



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

March 28, 2024

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STATE CLEARINGHOUSE

David Moore, Acting Branch Chief
Caltrans District 4, Office of Environmental Analysis
Post Office Box 23660, MS-8B
Oakland CA 94623-0660
David.J.Moore@dot.ca.gov

Subject: U.S. Highway 101 Corte Madera Creek Bridge Rehabilitation Project, Initial Study/Proposed Negative Declaration; SCH No. 2024020937, Marin County

Dear David Moore:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Proposed Negative Declaration (IS/ND) from the California Department of Transportation, District 4 (Caltrans) for the U.S. Highway 101 Corte Madera Creek Bridge Rehabilitation 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, plants, and their habitats. 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.

CDFW ROLE

CDFW is a **Trustee Agency** pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a **Responsible Agency** under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any species listed under CESA cannot be avoided either during

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 et seq.). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

CESA-listed species identified that may occur within the Project area include:

- California Ridgway's rail (CRRA) (*Rallus obsoletus obsoletus*), State Endangered (SE) and Fully Protected (FP);
- California black rail (BLRA) (*Laterallus jamaicensis coturniculus*), State Threatened (ST) and FP
- San Pablo song sparrow (SPSS) (*Melospiza melodia samuelis*), State Species of Special Concern (SSC)
- Salt marsh harvest mouse (SMHM) (*Reithrodontomys raviventris*), SE and FP
- Point Reyes salty bird's-beak (PRSB) (*Chloropyron maritimum ssp. palustre*) California rare plant, ranked as 1B.2 (a plant that is rare, threatened, or endangered in California and elsewhere)
- Longfin smelt (LFS) (*Spirinchus thaleichthys*), ST
- Central Valley spring-run chinook salmon (CVCH) (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), ST
- Sacramento River winter-run chinook salmon (SRCH) (*Oncorhynchus tshawytscha*) ESU, SE

Additionally, Corte Madera Creek qualifies as designated essential fish habitat (EFH) for CVCH.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required 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

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river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Migratory Birds and Raptors

CDFW also 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 section 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), section 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and section 3513 (regarding unlawful take of any migratory nongame bird). Fully-protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation

Objective: The objective of the Project is to extend the Bridge's service life by rehabilitating the Bridge deck and protecting the rectangular columns in the tidal zone. The Project is needed because the Caltrans *Bridge Inspection Report* identified the Bridge deck to be in poor condition and noted the need for corrosion protection on the rectangular columns in the tidal zone, which if not addressed would affect the structural integrity of the Bridge.

Primary Project activities include:

- Rehabilitation of the Corte Madera Creek Bridge deck and onramps;
- Replacement of joint seal at Abutment D-16, drilling of vent holes in the Span 7 soffit; and
- Protection of the rectangular bridge columns at D7 through D-15 using a galvanic anode jacket system.

Location: Highway 101 (U.S. 101) Corte Madera Creek Bridge on-ramps from Sir Francis Drake Boulevard onto the southbound lane of U.S. 101 at Corte Madera Creek Bridge (Bridge No. 27-008K) at Post Mile (PM) 8.47 in the City of Larkspur, Marin County, and Global Positioning System (GPS) coordinates 37.943715°N 122.516512°W.

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Timeframe: April 2026-February 2027

COMMENTS AND RECOMMENDATIONS

CDFW acting as both a Trustee and Responsible Agency offers the following 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.

Fish and Wildlife Resources

CDFW recommends that a full list or table is included in the updated Biological Resources Section of the IS/ND that notes species common name, scientific name, state and federal listing status (as applicable), habitat type preference and determination on presence, for all special-status species with the potential to occur within the Biological Study Area (BSA). CDFW also recommends the following updates to the Biological Resources Section of the IS/ND:

California Ridgway's rail and California black rail

The IS/ND states there will be no impact to CRRA and BLRA based on minimal occurrences on or near the BSA. However, throughout Corte Madera Marsh and Corte Madera Creek, as well as adjacent accreted marsh located directly across U.S. 101 from the proposed Project contain one of the highest concentrated populations of CRRA in the San Francisco Bay Area. Despite the five California Natural Diversity Database (CNDDDB) occurrences documented in the IS/ND, the Corte Madera Marsh and Creek are known for CRRA and even visually observed by CDFW staff recently in 2024. Although not as prevalent as CRRA, BLRA have been documented in these locations near the BSA in recent years. Considering dispersal, potential marginal habitat present in the BSA, and the additional pressure of climate change (and sea level rise), Caltrans should not preclude impact to CRRA and BLRA determinations even with mitigation measures in place.

CDFW recommends Caltrans conduct rail surveys following the *2017 Site-Specific Protocol for Monitoring Marsh Birds* (<https://ecos.fws.gov/ServCat/Reference/Profile/68062>). The 2017 protocol was designed specifically for maximizing detection of CRRA and will also cover surveying for BLRA.

CDFW recommends updating or inclusion of the following avoidance and minimization measures in the Biological Resources Section of the IS/ND to reduce impacts below a level of significance:

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- If Project activities are within 200 feet of BLRA/CRRA habitat during the nesting season (February 1 to August 31), then pre-construction call back rail surveys shall be required prior to initiation of Project activities;
- If BLRA/CRRA are detected through surveys, then Project activities will not occur within 100 feet of an identified detection location. If the activity occurs where the Project site is across a major channel or slough from the Project site greater than 100 feet in distance the activity may continue. If bird activity is surveyed or discovered within the buffer limits immediate consultation with CDFW is required;
- If a CRRA or BLRA is observed within the Project area at any time work shall be stopped immediately by a qualified biologist and the rail species will be allowed to leave the area on its own. If the rail species does not leave the area then no work shall commence until CDFW has made a determination on how to proceed with work activities; and
- Daily monitoring surveys of Project sites shall occur for CRRA and BLRA until the Project is complete. If an injured or dead CRRA or BLRA is discovered at the Project sites, consultation with CDFW is required immediately.

State Listed Fish Species

The IS/ND states less-than-significant impact are to occur to multiple state listed fish species, mainly based on the use of temporary cofferdams. However, any in-water work has the potential to cause take of state listed fish species. Corte Madera Creek and the adjacent wetland system to which this Project location has a direct connection, has known occurrences of LFS, CVCH and SRCH. Under CESA, take is defined as “to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill.”

CDFW recommends that Caltrans obtain a CESA ITP for any Project related activity falling under the definition of take, regardless of the probability of a high density or low density of the species being present on-site before Project activities commence.

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (See Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/ND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Karen Taylor, Senior Environmental Scientist (Specialist), at (707) 287-2144 or Karen.Taylor@wildlife.ca.gov; or Jason Faridi, Senior Environmental Scientist (Supervisory) at Jason.Faridi@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell

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Erin Chappell
Regional Manager
Bay Delta Region

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024020937)
Craig Weightman, CDFW Bay Delta Region – Craig.Weightman@wildlife.ca.gov