

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2021-065-02**

**Butte County Public Works
Ord Ferry Road at Little Chico Creek Bridge Replacement**

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 Ord Ferry Road at Little Chico Creek Bridge Replacement (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 Butte County Public Works (Permittee) to incidentally take giant garter snake (GGS, *Thamnophis gigas*) and Central Valley spring-run Chinook salmon (CVSR, *Oncorhynchus tshawytscha*) (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 GGS and CVSR are designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E) and (b)(2)(C), 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, Butte County Public Works (Butte County). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) Butte County analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration and Initial Study (SCH No. 2019049055) and approved the Project on June 19, 2021. In so doing, Butte 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 Butte County, the Project involves removal of the structurally deficient existing bridge and construction of a new wider bridge on the existing alignment. The new bridge cast-in-place reinforced concrete slab bridge will be founded on cast-in-steel-shell piles and will be 640 feet long by approximately 43 feet wide. Ord Ferry Road will be widened to 40 feet for a length of approximately 400' feet to the west and 500' to the east

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

CEQA Findings

Ord Ferry Road Bridge Replacement – 2081-2021-065-R2

Page | 2

of the proposed bridge. Existing electrical, telephone, and fiber optic utilities located on the west side of the Ord Ferry Road will need to be relocated as part of the project. Phasing of the bridge and roadway approach construction is required to keep the road open to conventional traffic during construction operations. This phased bridge construction alternative would require two construction seasons and approximately 18 months of single lane traffic control utilizing a temporary traffic signal system. A temporary access road will need to be installed to facilitate construction access. The access road will require installing a clear water diversion within Little Chico Creek from May 1 through October 31 in both seasons of construction. The field northwest of the existing bridge will serve as a staging area for equipment and materials. Tree removal and impacts to riparian and grassland habitats are anticipated. The Project is expected to temporarily impact 0.17 acres of aquatic habitat and 1.54 acres of upland habitat and cause the permanent loss of 0.09 acres of aquatic habitat and 0.56 acres of upland GGS habitat. The Project is expected to permanently impact 0.0013 acres and temporarily impact 0.06 acres of CVSR habitat. 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 Butte County'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 Butte County as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by Butte County, along with the mitigation measures and Conditions of Approval set forth in

CEQA Findings

Ord Ferry Road Bridge Replacement – 2081-2021-065-R2

Page | 3

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 shall purchase 0.72 acres of Covered Species' credits from a CDFW-approved conservation bank. In addition, the Permittee shall restore on-site 1.71 acres of temporarily impacted Covered Species habitat. Within 12 months of issuance of the ITP, the Permittee shall prepare a Vegetation Restoration Plan to facilitate restoration of the 1.71 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor.
- 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. Permittee shall develop and submit to CDFW for approval a GGS Relocation Plan and a CVSR Dewatering and Rescue Plan. All Covered Species found on the Project site shall be relocated by the Designated Biologist to an approved protected off-site location.

CEQA Findings

Ord Ferry Road Bridge Replacement – 2081-2021-065-R2

Page | 4

- G. Permittee will prepare and submit a final mitigation report within 45 days following completion of site restoration 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: DocuSigned by 8/5/2022

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