

State of California
Department of Fish and Wildlife



Memorandum

Date: July 3, 2020

To: Ms. Yolanda Rivas
California Department of Transportation, District 4
Post Office Box 23660, MS-8B
Oakland, CA 94623

Governor's Office of Planning & Research

Jul 06 2020

STATE CLEARINGHOUSE

DocuSigned by:

Gregg Erickson

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From: Mr. Gregg Erickson, Regional Manager

California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: U.S. 101 and State Route 82-El Camino Real Roadway Renewal Project, Notice of Preparation, SCH No. 2020059037, San Mateo County

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) for the proposed U.S. 101 and State Route 82 – El Camino Real Roadway Renewal Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ Pursuant to our jurisdiction, CDFW is submitting comments on the NOP as a means to inform the California Department of Transportation (Caltrans) as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

PROJECT LOCATION AND DESCRIPTION SUMMARY

Caltrans proposes improvements to include replacing 3.5 miles of existing roadway pavement structural section, replacing existing drainage inlets and pipe culverts, replacing 5.5 miles of existing sidewalk, reconstructing or installing up to 188 curb ramps, upgrading pedestrian push button assemblies by installing Accessible Pedestrian Signal (APS) systems and countdown pedestrian signal (CPS) systems, and refreshing crosswalks with high visibility pavement markings. The Project is located from Post-Mile (PM) 12.3 to PM 15.9 on State Route-82 (SR-82) in the cities of San Mateo, Burlingame and Millbrae in San Mateo County, in the State of California.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA §15386 for commenting on projects that could impact fish, plant and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as 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.

¹ 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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LAKE AND STREAMBED ALTERATION AGREEMENT

The Project has the potential to impact resources at four creek systems known to occur within the identified limits of the Project: Mills Creek, Sanchez Creek, San Mateo Creek and Easton Creek. If work is proposed that will impact the bed, bank channel or upland riparian habitat, including the trimming or removal of trees, please be advised that the proposed Project may be subject to LSA Notification for impacts to drainage systems that connect to tributaries of main stem creeks and tributaries that occur within the Project BSA. CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for or 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.

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 species of plants or animals listed under CESA, either during construction or over the life of the Project. Under CESA, take is defined as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.” Issuance of an ITP is subject to CEQA documentation. 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.

ENVIRONMENTAL SETTING

The state special-status species that have the potential to occur in or near the Project site, include, but are not limited to:

- Alameda song sparrow (*Melospiza melodia pusillula*), state species of special concern;
- Hoary bat (*Lasiurus cinereus*), state species of special concern;
- Pallid bat (*Antrozous pallidus*), state species of special concern;
- Nesting birds;
- Native Fish/Fish Passage

COMMENTS AND RECOMMENDATIONS

CDFW acting as a Responsible Agency, has discretionary approval under CESA through issuance of an ITP and the LSA Agreement as well as other provisions of the Fish and Game Code that afford protection to the State’s fish and wildlife trust resources. CDFW would like to thank you for preparing the NOP and CDFW recommends the following updates, avoidance and minimization measures be imposed as conditions of Project approval by the lead agency, Caltrans, to ensure all Project-related impacts are mitigated to below a level of significance under CEQA:

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COMMENT 1: Full Project Description of Project Features

The CEQA Guidelines (§§15124 and 15378) require that the environmental document incorporate a full Project description, including reasonably foreseeable future phases of the Project, and require that it contain sufficient information to evaluate and review the Project's potentially significant impacts.

To fully address the Project's impacts to fish and wildlife resources. Please include complete descriptions of the following features within the updated environmental document, as applicable:

- A full description of the proposed drainage improvements and replacements locations including creek name, tributaries and post mile.
- A full description of the proposed drainage improvements and replacements dimensions, quantities of material to be employed and a detailed description of how the proposed work will be completed.
- A full description of the proposed areas of impact at each drainage or culvert location in acres and linear feet and an analysis of the vegetation type and number of trees to be trimmed or removed.
- A full description of the proposed locations for staging area and access routes to drainages or culverts.
- A full design plan set of each culvert locations improvements or replacements.

COMMENT 2: Nesting Birds

CDFW encourages Project implementation outside of the bird nesting season, which extends from February through early September. However, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season, the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or Fish and Game Code.

To evaluate and avoid for potential impacts to nesting bird species, CDFW recommends incorporating the following mitigation measures, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: Nesting Bird Surveys

A qualified biologist conduct pre-activity surveys for active nests no more than seven (7) days prior to the start of ground or vegetation disturbance and every fourteen (14) days during Project activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of ground or vegetation disturbance, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having the qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If

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behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

Recommended Mitigation Measure 2: Nesting Bird Buffers

CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers.

COMMENT 3: Bats

Special-status bat species are known to occur within and surrounding the Project site. To evaluate and avoid potential impacts to bat species, CDFW recommends incorporating the following mitigation measures and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 3: Bat Habitat Assessment

A qualified biologist should conduct a habitat assessment for bats at work sites seven (7) days prior to the start of Project activities and every 14 days during Project activities. The habitat assessment shall include a visual inspection of features within 200 feet of the work area for potential roosting features (bats need not be present). Habitat features found during the survey shall be flagged or marked.

Recommended Mitigation Measure 4: Bat Habitat Monitoring

If any habitat features identified in the habitat assessment will be altered or disturbed by Project construction, the qualified biologist should monitor the feature daily to ensure bats are not disturbed, impacted, or fatalities are caused by the Project.

Recommended Mitigation Measure 5: Bat Project Avoidance

If bat colonies are observed at the Project site, at any time, all Project activities should stop until the qualified biologist develops a bat avoidance plan to be implemented at the Project site. Once the plan is implemented, Project activities may recommence.

COMMENT 4: Fish Passage Assessment

Senate Bill 857 (SB-857), which amended Fish and Game Code 5901 and added section 156 to the Streets and Highways Code states in section 156.3, "For any project

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using state or federal transportation funds programmed after January 1, 2006, [Caltrans] shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. [Caltrans] shall submit the assessment to the [CDFW] and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the [CDFW].

CDFW recommends discussing, as applicable, a fish passage assessment in the updated environmental document based on the language noted in the previous paragraph as it pertains to Mills Creek (PM 15), Fish Passage Assessment Database ID# 733781, fish barrier status: unknown; Sanchez Creek (PM 14.2), Fish Passage Assessment Database ID# 733780, fish barrier status: unknown; San Mateo Creek (PM 11.8), Fish Passage Assessment Database ID# 733779, fish barrier status: unknown and Easton Creek (PM 14.6), Fish Passage Assessment Database ID# 761171, fish barrier status: unassessed. The fish passage section should discuss the current status of the proposed culvert replacement locations noted in the California Fish Passage Assessment Database, conduct first pass and or second pass fish assessments, as necessary, as well as, provide images of the upstream and downstream ends of the proposed locations noted in the NOP. CDFW requests a fish passage discussion section is included to address these potentially significant impacts through the following avoidance and minimization measure, which should be made a condition of approval by the lead agency:

Recommended Mitigation Measure 6: Fish Passage Assessment

To evaluate potential impacts to native fish species and fisheries resources, Caltrans shall submit the assessment to CDFW and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the Project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with CDFW.

COMMENT 5: Tree Removal and Inventory

To evaluate potential impacts to trees and riparian habitat, the updated environmental document should provide a detailed tree inventory that includes a description of the number of trees, size of trees, tree species and location of trees to be impacted or removed as a result of Project completion. Reducing or avoiding the limbing, trimming or removal of trees throughout the Project limits will reduce the potential for impacts to be considered significant on fish and wildlife resources. If trees impact or removal cannot be avoided as a result of Project completion, the proponent should include the following avoidance and minimization measure, which should be made a condition of approval by the lead agency:

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Recommended Mitigation Measure 6: Tree Inventory

A Qualified Biologist shall prepare a tree inventory report that will include the species, size [diameter at breast height, (DBH)], health status and location of all trees within the Project limits proposed for trimming or removal. The Tree Inventory will give an identification number to each tree proposed for impact or removal within the Project limits that is also illustrated on a tree inventory map(s) and in the tree inventory report. Trees impacted (including work within the dripline of the tree), trimmed, limbed or removed will be replaced at the following ratio's; Oak Species 6:1, Black Walnut 6:1, Sycamore 4:1, Native California Species 3:1, Non-native/ornamental species 2:1. All trees shall be monitored for up to five years and achieve a 75% success criteria or more for survivorship.

CONCLUSION

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California's 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.

Questions regarding this letter or further coordination should be directed to Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or Robert.Stanley@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager at (707) 944-5577 or Craig.Weightman@wildlife.ca.gov.

cc: State Clearinghouse #202005073