



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 8, 2020

Governor’s Office of Planning & Research

Sep 08 2020

STATE CLEARINGHOUSE

Mr. Philip A. Buckley, Senior Civil Engineer
County of Marin Department of Public Works
3501 Civic Center Drive, Room 304
San Rafael, CA 94903
pbuckley@marincounty.org

Subject: Mountain View Road Over San Geronimo Creek Bridge Replacement Project,
Mitigated Negative Declaration, SCH No. 2020080138, Marin County

Dear Mr. Buckley:

The California Department of Fish and Wildlife (CDFW) received a notice of intent to adopt a Mitigated Negative Declaration (MND) from Marin County Department of Public Works (County) for the Mountain View Road Over San Geronimo Creek Bridge Replacement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed project.

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 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 Lake and Streambed Alteration (LSA) Program, or 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 take² of plants or animals listed under CESA, either

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.

² Take is defined in Fish and Game Code section 86 as hunt, pursue, catch, capture, or kill, or attempt any of those activities.

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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 ITP.

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 CESA.

Lake and Streambed Alteration Agreement

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.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503, 3503.5, and 3513. Fully protected species may not be taken or possessed at any time (Fish and Game Code, § 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: Marin County Department of Public Works

Objective: The objective of the Project is to replace a deteriorating bridge and associated infrastructure above San Geronimo Creek. The existing 51-foot long, 11-foot wide railcar bridge would be replaced with a 70-foot long, 20-foot wide, single-span, precast concrete slab unit bridge. The roadway profile of the bridge would be raised

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approximately 4 feet and the bridge alignment will shift approximately 7 feet to the east. The roadway segments surrounding the bridge will be repaved. Two soldier pile retaining walls will be installed to protect Mountain View Road and Corona Avenue leading to the bridge. Vegetated rock riprap will be installed along both bridge abutments and the retaining walls. An existing storm drain culvert will be replaced. Two storm drain outlets into the creek will be replaced, and a new storm drain outlet will be installed. Two existing utility poles and a fire hydrant would be removed during construction and relocated near their current positions. Primary Project activities include demolishing and removing the existing bridge, excavating, grading, paving, dewatering a segment of San Geronimo creek, revegetating the Project site, and using heavy equipment.

Location: The Project is located near 7190 Sir Francis Drake Boulevard, Lagunitas, CA 94938, in unincorporated Marin County. The bridge is located south of Sir Francis Drake Boulevard and north of the juncture of Mountain View Avenue and Corona Avenue. The approximate centroid of the Project location is Latitude 38.01275°, Longitude - 122.69939°.

Timeframe: The Project will take approximately six months and is projected to begin in spring 2021.

ENVIRONMENTAL SETTING

The Project covers approximately 2.31 acres southeast of Barnabe Mountain and northwest of Green Hill along San Geronimo Creek. The Project is approximately 0.75 miles upstream of the confluence of San Geronimo Creek and Lagunitas Creek. The Project area contains open water, developed roadway, landscaped vegetation, ruderal/non-native vegetation along the roadways, and three sensitive natural communities: bigleaf maple (*Acer macrophyllum*)-Oregon ash (*Fraxinus latifolia*) forest, Oregon ash-red alder (*Alnus rubra*) grove, and California bay (*Umbellularia californica*)-California buckeye (*Aesculus californica*) grove. Special-status species that are likely to occur in the Project area include, but are not limited to:

- Coho salmon south of Punta Gorda (*Oncorhynchus kisutch pop.4*), federally and state listed as endangered
- California freshwater shrimp (*Syncaris pacifica*), federally and state listed as endangered
- Northern spotted owl (*Strix occidentalis caurina*), federally and state listed as threatened
- Central California Coast steelhead DPS (*Oncorhynchus mykiss irideus, pop. 8*), federally listed as threatened
- Tomales roach (*Lavinia symmetricus ssp. 2*), California Species of Special Concern (SSC)
- California red-legged frog (*Rana draytonii*), federally listed as threatened and SSC

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- Foothill yellow-legged frog (*Rana boylei*), SSC
- Western pond turtle (*Emys marmorata*), SSC
- San Francisco dusky-footed woodrat (*Neotoma fuscipes ssp. annectens*), SSC
- Pallid bat (*Antrozous pallidus*), SSC

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Marin County Department of Public Works in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Biological Resources

CESA Listed Species

The MND correctly identifies CDFW as a Trustee and Responsible Agency for this Project (page 6). The MND also briefly discusses CDFW's regulatory authority related to CESA and other species-specific laws (pages 16-17) and references CDFW's LSA authority (page 21). Appendix A of the MND specifies that the Project will provide CDFW an LSA Notification and identifies CESA as among the "other regulations that apply" to the Project (page v).

The MND states that Coho salmon and California freshwater shrimp are on-site. While the MND recognizes the CESA status of Coho salmon, the MND should be updated to identify that California freshwater shrimp is listed as endangered under CESA.

For both species, impacts identified in the MND include fish relocation, dewatering, temporary increases in sedimentation, injury or mortality during handling and dewatering, and temporary and permanent loss of habitat (pages 32-34). To comply with CESA, all impacts must be fully mitigated and an ITP should be obtained. To reduce impacts to less-than-significant, CDFW recommends updating the *Regulatory Setting* to require obtaining an ITP for impacts to coho and CFW due to the impacts identified in the MND (pages 16-17).

Northern Spotted Owl

The MND identifies that a known northern spotted owl activity center occurs approximately 450 feet from the Project area and that northern spotted owls could nest near the Project (Appendix A, page 73). Population levels and vital rates for NSO continue to decline throughout California (CDFW 2016). Construction activities could disturb nesting northern spotted owls leading to nest abandonment or reduced health and vigor of young, a potentially significant impact. The MND proposes complying with Marin County Code 22.20.040 (G) and Mitigation Measure BIO-23 to reduce impacts to

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less-than-significant. The proposed measure and county code do not adequately identify and protect nesting northern spotted owls. The identified nesting season, February 1 to July 9, does not cover the full potential nesting range of the northern spotted owl, which should extend through July 31 (U.S. Fish and Wildlife Service (USFWS) 2012). Also, the required survey visits do not adhere to USFWS-approved protocol level surveys for noise disturbance activities and therefore could erroneously assume absence or non-nesting status of northern spotted owls near the Project area (*ibid.*). Through lack of identifying nesting northern spotted owls, the Project could significantly impact the species. To reduce impacts to less-than-significant, CDFW recommends the following deletions in ~~strikethrough~~ and additions in **bold** to the existing Mitigation Measure:

Mitigation Measure BIO-23: Work Window for Northern Spotted Owl

If Project activities will occur during the northern spotted owl nesting season (February 1 to July 31), then the County shall commission a CDFW-approved qualified biologist to conduct surveys for northern spotted owl following the U.S. Fish and Wildlife Service's *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls* (USFWS 2012). Surveys shall be conducted in accordance with section 9 of the survey protocol, *Surveys for Disturbance-Only Projects* two surveys for nesting northern spotted owls during the months of April and May preceding the commencement of construction. At a minimum, the survey area shall include all suitable nesting habitats within 0.25 mile of the project site. If **nesting northern spotted owls are detected during surveys, following the first or second survey, it can be conclusively determined that there are nesting northern spotted owls, construction activities that are within 0.25 mile of an identified active nest shall not begin prior to August 1 unless **a qualified biologist determines** the young have fledged **and the nest is no longer active**, at which time construction or staging may begin no earlier than July 10. Regardless of nesting locations, construction shall conclude no later than January 31 (prior to the beginning of the mating and nesting season). **A qualified biologist should be familiar with northern spotted owl ecology, have proven success identifying northern spotted owl aurally and visually, and have at least two seasons of experience surveying for northern spotted owl using the USFWS protocol.****

If Project-generated sound will not exceed ambient noise conditions by over 20 decibels *and* total combined sound (ambient and Project-generated) during Project activities does not exceed 90 decibels, then noise impacts would likely be less-than-significant and surveys may not be necessary (USFWS 2006). Pre-Project sound conditions shall be accurately measured, documented, and provided to CDFW for review and acceptance to justify a no-survey outcome.

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Appendix A

Thank you for providing Appendix A: Natural Environment Study upon CDFW's request. CDFW recommends that Appendix A and the other appendices referenced in the MND be included with the body of the MND for public review.

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)³.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Marin County Department of Public Works in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Amanda Culpepper, Environmental Scientist, at Amanda.Culpepper@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at Karen.Weiss@wildlife.ca.gov.

Sincerely,

DocuSigned by:

BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

³ The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found on CDFW's website at <https://wildlife.ca.gov/data/CNDDDB/submitted-data>.

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cc: Office of Planning and Research, State Clearinghouse (SCH # 2020080138)

REFERENCES

CDFW. 2016. Report to the Fish and Game Commission: A Status Review of the Northern Spotted Owl (*Strix occidentalis caurina*) in California.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

<https://repository.library.noaa.gov/view/noaa/17797>

USFWS. 2006. Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California. U.S. Fish and Wildlife Service Arcata Fish and Wildlife Office.

<https://www.fws.gov/arcata/es/birds/MM/documents/MAMU-NSO%20Harassment%20Guidance%20NW%20CA%202006Jul31.pdf>

USFWS. 2012. Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls. U.S. Fish and Wildlife Service.

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83977&inline>