



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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September 24, 2020

Governor's Office of Planning & Research

Sep 24 2020

STATE CLEARINGHOUSE

Juergen Vespermann
California Department of Transportation, District 6
855 M Street, Suite 200
Fresno, California 93721

**Subject: Lindsay Route 65 and Route 198/245 Operational Improvements
(Project)
Initial Study with proposed Negative Declaration
State Clearinghouse No. 2003111011**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, CDFW appreciates 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 Fish and Game Code.

CDFW 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 and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (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,

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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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 fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's 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.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes several operational improvements to various state routes in Tulare County. Location 1 would include the realignment of Tulare Road and Oak Avenue and a newly constructed roundabout in northwest Lindsay. At Location 2, a new roundabout would be constructed at the State Route 198/245 and Spruce Avenue intersection. Location 3 would involve the realignment of State Route 65 to the west of its current location near Lindsay. This realignment would include the construction of a four-lane expressway beginning just north of the State Route 65/Lindmore Street intersection, continuing northbound until it reaches State Route 65 about one-quarter mile east of the SR 65/Spruce Avenue intersection, with roundabouts at Hermosa Street and where the new alignment meets with the existing SR 65 (Project). The existing, southbound SR 65 would be reconstructed and converted to a two-lane frontage road connecting to the new roundabout at Location 1. A new two-lane frontage road would be constructed, providing access to Oak Avenue. Other Project-related activities will include the construction of pedestrian crossings, sidewalks, the installation of lighting facilities, and bike lanes.

Location: The three Locations which will be realigned and/or rehabilitated exist west of the City of Lindsay along SR 65 and northeast of the City of Exeter in Tulare County.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments to assist Caltrans in adequately identifying and sufficiently reducing to less-than-significant the potentially significant, direct and indirect

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Project-related impacts to fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the proposed ND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. However, as currently drafted, it is unclear: 1) whether some of the species specific measures proposed in the IS sufficiently reduce to less-than-significant the potential Project-related impacts to those species, and 2) how Caltrans came to the conclusion that there will be no impacts to State listed species CDFW considers potentially present in the vicinity of the Project.

In particular, Caltrans concludes there will be: 1) less-than-significant effects to the State threatened and federally endangered San Joaquin kit fox (*Vulpes mutica macrotis*) and the State threatened Swainson's hawk (*Buteo swainsoni*) with implementation of proposed avoidance and minimization measures. CDFW does not agree with these conclusions and herein suggests measures to survey for and avoid Project-related impacts to these species, thereby reducing to less-than-significant Project-related impacts. CDFW also recommends a path forward for Caltrans in the event avoidance of the two species is not feasible.

I. Environmental Setting and Related Impact

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 the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

Issue: The Project activities will involve varying degrees of ground disturbance and the staging and laydown of equipment and materials along the three Project Locations. Some of the Project activities may constitute a novel disturbance sufficient to cause denning SJKF to abandon their dens causing increased susceptibility to predation and potentially resulting in abandoned pups during the pupping season. Caltrans proposes pre-activity clearance surveys of the Project footprint between 14 and 30 days of commencing Project activities, surveying within 200 feet of the project boundary, and exclusion radii around SJKF dens of 50 feet for potential dens and 100 feet for known dens. However, Caltrans does not propose a buffer radius in the event that a SJKF natal den is discovered.⁸ Further, while Caltrans proposes consulting with USFWS in the event pupping/natal SJKF are detected during these surveys and/or inspections, Caltrans does not propose consulting with CDFW.

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Specific Impacts: While CDFW agrees with Caltrans' plans to conduct pre-activity surveys and surveying outside of the project boundary, CDFW recommends a disturbance buffer around natal dens. Further, CDFW recommends Caltrans consult with CDFW in the event individual SJKF or SJKF dens are detected during the surveys and/or inspections.

Evidence impact would be significant: While habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al., 2013), disturbance in proximity to a den can result in unsuccessful pupping and cause individuals to become more susceptible to predation. Both results of the Project-related disturbance could constitute significant impacts to the species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because SJKF are known to occur in the general vicinity of the Project footprint and because dens could be present outside the Project footprint but sufficiently near the Project footprint to be affected by the Project-related activities, CDFW recommends the following edits to the SJKF avoidance and minimization measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to Avoidance and Minimization Measures No. 7 and No. 8 for SJKF on page 14 of the IS.

CDFW recommends the pre-activity clearance surveys for SJKF be conducted to identify SJKF dens at **and within 250 feet of the Project footprint**, and that Caltrans coordinate with USFWS **and CDFW** in the event that individuals and/or dens are detected during these surveys. These surveys can be limited to 100 feet beyond the Project footprint if work commences outside the pupping season. Through the aforementioned coordination, CDFW will recommend a 250-foot no disturbance buffer around natal dens, a 100-foot no disturbance buffer around known dens, and a 50-foot no-disturbance buffer around potential or atypical dens, and absolutely no disturbance to the dens within the above buffers without contacting CDFW and obtaining written authorization to do so. If the aforementioned edits to the existing avoidance and minimization measures are not made, and/or the aforementioned buffers are not feasible, CDFW recommends Caltrans obtain incidental take coverage under section 2081 subdivision (b) of Fish and Game Code and that this be specified in the revised IS, and that the revised IS support a Mitigated Negative Declaration (MND). In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be required to reduce to less-than-significant the unavoidable Project-related impacts on SJKF.

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COMMENT 2: Swainson's Hawk (SWHA)

Issue: SWHA are known to have nested in the vicinity of the Project. The Project activities will involve varying degrees of ground disturbance within the right-of-way, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if they occur within ½-mile of an active SWHA nest. This nest abandonment would represent a significant impact to SWHA as well as potentially resulting in take, as it is defined in section 86 of Fish and Game Code.

Specific Impacts: In the IS, Caltrans indicates it will maintain a 500-foot no disturbance buffer from active SWHA nests during Project implementation. However, CDFW considers this 500-foot no disturbance buffer insufficient to avoid take of SWHA. Therefore, CDFW does not agree that the proposed 500-foot no-disturbance buffer reduces to less-than-significant the potential Project-related impacts to the species.

Evidence impact would be significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Adoption of the ND as it is written will allow activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews within 500 feet of active SWHA nests. These activities could negatively affect these nests and have the potential to result in nest abandonment, significantly affecting nesting SWHA.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because the Project-related activities could threaten nest abandonment, CDFW recommends Caltrans propose a larger no-disturbance buffer in order to reduce to less-than-significant the Project-related impacts to the species. CDFW recommends the following edits to the SWHA avoidance and minimization measures section of the IS. Further, CDFW recommends these revised measures and be made conditions of Project approval.

Recommended Edits to Avoidance and Minimization Measures No. 1 for SWHA on page 15 of the IS.

Currently, under the avoidance and minimization measures section of the IS, Caltrans proposes a 500-foot no-work buffer established around active SWHA nests at and near the Project, unless a biological monitor is present. CDFW recommends Caltrans edit this measure to include protocol level surveys for nesting SWHA if Project-related activities will occur during, or extend into, the SWHA nesting season (February through August). Further, CDFW recommends Caltrans require an **unqualified ½-mile no-work buffer** around active SWHA nests until the young have fledged and are no longer reliant on parental care for

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survival. If the aforementioned edits to the existing avoidance and minimization measures are not made, and/or the aforementioned buffers are not feasible, CDFW recommends Caltrans obtain incidental take coverage under section 2081 subdivision (b) of Fish and Game Code and that this be specified in the revised IS, and that the revised IS support an MND. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be required to reduce to less-than-significant the unavoidable Project-related impacts to SWHA.

II. Editorial Comments and/or Suggestions

Appropriateness of ND: In summary, the above recommended revisions to the IS pertain to avoidance of SJKF and their dens, and nesting SWHA. If surveys confirm the presence of any of the aforementioned species at or within the species specific buffers, Caltrans may not be able to avoid impacts to these species nor accomplish the Project without first obtaining incidental take authorization pursuant to section 2081 subdivision (b) of Fish and Game Code. Incidental take authorization would require minimization of, and mitigation for, take of the permitted species. CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose an MND for the Project, in lieu of the currently proposed ND.

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 CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

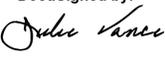
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and avoiding the Project's impacts on biological resources.

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More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Javier Mendez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at javier.mendez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation and Monitoring Reporting Program

cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

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Literature Cited

CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*).
California Department of Fish and Wildlife. April 11, 2016.

Cypher, B. L., S. E. Phillips, and P. A. Kelly. 2013. Quantity and distribution of suitable habitat for endangered San Joaquin kit foxes: conservation implications. *Canid Biology and Conservation* 16(7): 25–31.

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Attachment 1
Recommended Mitigation Monitoring and Reporting Program

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Lindsay Route 65 and Route 198/245 Operational
Improvements (Project)**

SCH No.: 2003111011

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Avoidance	
Mitigation Measure 2: SJKF Take Authorization (if avoidance is not feasible)	
Mitigation Measure 3: SWHA Avoidance	
Mitigation Measure 4: SWHA Take Authorization (if avoidance is not feasible)	