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March 11, 2022

Sam Tieu
Orange County Public Works
601 N. Ross St.
Santa Ana, CA 92703
Sam.Tieu@ocpw.ocgov.com

Subject: Modjeska Canyon Road Bridge (NO.55C-0172) Replacement (PROJECT), Mitigated Negative Declaration (MND), SCH #2022020094)

Dear Mr. Tieu:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the County of Orange for the Project pursuant 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 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.), related authorization as provided by the Fish and Game Code will be required.

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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PROJECT DESCRIPTION SUMMARY

Lead Agency: Orange County Public Works (County)

Objective: Orange County Public Works (Lead Agency), in cooperation with the California Department of Transportation (Caltrans), is proposing to replace the Modjeska Bridge (Bridge No. 55C-0172) over Santiago Creek. The existing bridge is a single span and crosses over Santiago Creek. The Project will replace the existing substandard steel bridge; a portion of the construction funding is provided by the Highway Bridge Program (HBP). The proposed replacement structure is a 65'-2" long and 43'-10" wide single span prestressed, precast concrete girder bridge. The bridge will be raised approximately one foot to increase hydraulic conveyance. Tall abutment walls, similar to the existing condition, will be set on spread-footing foundations. Tall wing walls will be required at all corners. The replacement bridge will have 12-foot-wide lanes and will include 8-foot minimum width shoulders.

The narrow road and limited extent of existing right of way requires the replacement structure be placed in the same location as the existing structure. Because of the steep, winding nature of the Modjeska Grade detour and the desire to provide suitable emergency ingress and egress, the new bridge will be constructed in stages to allow one lane of alternating traffic during construction. During the first stage, a temporary bridge approximately 80 feet long will be placed within the footprint of the new bridge, reducing environmental and right of way impacts to the same as needed for only the new bridge. The temporary bridge will contain both directions of travel on one lane, utilizing a temporary traffic signal, while the existing bridge is removed for the second construction stage, one lane of alternating traffic is shifted to the new bridge, the temporary bridge is removed, and the remaining half of the new bridge is constructed. Contractor staging areas are anticipated to be situated on the closed portion of the existing road approaches and potentially on property just west of the north abutment.

The Biological Study Area (BSA) is defined as the proposed Project Impact Area (PIA), plus a 100-foot buffer including potential staging areas and access routes. The BSA is approximately 6.70 acres.

Location: The Modjeska Canyon Road Bridge Project is located on Modjeska Canyon Road where the road crosses Santiago Creek, in the eastern part of Orange County near the Cleveland National Forest.

Biological Setting: Modjeska Canyon is on the western slope of the Santa Ana Mountains. Santiago Creek is an intermittent creek that flows under the bridge with western sycamore, the occasional white alder, and smaller vegetation along the stream. Dominant vegetation cover within the BSA include urban, disturbed, annual grassland, stream channel, coastal sage scrub, and riparian woodland. The Santiago Creek corridor may supply habitat connectivity for terrestrial and aquatic species; however, the MND states that Santiago Creek is not identified as an Essential Connectivity Area by CDFW (CDFW 2020). Please note that the Essential Connectivity project was prepared to identify very large blocks of contiguous undeveloped land throughout California. It was not intended for smaller scale applications or to infer the importance of more local wildlife movement corridors within NCCPs or comparatively urban/rural landscapes of California. The Essential Connectivity project is therefore not applicable to the current project.

The Project will have approximately 0.12 acre of temporary impacts and approximately 0.04 acre of permanent impacts to riparian woodland habitat. including the anticipated removal of approximately

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16 large diameter trees. However, all tree resources will be evaluated to determine where trees may remain protected in place without damaging essential root systems within the tree drip lines.

The MND indicates that the study area contains United States Fish and Wildlife Service (USFWS) designated Critical Habitat for arroyo toad (*Anaxyrus californicus*; ESA-listed endangered). Arroyo toad habitat suitability assessments and subsequent focused surveys yielded no observations of arroyo toad adults, juveniles, larvae, or egg strands. The results therefore concluded that arroyo toad are currently absent from the survey area including the portion of Santiago Creek within the BSA. Combining these findings with the results of the arroyo toad habitat suitability assessment, and Forest Service findings that no suitable arroyo toad habitat is present within any of these creeks within the Cleveland National Forest, the Lead Agency states that no suitable arroyo toad habitat would be considered present within the BSA or PIA.

Special status species including Coast Range newt (*Taricha torosa*), western spadefoot (*Spea hammondi*), coastal California gnatcatcher (gnatcatcher; *Polioptila californica*; ESA-listed threatened), least Bell's vireo (vireo; *Vireo bellii pusillus*; CESA- and ESA-listed endangered), coast patch-nosed snake (*Salvadora hexalepis virgulata*), coastal whiptail (*Aspidoscelis tigris stejnegeri*), orange-throated whiptail (*Aspidoscelis hyperythra*), red-diamondback rattlesnake (*Crotalus ruber*), southern California legless lizard (*Anniella stebbinsi*), two-striped gartersnake (*Thamnophis hammondi*), and western pond turtle (*Actinemys marmorata*) have a low to moderate potential to occur within the BSA due to presence of potentially suitable habitat in the surrounding area. The coast horned lizard (*Phrynosoma coronatum*) was considered to have a high potential to occur within the BSA due to the presence of suitable habitat and recent nearby occurrences approximately one mile south of the Project area.

The County coordinated with Caltrans and USFWS regarding the potential presence of the federally listed vireo and gnatcatcher, and to develop proposed avoidance and minimization measures, despite the lack of suitable habitat within the BSA.

The stream drains most of the northern Santa Ana Mountains and is a tributary to the Santa Ana River. The location of the stream is well defined and is currently not adjacent to the abutments during low flows. The subsurface conditions encountered at the Project site consist of a mixture of coarse-grained soils, sands, and mostly silty clay from the Riverwash, Cieneba, and Sorrento series. These soils extend approximately 6 feet below the ground surface.

Timeframe: Overall construction is anticipated to take eight months and estimated to begin in 2023. The new bridge will be constructed in phases with a temporary bridge placed within the footprint of the new bridge to allow traffic to pass during the construction period.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying 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 be included to improve the document. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

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Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Timing of Wildlife and Plant Surveys

Field surveys were conducted on September 27, 2019 and included walking meandering transects through the entire BSA, observing vegetation communities, compiling notes on observed flora and fauna, and assessing the potential for existing habitat to support sensitive plants and wildlife. These surveys fall outside of the spring nesting and blooming season and are also over two years old. CDFW generally recommends surveys for both wildlife and plants be conducted within one to two years from Project commencement, and that protocol surveys be performed for listed species, where suitable habitat occurs, to determine their potential presence and the need for further avoidance or mitigation.

Recommendation #1: In the absence of having performed focused/protocol surveys, CDFW recommends that a biological monitor be present during construction if performed during the breeding season to identify if any state or federal listed species may be present. If listed species are identified in or in close proximity to the work, CDFW and/or USFWS should be contacted immediately to determine if further measures are necessary to avoid impacts to such species.

COMMENT #2: Bat Surveys

Issue: It is unclear from the Biological Resources document whether bat surveys were included in the field surveys.

Why impact would potentially occur: Bat colonies may be found in many kinds of structures including bridges. As the Project consists of replacing an existing bridge within riparian woodland habitat, there appears to be potential for the presence of a bat colony within the Project site.

Evidence impact would be significant: Multiple bat species that are considered a species of special concern (SSC) by CDFW may occur in the environmental setting of the Project.

To reduce impacts to less than significant: CDFW recommends performing bat surveys to determine the potential for roost sites in the construction area, which may lead to further measures to be implemented to avoid impacts to bats and their roosts during construction.

Recommendation #2: CDFW recommends the following protocol be incorporated into the bat field surveys.

1. An initial bat survey should be conducted during the maternity season (March 1 to August 31) by a qualified bat biologist to confirm if any maternity colonies have been established within the Project site. Survey protocol should include an appropriate combination of suitable habitat inspection and sampling, as well as at least one evening emergence and acoustic survey. Any ground disturbance or removal of vegetation/suitable roosting habitat should be conducted no more than three days after pre-construction surveys are completed. Eviction of any bats found day-roosting during the maternity season should be avoided.
2. If an active roost is identified during maternity season, CDFW requests the opportunity to review any mitigation and exclusion plans for concurrence prior to implementation. Removal of the roost should only occur outside of the maternity season, when the mitigation plan has been approved by the County and by CDFW, and only when bats are not present in the roost. The mitigation plan should detail the methods of excluding bats from the roost and the plans for a replacement roost in the vicinity of the Project site.

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3. If special-status bat species or a maternity roost of any bat species is present, but no direct removal of active roosts will occur, specific avoidance measures should be determined by the bat biologist, which may include implementation of a construction-free buffer around the active roost. Combustion equipment such as generators, pumps, and vehicles should not be parked or operated under or adjacent to the roost habitat. Vibration and noise should be avoided, and personnel should not be present directly under the colony.
4. If the pre-construction survey determines that no active roosts are present, then trees/suitable habitat should be removed within three days following the pre-construction survey. All potential roost trees should be removed in a manner approved by a qualified bat biologist, which may include presence of a biological monitor. Additionally, all construction activity in the vicinity of an active roost should be limited to daylight hours.

COMMENT #3: Scientific Collecting Permit and Species Relocation Plan

Issue: According to the Biological Resources report, twelve special status species have a potential to occur within the BSA. Although MM BIO-10, MM BIO-12, and MM BIO-13 provide measures to avoid impacts to special status wildlife species, none of these measures include the requirement to obtain a Scientific Collecting Permit (SCP) from CDFW prior to any relocation of a species. A SCP is required by CDFW in order to legally handle and relocate special status species, as described in Section 650, Title 14, California Code of Regulations.

Recommendation #3: Due to the possible presence of multiple special status species, CDFW recommends that the biological monitor possess or obtain a Scientific Collecting Permit and be qualified to relocate any special status wildlife from the Project site. A Species Relocation Plan may further be appropriate to establish protocol for relocation of wildlife, including guidelines for the SCP-holding biologist to capture unharmed and release such found species in appropriate habitat an adequate distance from the project site. Additionally, if any CESA- and/or ESA-listed species are found during construction, coordination and direction from CDFW and/or the USFWS, respectively, shall be required.

To reduce potential impacts to the special status wildlife species, CDFW recommends the below language be incorporated into MM BIO-10, MM BIO-12, and/or MM BIO-13 regarding species relocation:

“[a] Biological Monitor shall be present on site during all vegetation clearing and construction activities, even if special status wildlife are not detected during pre-construction surveys. If any special status wildlife enters the construction area following pre-construction trapping, the Biological Monitor shall have the authority to halt construction that could harm wildlife, until the individual can be captured and relocated. The Biological Monitor shall contact the Construction Lead and CDFW immediately to notify them of the observation. If the wildlife individual has not been captured after four days of trapping, the Construction Lead shall contact CDFW to determine whether trapping will be extended, or for authorization to continue construction activities.”

COMMENT #4: Wetland Permitting Obligations

According to “Response to Question c)” in the MND,

“construction activities within Santiago Creek would be limited to temporary ground disturbance associated with construction on the new bridge structure, and any diversion or dewatering activities necessary to avoid work occurring within flowing waters. Due to these temporary construction activities, the Project is anticipated to have approximately 0.04 acres of temporary impacts to the Santiago Creek channel, a water of the U.S. and State,

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and CDFW jurisdictional habitat. Permanent impacts to Santiago Creek, as a result of the proposed Project, are not anticipated” (Orange County Public Works, 2022).

CDFW has regulatory authority over activities in streams that will divert or obstruct the natural flow, or change the bed, channel, or bank (which may include associated riparian resources) of any river, stream, or lake or use material from a river, stream, or lake. For any such activities, the project applicant (or “entity”) must provide written notification to CDFW pursuant to section 1600 *et seq.* of the Fish and Game Code. Based on this notification and other information, CDFW determines whether a Lake and Streambed Alteration Agreement (LSAA) with the applicant is required prior to conducting the proposed activities. CDFW’s issuance of a LSAA for a project that is subject to CEQA will require CEQA compliance actions by CDFW as a Responsible Agency. If any construction equipment or activities may impact the bed, bank, or channel of Santiago Creek, we encourage you to consult further with CDFW regarding the possible submittal of a LSAA Notification package. A Notification package for a LSAA may be obtained by accessing CDFW’s web site at <http://www.wildlife.ca.gov/Conservation/LSA>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 MND to assist the County of San Diego in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alex Troeller, environmental scientist at (858) 354-4299 or Alex.Troeller@wildlife.ca.gov.

Sincerely,

DocuSigned by:


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David Mayer
Environmental Program Manager
South Coast Region

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Attachments:

A. CDFW Comments and Recommendations

cc: CDFW

Jennifer Turner, San Diego – Jennifer.Turner@wildlife.ca.gov

Cindy Hailey, San Diego – Cindy.Hailey@wildlife.ca.gov

State Clearinghouse, Office of Planning and Research – State.Clearinghouse@opr.ca.gov

Jonathan Snyder, USFWS – Jonathan_D_Snyder@fws.gov

REFERENCES

California Department of Fish and Wildlife. 2020. CWHR Life History Accounts and Range Maps. Available at: <http://www.dfg.ca.gov/biogeodata/cwhr/cawildlife.aspx>

California Natural Diversity Database (CNDDDB). 2021. RareFind 5 [Internet]. California Department of Fish and Wildlife, Government Version.

Orange County Public Works (OCPW). 2022. Modjeska Canyon Road Bridge (No. 55C-0172) Replacement Project Initial Study No. IP 22-0017.

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Attachment A:

Summary of CDFW Recommendations:

	Measures	Timing	Responsible Party
	<i>Recommendation</i>		
Recommendation #1	CDFW recommends that a biological monitor be present during construction if performed during the breeding season to identify if any state or federal listed species may be present. If listed species are identified in or in close proximity to the work, CDFW and/or USFWS should be contacted immediately to determine if further measures are necessary to avoid impacts to listed species.	Prior to Project commencement	Orange County Public Works
Recommendation #2	<p>CDFW recommends the following protocol be incorporated into the bat field surveys.</p> <p>An initial bat survey should be conducted during the maternity season (March 1 to August 31) by a qualified bat biologist to confirm if any maternity colonies have been established within the Project site. Survey protocol should include an appropriate combination of suitable habitat inspection and sampling, as well as at least one evening emergence and acoustic survey. Any ground disturbance or removal of vegetation/suitable roosting habitat should be conducted no more than three days after pre-construction surveys are completed. Furthermore, eviction of any bats found day-roosting during the maternity season should be avoided.</p> <p>If an active roost is identified during maternity season, CDFW requests the opportunity to review any mitigation and exclusion plans for concurrence prior to implementation. Removal of the roost should only occur outside of the maternity season, when the mitigation plan has been approved by the County and by CDFW, and only when bats are not present in the roost. The mitigation plan should detail the methods of excluding bats from the roost and the plans for a</p>	Prior to construction activities	Orange County Public Works

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	<p>replacement roost in the vicinity of the Project site.</p> <p>If special-status bat species or a maternity roost of any bat species is present, but no direct removal of active roosts will occur, specific avoidance measures should be determined by the bat biologist, which may include implementation of a construction-free buffer around the active roost. Combustion equipment such as generators, pumps, and vehicles should not be parked or operated under or adjacent to the roost habitat. Vibration and noise should be avoided, and personnel should not be present directly under the colony.</p> <p>If the pre-construction survey determines that no active roosts are present, then trees/suitable habitat should be removed within three days following the pre-construction survey. All potential roost trees should be removed in a manner approved by a qualified bat biologist, which may include presence of a biological monitor. Additionally, all construction activity in the vicinity of an active roost should be limited to daylight hours.</p>		
<p>Recommendation #3</p>	<p>To reduce potential impacts to the special status wildlife species, CDFW recommends the below language be incorporated into MM BIO-10, MM BIO-12, and/or MM BIO-13 regarding species relocation:</p> <p><i>“[a] Biological Monitor shall be present on site during all vegetation clearing and construction activities, even if special status wildlife are not detected during pre-construction surveys. If any special status wildlife enters the construction area following pre-construction trapping, the Biological Monitor shall have the authority to halt construction that could harm wildlife, until the individual can be captured and relocated. The Biological Monitor shall contact the Construction</i></p>	<p>Prior to construction activities</p>	<p>Orange County Public Works</p>

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	<p><i>Lead and CDFW immediately to notify them of the observation. If the wildlife individual has not been captured after four days of trapping, the Construction Lead shall contact CDFW to determine whether trapping will be extended, or for authorization to continue construction activities.”</i></p>		
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