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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

July 21, 2021

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STATE CLEARINGHOUSE

Ms. Iffat Qamar
Associate Environmental Planner
Caltrans District 12, Division of Environmental Analysis
1750 East 4th Street, Suite 100
Santa Ana, California 92705
Iffat.Qamar@dot.ca.gov

Subject: Interstate 405 Multi-Asset Project from Interstate 5 to Harbor Blvd; Draft Negative Declaration (DND); SCH #2021060363

Dear Ms. Qamar:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Negative Declaration (DND) from the California Department of Transportation (Caltrans) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 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

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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result in “take”, as defined by state law, of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: The objective of the Project is to extend the life expectancy of pavement; improve safety and efficiency for all modes of travelers as well as maintenance crews; enhance traffic operation; manage traffic congestion; and provide the ability to collect, analyze, and utilize data for systems performance along the Interstate 405 (I-405) corridor within the Project limits.

Primary Project activities include:

1. Improve, remove, and replace pavement.
2. Remove and replace loop detectors.
3. Upgrade curb ramps to current Americans with Disabilities Act standards.
4. Improve bridge health by removing and replacing approach and departure slabs at multiple bridges and upgrading existing bridge railing at of the Santa Ana Delhi Channel Bridge.
5. Rehabilitate roadsides by improving planting and irrigation system deficiencies.
6. Relocate maintenance facilities and improve safe access.
7. Rehabilitate lighting.
8. Install and upgrade transportation management systems.
9. Miscellaneous operational improvements including constructing acceleration and deceleration lanes, constructing auxiliary lanes, and widening ramps.
10. Roadside improvements to reduce collision severity.
11. Construct a park-and-ride facility and one sound wall.

According to the DND, the proposed work would be restricted to the existing paved roadway and/or bridge structures.

Timeframe: The Project is scheduled to start construction in February 2024 and continue for approximately 32 months.

Location: The Project area includes the I-405 from Harbor Boulevard to Interstate 5. The total length of the Project is 11.2 miles. The Project is located in Orange County in the cities of Irvine and Costa Mesa and in an unincorporated area of Orange County.

Biological Setting: A Natural Environment Study (Minimal Impact) (NESMI) was conducted by LSA Associates, Inc. in September 2020 to analyze biological resources within the Project area. Subsequently Caltrans added construction locations to the Project area and LSA completed a Supplemental NESMI dated February 22, 2021.

The Biological Study Area (BSA) includes the Caltrans right-of-way within the Project footprint and a 200-foot buffer around the right-of-way. General survey and habitat mapping were conducted on August 21 and 26, 2020, September 2, 2020, and January 7, 2021.

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According to the NESMI, most of the work is located in highly urbanized areas, and the proposed work would be limited to the existing paved roadway and bridge structures. However, there are multiple locations that would involve direct disturbance to undeveloped areas and/or are located in proximity to sensitive habitats and/or aquatic resources where indirect impacts may occur.

According to the NESMI, the BSA includes willow riparian scrub, black willow riparian forest, herbaceous riparian vegetation, mixed ornamental and sycamore woodland, open water flood control channels, buckwheat scrub, agriculture, ornamental vegetation, ruderal, and urban and commercial developments.

The DND disclosed 0.002 acre of permanent impacts and 0.017 acre of temporary impacts within a concrete-lined CDFW stream. Two existing culvert crossings will be extended including at the San Joaquin Channel (D-6) and an unnamed channel (D-10). Caltrans does not propose any compensatory mitigation; however, Caltrans indicates a Lake and Streambed Alteration Agreement will be required.

Suitable habitat is present for coastal California gnatcatcher (*Poliioptila californica californica*; Endangered Species Act (ESA) listed Threatened, CDFW Species of Special Concern (SSC)) and least Bell's vireo (*Vireo bellii pusillus*; ESA listed Endangered, California Endangered Species Act (CESA) listed Endangered). However, direct impacts are not expected to occur to either species.

Species with a moderate or greater probability of occurrence include southern tarplant (*Centromadia parryi ssp. australis*; CNPS rarity ranking 1B.1), red diamond rattlesnake (*Crotalus ruber*, SSC), two-striped garter snake (*Thamnophis hammondi*; SSC), Cooper's hawk (*Accipiter cooperii*), white-tailed kite (*Elanus leucurus*; CDFW Fully Protected), yellow-breasted chat (*Icteria virens*; SSC), yellow warbler (*Setophagia petechia*; SSC), northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*; SSC), Yuma myotis (*Myotis yumanensis*), and San Diego desert woodrat (*Neotoma lepida intermedia*; SSC).

Daytime bat habitat assessment surveys were conducted at all bridge and culvert structures within the Project area and surrounding 200-foot buffer on August 12, 2020. When additional structures were added to the active Project components, additional surveys were conducted January 7, 2021. From August 17 through 19, 2020, nighttime emergence surveys were conducted at structures that were determined to likely support maternity roosts that might sustain indirect impacts due to Project activities. Maternity colonies of Yuma myotis were documented at the I-405 San Joaquin Creek Channel culvert, the I-405 Santa Ana Delhi Channel culvert, and the I-405 San Diego Creek Bridge. Bats may also day roost in trees that may be removed during the Project activities.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying, avoiding, 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 are also included.

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I. Specific Comments

Comment #1: Southern California Steelhead (*Oncorhynchus mykiss irideus*) and San Diego Creek DND Chapter 2, Page 2-16

Issue #1: The DND states that “no anadromous fish streams are present within the BSA. Implementation of the proposed project is not expected to permanently impact wildlife movement or decrease the functionality of any wildlife crossings.” However, a significant portion of the Project lies within the Lower San Diego Creek watershed and overlaps with a previous project wherein CDFW has determined that San Diego Creek is a historically anadromous stream and therefore Senate Bill 857 (SB 857) applies to Caltrans activities within the streambed, banks, and channel. This determination is based on information which will be transmitted to Caltrans in the very near future. SB 857 requires that, for any project using state or federal transportation funds programmed after January 1, 2006, Caltrans shall ensure that, if the project affects a stream crossing on a stream where anadromous fish are or were historically present, Caltrans must assess potential barriers to fish passage prior to commencing project design, and existing barriers are to be removed and no new barriers may be constructed.

Specific Impact: Although the proposed activities will not likely affect the structure of any bridges or culverts, according to the DND, Caltrans states in the DND that there is no historical anadromy and states there are no existing barriers. As stated above and to be verified in a forthcoming memo, CDFW has determined that San Diego Creek is a historically anadromous stream for the purposes of SB 857.

Why impact would occur: While there may be no direct impacts to San Diego Creek and tributary crossings for this Project, a significant portion of the project overlaps with the Orange County Transportation Authority (OCTA) Measure M2 Project L, Interstate 405 Improvement Project from Interstate 5 to State Route 55 (SR-55), for which Caltrans is the Lead Agency under CEQA. Caltrans approved the Notice of Determination for the Project October 23, 2019.

Caltrans, OCTA, and CDFW are currently in the midst of resolving the question of historic anadromy in San Diego Creek. Additionally, Caltrans' Fish Passage Advisory Committee identified a crossing in the I-405 Multi-Asset Project footprint approximately 0.3 mile east of the SR-133 junction as a steelhead barrier (<https://www.arcgis.com/apps/MapSeries/index.html?appid=34da468a52b84d34b969d15b9af3c62>). Furthermore, regardless of the applicability of SB 857, San Diego Creek was connected to Upper Newport Bay since the early 1900s and Caltrans should therefore provide for safe passage for all aquatic species between their structures.

CDFW believes it is important to fully disclose this issue so that it is conveyed to the public not only regarding this project but for those who may refer to this project in other analyses, which could otherwise lead to a contradictory and confusing record of San Diego Creek. Additionally, reviewers may not be aware of the current steelhead-related circumstances of the creek and may not have the opportunity to provide feedback on this important issue.

Finally, the issue may ultimately arise again when Caltrans requests a Lake and Streambed Alteration Agreement for Project.

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Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #1:

To reduce impacts to less than significant: CDFW recommends that Caltrans revise the steelhead discussion to reflect the status of San Diego Creek in terms of steelhead and Caltrans' responsibility under SB 857. In addition, CDFW suggests information be provided of the current status of the discussions between Caltrans and CDFW regarding southern California steelhead in San Diego Creek. CDFW also recommends the final DND address the creek's current connectivity to the ocean and anthropogenic barriers to fish passage.

Comment #2: Bat maternity colonies present at San Joaquin Channel culvert (55-0522), Santa Ana-Delhi Channel culvert (55-0484), and San Diego Creek bridge (55-0285), DND Chapter 2, Page 2-15

Issue #2: The DND indicates that the BSA includes a 200-foot buffer around the Project footprint. However, BIO-2 indicates that demolition and pile-driving activities shall avoid the recognized bat maternity season within 500 feet of structures where maternity roosting is confirmed. It is unclear how operators will be able to maintain a 500-foot buffer around maternity colonies if structures were only inspected within 200 feet of activities.

Issue #3: BIO-1 indicates that pre-construction bat surveys at bridge and culvert structures where activities will occur should be performed at least one year in advance of construction. However, Caltrans' 2019 Bat Mitigation Report advises that "the best Bat Mitigation Plans often start a minimum of 2 years before the project's Ready to List date and prior to construction."

Specific Impact: CDFW is concerned that if there are undetected maternity colonies within 500 feet of the project activities and outside the 200-foot buffer, potentially active maternity colonies may be inadvertently impacted, and such impacts could result in abandonment of non-volant young, in violation of Fish and Game Code section 4150 which prohibits take or possession of all nongame mammals or parts thereof. Bat maternity colonies are also considered native wildlife nursery sites and could be considered potentially significant under CEQA.

Additionally, if the Bat Mitigation Plan is not finalized and approved well in advance of the Ready to List date, contractor scheduling conflicts may not be resolved prior to construction, potentially resulting in unnecessary impacts to existing bat maternity roosts that may be unavoidable given other scheduling constraints.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #2:

To reduce impacts to less than significant: CDFW recommends that habitat assessments for potential bat roosting locations be extended to 500 feet surrounding the project footprint and any additional emergence surveys be completed and all pertinent information included in the final Negative Declaration. CDFW also recommends that the Bat Mitigation Plan be prepared and submitted to CDFW for review and approval at least two years prior to the Ready to List date to avoid any Project delays.

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Comment #3 Vegetation Classification and Quail Hill Preserve Final NESMI Figure 3 sheet 6 & Page 68

Issue #4: The BSA includes 200 feet from the Project footprint into the northern edges of Quail Hill Preserve (Preserve). The NESMI categorizes the habitat as mostly ruderal with some oak cottonwood sycamore woodland. However, CDFW's Biogeographic Information and Observation System identifies the habitat as mostly Mediterranean California naturalized annual and perennial grassland with some *Baccharis salicifolia* riparian habitat (Vegetation Orange County 2012 (ds1336)). Additionally, coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*; SSC), least Bell's vireo, and tri-colored blackbird (*Agelaius tricolor*; CESA threatened) are documented in the area in the California Natural Diversity Database (CNDDDB).

Specific Impact: As noted in the NESMI, the Preserve provides habitat and cover for movement of animals within the Orange County Central-Coastal Natural Community Conservation Plan/Habitat Conservation Plan. While Caltrans does not anticipate permanent impacts to the Preserve, temporary impacts may occur. According to the Merriam-Webster Dictionary, "ruderal" is typically used to describe weedy and commonly introduced plants growing where the vegetation cover has been interrupted. While this may be an accurate description it is a general category that does not lend itself well to assessing the specific plant species constituting a potential habitat. A more specific description of the vegetation alliance will help the reviewer analyze potential impacts from temporary habitat disruption and prescribe the appropriate remediation.

Why impact would occur: If temporary impacts to the grassland area should occur and they are not disclosed, this could result in lack of restoration and degradation of habitat in the Preserve.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #3:

To reduce impacts to less than significant: CDFW recommends that Caltrans reassess the vegetation community type(s) in the Preserve within 500 feet of the Project footprint and include the results of the assessment and any applicable recommendations in the final DND.

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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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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

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

Questions regarding this letter or further coordination should be directed to Simona Altman, Senior Environmental Scientist (Specialist), at (805)-338-0474 or Simona.Altman@wildlife.ca.gov.

Sincerely,

DocuSigned by:



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David Mayer
Environmental Program Manager I
South Coast Region

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REFERENCES

California Department of Fish and Wildlife. 2020. California Natural Diversity Database. Retrieved 07/19/2021. Available from: <https://wildlife.ca.gov/Data/CNDDDB>.

Fish Passages Senate Bill 857 (CA 2005). State Route 133 Operational Improvements Project from Interstate 5 to Interstate 405, Orange County, California 12-ORA-133 (PM 8.3/ M9.3) EA 0N890/1214000130.

Johnston, Dave S., Kim Briones, and Christopher Pincetich. 2019. California Bat Mitigation: A Guide to Developing Feasible and Effective Solutions. H. T. Harvey & Associates, Los Gatos, CA. Prepared for the California Department of Transportation, Office of Biological Studies, Sacramento, CA. Task Order 7, Agreement No.43A0355.

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CDFW recommends the following language to be incorporated into a future environmental document for the Project.

Biological Resources			
	Mitigation Measure	Timing	Responsible Party
MM-BIO-1-Southern California Steelhead	CDFW recommends that Caltrans revise the steelhead discussion to more accurately reflect the status of the discussions between Caltrans and CDFW regarding southern California steelhead in San Diego Creek and to address the creek's current connectivity to the ocean and anthropogenic barriers to fish passage.	Prior to finalizing the ND	Caltrans
MM-BIO-2-Potential Bat Roosting Surveys	CDFW recommends that habitat assessments for potential bat roosting locations be extended to 500 feet surrounding the Project footprint and any additional emergence surveys be completed and all pertinent information included in the final Negative Declaration. CDFW also recommends that the Bat Mitigation Plan be prepared and submitted to CDFW for review and approval at least two years prior to the Ready to List date.	Prior to finalizing the ND	Caltrans
MM-BIO-3-Vegetation Community Classification	CDFW recommends that Caltrans reassess the vegetation community type(s) in the Preserve within 500 feet of the Project footprint and include the results of the assessment and any applicable recommendations in the final ND.	Prior to finalizing the ND	Caltrans