Dorman, April@Wildlife

From: Tran, Harvey@Wildlife
Sent: Thursday, July 14, 2022 12:44 PM
To: Monte Vista@DOT
Cc: Wilson, Billie@Wildlife; Garcia, Jennifer@Wildlife; Thomas, Kevin@Wildlife; Wildlife R2 CEQA
Subject: Caltrans 03-3H610 Monte Vista Pavement Rehabilitation - CDFW CEQA comments PT 2022-0235-0000-R2
Follow Up Flag: Follow up
Flag Status: Completed

To Whom It May Concern:

The California Department of Fish and Wildlife (CDFW) appreciates the opportunity to comment on the proposed Negative Declaration (ND) for the Monte Vista Pavement Rehabilitation Project (Project). CDFW is responding to the draft ND as a Trustee Agency for fish and wildlife resources (Fish & G. Code, §§ 711.7 & 1802, and CEQA Guidelines, §§ 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 et seq.) and/or a California Endangered Species Act (CESA) Permit for incidental take of endangered, threatened, and/or candidate species (California Fish and Game Code Sections 2080 and 2080.1).

This Project is located along State Routes 80 between post miles 42.7 and 49.3 in Placer County. The Project proposes to add a truck climbing lane to reduce traffic delays and improve overall traffic operations, construct soldier pile ground anchors, realign on-ramps and off-ramps, construct new maintenance vehicle pullouts, and widen overcrossing and undercrossing bridges. The Project also proposes to install, extend, and replace culverts to accommodate the widen roadway. Two wildlife crossings are also proposed to be constructed from culverts that are 12 feet by 12 feet.

CDFW recommends the following items be addressed in the CEQA document:

Comment 1: Migratory birds, page 16.
Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests, and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that is it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA. Potential habitat for nesting birds and birds of prey is present within the Project area and impacts to the nesting birds are not sufficiently addressed in the ND (e.g., how many potential nesting trees will be trimmed or removed, how much potential foraging habitat will be lost, etc.). CDFW recommends the ND disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the ND.

To address this comment, CDFW recommends the ND describe how the considerations identified below will be implemented and incorporated into the appropriate ND section(s):

CDFW recommends Project proponent add specific avoidance and minimization measures to the Avoidance, Minimization, and/or Mitigation Measures section. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The ND should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is nest buffer radius which can be determined by monitoring the active nests and determining the distance that activities will disturb the nesting birds. CDFW recommends 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 & G. Code. A 500-foot exclusion buffer may be sufficient; however, that buffer may need to be increased based on the birds' tolerance level to the disturbance. It is the Project proponent's responsibility to confirm the buffer is sufficient to avoid take/nest failure. CDFW recommends a final preconstruction survey be required no more than 14 calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1).

Comment 2: Compensatory Mitigation for Permanent Impacts on Aquatic Resources, pages 55-56
CDFW does not accept in-lieu fee for mitigation to areas required to be notified by Fish and Game Code 1600. Mitigation purchase should be done at a CDFW-approved mitigation bank or another mechanism approved by CDFW.
To address this comment, CDFW recommends including mitigation from a CDFW-approved mitigation bank or another mechanism approved by CDFW.

Comment 3: Foothill Yellow-legged Frog (FYLF), page 49.
If 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, CDFW recommends that Caltrans disclose that an incidental take permit (ITP) (Fish & G. Code, §§ 2081) may be required prior to starting construction activities. The ND 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)). Take of FYLF must be completely avoided and measures should be identified to ensure such action if no CESA take coverage will be obtained. If Caltrans encounters any FYLF during project activities, work shall be suspended, and CDFW notified. Work may not re-initiate until Caltrans has consulted with CDFW and can demonstrate compliance with CESA.

In order to help avoid take of the FYLF, CDFW recommends the mesh size of the dewatering pumps for temporary water diversion to be no larger than 0.125" to prevent take of tadpoles. CDFW also recommends creating sites in gravel/cobble bars to draft water from or using very deep pools. If none are present, then have the contractor dig a hole in the gravel/cobble bars and allow subsurface flow to fill the hole and then draft from there. The site will need to be fenced so juvenile/adult frogs and other mobile species do not colonize it.

CDFW recommends that Caltrans look at CDFW's "Considerations for Conserving the Foothill Yellow-legged Frog" document and incorporate the following dewatering measures:

Intake screening. To minimize entrainment of foothill yellow-legged frog larvae during water diversion, all pump intakes should be fitted with a screen-type device consisting of, at minimum, a water intake strainer. Water intake strainers are most appropriate for low-volume diversion projects. For high-volume water diversion projects or other diversion activities that may warrant greater protection, pump intakes should be fitted with screens made of woven mesh, perforated plate, or wedge wire. The screen medium must be able to withstand forces related to pumping and be of sufficient size to prevent foothill yellow-legged frog larvae from entering the intake and being pumped along with

diverted water. High-volume water diversion projects may require project-specific consultation with CDFW engineering staff.

For water diversions involving water trucks, operators should move drafting hoses with attached screens in and out of the water after each drafting operation. The screen should be brushed clean and inspected each time it is placed into the water. This practice will usually prevent screens from accumulating significant amounts of debris and essentially replicate the function of a self-cleaning screen. Where a stationary pump is used, the screen should be checked frequently to ensure it is kept clean and free of debris.

Diversion rate. Water diversion rates may cause adverse impacts to foothill yellow-legged frogs if the flow in source streams is reduced to levels insufficient to support eggs, tadpoles, and subadults. For these cases, a site-specific water diversion plan and measures such as these may minimize impacts in smaller streams:

- For small streams, maintain flow in the source stream during water diversion at a minimum rate of 2.0 cubic feet/second or greater
- If diverting from a pool, do not reduce pool volume by more than 10 percent
- Do not exceed a diversion rate of 10 percent of the surface flow from the source stream
- Do not exceed an instantaneous diversion rate of 350 gallons per minute (0.78 cubic feet/second)

Comment 4: Invasive Species, page 18

CDFW recommends that construction activities be done in a manner that prevents the introduction, transfer, and spread of aquatic, riparian, and terrestrial invasive species from one work site and/or water body to another. Prior to entering the project area, equipment should be inspected for invasive species and, if any signs of invasive species are found, the equipment should be cleaned to remove those species. All visible soil/mud, plant materials, and animal remnants on equipment should be removed prior to entering and exiting the work site and/or between each use in different water bodies. CDFW should be notified immediately if an invasive species not previously known to occur within the work site is discovered during work activities by contacting CDFW's Invasive Species Program by email at Invasives@wildlife.ca.gov. CDFW also recommends vehicle wash stations be used to control spread of invasive plant species.

Comment 5: Bat Exclusion Plan, page 17.

CDFW recommends adding measures to avoid bat impacts and proportionately enhance or create habitat impacted as a result of the project. CDFW recommends utilizing the following measures as appropriate, to reduce potentially significant impacts to bat habitat:

Qualified Bat Biologist. Retain a biologist with expertise and experience with bats and their habitat. The minimum qualifications for the biologist should include at least three (3) 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). The Qualified Bat Biologist should ensure that no Project Activities occur within 200 ft of a bat roost during the maternity (April 15 to August 31) or hibernation (October 15 to March 1) seasons.
Surveys and Monitoring. Conduct pre-project surveys or monitoring, usually over the course of spring, summer, fall, and winter (and possibly for two or more years) to determine which bat species are using the site. Multiple survey visits are necessary because different species may use a particular roost only during certain seasons (maternity, hibernation, dispersal, migration). Further, multiple visits within a season may be necessary to ensure intermittent use is observed. Due to year-to-year variation in use, multiple years of surveys may also be necessary.
Bat Avoidance Plan. The Qualified Bat Biologist should prepare a Bat Avoidance Plan for roosts identified during pre-construction surveys. The Bat Avoidance Plan should include detailed measures to avoid and minimize impacts to roosting bats in and near the construction areas. Bats should not be disturbed without an experienced biologist overseeing avoidance and minimizations measures designed to protect nesting/roosting bats. All appropriate exclusionary measures should be implemented prior to the bridge construction 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. CDFW further recommends that construction activities be implemented outside the critical hibernation and maternity seasons if feasible.

Comment 6: 2.2.4 CEQA Significance Determinations for Biological Resources – Biological Resources (b) Substantial adverse effect on any riparian habitat or other sensitive natural community, pages 50-51.
The Project may involve the removal of trees in the riparian area. Removal of mature trees is not considered a temporary impact due to the long-term temporal loss of the tree function in providing shade, habitat for species, water quality, and soil stability before a replacement tree can grow fully to the previous tree's size to provide similar function. The loss of mature trees in the riparian area should be considered as permanent impacts requiring mitigation. Mitigation should be purchased at a CDFW-approved Mitigation Bank or another mechanism approved by CDFW.

CDFW suggests that mitigation for the activities of replacing, installing, or extending culverts could be reduced because the new wildlife crossings would be bigger and allow for more species and age classes to cross under the highway and improve habitat connectivity.

To address this comment, CDFW recommends changing this determination from, "Less than Significant Impact" to "Less than Significant Impact with Mitigation."

Comment 7: Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?, Page 51 c).
As stated on page 52 of the CEQA document, the Project would have permanent impacts to jurisdictional waters of the U.S. (bed, bank, and channel habitat) from the culvert work. On pages 52 to 56, avoidance and minimization measures are described that would be necessary to achieve no-net-loss of the functions and values within the Project area. Avoidance and minimization measures are considered "mitigation" as defined by CEQA (California Code of Regulations, Title 14 ("CEQA Guidelines"), Section 15370) and the in-lieu fee program proposed on pages 55-56 is also a mitigation. In addition, habitats permanently impacted by activities subject to 1602 notification will require mitigation.

To address this comment, CDFW recommends changing this determination from, "Less than Significant Impact" to "Less than Significant Impact with Mitigation."

Comment 8: Proposed Negative Declaration
The CEQA document is declared to be an Initial Study with proposed Negative Declaration. CEQA allows for a "Mitigated Negative Declaration" in which mitigation measures are proposed to reduce potentially significant effects to less than significant (14 CCR § 15369.5). Since the Project would have impacts that would require mitigation to bring them down to less than significant, then declaring the CEQA document to be an Initial Study with a proposed Mitigated Negative Declaration would be more appropriate.

To address this comment, CDFW recommends changing the CEQA document from an "Initial Study with proposed Negative Declaration" to an "Initial Study with a proposed Mitigated Negative Declaration".

Comment 9: 2.4.8 Mitigation Measures, Page 57
The CEQA document proposes no mitigation measures for this Project. However, based on comments 2, 6, and 7, the Project will result in permanent impacts to bed, bank, channel, and riparian habitats. Permanent impacts to the bed, bank, channel, and riparian habitats will require mitigation under Fish and Game Code 1602. Through the Lake and Streambed Alteration Agreement process, CDFW may require at least a 3:1 mitigation ratio depending on Project specific factors to ensure no-net-loss of the habitat functions and values within the Project area occurs. If mitigation is proposed through use of mitigation or conservation bank credits, credit purchases should be from a CDFW-approved mitigation bank with appropriate credit types available. Applicant may also propose alternative mitigation options for CDFW review and approval as part of the LSAA notification process, as appropriate.

To address this comment, CDFW recommends replacing this section with text describing a minimum of 3:1 ratio for habitats impacted by activities subject to 1602 notification. Mitigation can include a combination of on-site restoration, purchase of mitigation credits at an appropriate agency-approved mitigation bank, or any other mechanism approved by the appropriate agency, as biologically justifiable (e.g., wildlife crossings).

Please note that when acting as a responsible agency, CEQA guidelines section 15096, subdivision (f) requires CDFW to consider the CEQA environmental document prepared by the lead agency prior to reaching a decision on the project. Addressing CDFW's comments and disclosing potential Project impacts on CESA-listed species and any river, lake, or stream, and provide adequate avoidance, minimization, mitigation, monitoring and reporting measures; will assist CDFW with the consideration of the IS/ND.

Thank you.

Harvey Tran
Environmental Scientist
California Department of Fish and Wildlife
Region 2 - North Central Region
Habitat Conservation Program
(916) 358-4035