State of California
Department of Fish and Wildlife

Memorandum

Date: April 29, 2022

To: Ms. Arnica MacCarthy
California Department of Transportation
District 4; Environmental Planning
111 Grand Avenue
Oakland, CA 94612
Arnica.MacCarthy@dot.ca.gov

From: Ms. Erin Chappell, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Marin County State Route – 37 Capital Preventative Maintenance (CAPM) Pavement Project, Notice of Preparation for Negative Declaration, SCH No. 2022040025

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Preparation (NOP) for the draft Negative Declaration (ND) for the Marin County State Route – 37 Capital Preventative Maintenance (CAPM) Pavement Project (Project), pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1] CDFW is submitting comments on the draft ND as a means to inform the California Department of Transportation (Caltrans) as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project.

CDFW is a Trustee Agency with responsibility under CEQA §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 permits issued under the California Endangered Species Act (CESA), the Native Plant Protection Act, the Lake and Streambed Alteration (LSA) Program and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. CDFW has the following concerns, comments, and recommendations regarding the Project.

PROJECT LOCATION AND DESCRIPTION

Caltrans, as the lead agency proposes to preserve and extend the life of the existing pavement, 3.4 linear miles of State Route (SR) 37 from the Ignacio overhead crossing (U.S. Highway 101 junction) to the Petaluma River Bridge at the Marin/Sonoma County line from Post Mile (PM) 11.2 to PM 14.6. The Project includes resurfacing and repairing the existing asphalt-concrete (AC) pavement; injecting polyurethane foam below the roadway to address settlement correction; replacing traffic loop detectors, and AC dikes;

[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.

upgrading concrete barriers, guard rails, and curb ramps; installing enhanced wet/night visibility striping; adjusting and cleaning drain inlets; and providing vegetation control under guardrails. Vegetation control under guardrails consists of installing concrete slabs underneath structures that will result in impacts to 2.6 acres of varied habitat types and land types but does not include tree removal.

Lake and Streambed Alteration Agreement

The Project has the potential to impact stream resources including mainstems, tributaries, drainages and floodplains associated with varied aquatic resource types within the Biological Study Area (BSA) including but not limited to Simmons Slough, Novato Creek and the Petaluma River. If work is proposed that will impact the bed, bank, channel or riparian habitat, including the trimming or removal of trees and riparian vegetation, please be advised that the proposed Project may be subject to LSA notification. CDFW requires an LSA notification, pursuant to Fish and Game Code § 1600 et. seq., for or any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, bank or channel 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 generally subject to notification requirements.

Fish and Game Code § 5901

Except as otherwise provided in this code, it is unlawful to construct or maintain in any stream in Districts 1, $1^3/_8$, $1^1/_2$, $1^7/_8$, 2, $2^1/_4$, $2^1/_2$, $2^3/_4$, 3, $3^1/_2$, 4, $4^1/_8$, $4^1/_2$, $4^3/_4$, 11, 12, 13, 23, and 25, any device or contrivance that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream. Fish are defined as a wild fish, mollusk, crustacean, invertebrate, amphibian, or part, spawn, or ovum of any of those animals (Fish and Game Code § 45).

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either 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 Permit. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA Guidelines §§ 21001 subd. (c), 21083, 15380, 15064 and15065). 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 Fish and Game Code, § 2080. More information

on the CESA permitting process can be found on the CDFW website at https://www.wildlife.ca.gov/Conservation/CESA.

Fully Protected Species

Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take, except for collecting these species for necessary scientific research and relocation of a fully protected bird species for the protection of livestock. Take of any fully protected species is prohibited, and CDFW cannot authorize their take in association with a general project except under the provisions of a Natural Communities Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding for scientific research purposes. "Scientific Research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the Project, and its alternative's, significant impacts on the environment (CEQA Guidelines, §§ 15125 and 15360). CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish, and wildlife species located and potentially located within the Project area and surrounding lands, including all rare, threatened, or endangered species (CEQA Guidelines, § 15380). Threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

Common Name	**Scientific Name**	**Status**
California red-legged frog	*Rana draytonii*	SSC, FT
Northern harrier	*Circus hudsonius*	SSC
White-tailed kite	*Elanus leucurus*	FP
California black rail	*Laterallus jamaicensis coturniculus*	ST, FP
California Ridgway's rail	*Rallus obsoletus obsoletus*	SE, FP, FE
Great Blue Heron	*Ardea herodias*	
Snowy Egret	*Egretta thula*	
Double crested cormorant	*Phalacrocorax auritus*	WL

California horned lark	*Eremophila alpestris actia*	WL
Steelhead - Central California Coast DPS	*Oncorhynchus mykiss irideus*	FT
Chinook Salmon - California Coastal ESU	*Oncorhynchus tshawytscha*	ST
Longfin smelt	*Sprinchus thaleichthys*	ST, FC
Delta smelt	*Hypomesus transpacificus*	SE, FT
Big brown bat	*Eptesiscus fucus*	
Western red bat	*Lasiurus blossevillii*	SSC
Pallid bat	*Antrozous pallidus*	SSC
Townsends big-eared bat	*Corynorhinus townsendii*	SSC
Brazilian free-tailed bat	*Tadarida brasiliensis*	
Hoary bat	*Lasiurus cinereus*	
Yuma myotis	*Myotis yumanensis*	
American badger	*Taxidea taxus*	SSC
Saltmarsh harvest mouse	*Reithrodontomys raviventris*	SE, FP, FE
Notes:		
FE = Federally Endangered; FT = Federally Threatened; SE = State Endangered; ST = State Threatened; SC = Special Concern (Federal) SSC = State Species of Special Concern (State); DPS = Distinct Population Segment; ESU = Ecologically Significant Unit; FC = Federal Candidacy; WL = CDFW Watch List; SR = State Listed Rare Plant; 1B = California rare plant rank		

Habitat descriptions and species profiles should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDB) and Biogeographic Information and Observation System (BIOS). Based on the data and information from the habitat assessment, the CEQA document can then adequately assess which special-status species are likely to occur in the Project vicinity. CDFW recommends that prior to Project implementation surveys be conducted for special-status species noted in this comment letter with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: https://www.wildlife.ca.gov/Conservation/Survey-Protocols.

COMMENTS AND RECOMMENDATIONS

CDFW acting as a Responsible Agency, has discretionary approval under CESA through issuance of a CESA ITP and LSA Agreement, as well as other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife resources. CDFW would like to thank you for preparing the NOP for the ND. CDFW recommends the following updates, avoidance and minimization measures be imposed as conditions of Project approval by the lead agency, Caltrans, to ensure all Project-related impacts are reduced below a level of significance under CEQA:

COMMENT 1: Project Description and Nightwork Details

Issue: the ND does not sufficiently describe key elements of the Project that are necessary to assess potentially significant impacts to fish and wildlife resources including information on nightwork. Page 2-4 that indicates nightwork is necessary but does not indicate the specific number of nights necessary to complete the Project.

Recommendation: Please include the number of nights work will be necessary in the updated Project Description. This information is important to adequately assess potentially significant impacts to fish and wildlife resources from night work.

COMMENT 2: Simmons Slough, Wetlands and Freshwater Emergent Habitat Analysis

Issue*:* Simmons Slough and the surrounding area consist of vital floodplains, wetlands and freshwater emergent habitat. Many of the proposed staging areas including Figure 1-3, Map 6 of 8 and Figure 3-1 and Map 5 of 8 Staging are extremely close to wetlands, swales and freshwater emergent habitat. In addition, the Project proposes to incorporate vegetation control under new Midwest style guardrail systems, and new and barriers, by adding a concrete slab with proposed dimensions of 80 inches wide and 2 inches thick along the full length of the guardrails and barriers. The total vegetation control area impacted by the concrete slabs is 2.16 acres that will result in new and impervious services with the potential to deposit deleterious material into habitat that supports fish and wildlife resources.

Recommendation Measure 1: Selection of staging areas shall occur on previously impacted areas with existing highway infrastructure and shall avoid, minimize and/or mitigate temporary or permanent impacts to areas that contain fish and wildlife resources including bed, bank, channel, riparian habitat, floodplains, wetlands, swales and freshwater emergent habitat.

COMMENT 3: Wildlife Connectivity

Issue: California wildlife is losing the ability to move and migrate as habitat conversion and built infrastructure disrupt species habitat and cut off migration

corridors (Senate Bill 790; SB-790). Section 15355 of the CEQA guidelines states that cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts. The individual effects may be changes resulting from a single project or a number of separate projects. This Project represents a single Project that will be preceded and proceeded by multiple transportation construction projects on SR-37 by the lead agency that have the potential to further disrupt migration corridors and species movement.

Evidence the impact would be significant: This Project has the potential to significantly modify wildlife movement over the 3.4-mile linear stretch of highway within the SR-37 corridor proposed for the Project. The upgrade, modification and installation of concrete barriers especially may further disrupt migration corridors and species movements when analyzed in conjunction with the State Route – 37 (SR-37) Sears Point to Mare Island Improvement Project from Post Mile (PM) 2.3 in Sonoma County to PM 8.4 and the State Route – 37 (SR-37) Flood Reduction Project (Project) from postmile (PM) 19.1 on U.S.-101, at the Hanna Ranch Road interchange in Marin County moving east along SR-37 to PM 4.0 to the interchange with SR-121 at Sears Point in Sonoma County.

Recommendation: Terrestrial connectivity elements such as wildlife friendly culverts, directional fencing, and strategically placed median barriers should be programmed into the Project as design features or conditions of approval in coordination with the natural resource agencies.

Recommendation Mitigation Measure 1: Wildlife Connectivity: The draft ND should include the results of a Project wildlife movement study. CDFW recommends the study occur over a period of at least 12 months prior to the development of designs so they may be incorporated into the Project development. The study should occur within the limits of the proposed Project to develop a baseline understanding of the areas where wildlife movement, crossings and mortalities are most prevalent. The study should also be utilized to develop Project design to identify areas where wildlife crossing structure(s) installation(s) would result in the largest benefit to rare, threatened and endangered species as well as special status species and non-special status species for wildlife connectivity. Analysis during the 12-month study should be utilized to determine the type, size and number of structures that would be most beneficial to facilitate wildlife connectivity (new wildlife crossing culverts, modification of existing culverts, elevated causeways, etc.). Upon completion of the Project, wildlife connectivity structures and movement corridors should be studied for an additional 6 to12 month period, at minimum, to determine the effectiveness of the designs. The protocol for the baseline survey, post-construction surveys, site selection criteria and design criteria for the development of the wildlife connectivity structures should follow the protocols outlined in *The California Department of Transportation (Caltrans), Wildlife Crossings Design Manual* (Caltrans, 2009) and the *Federal Highway Administration Wildlife Crossing Structure Handbook – Design*

and Evaluation in North America, Publication No. FHWA-CFL/TD-11-003 (FHWA, 2011).

COMMENT 4: Fish Passage Assessment

Issue: Multiple potential fish passage barriers and unassessed locations exist within the identified Project limits, as described in the recommendations section below. Senate Bill 857 (SB-857), which amended Fish and Game Code § 5901 and added § 156 to the Streets and Highways Code states in § 156.3, "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 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 [CDFW] 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 [CDFW].

Evidence the impact would be significant: The Project contains stream crossings within areas mapped as historic or current watersheds where anadromous fish are, or historically were found. The species include but are not limited to steelhead – Central Coast DPS (BIOS; DS-806), longfin smelt (BIOS; DS-1324) and Delta smelt (BIOS; DS-1249). The decline of naturally spawning salmon and steelhead trout is primarily a result of the loss of appropriate stream habitat and the inability of fish to get access to habitat, according to reports to the Fish and Game Commission and by the CDFW (CDFW, 1996). Restoration of access to historical spawning and rearing areas should be incorporated into the Project design through barrier modification, fishway installation, or other means (CDFW, 1996).

Recommendations: If barriers or unassessed barriers noted within the Project limits identified below are found to be a barrier to fish passage, remediation of the problem should be designed into the Project by the implementing agency as a Project feature in consultation with CDFW and other natural resource agencies. CDFW recommends discussing the following locations as they pertain to fish passage:

Location 1, Novato Creek, PM 11.69; SR-37, (Latitude: 38.0872; Longitude: -122.5345; Marin County), Fish Passage Assessment Database ID# 732744, fish barrier status: unknown, requires a detailed survey per results of reconnaissance survey (First Pass).

Location 2, Simmons Slough, PM 13.04, SR-37, (Latitude: 38.0976; Longitude: -122.5211; Marin County), Fish Passage Assessment Database ID# 732746, fish barrier status: unknown, requires a detail survey per results of reconnaissance survey (First Pass).

Location 3, Petaluma River, PM 0; SR-37, (Latitude: 38.1156; Longitude: -122.5056; Sonoma County), Fish Passage Assessment Database ID# 761443, fish barrier status: unassessed.

Location 4, Unnamed tributary to the Petaluma River, PM 0.2; SR-37, (Latitude: 38.1175; Longitude: -122.5031; Sonoma County), Fish Passage Assessment Database ID# 761444, fish barrier status: unassessed.

The fish passage section should discuss the current status of the crossing location 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 structure. CDFW requests a fish passage discussion section is included to address this potentially significant impact through the following avoidance and minimization measures, which should be made conditions of approval by the lead agency.

Recommended Mitigation Measure 1: Fish Passage Assessment

To evaluate potential impacts to native fish species and fisheries resources, Caltrans should submit the assessment to the CDFW 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 CDFW. CDFW shall be engaged prior to design in early coordination and at 30% design at minimum and through the permitting process for review and comment as identified in the Interagency Agreement (Agreement Number 43A0398).

COMMENT 5: California Clapper Rail/California Black Rail

Issue: Page 3-35, AMM-BIO-23 does not follow the appropriate protocols and avoidance measures for California clapper rail (CCR) also known as Ridgway's Rail, a State endangered, federally endangered, and fully protected species and California black rail (CBR) a State threatened and fully protected species. As lead agency, Caltrans must adopt the appropriate avoidance and minimization measures as conditions of approval to avoid take of a fully protected species.

Recommendation: CDFW recommends the following measures are incorporated as conditions of approval to replace AMM-BIO-23 of the draft ND:

Recommended Mitigation Measure 1: CCR/CBR Protocol Level Surveys

Protocol level surveys shall be conducted beginning between January 15 and February 1. A minimum of four surveys are required, each survey should be 2 to 3 weeks apart and the final survey should be completed by March or mid-April to

ensure that no CCR/CBR are present during construction. Surveys shall be completed prior to the initiation of construction with three weeks remaining after completion of surveys and before Project initiation to submit results to CDFW for review. Protocol survey requirements shall be followed as recommended in the *USFWS Clapper Rail Survey Protocol* (USFWS, 2015), *Secretive Marsh Bird Survey Protocol Comparison in San Francisco Bay* (Wood, 2014) and *USFWS Site-Specific Protocol for Monitoring Marsh Birds* (Wood et al., 2017).

Recommended Mitigation Measure 2: CCR/CBR Avoidance and Minimization

If CCR/CBR is detected during protocol surveys, no work activity shall occur from February 1 to August 31 during the CCR/CBR nesting season, within suitable CCR/CBR habitat. Suitable CCR/CBR habitat includes but is not limited to marshes, wetlands, streams and waterways, as well as associated upland habitat capable of providing upland refugia habitat as determined by a qualified biologist experienced with CCR/CBR.

Recommended Mitigation Measure 3: CCR/CBR Avoidance Buffers

If breeding CCR/CBR are determined to be present, activities will not occur within 700 feet of an identified calling center. If the intervening distance across a major slough channel or across a substantial barrier between the CCR/CBR calling center and any activity area is greater than 200 feet, work may proceed at that location within the breeding season in consultation with CDFW.

Recommended Mitigation Measure 4: CCR/CBR High Tide Restriction

To avoid the loss of individual CCR/CBR's, activities within or adjacent to CCR/CBR suitable habitat will not occur within 2 hours before or after extreme high tides (6.5 feet or above, as measured at the Golden Gate Bridge). This is when the marsh plain is inundated and protective cover for CCR/CBR is limited. Project activities could prevent CCR/CBR from reaching available cover.

COMMENT 6: Salt Marsh Harvest Mouse

Issue: The Project has the potential to result in potentially significant impacts to fish and wildlife resources that support salt marsh harvest mouse (SMHM) a State fully protected species and State and federal endangered species. AMM-BIO-4 does not adequately reduce the potentially significant impacts to SMHM.

Evidence the impact would be significant: The Project proposes to conduct work within suitable habitat and within the predicted range of SMHM (BIOS; DS-943, DS-2568). An occurrence of the species is also present within the Project limits in the CNDDB (BIOS; DS-45) that is considered extant. If permanent impacts are proposed within SMHM habitat it may not be feasible to incorporate conditions of approval that can reduce the impacts below a level of significance.

Recommendation: CDFW recommends incorporation of the following measures into the draft ND to avoid take of a fully protected species:

Recommended Mitigation Measure 1: SMHM Suitable Habitat Analysis and Survey

A qualified biologist, experienced with SMHM shall conduct a suitable habitat analysis and focused surveys a minimum of one season prior to the initiation of construction. Focused surveys shall occur in areas proposed for work within three-hundred feet of tidal marsh habitat. Maps of suitable habitat and any detections of SMHM should be included in the draft ND.

Recommended Mitigation Measure 2: Construction Monitoring and Survey

A qualified biologist, experienced with SMHM shall conduct focused surveys a minimum of seven days prior to the initiation of construction including the creation of staging and access roads within three-hundred feet of tidal marsh habitat. Any vegetation within suitable habitat shall be cleared with hand-tools under supervision of a qualified biologist. Heavy equipment such as tractors or excavators working in SMHM habitat may proceed after the initial hand clearing has occurred and the biologist has given approval to proceed. A biologist shall be present on-site at all times when work is occurring in SMHM habitat. If a mouse of any species is observed within the project area, work within the vicinity should be halted immediately by the qualified biologist and the mouse should be allowed to leave the work area. SMHM may not be handled or captured at any time during site preparation or project activities. If an injured or dead SMHM is discovered at the project sites, consultation with CDFW is required immediately.

Recommended Mitigation Measure 3: SMHM High Tide Restriction

See **Recommended Mitigation Measure 4: CCR/CBR High Tide Restriction** and apply the same measure for SMHM.

CONCLUSION

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California's fish and wildlife resources. 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.

Questions regarding this letter or further coordination should be directed to Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 339-6534 or Robert.Stanley@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

cc: State Clearinghouse #2021110045

REFERENCES

California Department of Fish and Wildlife. July 2009. California Salmonid Stream Habitat Restoration Manual, Part XII.

California Department of Fish and Wildlife. February 1996. Steelhead Restoration and Management Plan for California.

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