



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846



In Reply Refer To:
08ESMF00-2012-I-0662-01

NOV 27 2012

Mr. Javier Almaguer
Branch Chief
Central Region Biology South Branch
California Department Transportation
855 M Street, Suite 200
Fresno, California 93721

Subject: Informal Section 7 Consultation on the State Route 24 Happy Valley Road Slide Repair Project, Contra Costa County, California (Caltrans EA 04-3G160)

Dear Mr. Almaguer:

This is in response to your September 18, 2012, request for informal consultation with the U.S. Fish and Wildlife Service (Service) on the effects of the proposed State Route (SR) 24 Happy Valley Road Slide Repair Project in the City of Lafayette, Contra Costa County, California. Your letter was received in our office on September 21, 2012. At issue are the potential effects of the proposed project on the threatened California red-legged frog (*Rana draytonii*) and the threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*). This document has been prepared in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*) (Act).

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users legislation (23 U.S.C. 327) allows the Secretary of the U.S. Department of Transportation acting through the Federal Highway Administration (FHWA) to establish a Surface Transportation Project Delivery Pilot Program, whereby a State may assume the FHWA responsibilities under the National Environmental Policy Act for environmental review, agency consultation and other actions pertaining to the review or approval of a specific project. Caltrans assumed these responsibilities for the FHWA on July 1, 2007, through a Memorandum of Understanding within the State of California (http://www.dot.ca.gov/ser/downloads/MOUs/nepa_delegation/sec6005mou.pdf) and are exercising this authority as the Federal nexus for section 7 consultation on this project.

This document was prepared based on: (1) the revised November 2012 Biological Assessment (BA) for the proposed project; (2) an October 1, 2012, site visit; and (3) other information available to the Service.

The following project description was provided in the November, 2012 BA, with minor modifications for reasons of clarity and accuracy provided by the Service.

Caltrans proposes to repair and stabilize a portion of an embankment adjacent to eastbound SR 24. The unstable embankment was previously affected by the Bin Wall Landslide. Actions were taken in 1988 and 1989 to address the geological issue. However, landslide movement continues and is compromising the integrity of SR 24.

Caltrans proposes to address the issue by implementing the following:

1. A bench will be constructed for the installation of two parallel sets of ground anchors to buttress the hill slope (slope stressing technique). Each row of ground anchors will be connected with a concrete waler. The anchors will be spaced over an approximate length of 750 feet along the shoulder and partly in front the existing Bin Wall on the south side of the eastbound SR 24.
2. The current metal beam guard rail along the eastbound SR 24 road shoulder will be replaced with an approximately 750-foot long concrete barrier along the top of the hill slope;
3. The damaged open v-ditch culverts designed to direct storm water away from the slope may be repaired or replaced; and
4. The roadway and road shoulder may be repaired and repaved as needed.

The project will be constructed on the embankment of the southbound shoulder and will include two parallel sets of ground anchors. Equipment used for construction will include, but not be limited to:

1. Excavators and bulldozers to dig and remove soil for the ground anchor installation;
2. Trucks for hauling material into and out of the construction area; and
3. Drilling equipment, a crane, grade-all, or boom truck lift will be used to lift and load the vertical pilings.

Caltrans will remove all vegetation from the construction footprint, plus within a 25-foot buffer from the proposed ground anchors. Installation of ground anchors will require the excavation of the existing slope (approximately 6000 cubic yards of soil). The ground anchors will then be installed and excavated soil may be used to reestablish a new slope that will rest against the new ground anchors. Excavated soil not reused on site will be hauled away.

All work will occur within a 1.0-acre project footprint within the existing Caltrans right-of-way, between post mile 5.3 and 5.5. Access and staging will be limited to the SR 24 road shoulder. Work is expected to begin in the summer of 2014.

The following avoidance measures will be implemented to prevent take and avoid adverse effect to the Alameda whipsnake and California red-legged frog:

1. Caltrans will include language in their contracts that expressly requires contractors and subcontractors to work within the boundaries of the project footprint identified in the November 2012 BA, including vehicle parking, staging, laydown areas, and access.
2. Work will be limited between June 15 and October 15 to the maximum possible. If Caltrans needs to work outside this typical dry season window, they will contact the Service at least 14 days prior to those activities. Work activities will not be conducted during rain events.
3. Within 6 hours prior to initial ground disturbance, pre-construction surveys will be conducted by a Service-approved biologist for the California red-legged frog and Alameda whipsnake. These surveys will consist of walking surveys of the project limits and accessible adjacent areas within at least 50 feet of the project limits. The biologist(s) will investigate all potential California red-legged frog and Alameda whipsnake cover sites. Native vertebrates found in the cover sites will be documented and relocated to an adequate cover site in the action area vicinity. The entrances and other refuge features within the project limits will be collapsed or removed following investigation and clearance.
4. A Service-approved biologist(s) will be on-site during the initial ground disturbance/vegetation removal. The biologist(s) will have the authority to stop any work, through communication with the Resident Engineer or their designee that may result in take of a listed species. If the biologist(s) exercises this authority, the Service and CDFG will be notified by telephone and e-mail message within one working day. The Service contact is the Coast Bay/Forest Foothills Division Chief in the Sacramento Fish and Wildlife Office at (916) 414-6600.
5. All project work will cease if a listed species is found on or within 250 feet of the project site and Caltrans will initiate formal consultation with the Service. Work will not commence until formal consultation has been completed.
6. Pre-construction worker environmental awareness training will be conducted prior to any ground breaking activities. The biologist will educate the workers on how to identify the Alameda whipsnake and the California red-legged frog. Workers will be told to stop all construction on the site if they observe any snake or frog species, dead or alive, within the project footprint. A biologist will identify the animal by species before activities can commence.

7. If a California red-legged frog or Alameda whipsnake, or any frog or snake that is believed may be these species, is encountered during construction, or if any contractor, employee, or agency personnel inadvertently kills or injures a California red-legged frog or Alameda whipsnake, all project work will cease and Caltrans will contact the Service.
8. Plastic monofilament netting (erosion control matting) or similar material will not be used. Instead, Caltrans will use alternative materials such as coconut coir matting or pacified hydroseeding compounds.
9. Caltrans will allow the Service and CDFG personnel access to the project sit at any time during and after construction with prior notification to the resident engineer.
10. The contractor will implement all necessary Best Management Practices for storm water and erosion control in accordance with Caltrans' statewide National Pollutant Discharge Elimination System permit.
11. All food and food-related trash items will be enclosed in sealed trash containers and removed completely from the site at the end of each day.

The project footprint is located between SR 24 and business development. The site has been previously disturbed for stabilization activities and has been the subject of ongoing monitoring and maintenance. The footprint is gated and is landscaped with ornamental shrubs, eucalyptus, and oak trees.

Likely and known occupied Alameda whipsnake and California red-legged frog habitat is located north and south of the action area. The California Natural Diversity Database (CNDDDB) includes several observations of both species within less than 3.0 miles of the site (CDFG 2012). The closest Alameda whipsnake record is approximately 1.9 miles north of the site in the Briones Regional Park (CNDDDB occurrence #92), while the closest California red-legged frog record is approximately 1.4 miles to the south (CNDDDB occurrence #374). Critical habitat for the Alameda whipsnake and California red-legged frog are located approximately 1.0 and 2.0 miles from the site, respectively.

The action area is surrounded by development and is subject to ongoing disturbance. The site and local vicinity lack the resources associated with all the life history needs of the species and the site lacks obvious connectivity with areas that support those resources. Habitat for both species occurs immediately north of SR 24. However, north-south movement for either species across the SR 24 transportation corridor is restricted by: a six-lane highway, a Bay Area Rapid Transit (BART) rail line, fences paralleling the road shoulders and BART; and concrete barrier medians (without wildlife passage openings) paralleling both sides of the BART rail. Access to the site from the south side of SR 24 is limited by surrounding development including businesses and roads.

It is unlikely that Alameda whipsnakes or California red-legged frogs would forage or take refuge within the action area. Occupancy of the proposed action area would likely be limited to dispersing individuals of either species. Given the barriers to movement surrounding the construction footprint, it is unlikely that the listed frog or snake would gain access to the proposed action area.

Due to the lack of California red-legged frog and Alameda whipsnake detections in the project vicinity, the small project footprint, the existence of barriers to frog and snake movement between the project footprint and likely occupied habitat, and the implementation of proposed avoidance measures, the Service concurs that the proposed SR 24 Happy Valley Road Slide Repair Project, if implemented as proposed, may affect, but is not likely to adversely affect the California red-legged frog or the Alameda whipsnake.

This letter does not provide authorization for the incidental take of any listed species, including harassment. Unless new information reveals effects of the proposed action that may affect listed or proposed species in a manner or to an extent not considered, or a new species or critical habitat is designated or proposed that may be affected by the proposed action, no further action pursuant to the Act, is necessary.

If you have questions regarding our response on the proposed State Route State Route 24 Happy Valley Road Slide Repair Project, please contact John Cleckler (John_Cleckler@fws.gov) or Ryan Olah, Coast Bay/Forest Foothill Division Chief, (Ryan_Olah@fws.gov) at the letterhead address or at (916) 414-6600.

Sincerely,



Eric Eric Tattersal
Deputy Assistant Field Supervisor

cc:

Michelle Ray, Caltrans, Fresno, California
Carie Montero, Caltrans, Oakland, California
Melissa Escaron, CDFG, Yountville, California

Literature Cited

California Department of Fish and Game (CDFG). 2012a. California Natural Diversity Data Base (CNDDDB) RAREFIND. Natural Heritage Division, Sacramento, California.

_____ 2012b. BIOSIS. Natural Heritage Division, Sacramento, California.