



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534  
(707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



June 18, 2020

Governor's Office of Planning & Research

**Jun 18 2020**

## **STATE CLEARINGHOUSE**

Ms. Laura Cremin  
Contra Costa County Public Works Department  
50 Glacier Drive  
Martinez, CA 94552  
[Laura.Cremin@pw.cccounty.us](mailto:Laura.Cremin@pw.cccounty.us)

Subject: Marsh Creek Road Bridge Replacement-Bridges #28C-0143 and #28C-0145,  
Mitigated Negative Declaration, SCH #2020040312, Contra Costa County

Dear Ms. Cremin:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Contra Costa County Public Works Department (CCCPWD) for the Marsh Creek Road Bridge Replacement-Bridges #28C-0143 and #28C-0145 Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **CDFW ROLE**

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency if a project requires discretionary approval, such permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

### **REGULATORY REQUIREMENTS**

#### *California Endangered Species Act*

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

#### *Lake and Streambed Alteration*

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

### **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Contra Costa County Public Works Department

**Objective:** The Project involves the removal of two existing bridges (#28C-0143 and #28C-0145) on Marsh Creek Road that carry traffic over Marsh Creek, and the construction of two new bridges to meet current design standards.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations below to assist CCCPWD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

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### **Impacts to Native Bat Species**

Bridges often provide roosting habitat for native bat species. To fully mitigate impacts to bats not covered by the East Contra Costa County Habitat Conservation Plan and Natural Community Conservation Plan (ECCC HCP/NCCP), CDFW recommends incorporating the following measure into the MND:

#### ***Recommended Mitigation Measure 1: Bat Surveys and Mitigation***

A qualified bat biologist shall conduct daytime and evening acoustic surveys for bats within 14 days prior to the beginning of project construction work planned either on or within 50 feet of the bridges. If bats are identified on-site, the biologist shall identify the species, estimated quantity present, roost type, and roost status, but shall avoid disturbing bats during surveys. If foraging bats, active roosts, or other signs of bat activity (i.e. guano, urine staining) are identified on-site, the qualified bat biologist shall flag or mark all roosts and actively used features for avoidance. If complete avoidance is not possible (i.e. roosts within the bridge structures), then the qualified bat biologist shall develop a Bat Mitigation and Monitoring Plan in consultation with CDFW. The Bat Mitigation and Monitoring Plan shall include: i) an assessment of all Project impacts to bats, including noise disturbance during construction; ii) effective avoidance and minimization measures to protect bats; iii) and compensatory mitigation for permanent impacts to bats or their nesting/roosting habitat. Once the Bat Mitigation and Monitoring Plan is implemented, Project activities may commence.

### **Impacts to Swallows**

Bridges often provide nesting habitat for native swallow species. To minimize impacts to swallows, CDFW recommends incorporating the following measure into the MND:

#### ***Recommended Measure 2: Swallow Exclusion***

Prior to the initiation of nesting season (February 1 to September 30), CCCPWD, in consultation with CDFW, the Project shall install exclusionary devices on existing bridge structures to prevent the establishment of nests within the footprint of the Project area. Exclusionary devices shall be limited to solid materials and shall not contain monofilament netting or similar material due to documented evidence of birds becoming entangled or trapped in such material. Exclusionary devices shall be inspected weekly while in place to ensure they are in good repair and functioning properly. Spraying and destruction of partially built mud nests shall not be allowed during the nesting season.

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### ***Recommended Measure 3: Swallow Nest Avoidance***

Project activities shall not be initiated or conducted if an active swallow nest is detected on-site. The qualified biologist shall conduct a survey of the bridges no more than 5 days prior to construction activity to ensure that no active nests are present. If any active nests are found, work within 300 feet of the active nest(s) shall not take place until the young have fledged, as determined by the qualified biologist. The 300-foot buffer may be reduced at the discretion of the qualified biologist in consultation with CDFW. CDFW encourages the implementation of swallow-friendly designs in the construction of the new bridges.

### **Substantial Adverse Impacts to Marsh Creek**

The MND identifies approximately 304.24 linear feet of permanent impacts and 432.19 linear feet of temporary impacts to Marsh Creek (Section 4b, page 36), and indicates that impacts to water quality and riparian habitats will be minimized through measures prescribed in future permits obtained from CDFW (LSA Agreement) and Regional Water Quality Control Board (Water Quality Certification). The MND should include fully enforceable measures to mitigate potentially significant impacts and should not defer these measures to a future time (CEQA Guidelines § 15126.4). CDFW recommends CCCPWD incorporate quantifiable and enforceable measures into the MND to minimize impacts to Marsh Creek and associated riparian habitats.

Additionally, the MND indicates that compensatory mitigation for permanent and temporary impacts to water quality and riparian habitat will be achieved through payment of development fees and wetland mitigation fees to the East Contra Costa County Habitat Conservancy (Conservancy). However, the Conservancy does not provide coverage for in-channel impacts to perennial streams. CDFW recommends that CCCPWD require compensatory mitigation at a minimum ratio of 3:1 (conserved habitat to impacted habitat) for the 304.24 linear feet of permanent impacts and 1:1 (conserved habitat to impacted habitat) for the 432.19 linear feet of temporary impacts to Marsh Creek. Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

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## ENVIRONMENTAL DATA

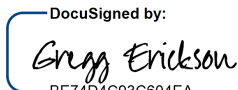
CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist CCCPWD in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or [Jennifer.Rippert@wildlife.ca.gov](mailto:Jennifer.Rippert@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
BE74D4C93C604EA...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: State Clearinghouse #2020040312