



January 16, 2024

California Department of Fish & Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090
Submitted electronically: mitconnect@wildlife.ca.gov

RE: Draft Wildlife Connectivity Advance Mitigation Guidelines

Dear California Department of Fish & Wildlife staff:

The California Ecological Restoration Business Association (CalERBA) appreciates the opportunity to provide comments to the California Department of Fish & Wildlife (CDFW) on the Draft Wildlife Connectivity Advance Mitigation Guidelines issued in October 2023 (the Guidelines). As sponsors of advance and landscape scale restoration projects, CalERBA recognizes the value of the wildlife connectivity actions (WCAs) that the Guidelines aim to explain and promote. We thank CDFW for the time and effort spent on compiling the Guidelines and share the common goal of improving ecological outcomes by connecting isolated “islands” of habitat or conserved landscapes via WCAs. While we greatly support the overall purpose of the Guidelines, we do have some questions and concerns about how the WCA program will be enacted in practice. We appreciate the opportunity to share our recommendations to strengthen and improve the Guidelines, as outlined below in this letter.

As an association, CalERBA represents California’s growing industry of businesses and jobs that specialize in full delivery of wetland, stream, water quality, habitat restoration, and other ecological restoration projects in collaboration with conservationists, NGOs, landowners, and regulators. These comments were developed by CalERBA’s broader membership, with input ranging from mitigation project sponsors to consulting, legal, and contractor companies. Collectively, the membership represents decades of experience in successful ecological restoration projects, thousands of conserved acres, and substantial private capital that is—if given the right policy incentives—prepared to invest in advance ecological outcomes. Investments by the ecological restoration industry accelerate conservation and fill in gaps where public funding and public lands alone are not enough.

CalERBA members and our policy positions are informed by our *Principles for Nature-Based Solutions* (the Principles).¹ For all ecological restoration projects, including mitigation, we advocate for high standards to ensure: i) durability (*i.e.*, perpetual land protection and stewardship of the resource), ii) science-based design and performance criteria, and iii) risk reduction mechanisms (such as financial assurances and adaptive management tools). To incentivize investment in restoration, we advocate for i) policy preferences for projects that

¹ CalERBA, *Principles for Nature-Based Solutions*, March 2022, at <https://caecologicalrestoration.org/calerba-principles>.

provide ecological benefits in advance of impacts, ii) additionality requirements and policy preferences to ensure ecological uplift, and iii) equivalency in standards for restoration projects, especially when multiple forms of restoration may qualify as an offset for a permit action. CalERBA's comments here are informed and guided by these principles.

Based on the experience of our membership, CalERBA respectfully proposes the following key recommendations to strengthen and improve the Guidelines. Most notably, we urge CDFW to reconsider the Guidelines' predominant focus on large, expensive overpass/underpass projects to the discouragement of smaller, less costly projects and related measures (e.g., reduced speed limits, fencing, and culverts), which are also proven to yield significant benefits to habitat connectivity. With regard to the large overpass/underpass projects, we encourage CDFW to provide more certainty as to the applicable credit ratios and to guarantee a heightened credit ratio (e.g., minimum 3:1 and higher for certain structures). Based on our membership's business experience, CalERBA believes that unless the Guidelines guarantee higher crediting ratios, it will be difficult if not impossible for project sponsors to undertake and recoup the cost of building and maintaining these types of projects. Finally, we encourage CDFW to interface with other state agencies in advance to ensure that WCA projects that would otherwise be feasible are not being scuttled by unexpected costs, such as long-term road maintenance obligations.

Key Recommendations

1. Large Overpass/Underpass WCAs are Currently Prohibitively Expensive, Additional Crediting Assurances and Higher Crediting Ratios are Required to Encourage Serious Investment in these Actions

CalERBA is concerned that the Guidelines are primarily focused on large overpass/underpass WCA projects. While these larger projects are important and can yield significant ecological benefits, they can be extremely expensive and therefore difficult to execute. For example, California's most famous overpass project, the Wallis Annenberg wildlife crossing over the 101 Freeway in Santa Monica, is estimated to cost \$90 million.² The Wallis Annenberg project is also unique in that it benefits from significant public support, both in the sense that it is popular among members of the public (60 percent of the funding came from private donors) and that nearly half of the project (the remaining 40 percent) will be paid through public funding. Such public funding may not always be available for other WCA projects, so it is critical to structure the Guidelines in a manner where WCAs can succeed on their own.

As CDFW is no doubt already aware, most WCAs do not have access to this type of financial support, and with regard to large overpass/underpass projects, our membership is concerned that the credits for legal compliance (pursuant to laws such as the California Endangered Species Act, the California Environmental Quality Act, the California Fish and Game Code, etc.) will not have a high enough value to recoup investments. Therefore, CalERBA recommends that CDFW modify the Guidelines to provide certainty on credit ratios, so that project sponsors can more comfortably rely on these ratios when assessing the cost of a potential project. For these types of expensive, large-scale WCAs, CalERBA recommends a guaranteed, heightened credit ratio (e.g., minimum 3:1 or higher depending on the structure and project scale). We leave the method of implementing

² Christopher Weber, *California groundbreaking set for largest wildlife crossing*, ASSOCIATED PRESS, March 24, 2022, at <https://apnews.com/article/mountains-environment-california-los-angeles-canada-b641c9aaca098a044cc8410f41af72f>.

the heightened credit ratio for these types of projects to CDFW's discretion, but, in our view, assessing the cost of this type of WCA should be noted explicitly as a crediting factor. We are aware that this version of the Guidelines does not include crediting factors as CDFW gathers information,³ and we are responding directly to that call for information with this request. It may also be possible to incorporate the credit ratio assessment at the threshold determination step in the project evaluation process.⁴ These complex issues relating to the credit ratio assessment are best resolved in a collaborative two-way dialogue and therefore CalERBA recommends that CDFW hold meetings with key stakeholder groups in the mitigation banking community or a public workshop specifically to discuss this component of the Guidelines. Many of the most challenging aspects relating to the credit ratio assessment may not be readily apparent until WCA project sponsors are further along in developing their projects, so CalERBA encourages CDFW to continually gather input and refine the Guidelines moving forward.

2. Smaller, Less Expensive WCAs Can Yield Significant Ecological Benefits, and Their Value Should be Reflected in the Considerations Outlined in Sections 3 and 4 of the Guidelines.

While CalERBA understands and appreciates that one major aim of the Guidelines is to make large-scale overpass/underpass WCAs more attractive to project sponsors, we respectfully point out that the Guidelines can advocate for these projects while also underscoring the benefits of smaller WCAs. Smaller WCAs (*i.e.*, solutions to habitat fragmentation caused by the presence of smaller roadways and/or canals) are significantly less expensive and are therefore more likely to be pursued by project sponsors. For example, the installation of small (*e.g.*, less than two feet), earth-bottomed culverts under two lane roads would be relatively inexpensive and would have the potential to measurably reduce mortality to rodent and reptile species.

CalERBA recommends that the CDFW revise the Guidelines to emphasize that small-scale WCAs are encouraged and can have significant positive environmental effects. Although the Guidelines state that "wildlife connectivity actions can vary greatly in size and structure,"⁵ the Guidelines only list three examples of WCAs, and all are relatively major projects (replacing a culvert with a full-span bridge, installing an elevated roadway with directional fencing, and building a freeway overpass with directional fencing). While perhaps not as singularly impactful as a larger WCA, WCAs that address habitat fragmentation caused by smaller roadways or water features can also have significant ecological benefits, both individually and in the aggregate. Most importantly, these smaller actions are easier to plan and finance, and therefore have a much greater chance of being built. Accordingly, we encourage CDFW to list examples of small-scale WCAs when defining WCAs in Section 1.6 of the Guidelines and to promote these types of projects with adjustments to the crediting considerations outlined in Sections 3 and 4.

3. The Guidelines Should Clarify Whether WCA Mitigation Credits will be Added to the Pool of Existing Credits or will be Considered Their Own Class of Credits

CalERBA recommends that CDFW clarify whether the WCA credits will be added to the existing mitigation credit marketplace among other types of existing mitigation credits or will be considered as a new unique class of credit with its own separate marketplace. The latter approach of having a separate class of credits used to meet specific mitigation obligations could help in encouraging

³ See Guidelines Section 3.3.3. at 3-10.

⁴ *Id.* at 3-3 (Section 3.3.1, Credit type threshold determination).

⁵ *Id.* at 1-9 (Section 1.6, Wildlife Connectivity Actions).

investment in these types of projects without diluting the value of existing mitigation credits. Additionally, it is unclear from the Guidelines whether WCA credits will be bundled (*i.e.*, stacked) with non-WCA credits or if they will be treated separately. If CDFW plans to treat WCA credits as separate, can a WCA credit be sold on an acre, and then, subsequently, can a non-WCA credit be sold from that same acre? These clarifications might be most appropriate in Section 3.1 of the Guidelines, which already outlines WCA credit uses.

4. The Guidelines Should Explicitly Include Ways to Improve Habitat Connectivity in Conjunction with the Construction of Physical WCAs

While constructing physical features such as underpasses or overpasses is a core component of a wildlife connectivity action, CalERBA encourages CDFW to modify the Guidelines to include other measures that can be taken together with these physical features to improve habitat connectivity. For example, reducing the speed limits on certain private roadways (*e.g.*, to 10 mph) through the habitat restoration project area would significantly reduce the likelihood that an animal is struck by a vehicle in the event it does not utilize the underpass/overpass feature. These measures could be included in the example WCAs listed in Section 1.6 of the Guidelines and throughout the Guidelines as appropriate.

5. The Guidelines Section 5.1.1 Should Further Elaborate on the Required Elements of a Satisfactory “Long-term Durability Agreement.”

One of CalERBA’s chief Principles is durability.⁶ Durability is most commonly achieved through permanent land protections via a conservation easement. Our membership has witnessed the pitfalls in desired ecological performance when projects rely on non-permanent land protections, and we are therefore asking CDFW to be especially cautious with regard to the proposed “long-term durability agreement” addressed in Guidelines Section 5.1.1. To ensure this type of agreement provides the necessary protections to achieve the connectivity goals of WCA projects, is equivalent with other durability measures required of sponsors, and is consistently implemented, we recommend that CDFW publish a sample durability agreement for public (or at least key stakeholder) review and comment. Comments on the sample durability agreement should then be incorporated into the description of the durability agreement and corresponding requirements laid out in the Section 5.1.1. of the Guidelines.

6. The Guidelines Section 6.1 Should Offer More Flexibility on Credit Releases and Securities to Incentivize Prospective Sponsors to Pursue WCA Projects.

CalERBA membership also takes issue with Section 6.1 of the Guidelines, which proposes that credits releases are to be approved after construction of a WCA. We are concerned that, as written, this approach to credit releases would mean that project sponsors may not begin to recoup their investment until years after committing initial capital and labor. The delay on credit releases will therefore result in higher credit prices and discourage some smaller firms with tighter budgets from pursuing WCA projects they might otherwise take on.

⁶ CalERBA, *Principles for Nature-Based Solutions*, March 2022, at <https://caecologicalrestoration.org/calerba-principles>.

Instead, CalERBA recommends that the Guidelines more closely mirror the current credit release and securities structure in place at mitigation banks by allowing sponsors to pursue an upfront credit release if they also post a sufficient Construction Security for the connectivity structure. The Construction Security would then be released upon completion of construction in accordance with as-built plans. Further, Section 6.1 should give sponsors flexibility in the form of securities they may use for their project. Financial assurances of any form for a large overpass construction project will be a significant expense when compared to other advance conservation projects. This will be especially true if CDFW requires only letters of credit as a sufficient form of financial assurance, rather than also allowing performance bonds. These alternative assurance forms are used for other projects in California, are widely accepted as a means of guaranteeing ecological outcomes at mitigation bank sites in other states, and are more feasible for a wider range of companies that may be interested in implementing projects. We encourage CDFW to build in these financial assurance and credit release options to the Guidelines, primarily within Section 6.1 and other related Sections and/or Checklists as appropriate.

7. CDFW Should Interface with Other State Agencies (such as CalTrans) to Ensure that Project Sponsors are Not Expected to Shoulder Unanticipated Costs

In our membership discussion about the Guidelines, one member company recalled that it had considered pursuing an overpass WCA in the past, but that the project was abandoned when the company was informed by the California Department of Transportation (CalTrans) that the company would be expected to maintain the state highway surrounding the overpass (for example, maintaining drainage and ensuring there was no obstruction of the road way from vegetation, debris, etc.). The member company abandoned the project because this cost and potential liability of maintaining the road surrounding the action was prohibitive.

CalERBA encourages CDFW to collaborate with other relevant agencies to ensure that these types of unanticipated costs are not deterring otherwise feasible connectivity projects. We recognize that CDFW is already planning to coordinate with agencies during credit review,⁷ but we are advocating for inter-agency coordination that goes beyond just credit review, to ensure all involved agencies are on the same page about what it will mean for project sponsors to construct and operate a WCA project. It would also be extremely helpful to project developers if the agencies are able to share their agreed upon positions (e.g., through a memorandum of understanding, via the agencies' websites or through some other public-facing channel).

Thank you and Summary

Thank you for your efforts and leadership on the Guidelines. We appreciate the opportunity to comment. To summarize our position, CalERBA agrees with CDFW that increasing wildlife connectivity is a worthy goal that can have tremendous ecological value. However, we are concerned that, in their current form, the Guidelines may not go far enough to encourage the type of financial investment required for these types of projects to succeed in practice. We look forward to continuing to work collaboratively with CDFW as the Guidelines are revised and specifically reiterate our recommendation above that CDFW convene meetings or workshops to work through the more complex issues relating to the Guidelines. Please reach out to CalERBA Executive

⁷ See *id.* at 3-11 (Section 3.5, Agency Coordination During Credit Review).

Director, Sara Johnson at sjohnson@ecologicalrestoration.org if CalERBA can provide any further information or answer questions on our recommendations.

Sincerely,

CalERBA Membership