

Memorandum

Date: March 6, 2020

Governor's Office of Planning & Research

To: Ms. Elizabeth Nagle
California Department of Transportation
District 4
111 Grand Avenue
Oakland, CA 94612

MAR 06 2020

STATE CLEARINGHOUSE

From: 
Mr. Gregg Erickson, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Sonoma 1 Culvert Rehabilitation Project – North, Initial Study/Negative Declaration,
SCH #2020020415, Sonoma County

The California Department of Fish and Wildlife (CDFW) received a Notice of Completion of an Initial Study/Negative Declaration (IS/ND) from the California Department of Transportation (Caltrans) for the Sonoma 1 Culvert Rehabilitation Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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, 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 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

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

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>.

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 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 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). 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, District 4

Objective: The Project proposes to replace 27 existing or failed culverts at various locations along State Route (SR) 1 in Sonoma County from post mile (PM) 41.2 to 54.6 that were determined to have deficiencies and require replacement to prevent further damage and possible failure of SR-1.

Location: The Project is located along SR-1 in Sonoma County in the State of California from PM 41.2 to 54.6 from 0.2 miles north of Miller Creek in Salt Point State Park to 0.1 miles north of Vantage Road within the community of Sea Ranch.

Environmental Setting: The 8.78-acre Biological Study Area (BSA) contains portions of the highway prism, developed bare ground, potential waters of the U.S., and the following vegetation types: *Baccharis pilularis* alliance, native and non-native perennial coastal grasslands, western North American freshwater marsh macro-group, *Pinus muricata* alliance, Eucalyptus semi-natural alliance, *Sequoia sempervirens* alliance, Vancouverian coastal riparian scrub, Vancouverian riparian deciduous forest, southwestern North American riparian wash scrub, *Hesperocyparis macrocarpa* semi-natural alliance, and non-native shrubs.

Seventy-three (73) native and non-native tree species are within the BSA, forty-one (41) of which are proposed for trimming or removal. Special-status species with the potential to occur in or near the Project area include: northern spotted owl (*Strix occidentalis caurina*), State

Endangered; marbled murrelet (*Brachyramphus marmoratus*), State Threatened; Sonoma tree vole (*Arborimys pomo*), Species of Special Concern (SSC); foothill yellow-legged frog (FYLF) – northwest/north coast clade (*Rana boylei*), SSC; California giant salamander (*Dicamptodon ensatus*), SSC; western pond turtle (*Actinemys marmorata*), SSC; nesting birds and roosting bats. Suitable habitat for special-status plant species such as coastal bluff morning-glory (*Calystegia purpurata* ssp. *saxicola*), swamp harebell (*Campanula californica*), supple daisy (*Erigeron supplex*), short-leaved evax (*Hesperis matronalis* var. *brevifolia*), coast lily (*Lilium maritimum*), Point Reyes checkerbloom (*Sidalcea calycosa* ssp. *rhizomata*), and fringed false-hellebore (*Veratrum fimbriatum*) were determined to be present in the BSA.

COMMENTS AND RECOMMENDATIONS

CDFW 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.

Project Impacts

The Biological Resources section of the IS/ND does not adequately describe the individual impacts occurring at each Project location and the cumulative impacts of the Project as a whole. The IS/ND does provide information on impacts to certain habitat types and individual species habitat types such as California red-legged frog (CRLF) and northern spotted owl (NSO) but does not provide a site-specific reference as to which Project locations contain this habitat. CDFW recommends that a table of the overall impacts is provided in the updated environmental document broken down by temporary and permanent impacts to specific habitat types. CDFW also recommends that Table 2-2 on page 2-9 is used as a template for a site-specific impacts table that denotes potential habitat type impacts for specific habitat types down into temporary and permanent impacts per culvert location. Maps such as the ones provided after page 2-11 of the IS/ND may also be a useful tool to describe the site-specific impacts to habitat types at each culvert location.

Tree Removal

Page 3-22 of the IS/ND describes the potential number of trees contained within the BSA at 71 trees and notes that 41 of those trees have the potential to be trimmed or removed as a result of the Project. Page 3-22 and AMM-BIO-14 note that the 71 trees were determined as individuals larger than 4 inches diameter at breast height (DBH), there is no CDFW requirement to determine a tree as a tree based on DBH. Therefore, it is recommended that AMM-BIO-14 removes the reference to 4 inches DBH or greater and that an updated survey is conducted to determine what trees exist throughout the Project locations that were not initially included in the IS/ND because they were less than 4 inches DBH. In addition, the IS/ND did not provide a tree inventory that notes tree species type, DBH and tree health status. CDFW recommends the updated IS/ND includes an updated tree inventory. Maps such as the ones provided after page 2-11 of the IS/ND may also be a useful tool to describe the site-specific tree removal or trimming impacts.

Rock Slope Protection (RSP) and Filter Fabric

Page 2-5 of the IS/ND and Figure 2-3 on page 45 of the .PDF file for "Typical Rock Slope Protection Cross Section" illustrates the use of filter fabric (Class 8 – RSP Fabric) under fields of RSP. CDFW recommends that filter fabric is not employed as method of erosion control as it has the potential to prevent larger woody vegetation and trees from taking root in riparian and upland areas and has the potential to prevent wildlife from creating burrows in and around the field of RSP. In addition, CDFW considers the placement of filter-fabric, geo-textile and RSP as

a permanent impact and if these types of materials were not initially determined as permanent. The updated IS/ND should note those changes in the impacts section described previously in this memorandum.

CDFW recommends updating the Mitigation Measure AMM-BIO-3 to incorporate the following language into the existing measure to reduce potential impacts to less-than-significant for sensitive habitats such as riparian habitat:

Mitigation Measure AMM-BIO-3: Proper Use of Erosion Control Devices. Plastic monofilament netting (i.e., erosion control matting), rock slope protection filter fabric, geotextile or similar material will not be used. Acceptable substitutes would include coconut coir matting or tackifying hydroseeding compounds.

Northern Spotted Owl

The Biological Resources section of the IS/ND identifies NSO as a potential sensitive species and states that suitable NSO habitat is present within the Project area on page 3-16. NSO is a threatened species pursuant to CESA and the federal Endangered Species Act (ESA). The Project proposes to remove potential NSO habitat and cause noise related construction activities at the Project site that could potentially disturb NSO during nesting season and interrupt breeding or lead to nest failure. Population levels and vital rates for NSO continue to decline², so any reduction in successful nesting is a potentially significant impact.

CDFW recommends updating the Mitigation Measure AMM-BIO-7 to incorporate the following language into the existing measure to reduce potential impacts to NSO to less-than-significant:

Mitigation Measure AMM-BIO-7: Occupied Northern Spotted Owl Habitat. If Project activities will occur during the NSO nesting season (February 1 to July 31), then a CDFW-approved Qualified Biologist shall conduct surveys for NSO following the U.S. Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (Revised) January 9, 2012³. Surveys shall be conducted in accordance with section 9 of the survey protocol, *Surveys for Disturbance-Only Projects*. If NSO are detected during surveys, Project activities within 0.25 miles of a nest site shall be avoided until the end of the breeding season or until a Qualified Biologist determines the nest is no longer active. A Qualified Biologist should be familiar with NSO ecology, have proven success identifying NSO aurally and visually, and have at least two seasons of experience surveying for NSO using the USFWS protocol.

If Project-generated sound will not exceed ambient nest conditions by over 20 decibels and total combined sound (ambient and Project-generated) during Project activities does not exceed 90 decibels, then noise impacts would likely be less-than-significant and surveys may not be necessary (USFWS 2006⁴). Pre-Project sound conditions should be accurately

² California Department of Fish and Wildlife. 2016. Report to the Fish and Game Commission: A Status Review of the Northern Spotted Owl (*Strix occidentalis caurina*) in California.
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=116307&inline>

³ United States Fish and Wildlife Service's (USFWS) *Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls*, dated (Revised) January 9, 2012
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83977&inline>

⁴ United States Fish and Wildlife Service. 2006. Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California.

measured and documented to justify a no-survey outcome and the method of sound monitoring to determine if levels exceed 90 decibels should be adequately described to allow CDFW to comment on the methods.

If take of any species listed under CESA cannot be avoided either during 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.*).

Marbled Murrelet

The Biological Resources section of the IS/ND identifies marbled murrelet as a potential sensitive species and states that suitable habitat is present within the Project area on page 3-18. Marbled murrelet is an endangered species pursuant to CESA and listed as threatened under ESA. The Project proposes to remove potential marbled murrelet habitat and cause noise related construction activities at the Project site that could potentially disturb marbled murrelet during nesting season and interrupt breeding or lead to nest failure. Population levels and suitable habitat for marbled murrelet continue to decline⁵, so any reduction in successful nesting or suitable habitat is a potentially significant impact.

CDFW recommends updating the Mitigation Measure AMM-BIO-9 to incorporate the following language into the existing measure to reduce potential impacts to NSO to less-than-significant:

AMM-BIO-9 – Occupied Marbled Murrelet Habitat. If take of any species listed under CESA cannot be avoided either during 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.*).

Special-Status Plants

The IS/ND identifies suitable habitat for special-status plants that have the potential to occur in the vicinity of the Project area on page 3-14 of the Biological Resources section but notes that no findings of special-status plants have occurred. Page 3-14 also notes that protocol level surveys were not conducted. CDFW recommends that acceptable botanical surveys must be systematic, floristic surveys, and should occur multiple times within the blooming period of potential special-status plants on-site. Based on the IS/ND, it is difficult to conclude that special-status plants are absent. Potentially significant impacts to special-status plants, such as crushing and burying, are more likely to occur without sufficient survey information.

CDFW recommends updating the Mitigation Measure AMM-BIO-1 to reduce potential impacts to special-status plants to less-than-significant:

Mitigation Measure AMM-BIO-1: Special-Status Plant Surveys. A Qualified Biologist shall conduct a survey during the appropriate blooming period for all special-status plants that have the potential to occur on the Project site the season prior to the start of construction. Surveys should be conducted following *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by

<https://www.fws.gov/arcata/es/birds/MM/documents/MAMU-NSO%20Harassment%20Guidance%20NW%20CA%202006Jul31.pdf>

⁵ The Cooper Ornithological Society, 2012. Recent Population Decline of the Marbled Murrelet in the Pacific Northwest. Sherri L. Miller et. al.

https://www.biologicaldiversity.org/species/birds/marbled_murrelet/pdfs/Miller_et_al_2012_murrelet_decline.pdf

CDFW, dated March 20, 2018⁶. If special-status plants are found during surveys, the IS/MND should outline how the Project would be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, the IS/ND should outline adequate compensatory mitigation.

A Qualified Biologist in this context should be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols.

If take of any species listed under CESA cannot be avoided either during 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.*).

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 California Natural Diversity Database (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 emailed to CNDDDB at the following email address: cnddb@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

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 and Game 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 Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or Robert.Stanley@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager at Craig.Weightman@wildlife.ca.gov.

cc: State Clearinghouse (SCH #2020020415)

⁶ <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>