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Governor's Office of Planning & Research

**Sep 23 2020**

## STATE CLEARINGHOUSE

September 23, 2020

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**Subject: Comments on the Notice of Preparation for the California High-Speed Rail, Los Angeles to Anaheim Segment Project, SCH #2007031067, Los Angeles County**

Dear Mr. McLoughlin:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced California High-Speed Rail, Los Angeles to Anaheim Segment Project (Project) Notice of Preparation (NOP). Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### CDFW's Role

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State [Fish & G. Code, §§ 711.7, subdivision (a) & 1802; Public Resources Code, § 21070; California Environmental Quality Act (CEQA) Guidelines, § 15386, subdivision (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA (Public Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code, including lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take", as defined by state law, of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), or state-listed rare plant pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code, § 1900 et seq.) authorization as provided by the applicable Fish and Game Code will be required.

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## Project Description and Summary

**Objective:** California High-Speed Rail Authority (Authority) proposes to construct and operate the Los Angeles to Anaheim Segment of the California High-Speed Rail (HSR) system. The proposed Project is approximately 30 miles long, in a fully urbanized area within existing railroad corridor that crosses major streets and highways and, in some portions, is adjacent to the Los Angeles River. The Project includes a combination of at-grade, below-grade, and retained-fill tracks with the majority consisting of new tracks that would be placed along the existing railroad right-of-way (ROW) and be useable for HSR and other passenger rail operators. The alignment would cross at least three major streams: the Los Angeles River, Rio Honda, and San Gabriel River.

**Location:** The Project connects Los Angeles and Orange counties by traveling from Los Angeles Union Station (LAUS) to the Anaheim Regional Transportation Intermodal Center (ARTIC) using the existing Los Angeles-San Diego-San Luis Obispo (LOSSAN) rail corridor. The approximately 30-mile Project Section would travel through the cities of Los Angeles, Vernon, Commerce, Bell, Montebello, Pico Rivera, Norwalk, Santa Fe Springs, La Mirada, Buena Park, Fullerton and Anaheim. Proposed stations include Los Angeles Union Station and ARTIC (Anaheim) with stops in the Norwalk/Santa Fe Springs area and the City of Fullerton.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the California High-Speed Rail Authority (Authority; Lead Agency) in adequately identifying, avoiding, and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. CDFW recommends the measures or revisions below be included in a science-based monitoring program that contains adaptive management strategies as part of the Project's CEQA mitigation, monitoring and reporting program (Public Resources Code, § 21081.6 and CEQA Guidelines, § 15097).

### Specific Comments

- 1) Lake and Streambed Alteration Agreement (LSA): Figure B: Los Angeles to Anaheim HSR Passenger Rail Corridor of the NOP shows the alignment of the segment. It follows existing rail infrastructure that crosses multiple streams: the Los Angeles River, Rio Hondo, San Gabriel River, and Coyote Creek. Should any work need to be done on the current crossings, such as retrofitting or expansion of a bridge, then the Project is likely subject to notification for a Lake and Streambed Alteration Agreement (LSA).
  - a) As a Responsible Agency under CEQA, CDFW has authority over activities in streams and/or lakes that will divert or obstruct the natural flow; or change the bed, channel, or bank (including vegetation associated with the stream or lake) of a river or stream; or use material from a streambed. This would include any construction activity that would involve temporary work in the bed, bank, or channel of a stream. For any such activities, the Project applicant (or "entity") must provide written notification to CDFW pursuant to section 1600 et seq. of the Fish and Game Code. Based on this notification and other information, CDFW determines whether an LSA Agreement (Agreement) with the applicant is required prior to conducting the proposed activities. CDFW's issuance of an Agreement for a Project that is subject to

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CEQA will require related environmental compliance actions by CDFW as a Responsible Agency. As a Responsible Agency, CDFW may consider the CEQA document prepared by the local jurisdiction (Lead Agency) for the Project. To minimize additional requirements by CDFW pursuant to section 1600 *et seq.* and/or under CEQA, the DEIR should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA (available at [www.wildlife.ca.gov/habcon/1600](http://www.wildlife.ca.gov/habcon/1600)).

- b) The Project area is located in areas that may support aquatic, riparian, and/or wetland habitats; therefore, CDFW recommends an investigation of the site for possible surface drainages in the surrounding areas that may feed into these creeks or channels. A preliminary jurisdictional delineation of the streams and their associated riparian habitats should be included in the DEIR. The delineation should be conducted pursuant to the U. S. Fish and Wildlife Service (USFWS) wetland definition adopted by the CDFW (Cowardin et al. 1970). Some wetland and riparian habitats subject to CDFW's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers' section 404 permit and Regional Water Quality Control Board section 401 Certification.
  - c) In areas of the Project site which may support ephemeral streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of ephemeral channels and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately-sized vegetated buffer areas adjoining ephemeral drainages.
  - d) Project-related changes in upstream and downstream drainage patterns, runoff, and sedimentation should be included and evaluated in the DEIR.
- 2) Nesting Birds. As stated in the NOP, the Project site goes through several cities with industrial, commercial, and residential land uses. Aerial photography indicates there are areas of ornamental vegetation and trees along the rail line. This vegetation may provide potential nesting habitat where Project activities may impact nesting birds. Project activities occurring during the breeding season of nesting birds could result in the incidental loss of fertile eggs, or nestlings, or otherwise lead to nest abandonment in trees directly adjacent to the Project boundary. The Project could also lead to the loss of foraging habitat for sensitive bird species.
- a) CDFW recommends that measures be taken to avoid Project impacts to nesting birds. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Code of Federal Regulations, Title 50, § 10.13). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).
  - b) Proposed Project activities including (but not limited to) staging and disturbances to native and nonnative vegetation, structures, and substrates should occur outside of the avian breeding season which generally runs from February 15 through August 31 (as early as January 1 for some raptors) to avoid take of birds or their eggs.

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- c) If avoidance of the avian breeding season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300-feet of the disturbance area (within 500-feet for raptors and 0.5 a mile for special status species). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the avian species involved, ambient levels of human activity, screening vegetation, or possibly other factors.
  - d) CDFW recommends providing an analysis of the increased use of the pre-existing rail lines. Such an analysis should include the expected increase in rail traffic along the alignment and the subsequent change in sound levels and frequency of noise relative to a no build alternative. The analysis should include forecasted changes in sound and seismic levels resulting from the long-term daily operation of the rail line after construction has completed. Using these expected elevated levels of sound and vibration, further consideration should be given to potential impacts to nearby nesting bird species.
- 3) Bat Species. A review of CNDDDB indicates occurrences of several bat species within the Project vicinity. These species include pallid bat (*Antrozous pallidus*), western mastiff bat (*Eumops perotis californicus*), hoary bat (*Lasiurus cinereus*). The pallid and the western mastiff are both considered California species of special concern (SSC). Despite the high diversity and sensitivity of bats in Southern California, numerous bat species are known to roost in bridges and trees throughout Los Angeles County. Project activities may have the potential to adversely impact bat populations within the vicinity.

Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment (Fish and Game Code § 4150, California Code of Regulations § 251.1). A DEIR should provide a thorough discussion of potential impacts to bats from construction and operation of the Project to adequately disclose potential impacts and to identify appropriate avoidance and mitigation measures. The CEQA document should describe feasible measures which could minimize significant adverse impacts (CEQA Guidelines §15126.4[a][1]).

### General Comments

Despite the urban setting of the Project site, the Los Angeles River, Rio Hondo, San Gabriel River, and their tributaries are known to support a variety of ecosystems that provide viable habitat to many aquatic and terrestrial species. Preventing the loss of function of these important ecosystems is imperative. The following comments should be addressed in the DEIR to reduce the significant impact the Project may have on the water bodies in and around the Project area.

- 1) Disclosure. A DEIR should provide an adequate, complete, and detailed disclosure about the effect which a proposed project is likely to have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, §15151). Adequate disclosure is necessary so CDFW may provide comments on the adequacy of proposed avoidance, minimization, or mitigation

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measures, as well as to assess the significance of the specific impact relative to the species (e.g., current range, distribution, population trends, and connectivity).

- 2) Project Description and Alternatives. To enable CDFW to adequately review and comment on the proposed Project from the standpoint of the protection of plants, fish, and wildlife, we recommend the following information be included in the DEIR:
  - a) A complete discussion of the purpose and need for, and description of, the proposed Project, including all staging areas and access routes to the construction and staging areas; and,
  - b) A range of feasible alternatives to Project component location and design features to ensure that alternatives to the proposed Project are fully considered and evaluated (CEQA Guidelines, § 15126.6). CDFW recommends Regional Planning consider configuring Project construction and activities, as well as the development footprint, in such a way as to fully avoid impacts to rare plants, oak trees, and oak woodlands. CDFW also recommends Regional Planning consider establishing appropriate setbacks from rare plants, oak trees, and oak woodlands. Setbacks should not be impacted by ground disturbance or hydrological changes for the duration of the Project and from any future development. Project alternatives should avoid or otherwise minimize direct and indirect impacts to sensitive biological resources. Project alternatives should be thoroughly evaluated, even if an alternative would impede, to some degree, the attainment of the Project objectives or would be more costly (CEQA Guidelines, § 15126.6).
- 3) Biological Baseline Assessment. CDFW recommends providing a complete assessment and impact analysis of the flora and fauna within and adjacent (approximately 500 feet if possible) to the Project area, with emphasis upon identifying endangered, threatened, sensitive, regionally and locally unique species, and sensitive habitats. Impact analysis will aid in determining any direct, indirect, and cumulative biological impacts, as well as specific mitigation or avoidance measures necessary to offset those impacts, as referred in General Comment 4. CDFW recommends avoiding any sensitive natural communities found on or adjacent to the Project. CDFW also considers impacts to Species of Special Concern a significant direct and cumulative adverse effect without implementing appropriate avoid and/or mitigation measures. The DEIR should include the following information:
  - a) Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines, § 15125(c)]. The DEIR should include measures to fully avoid and otherwise protect Sensitive Natural Communities from Project-related impacts. Project implementation may result in impacts to rare or endangered plants or plant communities that have been recorded adjacent to the Project vicinity. CDFW considers these communities as threatened habitats having both regional and local significance. Plant communities, alliances, and associations with a state-wide ranking of S1, S2, S3 and S4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by visiting <https://www.wildlife.ca.gov/Data/VegCAMP/Natural-Communities#sensitive%20natural%20communities;>

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- b) A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>);
  - c) Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the Project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this mapping and assessment (Sawyer, 2008). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;
  - d) A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the Project. CDFW's CNDDDB in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. CDFW recommends that CNDDDB Field Survey Forms be completed and submitted to CNDDDB to document survey results. Online forms can be obtained and submitted at [http://www.dfg.ca.gov/biogeodata/cnddb/submitting\\_data\\_to\\_cnddb.asp](http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp);
  - e) A complete, recent, assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code, §§ 3511, 4700, 5050 and 5515). Species to be addressed should include all those which meet the CEQA definition of endangered, rare or threatened species (CEQA Guidelines, § 15380). Seasonal variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the USFWS; and,
  - f) A recent, wildlife and rare plant survey. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.
- 4) Biological Direct, Indirect, and Cumulative Impacts. CDFW recommends providing a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. The following should be addressed in the DEIR:
- a) A discussion regarding indirect Project impacts on biological resources, including resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands (e.g., preserve lands associated with a Natural Community Conservation Plan (NCCP, Fish & G. Code, § 2800 et. seq.). Impacts on, and maintenance of, wildlife

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corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR;

- b) A discussion of potential adverse impacts from lighting, noise, human activity, and exotic species and identification of any mitigation measures;
  - c) A discussion on any potential Project-related changes on drainage patterns and downstream of the Project site; the volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and, post-Project fate of runoff from the Project site. The discussion should also address the proximity of the extraction activities to the water table, whether dewatering would be necessary and the potential resulting impacts on the habitat (if any) supported by the groundwater. Mitigation measures proposed to alleviate such Project impacts should be included;
  - d) An analysis of impacts from land use designations and zoning located nearby or adjacent to natural areas that may inadvertently contribute to wildlife-human interactions. A discussion of possible conflicts and mitigation measures to reduce these conflicts should be included in the DEIR; and,
  - e) A cumulative effects analysis, as described under CEQA Guidelines section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- 5) Translocation/Salvage of Plants and Animal Species. Translocation and transplantation is the process of moving an individual from the Project site and permanently moving it to a new location. CDFW generally does not support the use of, translocation or transplantation as the primary mitigation strategy for unavoidable impacts to rare, threatened, or endangered plant or animal species. Studies have shown that these efforts are experimental and the outcome unreliable. CDFW has found that permanent preservation and management of habitat capable of supporting these species is often a more effective long-term strategy for conserving sensitive plants and animals and their habitats.
- 6) Moving out of Harm's Way. To avoid direct mortality, we recommend that a qualified biological monitor approved by CDFW be on-site prior to and during ground and habitat disturbing activities to move out of harm's way any special status species or other wildlife of low mobility that would be injured or killed by grubbing or Project-related construction activities. It should be noted that the temporary relocation of on-site wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss. If the Project requires species to be removed, disturbed, or otherwise handled, we recommend that the DEIR clearly identify that the designated entity should obtain all appropriate state and federal permits.
- 7) Compensatory Mitigation. The DEIR should include mitigation measures for adverse Project related direct or indirect impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately

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mitigate the loss of biological functions and values, off-site mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. Areas proposed as mitigation lands should be protected in perpetuity with a conservation easement, financial assurance and dedicated to a qualified entity for long-term management and monitoring. Under Government Code, section 65967, the Lead Agency must exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward land, water, or natural resources on mitigation lands it approves.

## CONCLUSION

CDFW appreciates the opportunity to comment on the Notice of Preparation to assist the California High-Speed Rail Authority in identifying and mitigating Project impacts on biological resources. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist, at 562-292-6821 or by email at [Andrew.Valand@wildlife.ca.gov](mailto:Andrew.Valand@wildlife.ca.gov).

Sincerely,

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