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December 12, 2022

Governor's Office of Planning & Research

Dec 12 2022

STATE CLEARINGHOUSE

Lara Bertaina
District 5 Environmental Division
California Department of Transportation
50 Higuera St.
San Luis Obispo, California 93401

**Subject: Big Creek to Carmel Drainage Restoration
Initial Study with Proposed Mitigated Negative Declaration
State Clearinghouse No. 2022110242**

Dear Lara Bertaina:

The California Department of Fish and Wildlife (CDFW) received an Initial Study with Proposed Mitigated Negative Declaration (ISMND) from the California Department of Transportation (Caltrans) 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.

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.

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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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.

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).

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation (Caltrans)

Objective: The California Department of Transportation (Caltrans) proposes to rehabilitate nine existing drainage systems at eight locations on State Route 1 in Monterey County. Existing drainage systems at the proposed locations have exceeded their design life and have deteriorated or failed. The project work includes replacing or rehabilitating existing culverts and replacing or upgrading end treatments and headwalls as needed.

Location: The proposed Project is located eight locations on State Route 1 in Monterey County, between post mile 27.7 near Big Creek to post mile 70.87 within the City of Carmel-by-the-Sea (post miles 27.76, 29.63, 30.10, 30.86, 31.73, 33.87, 54.46, and 70.87). The Project is in the following portions of the Mount Diablo Base and Meridian: San Jose Y Sur Chiquito; El Sur; Section 4 of Township 21 South and Range 3 East; Section 10 of Township 21 South and Range 3 East; Section 22 of Township 21 South and Range 3 East; and Section 36 of Township 21 South and Range 3 East.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Caltrans 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 document.

Special-status species may be present at the Project site or in the Project area that were not addressed in the ISMND. These resources may need to be evaluated and

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addressed prior to any approvals that would allow ground-disturbing activities or land use changes. CDFW is concerned regarding potential impacts to nesting birds and special-status species including, but not limited to the state Candidate endangered Crotch bumblebee (*Bombus crotchii*), overwintering habitat for the Federal candidate monarch (*Danaus plexippus plexippus*), the State species of special concern Northern California legless lizard (*Anniella pulchra*), and the sensitive natural community seaside woolly herbaceous alliance.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Nesting Birds

Issue: Suitable habitat for nesting birds is present in the Project area at each of the culvert locations, but the ISMND did not describe potential impacts to nesting birds or provide avoidance and minimization measures. A variety of bird species may nest in vegetation to be cleared for the project or on the ground. Regulatory protections for nesting birds are listed above.

Specific impacts: Without appropriate avoidance and minimization measures for nesting birds, potential significant impacts that may result from Project activities include inadvertent nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Construction activities that kill nesting birds, including eggs or young would be a violation of Fish and Game Code and potentially the Migratory Bird Treaty Act, depending on species.

Evidence impact is potentially significant: Wild bird populations in the continental U.S. and Canada have declined by almost 30% since 1970 (Rosenberg et al. 2019). Population loss is not restricted to rare and threatened species but includes many widespread and common species that may be disproportionately influential components of food webs and ecosystem function. Project activities have the potential to significantly impact local bird populations.

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for nesting birds: CDFW recommends that initial clearing and grading for this Project occur during the bird non-nesting season (CDFW recommends February 1 to September 30, for this area). However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season, the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of relevant Fish and Game Codes or the Migratory Bird Treaty Act, as referenced above.

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CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

COMMENT 2: Crotch Bumblebee (CBB)

Issue: CBB have been documented to occur within the Project vicinity (CDFW 2022a). The ISMND did not describe this species. Suitable CBB habitat includes grasslands, opening in woodlands, 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). CDFW recommends that the MND include an impact analysis on CBB.

Specific impact: Based on the information provided in the MND, potential ground disturbance and vegetation removal associated with Project implementation has the potential to significantly impact local CBB populations, if present. Presence could vary from year to year, so CDFW recommends that presence be assumed in suitable habitat areas. CBB nest in underground burrows and in thatch and unless

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these potential nest sites are avoided, Project-related ground disturbance could result in take of the species.

Evidence impact is potentially significant: CBB was once common throughout most of the 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). CBB research suggests there have been sharp declines in relative abundance of 98% and persistence by 80% over the last ten years (Xerces Society et al. 2018). CBB could potentially occupy suitable habitat areas within or adjacent to the Project area and Project-related ground disturbance in these areas could result in significant effects to the species.

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for CBB: CDFW recommends that a qualified biologist conduct focused surveys for CBB and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance associated with Project ground-disturbing activities. 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 March), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. If CBB is observed in the Project area, 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).

COMMENT 3: Monarch Overwintering Habitat

Issue: Monarchs can be found overwintering along the California coast, specifically in non-native eucalyptus trees (Jepsen et al. 2017). Overwintering monarchs have been documented to occur near the Project area (CDFW 2022a). The ISMND identified the presence of Eucalyptus Woodlands at several Project locations. Project-related activities have the potential to impact this special-status species. CDFW recommends that the MND includes an impact analysis on monarchs with the potential to occur in the Project area.

Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's construction include roost destruction, inadvertent entrapment, reduced reproductive success, and direct mortality of individual monarchs.

Evidence impact is potentially significant: Monarch populations have declined by more than 99% since the 1980s and loss and degradation of overwintering groves are one of the main stressors (USFWS 2021). Protecting Central Coast areas where monarchs overwinter is a top priority for recovering western monarchs

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(Xerces Society 2021). Project activities have the potential to significantly impact the species by reducing possible overwintering habitat.

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for WESP: CDFW recommends that a qualified biologist conduct a habitat assessment to determine if suitable is present to support monarchs. The qualified biologist should assess habitat following the Xerces Management Guidelines for Monarch Butterfly Overwintering Habitat (Jepsen et al. 2017). If suitable habitat is present, CDFW recommends assessing presence of monarchs by conducting surveys following recommended protocols or protocol-equivalent surveys, such as the Western Monarch Count Protocol by the Xerces Society (2022). CDFW recommends avoiding disturbance to confirmed overwintering habitat by a buffer of at least 500 feet during the overwintering period (September 15 – March 15).

COMMENT 5: Northern California legless lizard (LELI)

Issue: Project-related activities have the potential to impact Northern California legless lizard, which has been documented in the Project vicinity (CDFW 2022a). The ISMND identified potentially suitable habitat in the Project area. Project-related activities have the potential to impact this special-status species. CDFW recommends that the MND includes an impact analysis on monarchs with the potential to occur in the Project area.

Specific impact: Without appropriate avoidance and minimization measures for the species mentioned above, potential significant impacts associated with the Project's construction include inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individual LELI.

Evidence impact would be significant: Habitat loss resulting from development is among the primary threats to special-status species. As a result, ground disturbance resulting from development of the Project has the potential to impact habitat that supports the LELI, which may result in significant impacts to local populations of these species.

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for LELI: CDFW recommends that a qualified biologist conduct a habitat assessment to determine if individual project areas or their immediate vicinity contain habitat suitable to support LELI. If suitable habitat is present, CDFW recommends that a qualified biologist conduct pre-construction surveys to search for LELI, and capture any individuals found within the construction limits and relocate them at least 50 feet away from the construction zone.

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Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

Comment 6: Seaside Woolly Herbaceous Alliance

Issue: The ISMND identified the presence of the seaside woolly-sunflower – seaside daisy – buckwheat patches vegetation alliance but did not recognize that it is a sensitive natural community (state rank S3, CDFW 2022b). CDFW provides guidance on evaluating sensitive natural communities in environmental reviews (<https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Background#sensitive%20natural%20communities>).

Specific impact: The ISMND identified permanent and temporary impacts to this plant community, both of which are due to clearing and grading the vegetation in this community for Project activities. Indirect impacts also include an increase in invasive species within and adjacent to Project impact areas.

Evidence impact would be significant: This alliance occupies a narrow band along the immediate coast of California, on rocky or sandy soils of California coastal strand along the North Coast and Central Coast. The biggest threat to dune and coastal habitats across California is the increase in non-native species (CNPS 2022). Although project impacts will be isolated and small, increases in non-native and invasive species could further degrade larger areas of this vegetation alliance.

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for seaside woolly herbaceous alliance: Bio-5 through Bio-8, Bio-16, and Bio 17 in the ISMND already includes measures to minimize introduction of invasive species and restore natural communities. CDFW recommends the following additional measures to mitigate for temporary and impacts to the seaside woolly herbaceous community and other native vegetation communities impacted by the Project: (1) offset permanent loss of seaside woolly herbaceous community by restoring areas dominated by invasive species with species from this community, as appropriate to the adjacent habitats; (2) develop planting pallets that include both early and later successional species of the impacted communities, with an emphasis on early successional species to compete with invasive species; (3) utilize local native plant materials, sourced from Santa Cruz, Monterey, or San Luis Obispo counties; (4) develop a mitigation and monitoring plan to ensure success at native vegetation growth and invasive species control in restored areas and the buffer around restored areas; and (5) maintain restoration and buffer areas for at least 3 years after construction to control invasive species and replant natives, as necessary.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database 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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

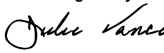
FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 fee is required 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).

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating the Project's impacts on biological resources.

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>). If you have any questions, please contact Mindy Trask, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 939-0282, or by electronic mail at mary.trask@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

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