

Notice of Determination

To:
[X] Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:
1400 Tenth Street
Sacramento, CA 95814

From:
California Department of Fish and Wildlife (CDFW)
Inland Deserts Region
3602 Inland Empire Blvd, Suite C-220
Ontario, CA 91764
Contact: Brandy Wood
Phone: 909-483-6319

Lead Agency (if different than CDFW)
San Bernardino County Transportation Authority
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410
Contact: Andres Ramirez
Phone: 909-884-8276 (Ext) 150

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108
State Clearinghouse Number: 2012041012

Project Title: Redlands Passenger Rail Project (California Endangered Species Act Incidental Take Permit No. 2081-2016-040-06 (ITP))

Project Location (include county): The Redlands Passenger Rail Project (Project) in the Cities of San Bernardino and Redlands, San Bernardino County.

Project Description: The Project proposes the operation of passenger rail service between E Street in the City of San Bernardino and the University of Redlands, in the City of Redlands. The Project will comprise the construction or improvements of railroad tracks, structural crossings and bridges, rail platforms, public utilities, and drainages. After construction is complete, the Project will also include routine maintenance. For this ITP, the focus is on the portion of the Project that contains Covered Species and/or their habitat at the Santa Ana River Bridge crossing and Gage Canal along Mission/Zanja Channel to the confluence of the Santa Ana River.

The Project will result in permanent impacts to 1.20 acres of least Bell's vireo (Vireo bellii pusillus) habitat; the Project will permanently remove 0.10 acres of Santa Ana River woolly star (Eriastrum densifolium sanctorum) habitat. The project is expected to result in incidental take of least Bell's vireo and Santa Ana River woolly star which are designated as endangered species under the California Endangered Species Act. The ITP referenced above as issued by CDFW authorizes incidental take of species listed under CESA that may occur as a result of Project implementation.

This is to advise that CDFW, acting as [] the lead agency / [X] a responsible agency] approved the above-described project on 4/10/2019 and made the following determinations regarding the above described project:

- 1. The project [] will / [X] will not] have a significant effect on the environment (This determination is limited to effects within CDFW's permitting jurisdiction as a responsible agency).
2. [X] An environmental impact report / [] A negative declaration] was prepared by the lead agency for the original project.
3. Additional mitigation measures [X] were / [] were not] made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan [X] was / [] was not] adopted by CDFW for this project.
5. A Statement of Overriding Considerations [] was / [X] was not] adopted by CDFW for this project.
6. Findings [X] were / [] were not] made by CDFW pursuant to Public Resources Code § 21081(a).
7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
[] Payment is submitted with this notice.
[X] A copy of a receipt showing prior payment was submitted to CDFW.

[X] Responsible Agency statement: The EIR prepared by the lead agency for the Project is available to the general public at the office location listed above for the lead agency. CDFW's administrative record of proceedings related to the incidental take permit is available to the public for review at CDFW's regional office.

Signature [Handwritten Signature] Governor's Office of Planning & Research Date: 4/10/2019
FOR Leslie MacNair, Regional Manager

APR 17 2019

Date Received for filing at OPR: STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2016-040-06**

**San Bernardino County Transportation Authority
Redlands Passenger Rail**

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Redlands Passenger Rail (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize San Bernardino County Transportation Authority (Permittee) to incidentally take Santa Ana River woollystar (*Eriastrum densifolium sanctorum*), and least Bell's vireo (*Vireo bellii pusillus*), (hereafter, collectively referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The Santa Ana River woollystar and least Bell's vireo are designated as endangered species under CESA. The least Bell's vireo is designated as endangered species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. [(a)(5)(I)]. Santa Ana River woollystar is designated as an endangered species under CESA. (Cal. Code Regs., tit. 14, § 670.2, subd. (a)(25)(A)).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency San Bernardino Transportation Authority (SBCTA). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) SBCTA analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report, Redlands Passenger Rail Project Environmental Impact Report (EIR) (SCH No. 2012041012) and approved the Project on February 17, 2015. In so doing, SBCTA imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

As approved by SBCTA, the Project involves the operation of passenger rail service between E Street in the City of San Bernardino and the University of Redlands, in the City of Redlands. The Project will comprise the construction or improvements of railroad tracks, structural crossings and bridges, rail platforms, public utilities, and drainages. After construction is complete, the Project will also include routine maintenance. The portion of the Project that contains Covered Species and/or their habitat is at the Santa Ana River Bridge crossing and Gage Canal along Mission/Zanja Channel to the confluence of the Santa Ana River. The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site will result in the permanent loss of 1.20 acres of least Bell's vireo habitat and the permanent loss of 0.10 acres of Santa Ana River woolly star habitat and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (Id., §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the SBCTA's Redlands Passenger Rail Project EIR, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by SBCTA for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

FINDINGS:

CDFW has considered the EIR certified by SBCTA as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by SBCTA, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- B. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided for any new workers before they perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.

- C. Develop a proposal for studying and reporting the potential indirect effects of railroad noise and the effectiveness of minimization measures, including the area needed for an established quiet zone, as well as, the type of brown-headed cowbird management needed to increase reproductive success (e.g. number of traps, trap distance from the noise source, etc.). The study plan shall include preparation of a report analyzing the effectiveness of the minimization measures. The report shall be submitted to CDFW one (1) year after the CDFW approval of the study protocol. The study protocol shall be submitted to CDFW for approval six (6) months after the start of construction and may include one of the following approaches:
- a. A field study that collects noise, startle behavior and breeding success data from a minimum of three (3) accessible sites known to be occupied by LBVI and within 300 feet of an active railroad and at least three (3) accessible sites known to be occupied by LBVI but located greater than 500 feet from an active railroad. The final report shall include an analysis of findings and recommended long-term management strategies for railroad operators and regulators, if any;
 - b. A data analysis study in which existing data (e.g. Santa Ana Water Authority) is correlated to the proximity of active railroads. The final report shall include an analysis of findings and recommended long-term management strategies for railroad operators and regulators, if any; or
 - c. A blended study that includes both a field component (e.g. startle effect in the field and collection of baseline and other noise measurements at varying distances from rail lines) and comparing/supplementing with existing Covered Species noise data.
- D. Permittee has funded the rehabilitation of four (4) acres of riparian habitat to benefit LBVI from the Riverside-Corona Resource Conservation District in March 2017. The Permittee shall also provide for the management for LBVI in perpetuity on 1 acre of riparian habitat with an existing conservation easement from the Riverside-Corona Resource Conservation District. Finally, Permittee shall purchase 0.2 acre of credit to benefit SAWS from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities or no later than 6 months from the issuance of the ITP if Security is provided pursuant to Condition of Approval 10 below.
- E. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of the ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area (See Measures 8.1 through 8.5 below for species specific monitoring). The Designated Representative or Designated Biologist shall prepare written observation and inspection records summarizing: oversight activities and compliance inspections, observations of

Covered Species and their sign, survey results, and monitoring activities required by the ITP.

- F. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition 7.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to CDFW's Regional Office at the office listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative. At the time of the ITP's approval, the CDFW Regional Representative is Brandy Wood (brandy.wood@wildlife.ca.gov). CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- G. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; and (6) information about other Project impacts on the Covered Species.
- H. No later than 90 days after completion of all construction monitoring measures, Permittee shall provide CDFW with a Final Monitoring Report. The Designated Biologist shall prepare the Final Monitoring Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information. CDFW will notify the Permittee in writing that the Final Monitoring Report is complete via the Regional Representative.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: 4/10/2019

By: Scott Wilson
FOR Leslie MacNair, Regional Manager
Inland Deserts Region
DEPARTMENT OF FISH AND WILDLIFE