



State of California – Natural Resources Agency
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October 11, 2022

Steve Loupe, Interim RMA Director
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**Subject: Panoche Road Bridge (No. 43C0027) Replacement at Tres Pinos Creek-05-SBT-0-CR Federal Project No. BRLO-5943 (056) – Initial Study/Mitigated Negative Declaration (IS/MND) Project (Project)
SCH No.: 2022080678**

Dear Mr. Loupe:

The California Department of Fish and Wildlife (CDFW) received an IS/MND from San Benito County for the above--referenced Project pursuant to 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, CDFW appreciates 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 Fish and Game Code. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

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,

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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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 to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project will 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.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

Water Pollution: Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to streams/lakes include the following: increased sediment input from road or structure runoff; and toxic runoff associated with development activities and implementation. The Regional Water Quality Control Board and United States Army Corps of Engineers also have jurisdiction regarding discharge and pollution to "Waters of the State".

PROJECT DESCRIPTION SUMMARY

Proponent: San Benito County Resource Management Agency, Public Works Division

Objective: The San Benito County Department of Public Works proposes the demolition of the existing single-lane 87-ft long and 16-ft wide bridge (Bridge No. 43C-0027) and the construction of a 132-ft long and 35-ft wide cast-in-place (CIP) pre-stressed concrete slab bridge over Tres Pinos Creek in San Benito County.

The replacement bridge would have two equal (66 ft) long spans, two 12-ft travel lanes, and two 4-ft wide paved shoulders along each side of the travel lanes. The new bridge would be constructed just south of the existing bridge. The roadway approach from the east would be realigned to allow construction of the new bridge in one stage while maintaining traffic flow on the existing bridge during construction and would meet current American Association of State Highway and Transportation Officials (AASHTO) minimum design speed standards. The proposed Project would also include the construction of a wingwall at the southeast corner of the bridge and the placement of rock slope protection on both sides of the creek

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banks to protect the new abutments from hydraulic scour. Other proposed improvements include the modification of the east and west roadway approaches to conform to the width and location of the new bridge and to reduce the S-curve existing along Panoche Road. Additionally, a 110-ft wide by 120-ft long retaining wall would be installed against the hillside east of Tres Pinos Creek and south of Panoche Road to minimize excavation into the hillside and to protect from erosion and scour from Tres Pinos Creek. The completed Project would cover approximately 3-acres (ac).

Location: The Project site is located in an unincorporated portion of San Benito County on Panoche Road, across Tres Pinos Creek. Panoche Road runs roughly east to west, connecting State Route (SR)-25 and Interstate (I)-5 within San Benito County, California. The Project is located approximately 25 miles (mi) west of I-5 and approximately 9.5 mi east of SR-25. East of the project site, Panoche Road is degraded and hinders drivers from using the road as a preferred alternate route to I-5. (APN: 027-150-0030)

Timeframe: Construction is expected to occur between June 2025 and October 2026.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist San Benito 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 may also be included to improve the environmental document for this Project.

The Project area is within the geographic range of the Cooper's hawk (*Accipiter cooperii*) (CDFW Watch List (WL)), western burrowing owl (*Athene cunicularia*) (State species of concern (SSC)), prairie falcon (*Falco mexicanus*) (SSC), Pacific pond turtle (*Emys marmorata*) (SSC), San Joaquin whipsnake (*Masticophis flagellum ruddocki*) (SSC), coast horned lizard (*Phrynosoma blainvillii*) (SSC), California red-legged frog (*Rana draytonii*) (federally threatened (FT)), and South Central California Coast (SCCC) steelhead (*Oncorhynchus mykiss*) (FT), and the State candidate-listed as endangered crotch bumble bee (*Bombus crotchii*) (SC).

The IS/MND includes and discusses all of the species listed above, however; CDFW believes that the Foothill yellow-legged frog (FYLF) (*Rana boylei*), listed as State Endangered, West/Central Coast Clade, should be included in the species that could potentially be impacted by construction activities in the stream and surrounding habitat. This species historical range includes the entirety of San Benito County per the Historic California distribution of *Rana boylei*-Foothill yellow-legged frog map © Gary Nafis from the California Herps website (<https://californiaherps.com/frogs/maps/rboyleimap2.jpg>), and there is suitable habitat present within the Biological Study Area (BSA) per Google aerial photography and street view as well as information contained in the Natural Environment Study within the IS/MND document.

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CDFW is concerned regarding potential impacts to the FYLF due to the project's ground-disturbing development activities and provides the following species-specific recommendations.

Foothill Yellow-legged Frog (FYLF)

The FYLF is known to have historically occupied the Tres Pinos Creek area (CDFW 2022). FYLF are found in the vicinity of streams in a variety of habitats and frequent rocky streams and rivers with rocky substrate and open, sunny banks, in forests, chaparral, and woodlands. They are sometimes found in isolated pools, vegetated backwaters, and deep, shaded, spring-fed pools. (<https://californiaherps.com/frogs/pages/r.boylii.html>)

As stated above, the IS/MND does not include the FYLF or identify any mitigation measures for FYLF and therefore, the Project may result in significant impacts to the species.

While FYLF are considered primarily stream dwelling, the species has been documented as far as 40 meters (approximately 131-ft) from a stream (Borque 2008, Thomson et al. 2016). Potentially significant impacts associated with Project activities include inadvertent entrapment, destruction of eggs and oviposition sites, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Land use changes that result in degradation or destruction of riparian habitat, road development and use, urbanization, and water diversion are among proximate factors contributing to local declines of FYLF (Thomson et al. 2016, USDA 2016). FYLF have been estimated to be extirpated from 45% of historically occupied locations in California (Jennings and Hayes 1994 and Thomson et al. 2016). In the context of the Project and declining population trend within this portion of the FYLF range, the effect of Project development on local and regional populations of FYLF may be significant.

CDFW recommends editing the IS/MND to include the following measures as conditions of Project approval and conducting the following evaluation of individual project areas prior to implementation of Project activities:

1. A qualified biologist should conduct a habitat assessment of the Project area as part of the biological technical studies in support of the final CEQA document, to determine if the Project area or its vicinity contains suitable habitat for FYLF.
2. Focused visual encounter surveys should be conducted by a qualified biologist during appropriate survey period(s) (April – October) in areas where potential habitat exists. CDFW advises that these surveys generally follow the methodology described in pages 5–7 of *Considerations for Conserving the Foothill Yellow-Legged Frog* (CDFW 2018a). In addition, CDFW advises surveyors adhere to *The Declining Amphibian Task Force Fieldwork Code of Practice* (DAPTF 1998). If any life stage of the FYLF (adult, metamorph, larvae, egg mass) is found, CDFW recommends consulting with CDFW to develop avoidance measures and evaluate permitting needs.

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3. Submission of survey results to CDFW is recommended. In the event of negative findings, CDFW recommends that consultation with CDFW include documentation demonstrating FYLF are unlikely to be present in the vicinity of the project site. Information submitted may include, but is not limited to, a full habitat assessment and survey results. If any life stage of FYLF is detected, consultation with CDFW is advised to determine if an Incidental Take Permit (ITP) is necessary to comply with CESA.
4. If surveys find that FYLF are occupying the project area and cannot be avoided, CDFW may issue an ITP authorizing take of FYLF, pursuant to Fish and Game Code section 2081 subdivision (b). Take authorization is issued only when take is incidental to an otherwise lawful activity, the impacts of the take are minimized and fully mitigated, the applicant ensures there is adequate funding to implement any required measures, and take is not likely to jeopardize the continued existence of the species.

Crotch Bumble Bee (CBB)

The proposed Project location is within CBB range (CDFW 2022). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

CBB was once common throughout most of central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features prior to Project implementation to evaluate impacts resulting from potential ground- and vegetation-disturbing activities that may result from the approval of the IS/MND.

If surveys cannot be completed, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

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If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b).

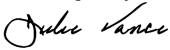
More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Federally Listed Species

CDFW also recommends consulting with the USFWS on potential impacts to Federally listed species including, but not limited to, the California red-legged frog and the South Central California Coast steelhead. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3194, or by electronic mail at Kelley.Nelson@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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cc: Regional Water Quality Control Board
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