

Feb 01 2024

STATE CLEARINGHOUSE

Haggerty, Nicole@Wildlife

From: Xiong, Mary@Wildlife
Sent: Thursday, February 1, 2024 12:29 PM
To: Robinson, Tracy@DOT
Cc: Stanfield, Melissa@Wildlife; Wildlife R2 CEQA; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: 03-0J480 South Tahoe CAPM Project - CDFW Comments on ND

Dear Tracy Robinson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to adopt a Negative Declaration (ND) from the California Department of Transportation (Caltrans) for the 03-0J480 South Tahoe CAPM Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the 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.

CDFW may also act 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. 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project proposes preventative maintenance along U.S. Highway 50 (US-50) in South Lake Tahoe, El Dorado County, from Trout Creek Bridge at Post Mile (PM) 77.30 to the Nevada Stateline at PM 80.44. The proposed Project would replace existing pavement from Trout Creek Bridge to the Nevada Stateline by cold planing; rehabilitate drainage systems by replacing and relining culverts; add and replace Transportation Management System (TMS) elements; replace roadside signs and modify a traffic signal; upgrade and replace curb ramps and sidewalks; and extend existing fiber optics.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

Comment 1: *Chapter 1.4 Standard Measures and Best Management Practices Included in All Alternatives, Page 8*

Section 15370 of the CEQA Guidelines defines mitigation as:

- a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
- d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

Issue: This section of the ND states the standard measures and best management practices for biological resources and water quality, among other environmental factors, included in this document are not considered mitigation measures because they are prescriptive and sufficiently standardized to be generally applicable. However, the measures are also referred to as avoidance and minimization measures in the second paragraph of this section. The ND also states these general measures resulted from laws, permits, agreements, guidelines, and resource management plans that predate the Project's proposal. General measures in documents like these, including, but not limited to Lake and Streambed Alteration (LSA) Agreements and California Endangered Species Act (CESA) Incidental Take Permits (ITP), are typically required to avoid, minimize, and/or mitigate impacts caused by projects that could significantly affect the environment.

Recommendation: CDFW believes that these measures should be considered mitigation under CEQA when the ND analyzes the effects of the Project with these measures in place. CDFW also recommends this document be identified as a "Mitigated Negative Declaration" considering the incorporation of measures that serve to avoid, minimize, and reduce/eliminate the effects of the Project to a point where no significant effect on the environment would occur. Subsequently, the Initial Study/Negative Declaration checklist should be updated to reflect which environmental factors would have impacts determined to be less than significant with mitigation incorporated.

Comment 2: *Chapter 2.4 Biological Resource, Page 57, Plant Species section*

Issue: The Plant section states that there will be no impact to special status plant species. Tahoe yellow cress (*Rorippa subumbellata*) is listed as an endangered plant species under CESA, and there are multiple CNDDDB occurrences of the species along the shoreline of Lake Tahoe. Based on the Project maps provided in the ND, culvert work on the outfall side and shoreline of Lake Tahoe is proposed.

Recommendation: CDFW recommends that a plant survey during the appropriate blooming period be conducted for Tahoe yellow cress prior to the start of any staging or construction activities. Protocol-level surveys shall be conducted in compliance with CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (2018).

If it is determined that the proposed Project may result in “take,” as defined in the Fish & G. Code, section 86, of a State-listed species designated as candidate, threatened, or endangered, a CESA ITP may be obtained to provide coverage in the event that take occurs.

To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated, and adequate funding has been ensured to implement the mitigation measures (Fish & G. Code, § 2081 subd. (b)). CDFW may only issue a CESA permit if CDFW determines that issuance of the permit does not jeopardize the continued existence of the species. To facilitate the issuance of an ITP, if applicable, the ND should include measures to minimize and fully mitigate the impacts to State-listed species. Please note that mitigation measures that are adequate to reduce impacts to a “less-than significant” level per CEQA requirements may not be enough to minimize and fully mitigate impacts to the extent required for the issue of an ITP. Therefore, CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes.

Comment 3: *Chapter 2.4 Biological Resource, Page 39, Animal Species section*

Issue: This section states that there will be no impact to animal species, however Biological Resource standard measure, BR-2 E, BR-2 F, and BR-2 H on Pages 10-11 are listed as measures relevant to the protection of natural resources deemed applicable to the proposed Project. Measure BR-2 E requires hydroacoustic monitoring during activities such as impact pile driving, hoe hammering, or jackhammering that could potentially produce impulsive sound waves that may affect listed fish species; Measure BR-2 F requires a qualified biologist to monitor in-stream construction activities that could potentially impact sensitive biological receptors (e.g., amphibians, fish) and other in-water work such as installation and removal of dewatering or diversion systems; and Measure BR-2 H consists of an in-water work period to protect water quality and vulnerable life stages of sensitive fish species.

Recommendation: Consequently, CDFW recommends that the “No Impact” determination be changed to a “Less Than Significant Impact with Mitigation Incorporated” determination to properly reflect the level of impacts and discuss how it will be reduced and minimized to less than significant.

Comment 4: *Chapter 2.10 Hydrology and Water Quality c), Lake and Streambed Alteration, Pages 77-78*

Issue: This section has a “No Impact” determination on the question c) “Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces...” however cofferdams, water diversions, and dewatering are mentioned in the document and BR-2 F.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

- substantially divert or obstruct the natural flow of any river, stream or lake;
- substantially change or use any material from the bed, channel or bank of any river, stream, or lake;
- or deposit debris, waste or other materials that could pass into any river, stream, or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, an LSA Agreement will be issued which will include reasonable measures necessary to protect the resource. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources.

Recommendations: CDFW recommends that the “No Impact” determination be changed to “Less Than Significant Impact” due to the potential installation and removal of water diversion systems and dewatering and discuss how the impacts to the drainage pattern of the site and alteration of the course of the streams will be reduced and minimized to less than significant.

CDFW recommends the lead agency provide more description of the construction activities in relation to the watercourses in the ND, more detailed maps, permanent and temporary impact quantities, and review the requirements under Section 1602 of the Fish and Game Code to determine if Notification is warranted. For more information on CDFW’s LSA program including the online permitting portal, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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 the 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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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 in order 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.)

CONCLUSION

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to r2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the ND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Mary Xiong, Senior Environmental Scientist (Specialist), at (916) 212-3876 or mary.xiong@wildlife.ca.gov.

Thank you,

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