



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 18, 2023

Frank Lucido
Napa County, Engineering Manager
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Subject: Campbell Creek Culvert Replacement Project, Mitigated Negative Declaration, SCH No. 2022120173, City of Rutherford, Napa County

Dear Mr. Lucido:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from Napa County (County) for the Campbell Creek Culvert Replacement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform the County, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Napa County

Objective: The Project objective is to improve the hydrologic and aquatic habitat function of Campbell Creek where Campbell Creek crosses underneath Dry Creek Road. Primary Project activities include replacing the existing undersized culvert with a bottomless arch bridge precast culvert and associated wingwalls. The Project will require installation of a temporary water diversion and dewatering a segment of

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Campbell Creek. The Project will also grade a portion of the streambanks to address incision and reconnect the creek to the original floodplain. The area will then be restored with revegetation.

Location: The Project is located along Campbell Creek in the City of Rutherford, Napa County, near the intersection of Dry Creek Road and Oakville Grade Road. Coordinates are 38.407229, -122.433236.

Timeframe: Project construction is anticipated to last three to four months, with initiation in summer 2024 and completion in fall 2024.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. **The Project has the potential to impact Northern spotted owl (NSO, *Strix occidentalis caurina*), a CESA listed as threatened species. Thank you for including Mitigation Measure BIO-8 in the MND which requires surveys and avoidance of NSO.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

Lake and Streambed Alteration Agreement

CDFW will require an LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will 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. **The Project would impact Campbell Creek and therefore an LSA Notification would be**

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required. Thank you for including Mitigation Measure BIO-9 in the MND which requires the Project to submit an LSA Notification and comply with the LSA Agreement. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Nesting Birds

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act.

Fully Protected Species

Fully Protected species, such as white-tailed kite (*Elanus leucurus*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for collecting these species for necessary scientific research, relocation of the bird species for the protection of livestock, or if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below which are also included in Attachment 1, CDFW concludes that an MND is appropriate for the Project.

- I. Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?**

Environmental Setting and Mitigation Measure Shortcomings

COMMENT 1: Special-Status Plants

Issue, specific impacts, why they may occur and be potentially significant: The Project may impact several special-status plant species with the potential to occur at or adjacent to the Project site. Page 3-31 of the MND incorrectly states there are no occurrences of Rincon Ridge manzanita (*Arctostaphylos stanfordiana* ssp. *decumbens*),

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California Rare Plant Rank (CRPR)² 1B.1, within one mile of the Project site, as the California Natural Diversity Database (CNDDDB) documents an occurrence directly across the street from the Project site. There may also be suitable habitat to support the following species:

- Rincon Ridge ceanothus (*Ceanothus confusus*), CRPR 1B.1
- Napa false indigo (*Amorpha californica* var. *napensis*), CRPR 1B.2
- Narrow-anthered brodiaea (*Brodiaea leptandra*), CRPR 1B.2

While no special-status plants were observed in the April 2022 site visit, it is unclear if protocol-level surveys were completed. If special-status plants are present and not detected by the appropriate surveys, the Project may result in potential significant impacts through crushing and killing plants and impacting viable seeds in the soil.

Recommended Mitigation Measure: For an accurate environmental setting and to reduce impacts to less-than-significant, CDFW recommends evaluating the presence of plants that occur within five miles of the Project site and providing a detailed explanation for why suitable habitat may or may not be present at the Project site to support such species. CDFW also recommends including the following measure:

Mitigation Measure BIO-11: Pre-Project Special-Status Plant Surveys. A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>). Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities.

COMMENT 2: White-Tailed Kite and other Nesting Birds

Issue, specific impacts, why they may occur and be potentially significant: The Project may impact white-tailed kite. The Project site falls within the range and predicted habitat of white-tailed kite and CNDDDB documents an occurrence approximately 4.25 miles east of the Project site. Threats to this species include habitat loss from conversion and vegetation clearing, drought, and disturbance at nest sites (Dunk 1995).

² CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List*

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Noise from road use, generators, and other equipment may be disruptive to hunting white-tailed kites, and exposure to noise has been shown to increase stress hormone levels in some raptor species (Hayward et al. 2011). White-tailed kite is a Fully Protected species. The classification of Fully Protected was the State's initial effort in the 1960s to identify and provide additional protection to those animals that were rare or faced possible extinction. Vegetation clearing and noise from construction may disturb nesting white-tailed kite and result in potential significant impacts if appropriate surveys are not completed and adequate buffer zones established for avoidance.

Additionally, Mitigation Measure BIO-04 states that pre-construction nesting bird surveys will be conducted *within the Project site*. It is unclear what Mitigation Measure BIO-04 means when it states a qualified biologist will "identify a 200-foot buffer for nesting birds" and if this is meant to indicate the radius that will be surveyed around the Project site. The Project may cause noise and visual disturbance to birds outside of the Project site. Therefore, surveys should encompass a minimum 500-foot radius area surrounding the Project site, in addition to surveying within the Project site, in order to identify any nesting birds that might be present and may be impacted by Project activities.

Mitigation Measure BIO-04 also states surveys will be repeated if *vegetation activities* are suspended for more than five days. However, surveys should be repeated if *any project activities* that could disturb nesting birds are suspended, including activities that do not impact vegetation, but could result in other impacts, such as noise and visual disturbance.

Recommended Mitigation Measure: For an accurate environmental setting and to reduce impacts to less-than-significant, CDFW recommends replacing BIO-04 with the following language:

Mitigation Measure BIO-04: Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.

- a) *Nesting Bird Surveys.* If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a Qualified Biologist within 5 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 5 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.

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b) *Active Nest Buffers*. If an active nest is found during surveys, the Project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as “Ecologically Sensitive Areas” (ESA) and protected (while occupied) during Project work by demarking a “No Work Zone” around each nest site.

- Buffers shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors. The buffer distances shall be determined by a Qualified Biologist based on-site conditions and specified to protect the bird’s normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.
- The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW.

c) *Nesting Habitat Removal or Modification*. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.

II. Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

Mitigation Measure Shortcoming

COMMENT 3: Impacts to Riparian Habitat

Issue: The MND indicates that the Project will result in impacts to stream and riparian habitat and will implement a restoration and revegetation plan. Additionally, the MND

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states that 11 riparian trees may be removed by the Project. On page 3-37, the MND states that implementation of Mitigation Measure BIO-09 would minimize impacts to riparian habitat through adherence to all permitting requirements, including the LSA Agreement from CDFW. However, the MND should include mitigation measures to ensure impacts to stream and riparian habitat are reduced to less-than-significant.

Recommended Mitigation Measure: To reduce impacts to stream and riparian habitat to less-than-significant, CDFW recommends including the following mitigation measure.

Mitigation Measure BIO-10: Stream and Riparian Habitat Restoration: Temporarily impacted areas within the riparian zone shall be restored and planted with native trees, shrubs and grasses. Permanently impacted areas, such as from placement of rock or wingwalls in the channel, require restoration at a 3:1 mitigation to impact ratio for acreage and linear feet impacted on-site or off-site as close the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year of the impacts. Trees shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW:

Oak (*Quercus* sp.) trees:

- 4:1 replacement for trees up to 7 inches diameter at breast height (DBH)
- 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH
- 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks

Non-oak trees:

- 1:1 replacement for non-native trees
- 1:1 replacement for native trees up to 3 inches DBH
- 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH
- 6:1 replacement for trees greater than 6 inches DBH

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended mitigation measures, as applicable.

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

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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>.

ENVIRONMENTAL DOCUMENT 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 required in order for the underlying project approval to be operative, vested, and final. environmental review by CDFW. Payment of the environmental document filing fee is (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 MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Alicia Bird, Environmental Scientist, at (707) 980-5154 or alicia.bird@wildlife.ca.gov; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or melanie.day@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Erin Chappell
Regional Manager
Bay Delta Region

Attachment 1: Draft Mitigation Monitoring and Reporting Program

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2022120173)

REFERENCES

- Dunk, J. 1995. White-tailed kite (*Elanus leucurus*), version 2.0. P. G. Rodewald, editor. The Birds of North America¹. Cornell Lab of Ornithology, Ithaca, NY, USA.
- Hayward, L. S., A. E. Bowles, J. C. Ha, and S. K. Wasser. 2011. Impacts of acute and long-term vehicle exposure on physiology and reproductive success of the northern spotted owl. *Ecosphere* 2:art65.

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-04	<p>Nesting Bird Avoidance. Active nests occurring at or near the Project site shall be avoided. Permittee is responsible for complying with Fish and Game Code section 3503 et seq. and the Migratory Bird Treaty Act of 1918.</p> <p>a) Nesting Bird Surveys. If construction, grading, vegetation removal, or other Project-related activities are scheduled during the nesting season, February 1 to August 31, a focused survey, within the Project site and a minimum 500-foot radius of the Project site, for active nests shall be conducted by a Qualified Biologist within 5 days prior to the beginning of Project-related activities. If an active nest is found, Permittee shall consult with CDFW regarding appropriate action to comply with Fish and Game Code. If a lapse in Project-related work of 5 days or longer occurs, another focused survey and, if needed, consultation with CDFW, shall be required before Project work can be reinitiated.</p> <p>b) Active Nest Buffers. If an active nest is found during surveys, the Project shall consult with CDFW regarding appropriate action to comply with state and federal laws. Active nest sites shall be designated as "Ecologically Sensitive Areas" (ESA) and protected (while occupied) during Project work by demarking a "No Work Zone" around each nest site.</p> <ul style="list-style-type: none"> • Buffers shall be a minimum of 250 feet for non-listed bird species and 500 feet for non-listed raptors. The buffer distances shall be determined by a Qualified Biologist based on-site conditions and specified to protect the bird's normal behavior to prevent nesting failure or abandonment. The buffer distance recommendation shall be developed after field investigations that evaluate the bird(s) apparent distress in the presence of people or equipment at various distances. Abnormal nesting 	<p>Prior to Ground Disturbance and continuing over the course of the Project</p>	<p>Project Applicant</p>

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	<p>behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards Project personnel, standing up from a brooding position, and flying away from the nest. The Qualified Biologist shall have authority to order the cessation of all nearby Project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.</p> <ul style="list-style-type: none"> The Qualified Biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during Project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the Qualified Biologist. Any reduction in monitoring active nests must be approved in writing by CDFW. <p>c) Nesting Habitat Removal or Modification. No habitat removal or modification shall occur within the ESA-marked nest zone until the young have fully fledged and will no longer be adversely affected by the Project, as determined by a Qualified Biologist.</p>		
<p>MM BIO-10</p>	<p>Mitigation Measure BIO-10: Stream and Riparian Habitat Restoration Temporarily impacted areas within the riparian zone shall be restored and planted with native trees, shrubs and grasses. Permanently impacted areas, such as from placement of rock or wingwalls in the channel, require restoration at a 3:1 mitigation to impact ratio for acreage and linear feet impacted on-site or off-site as close the Project site as possible and within the same watershed, unless otherwise approved in writing by CDFW. Restoration shall occur in the same year of the impacts. Trees shall be replaced at the following mitigation to impact ratios, unless otherwise approved in writing by CDFW:</p> <p>Oak (<i>Quercus</i> sp.) trees:</p> <ul style="list-style-type: none"> 4:1 replacement for trees up to 7 inches diameter at breast height (DBH) 5:1 replacement for trees greater than 7 inches and up to 15 inches DBH 10:1 replacement for trees greater than 15 inches DBH, which are considered old-growth oaks 	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>

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	<p>Non-oak trees:</p> <ul style="list-style-type: none"> • 1:1 replacement for non-native trees • 1:1 replacement for native trees up to 3 inches DBH • 3:1 replacement for trees greater than 3 inches DBH and up to 6 inches DBH • 6:1 replacement for trees greater than 6 inches DBH 		
<p>MM BIO-11</p>	<p>Pre-Project Special-Status Plant Surveys. A Qualified Biologist shall conduct botanical surveys during the appropriate blooming period and conditions for all special-status plants that have the potential to occur prior to the start of construction. More than one year of surveys may be necessary. Surveys shall be conducted following CDFW's Protocol for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities (https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants). Survey reports shall be submitted to CDFW for written approval prior to the start of construction. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>