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June 5, 2020

San Joaquin Regional Rail Commission
 Attn: Valley Rail Sacramento Extension Project, Kevin Sheridan
 949 East Channel Street Stockton, CA 95202
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Governor's Office of Planning & Research

Jun 05 2020

STATE CLEARINGHOUSE

Dear Mr. Sheridan:

RE: VALLEY RAIL SACRAMENTO EXTENSION PROJECT (PROJECT)
 DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) SCH# 2019090306

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from the San Joaquin Joint Powers Authority (SJJPA) San Joaquin Regional Rail Commission (SJRRC) and San Joaquin Joint Powers Authority (SSJPA) for the Project pursuant 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, 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 & 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, 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The SSJPA and SJRRC is proposing to implement Altamont Corridor Express and San Joaquin passenger rail service between Stockton and Sacramento with further connections to San Jose, Ceres, and Bakersfield. The proposed Project spans San Joaquin and Sacramento Counties. The SSJPA and SJRRC proposes to upgrade tracks within the existing Union Pacific Railroad Sacramento Subdivision right-of-way and construct six new stations along the alignment.

It is noted that the proposed Project overlaps with three regional conservation plans including the South Sacramento Habitat Conservation Plan (SSHCP), San Joaquin Multi Species Conservation Plan (SJMSCP), and Natomas Basin Habitat Conservation Plan

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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(NBHCP). It is also noted that Project activities would only overlap with the NBHCP in Phase II.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the SJRRC 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 or facilitate an effective environmental review process. Where CDFW recommends specific revisions to the DEIR, deletions are marked with a strikethrough (~~example~~) while additions are marked as underlined (example).

Comment 1: Additional coordination needed between stakeholders.

The Cosumnes River Preserve (CRP) consists of over 50,000 acres of wildlife habitat and agricultural lands owned by seven land-owning Partners. The CRP Partners include The Nature Conservancy, Bureau of Land Management, CDFW, Sacramento County Regional Parks, Department of Water Resources, Ducks Unlimited, and the California State Lands Commission. The CRP is centered along the Cosumnes River, its floodplains and riparian habitat. This habitat is buffered by a variety of agricultural operations. The CRP provides numerous social, economic, and recreational benefits to local communities and to people residing in the larger Sacramento and San Joaquin areas. The habitat supports wildlife, including birds that migrate throughout the Pacific Flyway.

While CDFW recognizes that the majority of new construction and track upgrades described in the DEIR are outside the CRP boundaries, the proposed Project will bring substantially more train traffic along the existing Union Pacific Right-of-Way which borders or bisects large sections of the CRP. CDFW requests additional coordination between the SJRRC and the SJJPA with the CRP Partners to discuss future planning, access, and consistency with the Partners' management plan for the CRP.

Section 15125 (d) of the CEQA Guidelines states that EIRs must discuss any inconsistencies between projects and applicable regional plans. The DEIR should include a discussion of the Project's consistency with the CRP Management Plan and how the SJRRC and the SJJPA will ensure that implementation of the Project does not impede the CRP Partner's ability to meet the management goals and objectives.

Comment 2: Deferred Mitigation.

Section 15126.4, subdivision (a)(1)(B) of the CEQA Guidelines states that formulation of mitigation measures should not be deferred until some future time. The DEIR includes mitigation measures for biological resources that rely on future approvals/agreements or processes that are not specific as a means of bringing identified significant environmental effects to a level of less than significant. CEQA requires that any activity resulting in loss of habitat, decreased reproductive success, or other negative effects on population levels of special-status species should be addressed in the DEIR. There should be a clear impact assessment that outlines the temporary and permanent effects of the Project on all biological resources within and surrounding the Project site. If it is not possible to avoid impacts to special-status species, the DEIR must identify feasible mitigation that reduces project impacts to a level of less than significant. CDFW recommends the DEIR include measures that are enforceable and do not defer the details of the mitigation to the future.

Comment 3: CDFW recommends continued coordination when its regulatory authority is applicable to Project activities.

CDFW expects that its regulatory authority may need to be exercised for the activities disclosed in the DEIR.

Relevant provisions of the Fish and Game Code include, but are not limited to, sections addressing:

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- CESA designated endangered, threatened, and candidate species (See, e.g., Fish & G. Code, 2080, 2081, 2085)
- CDFW's Lake and Streambed Alteration Program (*Id.*, 1600 et seq.)
- California Native Plant Protection Action (*Id.*, 1900 et seq.)
- Birds, nests, and eggs (*Id.*, 3503, 3503.5); and
- Fully protected species (*Id.*, 3511, 4700, 5515, 5050).

Information regarding portions of the Fish and Game Code relevant to the Project, and CDFW's related permitting and other programs, is available on our web page (www.wildlife.ca.gov). To address this comment, CDFW recommends careful review of these relevant code sections and continued coordination when they are applicable to particular Project activities.

Comment 4: Impact analysis for species is incomplete.

Table 3.4-3 outlines the temporary and permanent impacts by land cover type within the proposed Project area: however, it is unclear how these impacts were calculated and translated into the subsequent species-specific analysis. The DEIR contains sections that have inconsistent assessments, insufficient reasoning, or do not account for species utilization of certain habitats. Detailed analysis for these factors is essential since the Project covers a large and diverse geographic area. Examples of the issue include but are not limited to:

- Potential occurrence of special-status plants in 7.12 acres of aquatic habitat and 0.38 acres of nonnative annual grassland- these values (from Page 3.4-78) are not linked to Table 3.4-3 and are vague as to why or how they apply to specifically to the species listed in this section
- Disturbance to 60 acres of western pond turtle (*Actinemys marmorata*) and giant garter snake (*Thamnophis gigas*) habitat (within 1300-feet and 200-feet of suitable aquatic habitat respectively)- It is unclear how suitable aquatic habitat was assessed and likewise, how the same 60 acre value could apply to both species, given the life history differences and the distance parameters that DEIR establishes
- Loss of approximately 2.3 acres of potential foraging habitat for greater sandhill crane (*Grus canadensis tabida*)- it unclear where this number is derived from, given that there are greater than 2.3 acres of permanent impacts to habitat in the Project area

To address this comment, CDFW recommends the following:

- Work with landowners and managers within or adjacent to the Project area who have species-specific information to gather data to support species assessments in the DEIR
- Describe how suitable habitat was determined and inform the species analysis in DEIR by connecting impacts to the values in Table 3.4.3
- Provide biological and ecological reasoning for why the values apply specifically for the species being assessed
- Connect this assessment with specific Project activities and areas. It would be clearer to provide a sub-table of Table 3.4-3 that shows the species-specific impacts (both temporary and permanent) for each Project area.

Comment 5: Revisions needed to mitigate habitat impacts to a level of less than significant.

CDFW has noted that BIO-1.1 thru BIO-1.14 each mitigate impacts to fish and wildlife (Impact BIO-1) species in conjunction with other measures such as AQ-2.3 (fugitive dust control) or HYD-1.2 (water quality for surface waters) which contribute to the DEIR's conclusion that specific impacts will be mitigated to less-than-significant. However, the DEIR does not apply habitat mitigation outlined in BIO-2.2 (riparian) or BIO-3.1 (wetland avoidance) as well. As such, the DEIR does not effectively analyze the second portion of Impact BIO-1 which seeks to mitigate a "substantial adverse effect...through habitat modifications, on species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and

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Wildlife or the U.S. Fish and Wildlife Service.” While BIO-1.1 thru BIO-1.14 focus on direct species impacts, mitigation for habitat modification is not accounted for. This poses a particular issue in that the DEIR discloses impacts the species’ habitat but does not link those impacts to a mitigation measure. Section 15126.4 (a)(1)(B) of the CEQA guidelines states that formulation of mitigation measures should not be deferred until some future time. As such, the DEIR does not adequately propose specific habitat mitigation that can be evaluated.

To address this issue, CDFW recommends the DEIR propose mitigation measures that establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented and explain why the measure is feasible. CDFW recommends SJJPA and SJRRC analyze the suitability of existing habitat mitigation (such as BIO-2.2 (riparian) or BIO-3.1 (wetland avoidance)) and apply appropriately to the species impacts detailed in BIO-1. Particular effort should be focused on mitigation suitability, distinction between temporary and permanent impact for each species, whether temporary impacts, when reclaimed, will retain the same habitat value, and outline an appropriate strategy to effectively mitigate permanent impacts (e.g. SJJPA and SJRRC responsible mitigation or the purchase or funding of offsite mitigation).

While mitigation for habitats such as riparian may be covered in the DEIR, CDFW has identified additional impacts to species’ habitats for that are not mitigated for in the DEIR. Specific recommendations for those species are provided below. CDFW has also identified several species for which specific habitat mitigation should be disclosed (Comments 6, 8, 11, 14, and 18).

Comment 6: Revisions needed to mitigate special-status plants to a level of less than significant.

CDFW has identified several inconsistencies in mitigation measures BIO-1.3 and BIO-1.5 that do not adequately describe the protections for potentially affected plant species and appropriate avoidance and minimization strategies for those species. As such, CDFW recommends the SJJPA and SJRRC make revisions to the mitigation measures for special-status plants as outlined below.

The following revision is recommended BIO-1.3 (Page 3.4-80) because this measure relates to state-listed plants (including Bogg’s Lake hedge-hyssop (*Gratiola heterosepala*)) and the SSHCP process would only apply if the Project participates in the SSHCP: “Take of listed plant species such as Bogg’s Lake hedge-hyssop, slender Orcutt grass and Sacramento Orcutt grass is not permitted under CESA without appropriate take authorization, ~~the SSHCP~~; therefore, if the qualified botanist encounters a previously undiscovered occurrence of Bogg’s Lake hedge-hyssop, or Sacramento or slender Orcutt grass on a project site in the SSHCP Plan Area (i.e., the North Elk Grove Station, including all access and platform variants, which is in the UDA of the SSHCP), SJJPA and SJRRC shall contact the Land Use Authority Permittee with authority over the proposed project, who would coordinate with the Wildlife Agencies for written concurrence of the qualified biologist shall develop an avoidance plan to ensure that the proposed project does not cause take of the species. In the event, take cannot be avoided the project proponent may seek related take authorization as provided by the Fish and Game Code or otherwise comply with CESA through an existing Habitat Conservation Plan (if applicable).”

The following revision is recommended for Mitigation Measure BIO-1.5 (Page 3.4-82) because this measure includes other special-status plants and the SSHCP process would only apply if the Project participates in the SSHCP: “If Ahart’s dwarf rush, ~~Bogg’s Lake hedge-hyssop~~, dwarf downingia, legenera, pincushion navarretia, or Sanford’s arrowhead (or other special-status plants) are detected in an area proposed to be disturbed by the proposed project in the SSHCP Plan Area (i.e., the North Elk Grove Station [including all access and platform variants], which is in the UDA of the

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~~SSHCP), SJJPA and SJRRC would implement compensatory mitigation for impacts that assures permanent protection of the species or otherwise mitigate through an existing Habitat Conservation Plan (if applicable) that is consistent with the SSHCP by assuring one unprotected occurrence of the species is protected in an SSHCP Preserve before any ground-disturbance occurs at the North Elk Grove Station (including all access and platform variants) site.~~

The DEIR should outline mitigation for special-status, non-listed plants since it indicates presence of Sanford's arrowhead (*Sagittaria sanfordii*) in at least one proposed Project area.

CDFW has also noted that Mitigation Measure BIO-1.5 (Page 3.4-82) states CDFW would deem a salvage, relocation, or propagation and monitoring plan appropriate. Section 15126.4 (a)(1)(B) of the CEQA guidelines states that formulation of mitigation measures should not be deferred until some future time. As written, this measure relies on a future approval as means to mitigate to a level of less than significant. Salvage, relocation, or propagation of the rare plants with the potential to occur in the project area should only occur when properly supported by scientific evidence. Since the DEIR does not provide any further details of the salvage, relocation, or propagation and monitoring plan, it is difficult to determine whether the measures would be feasible, effective, or supported by scientific literature. As such, the DEIR does not provide adequately enforceable mitigation for this potentially significant impact.

To address this issue, CDFW recommends the DEIR propose mitigation measures that establish performance standards to evaluate the success of the proposed mitigation, provide a range of options to achieve the performance standards, and must commit the lead agency to successful completion of the mitigation. Mitigation measures should also describe when the mitigation measure will be implemented and explain why the measure is feasible.

Comment 7: Project landscaping can be enhanced.

CDFW has noted that the DEIR includes Project plans for landscaping improvements in the Project area. CDFW recommends consideration of the Homegrown Habitat Plant List (Sacramento Valley Chapter, California Native Plant Society), provided as Attachment 1, when developing the final planting palette for landscaped areas such as medians, shoulders, etc. The Homegrown Habitat Plant List (HHPL) is the result of a coordinated effort of regional stakeholders with the intent of improving landscape plantings for the benefit of property owners and ecosystem. Including plants from the HHPL is intended to produce the following outcomes for landscaping:

- Increased drought tolerance
- Decreased water use
- Decreased maintenance and replacement planting costs
- Increased functionality for local pollinators and wildlife
- Increase in overall biodiversity and ecosystem health
- Increased carbon sequestration and climate change resilience

Comment 8: Revisions needed to mitigate impacts to special-status vernal pool invertebrate habitat to a level of less than significant.

The DEIR discloses temporary loss of 3.35 acres and the permanent loss of approximately 1.28 acres of potential special-status vernal pool invertebrate habitat. The DEIR notes that that the Project will “compensate for potential project-related loss of potentially occupied habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp through consultation with USFWS and implementation of resulting mitigation requirements, to be consistent with regional conservation plans for both species.” While this compensation may be an appropriate component of a mitigation approach, using it as basis for the significant determination defers mitigation to a future permitting process without further discussion on how the mitigation would be implemented specifically. As such, the DEIR does not adequately mitigate the potentially significant impact it discloses and CDFW is unable to evaluate its effectiveness. Likewise, while every effort to be consistent with regional conservation plans is appreciated, citing them in the evaluation of the significance without

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participation does not disclose how the impacts are mitigated below a level of significance. The success of regional conservation plans is typically derived from the coordination of planning principles, impact assessments, conservation goals and objectives, avoidance and minimization measures, and a species/habitat-based mitigation approach. These factors are carefully planned to work in combination to achieve more effective regional conservation. If the SJRRC and SJJPA will not participate in a regional conservation plan, it should propose an independent mitigation strategy in the DEIR and independent evaluation of significance.

To address this, CDFW recommends the DEIR be revised to state the following:

“Implementation of Mitigation Measure BIO-1.6 would avoid and minimize potential impacts on vernal pool fairy shrimp and vernal pool tadpole shrimp habitats, and compensate for potential project-related loss of potentially occupied habitat for vernal pool fairy shrimp and vernal pool tadpole shrimp by preserving or permanently protecting vernal pool fair shrimp and vernal pool tadpole shrimp habitat to compensate for temporary and permanent impacts (or as determined through consultation with USFWS and implementation of resulting mitigation requirements). Compensation make take the form of permanent protection, enhancement, or restoration of suitable habitat, purchase of credits at a USFWS-approved bank or conservation site, or through an existing Habitat Conservation Plan (if applicable). ~~to be consistent with regional conservation plans for both species.~~ Implementation of Mitigation Measure BIO-1.6 would also reduce the proposed project’s construction impacts on vernal pool fairy shrimp and vernal pool tadpole shrimp through direct loss of potentially occupied habitat at the Lodi Siding Variants, North Elk Grove Station (including all access and platform variants), North Elk Grove Siding Variants, Del Paso Siding Upgrade/Extension, and the southern portion of the Natomas/Sacramento Airport Station to a less-than-significant level.”

Comment 9: Revisions suggested to further mitigate Steelhead – Central Valley DPS to a level of less than significant.

Measure BIO-1.8 describes how the Project will avoid and minimize impacts on special-status fish while pile driving and implement seasonal restrictions for in-water work. CDFW recommends adding the following text to the description of the work window:

There will be a construction work window of June 15 to October 15 for all work in the Arcade Creek channel. As Arcade Creek is typically dry during the summer months, in-channel work will be completed during the dry period to the maximum extent feasible. This time period will minimize impacts on migrating special-status fish species, such as adult steelhead which are unlikely to be present during these periods of no flow. In-water work in flowing streams will dewater only up to half of the wetted stream at any time to allow fish passage and any obstruction will be made of clean material.

Comment 10: Revisions suggested to BIO-9 to increase effectiveness.

CDFW recommends the following additions or text changes to increase the effectiveness of biological monitoring during Project implementation. CDFW also recommends the DEIR “immediate vicinity” in the first bullet below.

- *“During construction activities, if a special-status species is observed (or if an injured or dead special-status species is encountered), the work shall stop in the immediate vicinity. The project applicant shall notify the biological monitor, and the appropriate resource agency (e.g., USFWS and/or CDFW). Any measures required by these agencies shall be implemented, and proof of implementation shall be submitted to the agencies before construction is allowed to proceed. If the species is listed under CESA and in the event take cannot be avoided, the project proponent comply with CESA through an existing Habitat Conservation Plan (if applicable) or otherwise seek related take authorization as provided by the Fish and Game Code.*
- *The project applicant shall cap the top opening or fill the three holes on the top (e.g., with a bolt and nut), of any of u-channel posts, signs, or vertical poles installed temporarily or permanently throughout the course of the project to prevent the entrapment of wildlife, especially birds of prey. Fence posts, signs, or vertical poles will be checked periodically during the project.*
- *All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the project site shall be free of non-native plant materials. Fiber rolls or erosion control*

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mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Products with plastic monofilament or cross joints in the netting that are bound/stitched (such as found in straw wattles/fiber rolls and some erosion control blankets), which may cause entrapment of wildlife, shall not be allowed.

Comment 11: Revisions needed to mitigate impacts to western pond turtle and giant garter snake habitat to a level of less than significant.

The DEIR discloses the disturbance of approximately 60 acres of western pond turtle and giant garter snake habitat. The DEIR notes that “temporary impacts on habitats would be minor in extent, and are expected to return to pre-project conditions within one growing season because they are dominated by herbaceous vegetation, this impact would be less than significant” without further discussion on how impacts to 60 acres were calculated or how returning to pre-project conditions would offset the temporal loss of up to 60 acres of habitat. As such, the DEIR does not adequately analyze the potentially significant impact it discloses.

To address this, CDFW recommends the DEIR clarify the following:

- Distinction between temporary and permanent impacts to western pond turtle and giant garter snake habitat
- Propose effective mitigation for any permanent impacts identified
- Propose effective mitigation for any temporary impacts identified
- Mitigation may take the form of permanent protection, enhancement, or restoration of suitable habitat, purchase of credits at a CDFW-approved bank or conservation site, or through an existing Habitat Conservation Plan (if applicable)

Comment 12: Revisions needed to mitigate impacts to Swainson’s hawk and white-tailed kite to a level of less than significant.

Due to the special-status of these species and protections provided under the Fish and Game Code (CESA-listed for Swainson’s hawk (*Buteo swainsoni*) and fully protected for white-tailed kite (*Elanus leucurus*)), take of these species may constitute a potentially significant impact as identified in the DEIR. CDFW has identified several aspects of the DEIR that should be revised to effectively mitigate to a level of less than significant and comply with the Fish and Game Code:

- For project activities (including construction staging) that begin between March 1 and September 15, SJJPA and SJRRC shall retain a qualified biologist who will conduct preconstruction surveys for Swainson’s hawk and white-tailed kite and identify active nests on and within 0.25 mile of the project area. The surveys will be conducted before the beginning of any staging or construction activities between March 1 and September 15 and a separate survey will be conducted for each breeding season in which project activities will occur.
- “If an active Swainson’s hawk or white-tailed kite nest is found, impacts on nesting Swainson’s hawks and white-tailed kites will be avoided by establishing appropriate buffers around active nest sites and utilizing a biological monitor to assess bird behavior for any nests identified during preconstruction Swainson’s hawk surveys. CDFW guidelines and the SSHCP recommend implementation of a 0.25-0.5-mile-wide buffer for Swainson’s hawk and a 0.25-mile wide buffer for white-tailed kite, but the size of the buffer may be adjusted if a qualified biologist and SJJPA and SJRRC, in consultation with CDFW, determine that such an adjustment would not be likely to adversely affect the nest. Any adjustments to the buffer size should be made in increments and will take into account the biological monitor’s assessments of the bird’s response to project activities. No project activity will begin in the buffer areas until a qualified biologist has determined, in coordination with CDFW, that the young have fledged, the nest is no longer active, or reducing the buffer will not be likely to result in nest abandonment. Nest monitoring by a qualified biologist during and after construction or staging activities will be required if the activity has the potential to adversely affect a nest.
- In the event take of Swainson’s hawk cannot be avoided, the project proponent may seek related take authorization as provided by the Fish and Game Code or otherwise comply with CESA through an existing Habitat Conservation Plan (if applicable).”

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- *If it is determined during surveys or project implementation that project activities may impact white-tailed kite, project personnel shall fully avoid any impacts that may result in take if white-tailed kite is observed to be utilizing the project area or adjacent area.*

While surveys will be completed for at least the two survey periods immediately before the Project's implementation and may effectively capture a season's breeding behavior, the SJJPA and SJRRC recommends initiating these surveys in the year or season prior to Project implementation. This would allow the SJJPA and SJRRC to obtain data to inform decision making regarding Project schedules and environmental compliance. For instance, CDFW has noted 20 Swainson's hawks (10 breeding pairs at the Regional San)(CDFW 2020) which may be in proximity to the North Elk Grove Station and capturing this data in relation to Project implementation well in advance of scheduling construction may assist the SJJPA and SJRRC reduce risk of unanticipated delays due to a late discovery of an active nest.

Comment 13: The impact assessment of Swainson's hawk and white-tailed kite habitat is inconsistent and are not adequately assessed in the DEIR.

The DEIR notes impacts to "6.25 acres of potential nesting (i.e., oak tree canopy) and approximately 111 acres of foraging habitat (i.e., nonnative annual grassland, row and field crops, and ruderal habitat) for Swainson's hawk and white-tailed kite from activities such as site preparation (e.g., vegetation clearing, tree removal, grading, stockpiling materials), equipment access and operation, and other ground-disturbing construction." Based on the values provided in Table 3.4.-3, it is unclear how these numbers are calculated and whether they correspond to permanent or temporary impacts. As a result, it is difficult for CDFW to determine the extent to which the species will be impacted and to determine the appropriateness of any mitigation. The DEIR's analysis for Swainson's hawk and white-tailed kite is given as "that temporary impacts would occur in marginal habitat, be minor in extent, and are expected to return to pre-project conditions within one growing season because they are dominated by herbaceous vegetation, this impact would be less than significant." This analysis does not consider the life stages of Swainson's hawk and white-tailed kite and how both nesting and foraging habitats serve a valuable, but independent purpose for the species. As a result, the analysis in the DEIR does not adequately assess potential impacts.

To address this concern, CDFW recommends the DEIR show:

- nesting and foraging habitat independently as potentially significant impacts
- clear reasoning for the assessment of impacts
- separate assessment of temporary and permanent impacts
- how the appropriate habitat mitigation has been determined based on 1)-3) and how that mitigation reduces the potential impacts to a less than significant level

Comment 14: Revisions needed to mitigate impacts to Swainson's hawk and white-tailed kite habitat to a level of less than significant.

Given the above information, CDFW recognizes that the acreages provided in BIO-1.11 may change in response to Comment 5, but also recognizes the habitat mitigation proposed in the DEIR only covers the North Elk Grove Station and only includes foraging habitat mitigation. Without inclusion of nesting habitat or the remainder of the foraging habitat in the Project area, impacts to Swainson's hawk and white-tailed kite are not adequately analyzed so that an the SJRRC and SJJPA can make an appropriate significant determination.

To address this, CDFW recommends the following changes to the DEIR:

"To mitigate for the permanent removal of habitat, the SJJPA and SJRRC shall mitigate for in accordance with the Staff Report for Impacts to Swainson's Hawks (Buteo swainsoni) in the Central Valley of California (CDFW 1994). Permanent impacts to nesting habitat will be mitigated and may include permanent protection, enhancement, or restoration of suitable nesting habitat, purchase of credits at a CDFW-approved bank or conservation site, or through an existing Habitat Conservation Plan (if applicable). Permanent impacts to

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foraging habitat will be mitigated and may include permanent protection, enhancement, or restoration of suitable nesting habitat, purchase of credits at a CDFW-approved bank or conservation site, or through an existing Habitat Conservation Plan (if applicable).
~~approximately 30 acres of suitable grassland foraging habitat at the North Elk Grove Station (including all access and platform variants)~~ As portions of the project footprint are in unincorporated Sacramento County, SJJPA and SJRRC may also shall participate in Sacramento County's voluntary Swainson's Hawk Mitigation Program. Because the North Elk Grove station will impact fewer than 40 acres, mitigation can be achieved by paying a mitigation fee or providing replacement habitat (title or easement to suitable Swainson's hawk mitigation lands on a per-acre basis)."

Comment 15: Revisions needed to mitigate impacts to burrowing owl to a level of less than significant.

Measure BIO-1.12 describes avoidance measures for burrowing owl (*Athene cunicularia*). While CDFW appreciates using the SSHCP as the basis for this measure, the survey methodology described in the SSHCP is used in conjunction with over 150 other Avoidance and Minimization Measures in addition to the conditions of the Federal and State Incidental Take Permits. As such, relying solely on the SSHCP measures may not capture potential impacts to burrowing owl and allow the SJRRC to avoid take of burrowing owl. Due to the presence of suitable habitat and documented use of train track slopes by burrowing owl in Sacramento County, a more robust mitigation strategy is needed to mitigate to a level of less than significant.

To address this, CDFW recommends the DEIR reference and rely on the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012) for avoidance techniques. CDFW has identified several components of the DEIR that are inconsistent with 2012 Staff Report or otherwise reference the SSHCP process. These components include, but are not limited to the following:

- Survey radius (150 meters in the 2012 Staff Report)
- Number of surveys
- Timing of surveys
- Recommended no disturbance buffer size
- Reliance on the "Implementing Entity" and "Wildlife Agencies" to approve plans or nest status. Any plans should be developed by a qualified biologist and approved at the discretion of the SJJPA and SJRRC as lead agency
- Contingency plans (e.g. exclusion) in the event impacts to burrowing owl are unavoidable

Comment 16: Revisions needed to mitigate impacts to burrowing owl habitat to a level of less than significant.

The DEIR discloses the loss of approximately 30 acres of potential nesting habitat for burrowing owl in the Project area and also notes that burying/removal of occupied burrows could occur. The DEIR notes that "temporary impacts would occur in marginal habitat, be minor in extent, and are expected to return to pre-project conditions within one growing season because they are dominated by herbaceous vegetation, this impact would be less than significant" without further discussion on the potentially permanent impacts to nesting habitat or burying/removal of occupied burrows. As such, the DEIR does not adequately link Mitigation Measure BIO-1.12 to the potentially significant impact it discloses.

To address this, CDFW recommends the DEIR clarify the following:

- Distinction between temporary and permanent impacts to burrowing owl
- Disclosure that any attempted one-way exclusionary devices and burrowing owl eviction could be considered significant and would require mitigation for permanent impacts to burrowing owl
- Propose effective mitigation for permanent impacts identified as described in Appendix F of the *Staff Report on Burrowing Owl Mitigation* (CDFW 2012)

Comment 17: Revisions needed to mitigate greater sandhill crane to a level of less than significant.

BIO-1.13 describes surveys and avoidance measures for greater sandhill crane, a species

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fully protected by Section 3511 of the Fish and Game Code. As proposed BIO-1.13 may be focused too narrowly and as mentioned in Comment 4, reliance is placed on the SSHCP process of which the SJJPA and SJRCC are not a Permittee.

To address this, CDFW recommends the following revisions to BIO-1.13:

Prior to project construction, SJJPA and SJRCC will retain a qualified biologist to conduct preconstruction surveys to determine if active roosting sites are present within a 0.5-mile radius of a project footprint if existing or potential roosting sites were found during initial surveys ~~or if, and~~ construction activities will occur when wintering flocks are present in the project area ~~SSHCP Plan Area~~ (September 1 through March 15). A qualified biologist will conduct preconstruction surveys within 15 days prior to ~~of~~ initiating ground-disturbing activities, and within 0.5 mile of a project footprint, to determine presence of roosting greater sandhill cranes. Preconstruction surveys will be conducted September 1 through March 15, when wintering flocks are present in the project area ~~Plan Area~~. If birds are present at active roosting sites within a 0.5-mile buffer of a project footprint, then the following avoidance measures will be implemented. The qualified ~~approved~~ biologist will inform the SJJPA and SJRCC. ~~Land Use Authority Permittee and Implementing Entity of species locations, and they in turn will notify the Wildlife Agencies.~~

- *The SJJPA and SJRCC will establish a 0.5-mile temporary roosting no disturbance buffer around the roosting site until the cranes have left, or construct a visual barrier for the duration of project construction.*
- *A qualified biologist experienced with greater sandhill crane behavior will be retained by the SJJPA and SJRCC to monitor the roosting site throughout the roosting season, and to determine when the birds have left. The approved biologist will be on site daily while construction-related activities are taking place in the no disturbance buffer. Work within the temporary no disturbance buffer can only occur with the written permission of the SJJPA and SJRCC ~~Implementing Entity and Wildlife Agencies~~. If greater sandhill cranes show any sign of disturbance ~~are abandoning their roosting and/or forage sites~~, the qualified ~~approved~~ biologist will have the authority to shut down construction activities. If roost abandonment occurs, the SJJPA and SJRCC ~~will consult with CDFW, approved biologist, SJJPA, SJRCC, Implementing Entity, and Wildlife Agencies will meet to determine the best course of action to avoid harm and harassment of individuals.~~*
- *The qualified biologist will also train construction personnel on the avoidance procedures, buffer zones, and protocols in the event that greater sandhill cranes move into an active construction zone (i.e., outside the buffer zone).*
- *If it is determined during surveys or project implementation that project activities may impact greater sandhill crane, project personnel shall fully avoid any impacts that may result in take if greater sandhill crane is observed to be utilizing the project area or adjacent area.*

It should be noted that greater sandhill crane is particularly sensitive to disturbance (SSHCP 2018), so Project activities should only proceed with extreme caution if the species is present.

Comment 18: Revisions needed to mitigate impacts to greater sandhill crane habitat to a level of less than significant.

The DEIR discloses the disturbance of approximately 2.3 acres to greater sandhill crane foraging habitat. Since greater sandhill crane is both CESA-listed and fully protected, impacts to the species' habitat may be significant but the DEIR does not correspond potential habitat impacts to a mitigation measure. As such, the DEIR does not adequately mitigate the potentially significant impact it discloses.

To address this, CDFW recommends the DEIR clarify the following:

- Distinction between temporary and permanent impacts to greater sandhill crane habitat
- Propose effective mitigation for any permanent impacts identified
- Propose effective mitigation for any temporary impacts identified
- Mitigation may take the form of permanent protection, enhancement, or restoration of suitable habitat, purchase of credits at a CDFW-approved bank or conservation site, or through an existing Habitat Conservation Plan (if applicable)

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Comment 19: Revisions suggested to Other Special-Status Birds, Migratory Birds, and Other Raptors to further reduce impacts to a level of less than significant.

BIO-1.14 describes measures for bird surveys and response procedures in the event of active bird nests. CDFW recommends incorporation of the following:

- Conduct a preconstruction survey in each year in which Project activities during the nesting season
- Define survey radius to be consistent with potentially applicable buffer sizes defined in the DEIR
- Conduct an additional survey if a lapse in Project-related activities of 14 days or longer occurs to capture any newly established nests
- In the event take of tricolored blackbird or other listed bird cannot be avoided, the SJJPA and SJRRC may seek related take authorization as provided by the Fish and Game Code or otherwise comply with CESA through an existing Habitat Conservation Plan (if applicable)

Comment 20: DEIR revisions needed to adequately mitigate impacts to bats to less-than-significant.

The DEIR discloses that “no surveys for bat roosts have been conducted in the project area, but large trees and riparian habitats offer appropriate features to support individual and maternity bat roosts for western red bats and hoary bats” while also identifying over 5 acres of potentially impacted bat habitat. Impacts to bat and bat habitat could be considered a potentially significant impact but the DEIR proposes no mitigation measures for identifying, avoiding, and minimizing impacts to any species of roosting bats.

To address this CDFW recommends the DEIR be revised to include an additional mitigation measure that described the following:

- Habitat assessment and survey by a qualified bat biologist
- Examining all suitable habitats prior to project implementation (including tree removal, tree trimming, or other disturbance). This should include also habitats in manmade structures (e.g. bridges, culverts, etc.)
- Including development of a Bat Avoidance and Minimization Plan (Bat Plan) in the event that bats are utilizing the Project area during Project activities. The Bat Plan should include 1) Project-specific measures to avoid and minimize impacts to roosting bats in and near the areas that will be disturbed by Project activities 2) monitoring by a qualified bat biologist to oversee bat behavior and the avoidance and minimizations measures designed to protect nesting/roosting bats 3) exclusion measures for the habitat that will be removed or made inaccessible by the Project and 4) discussion of available alternative habitat (both temporary and permanent).

All appropriate exclusionary measures should be implemented prior to the Project implementation and during the period of March 1 to April 15 or August 31 to October 15.

Potential avoidance efforts may include exclusionary blocking or filling potential roosting cavities with foam or steel wool, visual monitoring, and staging Project work to avoid bats. If bats are known to use manmade structures, to avoid entanglement, exclusion netting should not be used.

CDFW has noted that the DEIR only includes assessment for two special-status bats while other special-status bats such as pallid bat (*Antrozous pallidus*) and other common bat species may also be impacted. CDFW recommends and DEIR revisions encompass all bat species including those with a special status.

Comment 21: Assessment needed for special-status species not analyzed in the DEIR.

The Project is within the Plan Area for the SSHCP. While CDFW recognizes the SJJPA and SJRRC are not a plan partner, the SSHCP designates 28 Covered Species that may occur in the SSHCP Plan Area for protection under a local ordinance and that should be accounted for when answering Section F of biological resources in the CEQA environmental checklist CDFW recommends the DEIR’s Appendix C disclose the potential

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to occur for any species covered under the SSHCP but not included in Appendix C, so that the DEIR can more effectively assess potential environmental impacts. CDFW has identified the following species, covered under the SSHCP but not discussed in Appendix C:

- Ricksecker's water scavenger beetle (*Hydrochara rickseckeri*)
- mid-valley fairy shrimp (*Branchinecta mesovallensis*)

Comment 22: Impacts to the NBHCP are not disclosed in the DEIR.

The NBHCP applies to the 53,537-acre interior of the Natomas Basin, located in the northern portion of Sacramento County and the southern portion of Sutter County. The Basin contains incorporated and unincorporated areas within the jurisdiction of the City of Sacramento, Sacramento County and Sutter County. The Phase II Project footprint shows overlap with the NBHCP for the Natomas Station improvements at Elkhorn Boulevard (specifically the roadway infrastructure to the west of Steelhead Creek). Section 15125 (d) of the CEQA guidelines requires discussion of any inconsistencies with regional plans. Since there is overlap with the NBHCP in the proposed Project, CDFW recommends the DEIR consider and analyze potential impacts to the NBHCP and its Covered Species.

Comment 23: Potentially significant impact not identified: wildlife impact.

CDFW has identified several wildlife impacts that are not identified in the DEIR. These wildlife impacts have been identified as a result of CDFW's management of open space areas of the CRP, which includes the existing UPRR ROW. While CDFW recognizes that many areas of the proposed Project are urbanized, many are not and would be potentially subject to the following impacts:

- Increased mortality of species due to train strikes (e.g. birds, deer)
- Increased disturbance of wildlife species due to increased train frequency and noise
 - Wildlife movement patterns
 - Nesting or mating behavior
 - Energy expenditure (e.g. birds scattering to avoid trains)
 - Pollinator impact
- Vibrational effect of increased train traffic over sensitive marsh and wetland habitats

While CDFW understands the DEIR states that "passenger trains would pass through these areas briefly, and are much smaller and less noisy than existing freight train service currently [in] operation," CDFW's concerns are primarily centered around the Project's increase in service which potentially adds to the cumulative impact to wildlife species and how the increased train speeds of the new service may further contribute.

To address this issue, the DEIR should provide a more robust analysis of the Project's cumulative effects given the above information with sufficient reasoning specific to biological resources. If significant impacts are identified, inclusion of impact specific mitigation is recommended to achieve a level of less than significant.

Comment 24: Impact not identified in *Operation*- Increased maintenance.

CDFW notes that the *Operation* section is limited to the passenger service from the proposed Project but does not account for the potential increase in maintenance needed to ensure safe operations of the existing (and future) facilities with an increase in train traffic. As such, the proposed Project may increase wear and tear on train facilities and thus need additional maintenance. As mentioned above, CDFW recognizes urban settings for portions of the Project area so the primary concern is for maintenance in undeveloped areas where sensitive resources or access may pose an issue. For instance, the existing UPRR ROW passes through both giant garter snake and Swainson's hawk habitat, where simple maintenance (such as erosion repair of an abutment) may result in impacts to listed species. Likewise, tracks, bridges, etc. in need of repair may require access to existing areas without or limited existing access, so vegetation removal or expansion of access routes may be needed. This section should also account for the unanticipated maintenance needs of an event such as train derailment.

To address this comment, CDFW recommends the DEIR analyze maintenance needs of the proposed Project. If significant impacts are identified, inclusion of impact specific mitigation is recommended to achieve a level of less than significant.

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Comment 25: Consistency with the Cosumnes River Preserve Management Plan is not addressed.

Page 3.4-14 states that “all project activities related to Track Curve Reconstruction South of Desmond Road would be confined to the existing UPRR ROW, and no impacts on the Cosumnes River Preserve Management Plan are expected.” As identified above, resources along the Union Pacific Right of Way (UPRR ROW) may not have been effectively captured in the DEIR while Comments 23-24 identify potentially significant impacts that are not analyzed in the DEIR. Section 15125 (d) of the CEQA guidelines requires discussion of any inconsistencies with regional plans. Since there is overlap with the NBHCP in the proposed Project, CDFW recommends the DEIR consider and analyze potential impacts to the NBHCP and its Covered Species.

Comment 26: CDFW recommends the SJJPA and SJRRC consider participating in either the SSHCP or SJMSCP.

As outlined in the DEIR and comments above, the proposed Project has potential to impact dozens of sensitive species and result in the impact to hundreds of acres of suitable habitat for these species. While CDFW recognizes neither the SSJPA or SJRRC are Plan Permittees, mechanisms are in place for non-Plan Permittees to become “Participating Special Entities” in the regional conservation plans. As such, the SSJPA and SJRRC may consider exploring this option as means to mitigate for both species and habitat impacts. To address this comment, CDFW recommends the SSJPA and SJRRC coordinate with the respective implementing entities for the SSHCP (the South Sacramento Conservation Agency), the SJMSCP (San Joaquin Council of Governments) and/or the NBHCP (The Natomas Basin Conservancy) to see whether the proposed Project could qualify as a Covered Activity under any respective plans.

CDFW also notes that the SJJPA and SJRRC rely heavily on the SSHCP for its environmental analysis and approach to mitigation measures. While citing the SSHCP is appreciated, applying only portions of the SSHCP may render the analysis in the DEIR incomplete. As stated above, the SSHCP uses hundreds of Avoidance and Minimization Measures, *in combination* with one another AND with a habitat-based mitigation strategy to reduce impacts to the special-status species. The SJJPA and SJRRC should consider whether using only selected measures or strategies from the SSHCP without full participation may not provide enough evidence that the impacts are mitigated to a level of less than significant.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental documents 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 the California Natural Diversity Database (CNDDDB). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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 & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the SJRRC in identifying and mitigating Project impacts on biological resources.

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Questions regarding this letter or further coordination should be directed to Dylan Wood, Environmental Scientist at 916-358-2384 or dylan.a.wood@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Kevin Thomas
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California Department of Fish and Wildlife

Office of Planning and Research, State Clearinghouse, Sacramento

Enclosures

Attachment 1- Homegrown Habitat List

Attachment 2- *Staff Report on Burrowing Owl Mitigation* (CDFW 2012)

Attachment 3- *RECOMMENDED TIMING AND METHODOLOGY FOR SWAINSON'S HAWK NESTING SURVEYS IN CALIFORNIA'S CENTRAL VALLEY* (Swainson's Hawk Technical Advisory Committee May 31, 2000)