

Attachment B
CEQA Findings of Fact

[This page intentionally blank.]

Attachment B

Caltrans State Route 138 Widening Project Notice of Applicability 2004-0004 DWQ CEQA Findings

A. INTRODUCTION

Pursuant to CEQA, these Findings of Fact (Findings) support the issuance of this Notice of Applicability (NOA) based on the *Caltrans State Route 138 Widening Project Initial Study/Environmental Assessment* and other supplemental documentation, including, the Project *Environmental Commitments Record* and the Notice of Intent (NOI) with attachments. (Cal. Code Regs., tit. 14, §§ 15091 & 15096, subd. (h).)

In preparing these Findings, the State Water Board has utilized the Draft Initial Study (March, 2010) and final Initial Study (June, 2012), the NEPA revalidation of November 19, 2013 (incorporating terms and conditions of the lake and streambed alteration agreement with the Department of Fish and Wildlife, and other measures) and other relevant material in the State Water Board's administrative record (Cal. Code Regs., tit. 14, § 15096, subd. (f)).

CEQA Finding Requirement

Prior to approving or carrying out a project for which a mitigated negative declaration has been issued that identifies one or more significant environmental effects, all public agencies must make one or more written findings for each of those significant impacts, accompanied by a brief explanation of the rationale for each finding. (Pub. Resources Code, § 21081, subd. (a); Cal. Code Regs., tit. 14, §§ 15091, subd. (a) & § 15082, subd. (b)(2)) This requirement applies to the lead agency and responsible agencies under CEQA (Pub. Resources Code, § 21081; Cal. Code Regs., tit. 14, §§ 15091, subd. (a) & § 15096, subd. (h)). As specified in the CEQA Guidelines, the possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; or
- (3) Economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

The State Water Board is a responsible agency under CEQA for purposes of approving the NOA for Project activities. To that end, these Findings provide the specific reasons supporting the State Water Board's decisions under CEQA as they relate to the issuance of the Project NOA. The Findings are supported by substantial evidence in the State Water Board's administrative record (Cal. Code Regs., tit. 14, § 15091 subd. (b).).

As a responsible agency, the State Water Board's CEQA obligations are more limited than those of the lead agency. (Cal. Code Regs., tit. 14, § 15096, subd. (g)(1).) The State Water Board, in particular, is "responsible for considering only the effects of those activities involved in

Attachment B

Caltrans State Route 138 Widening Project Notice of Applicability 2004-0004 DWQ CEQA Findings

[the] project which it is required by law to carry out or approve." (Pub. Resources Code, § 21002.1, subd. (d).) Thus, while the State Water Board must "consider the environmental effects" of the Project as disclosed in the environmental documents described above, the State Water Board "has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve." (Cal. Code Regs., tit. 14, § 15096, subds. (f), (g)(1).)

B. INCORPORATION BY REFERENCE

All CEQA project impacts and mitigation measures, including those discussed below, are analyzed in greater detail in the Project Final Initial Study/Mitigated Negative Declaration (IS/MND) which is incorporated herein by reference. The Project IS/MND is available at: http://www.dot.ca.gov/dist8/projects/san_bernardino/sr138widening/pdf/is_mnd_ea.pdf.

CEQA Project mitigation measures and reporting responsibilities are also summarized in the Project "Environmental Commitments Record," (Attachment A to the NOA which is incorporated herein by reference).

Also incorporated by reference into these Findings is Caltrans' NOI with all attachments, which include detailed project maps, a detailed project description, and other supporting information.

C. ENVIRONMENTAL REVIEW:

Caltrans approved a project MND on June 29, 2012, followed by a Notice of Determination (NOD), which was filed at the SCH by Caltrans on July 9, 2012. Caltrans prepared an "Environmental Commitments Record," dated November 19, 2013 and listing all project mitigation measures and reporting responsibilities, in compliance with Public Resources Code section 21081.6 and California Code of Regulations, Title 14, Section 15097 (Attachment A).

As directed by CEQA, the State Water Board has been deemed to have waived any objection to the adequacy of the IS/MND and the IS/MND is conclusively presumed to comply with CEQA for purposes of use by the State Water Board (Pub. Resources Code, § 21167.3, subd. (b); Cal. Code Regs., tit. 14, §§ 15096, subd. (e)(2) & § 15231). Based on the administrative record, the State Water Board finds that no Subsequent EIR or Supplement to the IS/MND is necessary per the requirements of CEQA (Cal. Code Regs., tit. 14, §§ 15162 & § 15163).

Prior to reaching a decision on the issuance of NOA for the project, the State Water Board has considered the environmental effects of the project as shown in the IS/MND (Cal. Code Regs., tit. 14, § 15096, subd. (f)). The IS/MND specifies mitigation measures for identified impacts, and a mitigation, monitoring and reporting plan (i.e., the *Environmental Commitments Record*) is in place to document the mitigation measures and how they are to be implemented. The Findings specified below are provided for each of those significant project impacts identified in the IS/MND that are subject to the State Water Board's jurisdiction. Parts D and E specify that potentially significant impacts which cannot be avoided or substantially lessened to a less than significant level are not identified for this Project. Part F addresses potentially significant

Attachment B

Caltrans State Route 138 Widening Project Notice of Applicability 2004-0004 DWQ CEQA Findings

impacts which can be avoided or lessened to a less-than-significant level.

D. GENERAL FINDINGS ON SIGNIFICANT AND UNAVOIDABLE IMPACTS ASSOCIATED WITH THE PROJECT WHICH CANNOT BE AVOIDED OR SUBSTANTIALLY LESSENERD TO A LESS-THAN-SIGNIFICANT LEVEL.

No significant and unavoidable impacts which cannot be avoided or substantially lessened to a less-than-significant level are identified for the Project.

E. CUMULATIVE IMPACTS

No cumulative impacts pertaining to the State Water Board's authorities are identified with this project.

F. SIGNIFICANT IMPACTS THAT ARE AVOIDED OR SUBSTANTIALLY LESSENERD TO A LESS THAN SIGNIFICANT LEVEL BY MITIGATION MEASURES INCORPORATED INTO, OR REQUIRED AS A CONDITION OF APPROVAL OF, THE PROJECT

The IS/MND describes various environmental impacts that may be potential impacts to waters of the state, including waters of the U.S. These potential impacts are presented below, along with State Water Board staff findings and rationale for those findings.

IMPACT 1: Environmental Consequences identified to water quality due to stormwater runoff.

The IS/MND describes potential project impacts to waters of the state, including waters of the U.S., due to stormwater runoff and stormwater management. The proposed project scope includes widening of the existing SR 138 to four lanes with 4 ft median buffer and upgrading shoulders to 8 ft shoulders. Pre-construction impervious area is 110 acres, and post construction impervious area is 175 acres. The increase of the impervious area by 65 acres can result in an increase of the volume or velocity of down stream flow. In addition, the project may increase potential sediment load of downstream flow. New cross drains will be created, and existing drains will be modified to move stormwater from one side of the highway to the other.

Findings:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the IS/MND.

Rationale: Various mitigation measures are proposed by the applicant to avoid and minimize impacts to waters due to stormwater runoff.

Mitigation measure SW-1 requires preservation of existing vegetation in place and other permanent erosion control measures on all bare surfaces.

Attachment B

Caltrans State Route 138 Widening Project Notice of Applicability 2004-0004 DWQ CEQA Findings

Mitigation measure SW-2 requires slope protection through installation of fiber rolls on slope contours.

Mitigation measure SW-3 requires installation of bio-filtration swales and strips, and stipulates early installation where possible to provide function during construction as well as after construction.

Mitigation measure SW-4 requires installation of rock slope protection as needed.

Mitigation measure SW-5 requires development of stormwater pollution prevention plans (SWPPPs) by contractors.

IMPACT 2. Environmental Consequences identified to biological resources under the State Water Board's authorities.

- The proposed project would impact 0.1003-acre of waters of the state within the El Mirage and Rosamond watersheds.

Findings:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the IS/MND.

Rationale:

Numerous mitigation measures for impacts to waters of the state, including waters of the U.S., are provided to mitigate for Project impacts to those waters.

Measures relating to restoration of temporary impacts: Mitigation measure Bio 30 provides for avoidance of impacts and restoration of unavoidable temporary impacts, including temporary disturbances to stream banks or any waters will be restored by returning the area to original contours and soil surface conditions and by taking appropriate revegetation steps. Mitigation measure Bio-39 further requires that any temporary disturbance to the stream banks or channels shall be re-contoured to pre-construction conditions.

Mitigation measure Bio-12 require avoidance and minimization of riparian impacts where practicable, and requires post construction restoration of vegetation in temporarily disturbed sites.

Mitigation measure Land-12 requires project-wide restoration of native vegetation, erosion control, and revegetation timing.

Measures relating to protection of streams from stormwater impacts. Mitigation measures SW-1 through SW-6 provide for stormwater management and implementation of a stormwater

Attachment B

Caltrans State Route 138 Widening Project Notice of Applicability 2004-0004 DWQ CEQA Findings

pollution prevention plan (SWPPP) which would also include practices that would protect receiving waters of stormwater discharges.

Measures relating to minimization of impacts: Mitigation measure Bio-12 requires minimization of impacts to riparian areas. Similarly, mitigation measure Bio-18 requires project-wide minimization of impacts to vegetation. Mitigation measure Bio-30 require avoidance and minimization of riparian impacts where practicable, and requires post construction restoration of vegetation in temporarily disturbed sites.

Measures relating to protection of waters from pollutants: Mitigation measure Bio-34 requires that no debris, soil, etc., be placed into, or allowed to enter, any streams. Mitigation measure Bio-36 requires that no equipment maintenance/parking or fueling shall be done within or near any stream...including drainages and washes, where petroleum products or other pollutants from equipment shall enter these areas under any flow condition.

Measures relating to compensatory mitigation: The Project IS/MND states: "All avoidance, minimization and mitigation measures identified in the regulatory process to protect WUS will be adhered to in the construction of the project." Mitigation measures ensuring the implementation of appropriate compensatory mitigation include the following:

- Bio-7. Section 404 permit applications shall be submitted to the ACOE. The project will mitigate for any impacts associated with WUS.
- Bio-8. In conjunction with the 404 permits, Section 401 application shall be submitted to the applicable RWQCBs.
- Bio-9. Construction activities must demonstrate compliance with National Pollutant Discharge Elimination System (NPDES) Permit regulated by Section 402 of the Clean Water Act.
- Bio-10. Submit applications for 1602 Streambed Alteration Agreement with CDFG. Mitigation to project related impacts will be in accordance with agency requirements.

BIO IMPACT 3. WEEDS

According to the IS/MND (section 2.3.6, p. 2-131), "The project will create a considerable area of disturbed soil that may be susceptible to the spread of invasive species." Several invasive plant species known to occur in the project area are listed in the IS/MND.

Findings:

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant environmental effect as identified in the IS/MND.

Rationale:

Mitigation measure Bio-51 requires that the landscaping and erosion control revegetation plant materials will not use species listed as noxious weeds. In addition, mitigation measure Bio-52

Attachment B

Caltrans State Route 138 Widening Project Notice of Applicability 2004-0004 DWQ CEQA Findings

requires that, in areas of particular sensitivity, extra precautions will be taken if invasive species are found in or adjacent to the construction areas.

G. MITIGATION AND MONITORING PROGRAM

As mentioned in the discussion of Project impacts above, Caltrans has approved a plan to guide the monitoring and reporting of CEQA mitigation compliance: the Project Environmental Commitments Record (ECR). The ECR will guide implementation of all CEQA project mitigation measures by assigning implementation and reporting responsibilities and specifying timelines.

The ECR lists all Project mitigation measures and reporting and is herewith incorporated by reference.

No additional CEQA mitigation measures are being imposed by the NOA, so no further CEQA mitigation monitoring and reporting program is required.

H. STATEMENT OF OVERRIDING CONSIDERATIONS

No statements of overriding consideration are necessary for this Project.

I. MITIGATION MEASURES

All of Caltrans' project mitigation measures, including those cited above, are presented in the Environmental Commitments Record, Attachment A to the NOA.