

State of California
Department of Fish and Wildlife



Memorandum

Date: August 8, 2022

To: Arnica MacCarthy
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Governor's Office of Planning & Research

Aug 08 2022

STATE CLEARINGHOUSE

DocuSigned by:

Erin Chappell

From: Erin Chappell, Regional Manager

California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: State Route-121 Bridge Railing Upgrading Project, Notice of Completion for Draft Initial Study with Proposed Negative Declaration, SCH No. 2022070162, Sonoma County

The California Department of Fish and Wildlife (CDFW) has reviewed the Notice of Completion (NOC) for the State Route-121 (SR-121) Bridge Railing Upgrade Project (Project), Initial Study with proposed Negative Declaration (IS/ND) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹ CDFW is submitting comments on the IS/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 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 (LSA) 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

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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(CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT LOCATION AND DESCRIPTION

The Project is located at two sites along SR-121; Yellow Creek Bridge (Bridge No. 20-0021) and Arroyo Seco Bridge (Bridge No. 20-0023) at Post Mile (PM) 6.52 and 8.43 in Sonoma County, California.

Caltrans proposes to upgrade the bridge railings at Yellow Creek Bridge (approximately 44 linear feet) and at Arroyo Seco Bridge (approximately 164 linear feet on SR-121). The Project will also include widening of Yellow Creek Bridge by 6 inches on each side (for a total of 12 inches) and Arroyo Seco Bridge by 8 inches on each side (for a total of 16 inches) to accommodate the updated bridge railings. The Project will also include removing the metal beam guardrail and alternative flared terminal systems, installing Midwest Guardrail System and alternative in-line terminal systems, constructing concrete anchor blocks and installing vegetation control that includes fiber and rubber matting in areas behind the guardrails on the edge of the bridge and roadways.

REGULATORY REQUIREMENTS

Lake and Streambed Alteration Notification

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank (including associated riparian or wetland resources); 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.

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 Community Conservation Plan (NCCP), 2081.7 or a Memorandum of Understanding for scientific research, including efforts to recover fully protected, threatened or endangered

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species. "Scientific Research" does not include an action taken as part of specified mitigation for a project, as defined in § 21065 of the Public Resources Code.

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 section 21001(c), 21083, and CEQA Guidelines section 15380, 15064, 15065). 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, section 2080. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

Raptors and Other Nesting Birds

CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections protecting birds, their eggs, and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

COMMENTS AND RECOMMENDATIONS

CDFW would like to thank Caltrans for preparing the NOC for the IS/ND. CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT 1: Project Impacts and On-Site Enhancements

Issue: The IS/ND does not sufficiently disclose the direct and indirect impacts to fish and wildlife resources that may arise from the Project including proposed impacts to the bed, bank channel, and/or riparian habitat of streams. Page 3-12 of the IS/ND notes that no riparian habitat exists at Yellow Creek, though no rationale is provided on how that determination was made other than noting the area is surrounded by vineyards. Aerial imagery from Figure 1-3 of the IS/ND illustrates vegetated banks and scrub habitat

fenced off from vineyards and surrounding areas that should be categorized as riparian. Additionally, specific Project elements such as vegetation control impacts, anchor blocks and temporary access impacts to install bridge railings have not been adequately analyzed at both Project Sites.

Recommendation: The updated IS/ND should disclose all potential locations where Project work may occur and specifically describe dimensions of each proposed Project element to quantify Project impacts to fish and wildlife resources, including riparian vegetation. The IS/ND should fully analyze any riparian impacts and include details of any on-site enhancement plan proposed to minimize Project temporary impacts.

Recommendation for Project Impacts to Fish and Wildlife Resources 1 – Project Impacts: The updated IS/ND should provide detailed information for all temporary and permanent Project impacts to the bed, bank, channel and riparian habitat and any associated tributaries quantified by acres and linear feet.

Recommendation for Project Impacts to Fish and Wildlife Resources 2 – Night-Work Analysis: The updated IS/ND should identify the proposed number of nights necessary to complete work in order to adequately describe the potentially significant impacts that night work may have on surrounding fish and wildlife resources.

Recommendation for Project Impacts to Fish and Wildlife Resources 3 – Mitigation Planning: CDFW strongly recommends that the lead agency develop a mitigation plan in coordination with CDFW for any permanent Project impacts that cannot be avoided that will be subject to LSA permitting and include that plan as part of the updated IS/ND. The mitigation plan should include in detail any proposed on and/or off-site mitigation needs necessary to compensate for net-loss of river or stream resources including but not limited to hardscape materials and geo-textile fabric within the bed, bank or channel of a stream, loss of riparian vegetation and mature trees and expansion of existing infrastructure footprint(s). CDFW recommends proposed mitigation plan(s) include details such as mitigation location(s), proposed actions, monitoring, success criteria and any corrective actions.

COMMENT 2 – Bridge Runoff Capture Systems

Issue: The Project could increase impervious surfaces at the Project site that can cause concentrated run-off to Arroyo Seco and Yellow Creek. Page 3-37 of the IS/ND notes that no drainage work is anticipated. Impervious surfaces, stormwater systems, and storm drain outfalls have the potential to significantly affect fish and wildlife resources from polluted water and by altering the hydrograph of natural streamflow patterns via concentrated run-off that enters creeks and systems from the road. This Project proposes no changes to drainage systems that have the potential to introduce pollutants and additional flows directly into the channel.

Evidence the impact would be significant: Urbanization (e.g., impervious surfaces, stormwater systems, storm drain outfalls) can modify natural streamflow patterns by

increasing the magnitude and frequency of high flow events and storm flows (Hollis 1975, Konrad and Booth 2005). A review by Eisler (1987) indicates elevated incidence of tumors and hyperplastic diseases, and some circumstantial evidence about cancers, in fish in areas with high sediment Polycyclic Aromatic Hydrocarbon (PAH) levels. Arsenic, cadmium, chromium, lead, mercury, nickel, and zinc have been detected in streambed sediments and Stormwater Runoff from Bridges in the tissue of fish, indicating bioaccumulation of these metals in the environment (MacCoy and Black, 1998). Lead concentrations in benthic insects, and nickel and cadmium levels in certain fish were found to be related to traffic density and sediment levels of these constituents (Van Hassel, 1980). Acute toxicity and mortality have also been tied to immediate road runoff from a compound occurring in tires, 6PPD-Quinnone (Tian, 2021).

Recommendation 1 – Bridge Capture Runoff System: CDFW recommends the Project design be updated to include a bridge capture runoff system to prevent direct runoff of untreated water on the bridge decks from entering Arroyo Seco and Yellow Creek. The bridge runoff system should direct runoff to a land-based bio-filtration system or a mechanical filter system to avoid, minimize and treat any discharge water.

COMMENT 3: Swainson’s Hawk Protocol Surveys and Assessment

Issue: The IS/ND references conditions of approval PF-BIO-1, AMM-BIO-5, and AMM-BIO-7. The protocols outlined in those measures do not align with the protocol level surveys of the Swainson’s Hawk Technical Advisory Committee’s (TAC) *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley*. CDFW strongly recommends that the TAC survey method be strictly followed by incorporating the language below for Swainson’s hawk, a state threatened species as conditions of Project approval.

Recommendation 1 – Swainson’s Hawk Protocol Surveys and Assessments: CDFW strongly recommends that the Swainson’s Hawk Technical Advisory Committee’s (TAC) *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley* survey methods are strictly followed by starting early in the nesting season (late March to early April) in order to maximize the likelihood of detecting an active nest.

Recommendation 2 – Swainson’s Hawk Nest Buffers: In order to avoid “take” or adverse impacts to Swainson’s hawk in the event that an active nest is found during surveys, CDFW recommends avoiding all Project-related disturbance within a minimum of 0.25 miles and up to 0.5 miles of an active nest depending on site-specific conditions during the construction throughout the Swainson’s hawk nesting season. CDFW considers a nest active if it has had occupancy once in the previous five years. Please refer to the CDFW guidance document on Swainson’s hawk, which is available at <http://dfg.ca.gov/wildlife/nongame/docs/DFG-1994SWHASTaffReportMitigation.pdf>, on take avoidance, minimization and mitigation measures.

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Recommendation 3 – Swainson’s Hawk Take Prohibition: If “take” of Swainson’s hawk or any other species listed under CESA cannot be avoided either during Project activities or over the life of the Project, please be advised that a CESA permit must be obtained (pursuant to Fish and Game Code Section 2080 *et seq.*).

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 Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 339-6534 or Robert.Stanley@wildlife.ca.gov; or Wesley Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

cc: State Clearinghouse #2022070162

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