

# Notice of Determination

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**To:**

☒ 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)  
Bay Delta Region  
2825 Cordelia Road, Suite 100, Fairfield, CA 94534  
Contact: Robert Stanley, Senior Environmental Scientist  
Phone: (707) 428-2093

California Department of Transportation  
2379 Gateway Oaks Drive, #150, Sacramento, CA 95833  
Contact: Georgette Neale  
Phone: (916) 274-0623

RECEIVED

MAR 26 2019

DrG

Office of the General Counsel

**SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108**

State Clearinghouse Number: 2016072040

Project Title: Bridge Seismic Safety Retrofit Project in SAC and San Joaquin Counties, EA # 03-3F090 [California Endangered Species Act (CESA) Incidental Take Permit No. 2081-2018-017-03 (ITP)]

Project Location: The Caltrans Bridge Seismic Retrofit – Mokelumne (03-SAC-05-3F090) Project (Project) is located on the Mokelumne River Bridge (Bridge No. 29-0197L/R) over the Mokelumne River and the associated floodplain on Interstate 5 (I-5) at Post Mile (PM) 49.78 at the San Joaquin/Sacramento County border, in the State of California. Latitude 38.254958; Longitude: -121.447751, in the Bruceville USGS 7.5 minute quadrangle, in the Mt. Diablo meridian.

Project Description: The Project is limited to the retrofit of the existing Mokelumne River Bridges (Bridge No. 29-0197L/R) by replacing the existing multi-column bents with new outrigger bents and constructing new bent caps which will support the existing bridge decks. Each of the two bridges is supported by 20 existing bents (40 bents total). Each new outrigger bent will be supported by two new pile shafts comprised of 4-ft (48-inch) diameter cast in steel shell (CISS) concrete piles (a total of 40 outrigger bents supported by a total of 80 new pile shafts). Once the new outrigger bent systems have been constructed the columns of the existing bents will be removed.

The Project is expected to cause the permanent loss of 0.004 acres of in-water habitat for the Covered Fish Species, and temporary loss of 0.36 acres of in-water habitat for the Covered Fish Species as well as temporary loss of 0.99 acres of Covered Fish Species riparian habitat, for a total of 1.35 acres of temporary impacts to Covered Fish Species. The Project is also expected to cause 0.5 acres of impact in a peak injury zone for injurious sound levels and 5.5 acres of injury for a cumulative sound exposure level zone. The Project is expected to result in incidental take of Chinook salmon – Central Valley spring-run, which are designated as a threatened species under CESA and the incidental take of Chinook salmon – Sacramento River winter-run and Delta smelt, both designated as an endangered species under CESA as well as longfin smelt designated as a threatened species under CESA and giant garter snake designated as a threatened species under CESA. 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 / ☒ a responsible agency] approved the above-described project on 12-11-18 and made the following determinations regarding the above described project:

1. The project [☐ will / ☒ 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. [☐ An environmental impact report / ☒ A mitigated negative declaration] was prepared by the lead agency for the original project.
3. Additional mitigation measures [☒ were / ☐ were not] made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan [☒ was / ☐ was not] adopted by CDFW for this project.
5. A Statement of Overriding Considerations [☐ was / ☒ was not] adopted by CDFW for this project.
6. Findings [☐ were / ☒ were not] made by CDFW pursuant to Public Resources Code § 21081(a). CDFW did, however, adopt findings to document its compliance with CEQA.
7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):

☐ Payment is submitted with this notice.

☒ A copy of a receipt showing prior payment was submitted to CDFW.

☒ Responsible Agency statement: The Mitigated Negative Declaration 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.

Governor's Office of Planning & Research

Signature Gregg Erickson  
Gregg Erickson, Regional Manager

Date: 12-11-18

MAR 29 2019

Date Received for filing at OPR: \_\_\_\_\_

STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2017-068-02**

**California Department of Transportation  
Caltrans Bridge Seismic Retrofit – Mokelumne (03-SAC-160-3F090) Project**

**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 Caltrans Bridge Seismic Retrofit – Mokelumne (03-SAC-160-3F090) Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish and Game 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)].<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize California Department of Transportation (Caltrans) (Permittee) to incidentally take Chinook salmon – Central Valley spring-run (*Oncorhynchus tshawytscha*), Chinook salmon – Sacramento winter-run (*Oncorhynchus tshawytscha*), Delta smelt (*Hypomesus transpacificus*), longfin smelt (*Spirinchus thaleichthys*) and giant garter snake (*Thamnophis gigas*), (hereafter, Covered Species) during implementation of the Project. (See generally Fish and Game Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4). The Chinook salmon – Central Valley spring-run are designated as threatened under CESA [Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(C)]. The Chinook salmon – Sacramento winter-run are designated as endangered under CESA. [Cal. Code Regs., tit. 14, § 670.5, subd. (a)(2)(M)]. The Delta smelt are designated as endangered under CESA. [Cal. Code Regs., tit. 14, § 670.5, subd. (a)(2)(O)]. The longfin smelt are designated as threatened under CESA. [Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(E)]. The giant garter snake are designated as threatened under CESA. [Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E)].

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, Caltrans. (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367). Caltrans analyzed the environmental impacts associated with implementation of the Project in the SAC and San Joaquin Counties Mitigated Negative Declaration (SCH No.: 2016072040), dated December 30, 2016. Caltrans 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.

As part of the Caltrans Bridge Seismic Retrofit – Mokelumne (03-SAC-160-3F090) Project, the Project shall result in impacts to Covered Species habitat to include the permanent loss of 0.004 acres of in-water habitat for the Covered Fish Species, and temporary loss of 0.36 acres of in-water habitat for the Covered Fish Species as well as temporary loss of 0.99 acres of Covered Fish Species riparian habitat, for a total of 1.35 acres of temporary impacts to Covered Fish Species. The Project is also expected to cause 0.5 acres of impact in a peak injury zone for injurious sound levels and 5.5 acres of injury for a cumulative sound exposure level zone. All impacts overlap and take of the Covered Species as defined by Fish and Game Code is expected.

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

(Fish and Game 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 lead agency's prior analysis, 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.4<sup>th</sup> 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 Mitigated Negative Declaration 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.4<sup>th</sup> 1112, 1130).

#### **FINDINGS:**

CDFW has considered the Mitigated Negative Declaration adopted by Caltrans as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by Caltrans, 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. A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- B. Orientation will be provided to construction staff to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.




- C. The Permittee will acquire and permanently preserve 1.86 acres of Covered Fish Species' habitat and 2.67 acres of Giant Garter Snake habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- D. 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.

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: 12-11-18

By:   
Gregg Erickson, Regional Manager  
Bay Delta Region  
California Department of Fish and Wildlife