

Mikayla Vaba

From: Boyd, Ian@Wildlife <Ian.Boyd@Wildlife.ca.gov>
Sent: Friday, October 29, 2021 1:48 PM
To: Guidi, Scott@DOT
Cc: Wildlife R2 CEQA; Ralston, Ian@Wildlife; OPR State Clearinghouse
Subject: Caltrans 10-0Q210 State Route 88 Roadway Improvements_CDFW Comments on MND (SCH. 2021090506)

Governor's Office of Planning & Research

Oct 29 2021

Dear Mr. Guidi:

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 State Route 88 Improvement Project (Project) (10-0Q210) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.^[1]

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 the road segment on State Route (SR) 88 in Amador County from Post Miles (PM) 5.5 to PM 14.3. The total length of the Project is 8.8 miles The project proposes the following activities: cold-planing the asphalt pavement and overlaying the road surface, digging out spot locations to repair localized failures, adding shoulder backing, removing and replacing roadway signage, replacing culverts and end treatments, replacing down drains, and upgrading existing metal beam guardrails to the Midwest Guardrail System within the project area.

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: Chapter 2.1.4 Biological Resources, Affected Environment (pg. 11); – The description of the affected environment for biological resources in section 2.1.4 states that the biological study area for the proposed Project supports lone chaparral. The lone manzanita chaparral community exists approximately between SR-88 PMs 5.6 and 7.2 and contains lone manzanita (*Arctostaphylos myrtifolia*) (federally threatened) and lone buckwheat (*Eriogonum apricum* var. *apricum*) (federally and state endangered). Due to the proximity of the Project to known occurrences of special-status species and the lone manzanita chaparral sensitive natural community, CDFW recommends Caltrans conduct protocol level surveys to determine the presence of species with the potential to be directly, indirectly, on or within a reasonable distance of the Project activities. CDFW recommends assessments and surveys for rare plants and sensitive natural communities follow CDFW's 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities*. Based on survey data and analysis, Caltrans should include any necessary avoidance, minimization, and mitigation measures in the MND for rare plants and sensitive natural communities, including lone manzanita chaparral, before adopting it as final. CDFW also recommends maps and information regarding any survey efforts including methodologies used and dates surveys were completed be included within the MND. CDFW acknowledges that this section states a Natural Environmental Study was developed in July 2021, but the document was not included with the MND and CDFW has not reviewed the document at the time these comments were written and submitted for public comment.

Comment 2: Chapter 2.1.4 Biological Resources, General; Fish Passage Analysis – 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 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 [Department of Fish and Wildlife] 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 [Department of Fish and Wildlife].”

The Biological Resources section of the MND should address the following locations noted in the CALFISH Database that occur within the Project limits as it pertains to SB-857.

- Location 1, Unnamed stream (SR-88; PM 6.1, Amador County), Fish Passage Assessment Database ID# 763489, fish barrier status: unassessed.
- Location 2, Unnamed stream (SR-88; PM 7.2, Amador County), Fish Passage Assessment Database ID# 763506, fish barrier status: unassessed.
- Location 3, Unnamed stream (SR-88; PM 7.6, Amador County), Fish Passage Assessment Database ID# 763497, fish barrier status: unassessed.
- Location 4 and 5, Unnamed stream (SR-88; between PMs 7.7 and 7.8, Amador County), Fish Passage Assessment Database ID# 763496 and 763495, fish barrier status: unassessed.
- Location 6, Copper Creek (SR-88; PM 9.1, Amador County), Fish Passage Assessment Database ID# 763498, fish barrier status: unassessed.
- Location 7, Mountain Spring Creek (SR-88; between PMs 9.6 and 9.7, Amador County), Fish Passage Assessment Database ID# 763508, fish barrier status: unassessed.

- Location 8, Mountain Spring Creek (SR-88; between PMs 10 and 10.1, Amador County), Fish Passage Assessment Database ID# 763507, fish barrier status: unassessed.
- Location 9, Unnamed stream (SR-88; between PMs 13 and 13.1, Amador County), Fish Passage Assessment Database ID# 763501, fish barrier status: unassessed.
- Location 10, Rock Creek (SR-88; PM 14.1, Amador County), Fish Passage Assessment Database ID# 763490, fish barrier status: unassessed.

The MND should include a fish passage discussion section to address potentially significant impacts. CDFW recommends that the fish passage section, at a minimum, discuss the current status of the crossing 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 water conveyance structures. Information collected during fish passage assessments should be used to inform the Passage Assessment Database of the status for each unconfirmed/unassessed potential barrier listed above.

Comment 3: Chapter 2.1.10 Hydrology and Water Quality, Question c), (pg. 23-24); Question c) in the initial study asks if the Project would substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner that would (i) result in substantial erosion or siltation onsite or off-site; (ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on-site or off-site; (iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or (iv) impede or redirect flood flows? “No Impact” CEQA determinations were made by Caltrans for each question; however, the activity described at Culvert Location 2 (PM 8.36) includes permanent loss of intermittent stream habitat due to filling and plugging an existing culvert and redirecting the stream channel to the proposed inlet and outlet of the new Culvert Location 2. Although the MND proposes mitigation (BIO-11) for this activity by redirecting the stream channel, CDFW recommends changing the “No Impact” CEQA determination for sub-question (iv) to be “Less Than Significant With Mitigation Incorporated”. Caltrans should reevaluate the determinations for sub-questions (i), (ii), and (iii) based on the avoidance, minimization, and mitigation measures included in the Biological Resources section (BIO-3, 5, and 9).

Comment 4: The Project area as shown in the MND includes habitat for state and federally listed species (as referred to in Comment 1). If during the environmental analysis for the Project, it is determined that the Project may have the potential to result in "take", as defined in the Fish & G. Code, section 86, of a state-listed species, the MND should disclose an Incidental Take Permit (ITP), or a consistency determination (Fish & G. Code, §§ 2080.1 & 2081) may be required prior to starting construction activities. The environmental document must include all avoidance and minimization to reduce the impacts to a less than significant level. If impacts to listed species are expected to occur even with the implementation of these measures, mitigation measures shall be proposed to fully mitigate the impacts to state-listed species (Cal. Code Regs., tit. 14, § 783.2, subd. (a)(8)). CDFW encourages early coordination to determine appropriate measures to offset Project impacts and facilitate future permitting processes and to coordinate with the U.S. Fish and Wildlife Service to coordinate specific measures if federally-listed species are present within the Project limits.

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) 932-3035 or ian.boyd@wildlife.ca.gov.

Thank you,

Ian Boyd
Senior Environmental Scientist (Specialist)
North Central Region (Region 2)
1701 Nimbus Rd., Suite A
Rancho Cordova, CA 95670
P: 916-932-3035
ian.boyd@wildlife.ca.gov



^[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.