

Notice of Determination

To:
[X] Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

From:
California Department of Fish and Wildlife (CDFW) Bay Delta Region
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California Department of Transportation
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Contact: Brian Gassner

Office of the General Counsel
D-6

JUL 9 2019

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108
State Clearinghouse Number: 2010082001

RECEIVED

Project Title: Alameda Creek Bridge Replacement Project [California Endangered Species Act (CESA) Incidental Take Permit No. 2081-2018-072-03 (ITP)]

Project Location: The Alameda Creek Bridge (Bridge No. 33-0036) Project (Project) is located within Niles Canyon over Alameda Creek along State Route 84 (SR-84) at Post Mile 13.0 to 13.6, in Alameda County, California.

Project Description: The California Department of Transportation (Permittee) proposes to replace the Alameda Creek Bridge (Bridge No. 33-0036) to meet current design standards for safety. The Project proposes replace the existing 1928 bridge with a new, two-lane structure with standard eight-foot-wide shoulders, approximately 75 feet north of the existing bridge. The Project will include a temporary access road, water diversion, CIDH pile installation area, removal of an existing concrete weir, build of the road to match new alignment, construction of a soil nail wall, construction of a new viaduct structure and restoration of the impacted areas on-site. The Project shall take place over the course of three construction seasons.

The Biological Study Area (BSA) consists of 21.113 acres of which consists of 2.167 acres of previously paved surfaces of the freeway and 1.120 acres of urban/barren ground. Approximately 2.497 acres of the BSA is considered annual grassland, 3.405 acres Coastal Oak woodland, 1.043 acres coastal scrub, 0.597 acres fresh emergent wetland, 2.773 acres riverine habitat, and 7.511 acres valley riparian foothill habitat. Impacts to Alameda whipsnake habitat include temporary impacts to 1.684 acres of Alameda whipsnake suitable habitat, pro-longed temporary impacts (over 1 season) to 1.378 acres of suitable Alameda whipsnake habitat and permanent impacts to 1.663 acres of suitable Alameda whipsnake habitat. The project is expected to result in incidental take of Alameda whipsnake aka Alameda striped racer, 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 June 27, 2019 and made the following determinations regarding the above described project:

- 1. The project [X] will / [ ] 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. [X] An environmental impact report / [ ] 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 [X] 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.
[X] A copy of a receipt showing prior payment was submitted to CDFW.
[X] Responsible Agency statement: The Environmental Impact Report 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, Regional Manager
Date: June 27, 2019

Date Received for filing at OPR:

JUL 11 2019

STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2018-072-03**

**California Department of Transportation  
Alameda Creek Bridge Replacement 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 Alameda Creek Bridge Replacement 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)].<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize California Department of Transportation (Caltrans) (Permittee) to incidentally take Alameda whipsnake aka Alameda striped racer (*Masticophis lateralis euryxanthus*), (hereafter, Covered Species) during implementation of the Project. (See generally Fish and Game Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4). The Alameda whipsnake aka Alameda striped racer is designated as a threatened species under CESA. [Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(D)].

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, Caltrans. (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367). Caltrans analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report (SCH No.: 2010082001), dated September 25, 2017. 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 part of the Caltrans Alameda Creek Bridge Replacement Project, the Project shall result in impacts to Alameda whipsnake to include 1.663 acres of permanent impacts, 1.378 acres of prolonged temporary impacts and 1.684 acres of temporary impacts to upland foraging and dispersal habitat 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, 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

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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.

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.4<sup>th</sup> 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 Environmental Impact Report 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.4<sup>th</sup> 1112, 1130).

## **FINDINGS:**

CDFW has considered the Environmental Impact Report 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. 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 8.74 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- D. To prevent inadvertent entrapment of animals during construction, all excavated, steep-walled holes or trenches more than one-foot deep shall be covered with plywood or similar materials at the close of each working day or provide with one or more escape ramps constructed of earth fill or wooden planks. Before such holes or trenches are filled they must be thoroughly inspected for trapped Covered Species. All replacement pipes, culverts, or similar structures stored overnight shall be inspected before they are subsequently moved, capped or buried.



- E. If a Covered Species is injured as a result of Project activities, it shall be immediately taken to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility prior to the start of ground- or vegetation-disturbing activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. Permittee shall notify CDFW immediately unless the incident occurs outside of normal business hours. In that event, CDFW shall be notified no later than noon on the next business day. Notification to CDFW shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location and circumstances of the incident and the name of the facility where the animal was taken.
  
- F. 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, natural history, collecting and handling, 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.

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: June 27, 2019

By: 

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