

Subject: Caltrans 03-4H880 Gianella-Muir Safety Project - CDFW Comments on MND (SCH_2021040476)
Date: Wednesday, May 19, 2021 at 12:10:19 PM Pacific Daylight Time
From: Boyd, Ian@Wildlife
To: Loeffler, Laura M@DOT
CC: Greenwood, Caitlin@DOT, OPR State Clearinghouse, Wildlife R2 CEQA, Murphy, Melissa@Wildlife
Attachments: image001.png

Governor's Office of Planning & Research

May 19 2021

Dear Ms. Loeffler:

STATE CLEARINGHOUSE

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans) for the Gianella-Muir Safety Project (Project) (03-4H880) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project consists of improving road conditions on State Route (SR) 32 in Butte County between Post Mile (PM) 0.3 at Gianella Road and PM 5.0 at Muir Avenue. The Safety improvements include widening the existing shoulders to eight feet except at the nine existing bridges, increase the left turn deceleration lane lengths, add intersection safety lighting, add shoulder and centerline rumble strips, improve the ride quality of the pavement, address poor condition culverts, install safety lighting, and upgrade the guardrail at the existing bridges.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Comment 1: *Discussion of Environmental Evaluation Question 2.6 – Biological Resources a)* – The MND analyzes the potential for impacts for two bird species western yellow-billed cuckoo (WYBC) (*Coccyzus americanus*) and cliff swallow (*Petrochelidon pyrrhonota*), but does not consider other bird species that occur in the Sacramento River corridor and may utilize riparian habitat in the Project Area for foraging or nesting such as bank swallow (*Riparia riparia*) or Swainson's hawk (*Buteo swainsoni*). CDFW recommends that Caltrans consider Fish and Game Codes 3503, 3503.5, and 3515, which provide protection to nongame birds, migratory birds, birds of prey, their nests, and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. Therefore, the proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take should be included in the environmental document. Measures to avoid the impacts should include species specific work windows, biological monitoring, installation of noise attenuation barriers, etc. CDFW does not recommend the MND rely on Caltrans' 2018 Standard Specifications, Section 14-6.03B for the protection of bird species, but rather utilize recommendations in the following paragraph.

To minimize the potential for nest disturbance, CDFW recommends that nesting surveys be conducted within a minimum of 500 feet of the Project site, and ¼-mile for birds of prey, if project activities will be conducted between February 1 and August 31. Surveys should be conducted no more than 14 days prior to the start of project activities, and repeated if project activity is paused for 14 days or longer. If a nest is found or nesting/breeding activity is observed, CDFW recommends that the surveying biologist establish a suitable buffer based on the species and specific circumstances. All measures to protect nesting birds should be performance-based. While some birds may tolerate disturbance within 250 feet of construction activities, other birds may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. A 250-foot exclusion buffer may be sufficient; however, that buffer may need to be increased based on the birds' tolerance level to the disturbance.

Comment 2: *Discussion of Environmental Evaluation Question 2.6 – Biological Resources a), Yellow Billed Cuckoo* – The MND proposes that if WYBC are detected within the construction zone, the U.S. Fish and Wildlife Service (USFWS) will be notified. WYBC is not only federally-listed as threatened, but also state-listed as endangered. If in the event a WYBC is detected in the construction zone, CDFW recommends that Caltrans cease all construction activities, notify CDFW (in addition to the USFWS), consult a designated biologist experienced with WYBC to develop a non-disturbance buffer, and if necessary, comply with CESA.

Comment 3: *Environmental Setting, Swallow and Bats and Discussion of Environmental Evaluation Question 2.6 – Biological Resources a), Bats* – The MND acknowledges that the Pine Creek Lagoon Bridge contains 60 to 100 Mexican free-tailed bats. However, the MND also states that the work around the bridge where the bats are located will not affect the bats utilizing the bridge without providing specific reasoning for this justification. CDFW recommends the MND include avoidance and minimization measures for bats and include a habitat assessment to be performed by a biologist with expertise and experience with bats and their habitat for all bridges and associated riparian vegetation proposed to be removed. The minimum qualifications for the biologist should include at least three years of experience in conducting bat habitat assessments, night-time emergence surveys, and acoustic monitoring. The bat biologist should have adequate experience identifying local bat species (visual and acoustic identification), type of habitat, and differences in roosting behavior and types (i.e., day, night, maternity). Bats should not be disturbed without

an experienced biologist overseeing avoidance and minimizations measures designed to protect roosting bats. If temporary exclusionary devices are determined to be necessary by the bat biologist, they should be implemented prior to the project impacts and disturbance occurring during the period of March 1 to April 15 or August 31 to October 15. Potential avoidance efforts may include exclusionary blocking or filling potential roosting cavities with foam or steel wool, visual monitoring, and staging project work to avoid bats. If bats are known to use the bridge structure, exclusion netting should not be used.

Comment 4: Lake and Streambed Alteration – *Section 1.4 Permits and Approval Needed, Table 1*, does not include any permits or authorizations required by CDFW. However, *Section 1.2 Project Description, Alternative 1: Build Alternative*, describes extending existing concrete box culverts and corrugated metal pipes (CMP) (improvement number 7) and replacing existing 18-inch CMP culverts with new 24-inch CMP culverts if shoulder widening results in culvert lengths exceeding 100 feet in length (improvement number 15). Furthermore, the discussion in *Section 2.6 Biological Resources, Wetlands and Other Waters*, describes the environmental setting regarding three primary drainages that the Project crosses: Pine Creek, Rock Creek, and Mud Creek. Although in-water work is not proposed for this Project, Notification to CDFW is required, pursuant to Fish and Game Code section 1602 if a project proposes activities that will substantially divert or obstruct the natural flow of water; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. The Project proposes to remove (permanently impact) 0.75 acre of riparian habitat on the west bank of Pine Creek, which would result in a substantial change to the bed, bank, or channel. In addition to the requirement for Notification, CDFW recommends Caltrans to consider any grading, excavation, trenching, paving, and/or railing replacements on or adjacent to the existing bridges be included in a Lake and Streambed Alteration Notification due to the potential for material associated with those activities potentially passing into waters of the state.

The locations of the proposed culvert replacement and the purpose of riparian vegetation removal are not clearly identified in the MND. The layouts of proposed work in Appendix B of the MND do not provide coordinates for box culverts or CMPs that are proposed for improvements. CDFW recommends the MND clearly describe the project activities in detail and their associated impacts. In addition, the MND should include appropriate detailed exhibits disclosing the Project area including permanent impact areas, as well as temporary impacted areas such as equipment staging areas, spoils areas, adjacent infrastructure development, staging areas, and access haul roads.

Section 1.5 Standard Measures and Best Management Practices Included in All Alternatives, Water Quality and Stormwater Runoff, WQ-1 states that construction would likely require the following temporary construction site BMPs:

- Water would be removed by means of dewatering the individual pipe piles or cofferdams.
- Water generated from the dewatering operations would be trucked off-site to an appropriate facility or treated and used on-site for dust control and/or discharged to an infiltration basin or used to irrigate agricultural lands.

CDFW recommends that these activities be clarified in the MND as to the location where and for what parts of the Project these would be needed for. If these activities take place within a stream, river, or lake, they will be subject to Fish and Game Code 1602 and would require Notification.

Comment 5: *Discussion of Environmental Evaluation Question 2.6 – Biological Resources b) and Mitigation Measures* – As previously mentioned in Comment 4, the MND describes approximately 0.75 acre of riparian habitat on the west bank of Pine Creek will be permanently impacted. However, the only riparian habitat proposed for mitigation in the *Mitigation Measures* is described in association with valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (VELB) habitat (0.0574 acre). CDFW recommends

Caltrans develop avoidance, minimization, and mitigation measures for all permanent and temporary impacts to riparian habitat to reduce Project impacts to a less-than-significant level.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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 & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to r2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the MND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Ian Boyd, Senior Environmental Scientist (Specialist), at (916) 969-8940 or ian.boyd@wildlife.ca.gov.

Thank you,

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