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Governor's Office of Planning & Research

**Jan 21 2021**

## STATE CLEARINGHOUSE

January 21, 2021

Mr. Michael Tree  
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Subject: Valley Link Rail Project, Draft Environmental Impact Report,  
SCH No. 2018092027, Alameda and San Joaquin County

Dear Mr. Tree:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a draft Environmental Impact Report (EIR) from Tri-Valley San Joaquin Regional Rail Authority for the Valley Link Rail Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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 Game Code, §§ 711.7, subd. (a) and 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, 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

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<sup>1</sup> 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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proposed, for example, the Project may be subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority. (Fish and Game 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 and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Tri-Valley San Joaquin Regional Rail Authority

**Objective:** The objective of the Project is to establish new passenger rail service along a 42-mile corridor between Dublin/Pleasanton and Lathrop. Primary Project activities include construction of new track, new stations, and a new operations and maintenance facility.

The Project will connect the existing Dublin/Pleasanton Bay Area Rapid Transit (BART) Station in Alameda County to the approved Altamont Corridor Express (ACE) North Lathrop Station in San Joaquin County. The Project will use the existing Interstate 580 (I-580) corridor (11.7 miles) in the Tri-Valley; the Alameda County Transportation Corridor right-of-way (ROW) through the Altamont Pass (14.5 miles); and the existing Union Pacific Railroad (UPRR) Corridor (16.1 miles) in northern San Joaquin County. Dublin/Pleasanton is the only existing station. The Project will start at the Dublin/Pleasanton BART Station and will construct Isabel Station, Greenville Station, Mountain House Station, Tracy Operation and Maintenance Facility, Downtown Tracy Station, River Islands Station, North Lathrop Station. Each new station will include construction of platform shelters, benches, lighting, security cameras, signage, ticketing machines, storage facilities, landscaping, and emergency call boxes, and parking lots. The vehicle variants considered are diesel multiple unit (DMU), hybrid battery multiple unit (HBMU), battery-electric multiple unit (BEMU), and diesel locomotive haul (DLH). The Project also includes the operation and maintenance of the Valley Link Rail Project.

Track maintenance includes tie replacement, switch greasing, ballast recontouring, and maintenance will be needed for bridges, drainage features, signal apparatus and other signal infrastructure. Carrion removal near tracks and rodenticide application will be carried out through Project operation. Station maintenance includes trash pickup, landscaping, painting, minor concrete work, and light bulb replacement. Fleet maintenance includes cleaning, fueling, emptying of toilet tanks, and replenishment of fluids and supplies.

**Location:** The Proposed Project is located in Alameda and San Joaquin Counties near the cities of Livermore, Mountain House, Tracy, and Lathrop. The nearest major

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highways within two (2) miles of the proposed Project are I-580, Interstate 5, State Route 4, State Route 99, and State Route 120.

**Timeframe:** The Project is proposed to be implemented as soon as 2028. Construction duration at the various stations ranges from 16 to 42 months, but construction could occur simultaneously at several locations.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Tri-Valley San Joaquin Regional Rail Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Special-status species documented to occur, or with the potential to occur, on or near the Project area include, *but are not limited to*, those listed in the table below.

Common Name	Scientific Name	Status	Rare Plant Rank
Alkali milk vetch	<i>Astragalus tener var. tener</i>		1B.2
Bent-flowered fiddleneck	<i>Amsinckia lunaris</i>		1B.2
Big-scale balsamroot	<i>Balsamorhiza macrolepis</i>		1B.1
Big tarplant	<i>Blepharizonia plumosa</i>		1B.1
Brewer's western flax	<i>Hesperolinon breweri</i>		1B.2
Brittlescale	<i>Atriplex depressa</i>		1B.2
California alkali grass	<i>Puccinellia simplex</i>		1B.2
Caper-fruited tropidocarpum	<i>Tropidocarpum capparideum</i>		1B.1
Chaparral ragwort	<i>Senecio aphanactis</i>		2B.2
Congdon's tarplant	<i>Centromadia parryi ssp. congdonii</i>		1B.2
Contra Costa manzanita	<i>Arctostaphylos manzanita ssp. laevigata</i>		1B.2
Delta button-celery	<i>Eryngium racemosum</i>	SE	1B.1
Delta mudwort	<i>Limosella subulate</i>		1B.2
Delta tule pea	<i>Lathyrus jepsonii var. jepsonii</i>		1B.2
Diablo helianthella	<i>Helianthella castanea</i>		1B.2
Diamond-petaled California poppy	<i>Eschscholzia rhombipetala</i>		1B.1
Hairless popcorn flower	<i>Plagiobothrys glaber</i>		1A
Heartscale	<i>Atriplex cordulata var. cordulata</i>		1B.2
Hispid bird's beak	<i>Chloropyron molle ssp. hispidum</i>		1B.1
Hospital canyon larkspur	<i>Delphinium californicum ssp. interius</i>		1B.2

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Large-flowered fiddleneck	<i>Amsinckia grandiflora</i>	SE	1B.1
Lemmon's jewelflower	<i>Caulanthus lemmonii</i>		1B.2
Lesser saltscale	<i>Atriplex minuscula</i>		1B.1
Livermore tarplant	<i>Deinandra bacigalupii</i>	SE	1B.2
Long-styled sand-spurrey	<i>Spergularia macrotheca var. longistyla</i>		1B.2
Mason's lilaeopsis	<i>Lilaeopsis masonii</i>	R	1B.1
Mount Diablo fairy-lantern	<i>Calochortus pulchellus</i>		1B.2
Oregon polemonium	<i>Polemonium carneum</i>		2B.2
Palmate-bracted bird's-beak	<i>Cordylanthus palmatus</i>	SE	1B.1
Prostrate vernal pool navarretia	<i>Navarretia prostrata</i>		1B.1
Recurved larkspur	<i>Recurved larkspur</i>		1B.2
Saline clover	<i>Trifolium hydrophilum</i>		1B.2
Sanford's arrowhead	<i>Sagittaria sanfordii</i>		1B.2
San Joaquin spearscale	<i>Extriplex joaquinana</i>		1B.2
Shining navarretia	<i>Navarretia nigelliformis ssp.radians</i>		1B.2
Slough thistle	<i>Cirsium crassicaule</i>		1B.1
Suisun marsh aster	<i>Symphyotrichum lentum</i>		1B.2
Watershield	<i>Brasenia schreberi</i>		2B.3
Woolly rose-mallow	<i>Hibiscus lasiocarpus var. accidentalis</i>		1B.2
Wright's trichocornis	<i>Trichocoronis wrightii var. wrightii</i>		2B.1
Crotch bumblebee	<i>Bombus crotchii</i>	SSC	
California tiger salamander	<i>Ambystoma californiense</i>	FT, ST	
California red-legged frog	<i>Rana draytonii</i>	FT, SSC	
Foothill yellow-legged frog	<i>Rana boylei</i>	CT, SSC	
Western pond turtle	<i>Emys marmorata</i>	SSC	
Western spadefoot toad	<i>Spea hammondi</i>	SSC	
Coast horned lizard	<i>Phrynosoma blainvillii</i>	SSC	
California legless lizard	<i>Anniella pulchra</i>	SSC	
California glossy snake	<i>Arizona elegans occidentalis</i>	SSC	
Pallid bat	<i>Antrozous pallidus</i>	SSC	
Golden eagle	<i>Aquila chrysaetos</i>	SFP	
Giant garter snake	<i>Thamnophis gigas</i>	FT, ST	
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	CT	
Western red bat			
Hoary bat	<i>Lasiurus cinereus</i>	Western Bat Working Group-Med.	
San Joaquin coachwhip	<i>Masticophis flagellum ruddocki</i>	SSC	
Swainson's hawk	<i>Buteo swainsonii</i>	ST	

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Northern harrier	<i>Circus cyaneus</i>	SSC	
White-tailed kite	<i>Elanus leucurus</i>	FP	
Western bumblebee	<i>Bombus occidentalis occidentalis</i>	SSC	
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC	
Short-eared owl	<i>Asio flammeus</i>	SSC	
Burrowing owl	<i>Athene cunicularia</i>	SSC	
Loggerhead shrike	<i>Lanius ludovicianus</i>	SSC	
Bank swallow	<i>Riparia</i>	ST	
Song sparrow (Modesto population)	<i>Melospiza melodia</i>	SSC	
Tricolored blackbird	<i>Agelaius tricolor</i>	ST	
Yellow-headed blackbird	<i>Xanthocephalus</i>	SSC	
Western mastiff bat	<i>Eumops perotis californicus</i>	SSC	
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	FE, ST	
American badger	<i>Taxidea taxus</i>	SSC	
Riparian brush rabbit	<i>Sylvilagus bachmani riparius</i>	FE, SE	
Mountain lion	<i>Puma concolor</i>	CT, CE	
Central Valley fall-run Chinook salmon	<i>Oncorhynchus tshawytscha</i>		
Delta smelt	<i>Hypomesus transpacificus</i>	FT, SE	
Longfin smelt	<i>Spirinchus thaleichthys</i>	FC	
River lamprey	<i>Lampetra ayresi</i>	SSC	
Green sturgeon	<i>Acipenser medirostris</i>	FT, SSC	
Central Valley steelhead	<i>Oncorhynchus mykiss</i>	FT	

FE = federally listed as endangered under ESA; FT = federally listed as threaten under ESA; FC = federal candidate; SE = state listed as endangered under CESA; ST = state listed as threatened under CESA; SFP = state fully protected under Fish and Game Code; SSC = state species of special concern; CE= candidate for state listing as endangered; CT= candidate for state listing as threatened.

## General Comments

### Comment 1: Altamont Alignment Impacts to Existing Conservation Areas

Figure 3.4-8 of the “Biological Resources” section shows the Altamont Alignment. Contra Costa Water District (CCWD) conservation land and Haera Conservation Bank (burrowing owl and California tiger salamander (CTS) conservation bank) are located along the Altamont Alignment. Haera Conservation Bank is on the east side of the alignment shown in Figure 3.4-9. Figure 3.4-7 shows the alignment is adjacent to the Altamont Landfill Conservation Area. Figure 3.4-6 shows the alignment is adjacent to Department of Water Resources (DWR) South Bay Aqueduct Conservation Area and East Bay Regional Park District (EBRPD) Brushy Peak Regional Preserve. Construction and operation of the Project near conservation lands may impact the conservation values of those lands. CDFW recommends that the draft EIR disclose the conservation

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area locations along the alignments, address the impacts of the Project on conservation areas, and determine if the construction and operation of the Project will limit wildlife use and conservation values of the land. CDFW recommends avoidance of permanently conserved lands and that an alternative alignment is identified to avoid impacts to lands permanently conserved for their values to wildlife. Also, there is a large barn owl nesting colony within the CCWD (formerly Jess Ranch) alignment that should be avoided.

### **Comment 2: East Alameda County Conservation Strategy**

The draft EIR states the following in Mitigation Measure BIO-2.1: “The Authority will either obtain coverage through the applicable HCP, NCCP, or other biological conservation plan, where applicable, or follow the guidance in these conservation plans and strategies in developing compensatory mitigation strategies. Construction activities within Alameda County will either **obtain compensatory habitat mitigation through the EACCS or use the mitigation prescribed in the EACCS as a basis** for mitigation and obtain coverage under separate applicable state and federal permits from CDFW and USFWS.” The next paragraph lists mitigation ratios primarily of 3:1 (conserved lands to impacted lands). Mitigation required could be higher depending on where mitigation is proposed. The East Alameda County Conservation Strategy (EACCS) should be used to determine the appropriate ratio.

### **Comment 3: Proposed Project Alternatives: Southfront Station and the Mountain House Station Alternative**

The proposed Project includes Dublin/Pleasanton Station and construction of Isabel Station, Greenville Station, Mountain House Station, Tracy Operations and Maintenance Facility, Downtown Tracy Station, River Islands Station, and North Lathrop Station. Several alternative stations were analyzed in the draft EIR. Included in those alternatives are Southfront Station instead of Greenville Station and the Mountain House Station Alternative instead of Mountain House Station. The draft EIR analyzed the impacts of each station and alternative station, impacts after implementation of mitigation measures, and compared the proposed and alternative station significance of impacts after mitigation is applied. The draft EIR’s evaluation of environmental impacts in section four (Biological Resources) shows that the Southfront Station alternative and the Mountain House Station alternative would have less impacts than the Greenville Road Station and Mountain House Station. The draft EIR states: “At the Greenville Station, the proposed Project would hinder wildlife movement related to the existing underground rail crossing east of Greenville, even with mitigation. At the Mountain House Station, the proposed Project would result in a substantial impediment to wildlife movement in the undeveloped foothills, which are an area of key wildlife movement, even with mitigation.” The draft EIR should be revised to explain why Greenville Station and Mountain House Station (having a significant and unavoidable environmental impact after mitigation) were chosen for the proposed Project instead of the Southfront

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Station and Mountain House Station alternatives, which have less-than-significant impact after mitigation. CDFW recommends that the Project incorporate the stations which have less-than-significant impact as the proposed Project instead of the stations that have significant and unavoidable impacts even after mitigation is applied.

#### **Comment 4: Compensatory Mitigation: Riparian Habitat Differentiation**

Bio-7.1 (Compensate for loss of riparian habitat) proposes compensation for the loss of riparian habitat. If in-water work is conducted within riparian brush rabbit (RBR) habitat (e.g., Paradise Cut), CDFW recommends that this measure be revised to clarify that any riparian habitat removed within RBR habitat will be considered a loss of RBR habitat and mitigated as such (as opposed to mitigating for riparian or shaded riverine aquatic habitat instead of RBR habitat).

#### **Comment 5: Wildlife Corridors**

The Altamont Hills contain movement corridors for many terrestrial wildlife species such as California tiger salamander, California red-legged frog, San Joaquin kit fox, American badger, mountain lion, golden eagle, and burrowing owl. The Project has the potential to disrupt wildlife movement corridors that are already degraded (e.g., I-580), and would create a long stretch of blockage to wildlife movement, and it would further prevent wildlife from dispersing from the northern to the southern Diablo Range and from the Altamont into the San Joaquin Valley, reducing their range. Construction of the rail lines may create barriers to the movement of wildlife, which would cut them off from important food, shelter, and breeding areas. This could result in isolation of subpopulations limits genetic material exchange and puts populations at risk of local extirpation through genetic and environmental factors.

BIO-8.3 (Revise Greenville Station design and install wildlife crossing improvements near the existing underpass east of Greenville Road) proposes one wildlife crossing improvement near the existing underpass east of Greenville Road, if the Greenville Road Station is advanced as part of the final Project. CDFW recommends that additional wildlife crossings are considered for implementation along the 42-mile stretch of railway, for example, where the alignment will cross the California Aqueduct.

CDFW recommends that the Project analyze an elevated railway design for the Project to allow more unhindered wildlife movement across the alignments to decrease or eliminate significant and unavoidable impacts caused by blockage of wildlife movement corridors. Elevated railways are critical in areas where movement of wildlife is already reduced due to existing and/or proposed geographic transportation infrastructure such as I-580. Either elevated or below ground rail design could reduce the impacts the Project would have on wildlife movement and migration by allowing wildlife to pass unimpeded underneath or over the top of the entire length of the railway.

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CDFW recommends considering the following for design features for dedicated wildlife crossings: minimize lengths (entry to exit) of dedicated wildlife crossings for certain species guilds and/or incorporate designs (grates, shelving, terracing, etc.) that still allow light penetration; maximize heights of crossings; add bridges for larger species guilds; provide natural cover types to encourage use; incorporate bench designs to allow use of the crossings during flooding; and provide smaller animal escape within or adjacent to the dedicated wildlife crossings.

If wildlife passage structures will be used instead of elevated or below ground rail, CDFW recommends that an extensive evaluation be conducted before final wildlife passage locations are selected along the alignment to determine the appropriate and most effective locations, number, and types of wildlife passage structures. Dedicated wildlife crossing structures should ensure permeability, be evaluated on a species-specific basis, and be required to meet specific minimum dimensions for increased probability of wildlife utilizing these structures for crossing opportunities. Specific care should be taken to ensure that any wildlife crossing structure design incorporates generous openness and clear line of sight from entry to exit to maximize detection of the crossing by species at the time of encounter and to ensure use.

#### **Comment 6: Cumulative Impacts**

The draft EIR considered cumulative impacts of other projects planned in the Valley Link corridor. The draft EIR did not include the Manthey Road Bridge Replacement Project (SCH No. 2020090220). The Manthey Road Bridge Replacement Project proposes to replace the Manthey Road Bridge on the San Joaquin River with a new bridge downstream of the existing railroad bridge. The existing bridge will be demolished. The Manthey Road Bridge is near the UPRR bridge alignment where the railroad bridge is proposed to be replaced or moved. CDFW recommends revising the draft EIR to add this Project as part of the cumulative impacts analysis.

#### **Comment 7: Lake and Streambed Alteration Program**

Notification is required, pursuant to CDFW's LSA Program (Fish and Game Code section 1600 et. seq.) for any Project-related activities that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA (Public Resources Code section 21000 et seq.) as the responsible agency.



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## Biological Comments

### Comment 8: Foothill Yellow-Legged Frog

On July 7, 2017, the Fish and Game Commission published its acceptance of a petition for consideration and designation of the foothill yellow-legged frog (FYLF) as a candidate species. Pursuant to Fish and Game Code section 2074.6, CDFW has initiated a status review report to inform the Commission's decision on whether listing of FYLF, pursuant to CESA is warranted. During the candidacy period, consistent with CEQA Guidelines, Section 15380, the status of the FYLF as a threatened candidate species under CESA (Fish and Game Code, § 2050 et seq.) qualifies it as an endangered, rare, or threatened species under CEQA. Consequently, take of FYLF during the status review period is prohibited unless take authorization pursuant to Fish and Game Code section 2081(b) is obtained.

FYLF are found in the vicinity of streams in a variety of habitats (valley-foothill hardwood, valley-foothill hardwood-conifer, valley foothill riparian, coastal scrub, mixed chaparral, and wet meadow types). Potentially significant impacts associated with Project activities include inadvertent entrapment, destruction of eggs and oviposition (i.e., egg-laying) sites, degradation of water quality, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Land use changes that result in degradation or destruction of riparian habitat, road development and use, urbanization, and water diversion are among factors contributing to local declines of FYLF (Thomson et al. 2016, USDA 2016). FYLF have been estimated to be extirpated from 45% of historically occupied locations in California in general (Jennings and Hayes 1995 in Thomson et al. 2016).

In addition to *Considerations for Conserving the Foothill Yellow-Legged Frog* (CDFW 2018a) as proposed in BIO-2.10, CDFW also advises surveyors to adhere to *The Declining Amphibian Task Force Fieldwork Code of Practice* found at [https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining\\_Amphibian\\_Task\\_Force\\_Fieldwork\\_Code\\_of\\_Practice.pdf](https://www.fws.gov/southwest/es/NewMexico/documents/SP/Declining_Amphibian_Task_Force_Fieldwork_Code_of_Practice.pdf).

BIO-2.10 (Protect foothill yellow-legged frog) proposes relocation from the work site. It is more effective to relocate FYLF egg masses than to try to relocate thousands of tadpoles. BIO-2.10 should be revised to work in FYLF habitat outside of the breeding season when FYLF are less likely to be in the area.

In the event that any FYLF individuals or egg masses are detected during surveys, consultation with CDFW is advised to discuss how to implement the Project and avoid take, of if avoidance is not feasible, acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), would be warranted prior to any ground- or vegetation-disturbing activities.

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### **Comment 9: Tricolored Blackbird**

The draft EIR acknowledges that tricolored blackbird (TRBL) have the potential to occur within and near the Project alignments. Figures 3.4-8, 3.4-9, 3.4-12, 3.4-13, and 3.4-15 show the Project alignment where it cuts through areas where TRBL have been found within Alameda and San Joaquin counties.

TRBL aggregate and nest colonially. Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' global population (Kelsey 2008). For example, in 2008 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations. BIO-2.13 (Protect special-status and non-special status nesting birds) proposes a 300-foot buffer during breeding season if active nesting colonies are observed by the qualified biologist.

Because the draft EIR identifies the potential for TRBL to occur within the Project, CDFW recommends conducting the following evaluation of the Project, updating the draft EIR to include the following recommended measures, and that these measures be made Conditions of Approval for the Project.

CDFW recommends that a qualified biologist conduct a habitat assessment of Project areas in advance of Project activities, to determine if the alignments contain suitable habitat for TRBL. It is advised that Project activities be timed to avoid the typical bird breeding season (February 1 through September 15). However, if Project activities must take place during that time, CDFW recommends that a qualified biologist conduct surveys for nesting TRBL no more than 7 days prior to the start of ground- or vegetation-disturbing activities to evaluate the presence/absence of TRBL nesting colonies in proximity to Project activities and to evaluate potential Project-related impacts.

If an active TRBL nesting colony is found during pre-construction surveys, CDFW recommends implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's *Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015* (CDFW 2015b). CDFW advises that the buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged and are no longer reliant upon the colony or parental care for survival. Further, TRBL colonies can expand over time and for this reason the colony may need to be reassessed on a reoccurring basis to determine the extent of the breeding colony within 7 days of Project initiation.

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In the event that a TRBL nesting colony is detected during surveys, consultation with CDFW is advised to discuss how to implement the Project and avoid take, of if avoidance is not feasible, acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), would be warranted prior to any ground- or vegetation-disturbing activities.

### **Comment 10: California Tiger Salamander**

California tiger salamanders (CTS) are known to occur in the Project footprint. The Project is within the range of CTS and suitable habitat (i.e., aquatic breeding habitat, grasslands interspersed with burrows) and the Project occurs within upland and breeding habitat. Due to the potential ground-disturbing activities, potential Project-related impacts include but are not limited to the following: collapse of small mammal burrows, inadvertent entrapment, loss of upland refugia, reduced reproductive success, reduction in health, and direct mortality of individuals. Up to 75% of historic CTS habitat has been lost to development (Searcy et al. 2013). Loss, degradation, and fragmentation of habitat are the primary threats to CTS. CTS have been determined to be physiologically capable of dispersing up to 1.4 miles from seasonally flooded wetlands (Searcy and Shaffer 2011). Given the presence of suitable habitat within and surrounding the Project, Project activities have the potential to significantly impact local populations of CTS. There are CTS along the entire Tri-Valley alignment and along much of the Altamont alignment.

Because suitable habitat for CTS is present throughout the Project area, CDFW recommends conducting the following evaluation of the Project area, revising the draft EIR to include the following measure, and that these measures be made Conditions of Approval for the Project.

CDFW recommends that a qualified biologist assess the Project area to evaluate the potential for CTS. CDFW recommends the qualified biologist determine the impacts of Project-related activities to CTS upland and breeding habitat features within and/or adjacent to the construction footprint.

In all areas of the Project footprint where suitable breeding or upland refugia habitat is present, protocol-level surveys are advised to be conducted in accordance with the USFWS *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (USFWS 2003) found at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83915&inline>. CDFW recommends that survey findings be submitted for review. In order for a negative finding for CTS to be accepted, CDFW must make a determination whether it will accept negative finds based on if there has been sufficient rainfall. In addition, acceptance of a negative finding for CTS requires protocol-level surveys for two consecutive wet seasons.

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If surveys cannot be feasibly conducted as recommended, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in potential habitat within and/or adjacent to the Project area. CDFW also recommends delineating a 250-foot no-disturbance buffer around potential breeding pools and avoiding any impacts that could alter the hydrology or result in sedimentation of breeding pools. If avoidance is not feasible, consultation with CDFW is warranted to determine of the Project can avoid take.

If through surveys it is determined that CTS are occupying or have the potential to occupy any portion of the Project area and take of the species cannot be avoided then, take authorization through acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) would be necessary to comply with CESA. Alternatively, in the absence of protocol surveys, presence of CTS should be assumed within the Project footprint and an ITP from CDFW should be obtained prior to initiation of vegetation- or ground-disturbing Project activities.

#### **Comment 11: Plants**

Many special-status plant species have the potential to occur in the vicinity of the Project area. As stated in the draft EIR, the Project area contains habitat suitable to support special-status plant species meeting the definition of rare or endangered under CEQA Section 15380.

The draft EIR reconnaissance-level field surveys were conducted in 2015, 2016, 2017, and 2019. In 2019 reconnaissance field surveys were conducted for areas that were accessible at the time. The draft EIR includes measures to minimize the impact to special-status plants, but it does not define avoidance measures or reduce impacts to a level of less-than-significant by identifying compensatory mitigation if impacts to special-status plants and their habitats cannot be fully avoided. CDFW recommends addition of a mitigation measure to the draft EIR to include a statement of how impacts to special-status plants will be avoided in the event they are discovered in the Project area. If significant impacts to special-status plants are not fully avoidable, CDFW recommends the mitigation measure to require compensatory mitigation for impacts to special-status plant species at a minimum of a 3:1 mitigation ratio (conserved habitat to impacted habitat) for permanent impacts. CDFW also recommends inclusion of language defining the Project's obligation to obtain CESA-listed plant take coverage through an ITP issued by CDFW when take of special-status plant species (identified in the list on pages 2-4) cannot be fully avoided.

CDFW also recommends that special-status plant species be avoided whenever possibly by delineating and observing a no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s) or a specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted

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to determine appropriate minimization and mitigation measures for impacts to special-status plant species.

If a plant species listed pursuant to CESA or the Native Plant Protection Act is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground-disturbing activities may be warranted through acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

Please note that mitigation ratios and/or other measures for CESA-listed plants species will need to meet the full mitigation requirement pursuant to section 2081(b)(2) of Fish and Game Code, the details of which would be determined through the ITP process.

### **Comment 12: Riparian Brush Rabbit**

RBR are designated as an endangered species by the State and impacts to the species and its habitat are prohibited without meeting certain conditions. RBR are endemic to the Central Valley of California and considered the most sensitive mammal in the state (Larsen 1993). The current population is approximately 1% of the historic population, primarily as a result of habitat destruction, fragmentation, and degradation. Approximately 90% of the Central Valley riparian forests have been eliminated. The species is also threatened by modification of riparian habitat through dams, diversions, and flood control activities as well as from rodenticides (Larsen 1993). Based on the foregoing, Project impacts would potentially substantially restrict the range of RBR.

The following are potential impacts of Project activities on RBR that would be potentially significant. As RBR are restricted to the riparian forest habitats of the Central Valley, Project activities that compromise these habitats may negatively affect the rabbits. Where human habitation occurs, non-native predators (e.g., house cats, domestic dogs, black rats) are supported, and RBR populations are not sustainable. The Project site occurs in the midst of growing housing developments, which restricts the rabbits' range and increases the risk of predation by non-native predators.

Vegetation removal for Project activities may impact RBR as they require dense ground cover for breeding (Larsen 1993). Additionally, vegetation clearing can cause habitat loss, fragmentation, and create edge effects that permeate far beyond the Project site (Harris 1988, Murcia 1995). A major issue for RBR is the availability of refugia from floods. Refugia sites must be above the elevation of catastrophic floods and contain wild rose, native and non-native blackberry vines, and/or willows for cover as well as enough forage (forbs and grasses) to sustain concentrations of rabbits for several weeks while floodwaters recede.

According to the *Five-Year Review of the Riparian Brush Rabbit* (CDFW 2020), there has never been an attempt to census or estimate the size of the South Delta local

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populations. However, approximately 238 RBR were trapped in the South Delta between 1999-2010 as breeding stock for a captive propagation effort (Constable et al. 2011). Williams et al. (2008) believed populations in the South Delta totaled “at most a few hundred rabbits.” The Tracy to Lathrop alignment is known to have RBR in the Paradise Cut and River Islands areas. It should be noted that even if the habitat is sub-optimal, riparian brush rabbits will use sub-optimal habitat out of necessity as so little suitable or preferred habitat remains. They have been known to utilize stands of pepperweed when no other “suitable” habitat is available.

Besides the impact to riparian brush rabbit from bridge construction, the operation of the railway and station will also impact the rabbits. The railway will introduce a new source of noise and vibration. When the ambient noise level is above baseline conditions, the ability to discern predators is reduced. Construction noise and pile driving noise will increase the noise level above baseline conditions and could increase the riparian brush rabbits’ risk of predation. The Project will also create night-time lighting of the station. Artificial light has been shown to suppress the immune system of some mammals (Bedrosian et al. 2011), and it can cause disruption of normal circadian rhythms. Rabbits often decrease foraging in higher light levels due to higher risk of predation (Gilbert and Boutin 1991). RBR use the railroad and road bridges to weather high flood events. The railroad bridge in particular is used as a “bunny highway” during flood events. Construction of the new bridge temporarily may preclude the use of the railroad bridge.

To revise the draft EIR to mitigate the impacts of the Project to less-than-significant, mitigation measures should be included in the draft EIR to conduct protocol-level surveys RBR, avoid and minimize impacts to RBR and their habitat, and if full avoidance is not possible, compensatory mitigation for RBR habitat should be created and conserved in perpetuity. Conserved lands should be protected through a conservation easement and include suitable breeding and dispersal habitats with including funding an endowment established for managing the lands for the benefit of RBR in perpetuity as well as preparation of a long-term management plan by a qualified land manager. The mitigation ratio should be 3:1 for permanent impacts and 1:1 for temporary impacts. CDFW recommends that RBR mitigation should be separate from any riparian credits purchased at a mitigation/conservation bank. Habitat credits purchased to offset impacts to fish and nesting birds may not be appropriate habitat or located in a place beneficial for RBR. Creation of flood refugia for the species can also be considered as a piece of any compensatory mitigation package. CDFW also recommends inclusion of language defining the Project’s obligation to obtain take coverage for riparian brush rabbit through an ITP issued by CDFW.

CDFW agrees with the plan of using clear span bridges if new bridges must be built over Paradise Cut and the San Joaquin River. CDFW recommends designing the bridges such that planting vegetation under the bridges is possible for RBR habitat connection and/or design the bridges such that they could function as “rabbit bridges”

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with shelter from predators in order to provide flood refugia and act as a wildlife corridor. If possible, consider implementing design for the bridge abutments such that they act as vegetated soil berms for RBR flood refugia.

### **Comment 13: Swainson's Hawk and Nesting Birds**

BIO-2.15 (Protect Swainson's hawk nests) states that if active nests are found, a 0.25-mile buffer will be established between the active nest and construction activities until the young have fledged. The draft EIR should be revised to a 0.5-mile buffer as a conservative measure. Swainson's hawk in rural areas with little human disturbance may be distressed by Project activities closer than 0.5-mile if there is a clear line of sight from the Project activities to the nest.

BIO-2.13 (Nesting Birds) states that typical buffer sizes are 250 feet for raptors and 50 feet for other birds. CDFW recommends revising the mitigation measure to incorporate having a 500-foot buffer minimum for raptors but that the buffers should be determined by an on-site qualified biologist with daily monitoring to ensure no disruption to nesting behaviors occurs as a result of the Project.

### **Editorial Comments**

#### **Comment 14: Proposed Additional Mitigation Measures**

CDFW recommends adding the following language to the draft EIR for the protection of wildlife:

1. Fence and Signpost Restriction. Any fencing posts or signs installed temporarily or permanently throughout the course of the Project shall have the top three post holes covered or filled with screws or bolts to prevent the entrapment of wildlife, specifically the talons of birds of prey. Also, fencing should incorporate wildlife friendly design elements, such as smooth wires and having a 6-inch or greater gap above grade. The Permittee shall be responsible for ensuring compliance with this measure throughout the course of the Project and shall inspect each post for compliance when at the Project site.
2. Open Pipes Restriction. All pipes, culverts, or similar structures that are stored vertically or horizontally on-site for one or more overnight periods shall be securely capped on both ends prior to storage and thoroughly inspected for wildlife by a qualified biologist prior to utilization. All hollow pipes or posts installed as part of the Project at a positive angle and exposed to the environment shall be capped, screened, or filled with material by Permittee prior to the end of the workday in which installation occurs to prevent entrapment of birds and other wildlife inside hollow posts.

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## ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base 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 the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## FILING FEES

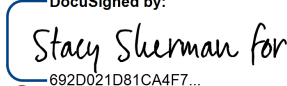
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying Project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist Tri-Valley San Joaquin Regional Rail Authority in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Andrea Boertien, Environmental Scientist, at (209) 234-3449 or [Andrea.Boertien@wildlife.ca.gov](mailto:Andrea.Boertien@wildlife.ca.gov); or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at [Melissa.Farinha@wildlife.ca.gov](mailto:Melissa.Farinha@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
692D021D81CA4F7...  
Gregg Erickson  
Regional Manager  
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento

Rich Walter, ICF – [Rich.Walter@icf.com](mailto:Rich.Walter@icf.com)



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