-03**

**Contra Costa County
Kirker Pass Road Northbound Truck Climbing Lane 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 Kirker Pass Road Northbound Truck Climbing Lane Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish and Game 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 Contra Costa County (Permittee) to incidentally take California tiger salamander (*Ambystoma californiense*) (hereafter referred to as Covered Species) during implementation of the Project. (See generally Fish and Game Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4). The California tiger salamander 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, Contra Costa County (County). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367). The County analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2016082079), and approved the Project on October 18, 2016. In so doing, the County 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 County, the Project involves expansion of the existing Kirker Pass Road northbound lane to include a truck climbing lane and paved shoulders for future Class II bike lanes. 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 1.05 acres of habitat for the Covered Species, temporary loss of 0.32 acres of habitat for the Covered Species, and take of the Covered Species as defined by Fish and Game Code is expected. (Fish and Game 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 lead agency's prior analysis,

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

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 County as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by the County, 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. A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- B. Orientation will be provided to construction staff to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.
- C. The Permittee will acquire and permanently preserve 3.47 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 quarterly 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. Covered Species found on the Project site shall be relocated by the Designated Biologist to a protected off-site location.
- G. Restoration of Project lands where temporary impacts occur will be monitored and the status included in Annual Reports beginning after completion of Phase 1 of the Project. Restoration of all areas subject to temporary ground- or vegetation disturbance shall be recontoured, as necessary, covered with stockpiled topsoil, and seeded with native species. Monitoring for two years post-construction of each Phase will ensure that native species are successfully reintroduced. If the temporary impact lands have not returned to pre-Project conditions two years after completion of each Phase, additional mitigation and an amendment to the Project ITP may be required.
- 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: 1-9-19

By: 

Gregg Erickson, Regional Manager
Bay Delta Region
California Department of Fish and Wildlife