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**To:** [nhay@co.sutter.ca.us](mailto:nhay@co.sutter.ca.us)  
**Cc:** [Wildlife R2 CEQA](#); [OPR State Clearinghouse](#)  
**Subject:** CDFW's comments on the IS/MND for the Howsley Road Bridge Replacement Project (SCH# 2020059006)  
**Date:** Friday, June 5, 2020 4:02:45 PM

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Neal Hay  
Director of Development Services  
Sutter County Development Services Department  
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Yuba, CA 95993  
[nhay@co.sutter.ca.us](mailto:nhay@co.sutter.ca.us)

6/5/2020  
Governor's Office of Planning & Research  
Jun 05 2020  
STATE CLEARINGHOUSE

Dear Mr. Hay:

Subject: HOWSLEY ROAD BRIDGE REPLACEMENT PROJECT  
MITIGATED NEGATIVE DECLARATION (MND)  
SCH# 2020059006

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from the Sutter County Development Services Department (County) for the Howsley Road Bridge Replacement Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines. [\[1\]](#)

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project upon which CDFW, by law, may need to exercise 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 (Fish & G. Code., § 1802). CDFW provides, 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) regarding any future discretionary actions such as the issuance of a Lake or Streambed Alteration Agreement (Fish & G. Code, § 1600 et seq and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or

Candidate species (Fish & G. Code §§ 2080.1 and 2081). CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California’s fish and wildlife resources.

**PROJECT DESCRIPTION SUMMARY**

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The proposed Project involves the replacement of the existing two-lane bridge, Bridge No. 18C-0113 on Howsley Road that crosses the Pleasant Grove Creek Canal in Sutter County at latitude 38.823456°, longitude -121.526478°. The existing bridge is approximately 25 feet wide and 230 feet long with 11 spans. The County proposes to replace the existing bridge with a wider three-span cast in place post-tensioned box girder bridge. The new bridge would be constructed approximately 25 feet south of the existing bridge and would be approximately 36 feet wide and 250 feet long. Howsley Road bridge approaches would be realigned to accommodate the new bridge alignment. The Project will also involve improvements to the Howsley Road/Natomas Road intersections and Natomas Road approach roadway, road closures and detours, the relocation of approximately ten power poles, the removal of approximately 15 trees, stream diversion and dewatering, and realignment of the low-flow channel within the canal.

**COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the County in adequately identifying and, where appropriate, mitigating the Project’s significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

*CESA Consistency Determination*

The Project as proposed will impact suitable upland and aquatic habitat for giant garter snake (*Thamnophis gigas*), which is listed as “threatened” under CESA, and giant garter snake has a high likelihood of occurring within the Project footprint. The County proposes to obtain authorization for incidental take of GGS through consultation with the United States Fish and Wildlife Service (USFWS) pursuant to Section 7 of the federal Endangered Species Act (ESA) and by obtaining a Consistency Determination (CD) from CDFW pursuant to Fish and Game Code section 2080.1.

For species that are listed under both ESA and CESA, Fish and Game Code section 2080.1 allows an applicant who has obtained a federal incidental take statement or federal incidental take permit to request that the Director of CDFW find the federal documents consistent with CESA. If the federal documents are found to be consistent with CESA, a CD is issued and no further authorization or approval is necessary under CESA.

In order for CDFW to issue a Consistency Determination, the conditions specified in the federal incidental take statement or the federal incidental take permit must be consistent with CESA and meet the following criteria:

1. The authorized take must be **incidental to an otherwise lawful activity;**
2. The impacts of the authorized take must be **minimized and fully mitigated;**

3. The measures required to minimize and fully mitigate the impacts of the authorized take must:
  - i. Be **roughly proportional** in extent to the impact of the taking on the species,
  - ii. **Maintain the applicant's objectives** to the greatest extent possible, and
  - iii. **Be possible for the applicant to successfully implement;**
4. **Adequate funding** must be provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and
5. Issuance of the permit **must not jeopardize the continued existence of a CESA-listed species.**

If CDFW determines that the federal statement/permit is not consistent with CESA, the applicant may gain take authorization by obtaining an incidental take permit pursuant to section 2081 subdivision (b) of the Fish and Game Code.

Because the standards and requirements of ESA and CESA are different, receipt of a federal incidental take statement or permit does not guarantee issuance of a CD. To increase the likelihood of successfully obtaining a CD, CDFW recommends that the County consult and coordinate with both USFWS and CDFW early in the permitting process prior to or during development of the biological assessment to ensure that the biological assessment and federal incidental take statement meets the criteria outlined above.

#### *Swainson's Hawk*

Biological Resources MM-3 proposes to avoid impacts to Swainson's hawk (*Buteo swainsoni*) by requiring a pre-construction survey for Swainson's hawk "no less than 14 days and no more than 30 days prior to commencement of construction". However, a single survey may not be adequate to identify and avoid Swainson's hawk nests. Furthermore, the timing of the survey may preclude identification of nests. Swainson's hawks are migratory and return to their breeding grounds in early March to April. They generally lay their eggs in early April to early May (CDFW 1994). A pre-construction survey timed early in the nesting season may fail to identify Swainson's hawk nests simply because the hawks have not arrived yet. With a delay of 30 days between the survey and the start of construction, a pair of Swainson's hawks may arrive and begin nesting between the survey date and the start of construction. Additionally, nests are often extremely difficult to locate while eggs are being laid and incubated and while newly hatched chicks are present because the parents avoid drawing attention to the nest site. CDFW recommends that the County revise Biological Resources MM-3 to require multiple surveys conducted in different periods of the nesting season as described in *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Tech. Advis. Comm. 2000).

#### *Swallow Exclusion*

Biological Resources MM-3 proposes to avoid impacts to nesting cliff swallows by covering the underside of the bridge with ½ to ¾ inch mesh netting before March 1 to prevent swallows from building nests on the bridge. Netting can present an entanglement hazard for birds, and if birds get through or under the netting they may become trapped inside the netting. Biological Resources

MM-3 recommends that the netting be inspected weekly, which is not frequently enough to repair damaged netting or save trapped or entangled birds. CDFW recommends that the County consider alternate methods of avoiding impacts to nesting swallows, such as phasing the bridge's demolition to avoid the nesting season, covering the bridge with polytetrafluoroethylene (PTFE, commonly called Teflon) sheeting, or removing nest precursors (mud placed by swallows to begin nest construction) on a daily basis from the beginning of the nesting season until the bridge is demolished.

If netting is used to exclude swallows, CDFW recommends that the County adopt the following avoidance and minimization measures to minimize entanglement risk:

- Netting shall be made of loose-weave or knotted mesh. This allows some movement and is easier for entangled wildlife to escape. Monofilament or fused-joint netting shall not be used.
- Netting shall be installed by a qualified professional with experience and expertise in installing swallow exclusion netting.
- Netting shall be inspected daily to check for trapped or entangled wildlife and repair any damage to the netting.

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto: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**

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to [r2CEQA@wildlife.ca.gov](mailto:r2CEQA@wildlife.ca.gov).

CDFW appreciates the opportunity to comment on the IS/MND to assist the County in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Gabriele Quillman at (916) 358-2955 or [gabriele.quillman@wildlife.ca.gov](mailto:gabriele.quillman@wildlife.ca.gov).

Sincerely,

Gabriele (Gabe) Quillman  
California Department of Fish and Wildlife – North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
(916) 358-2955

## REFERENCES

California Department of Fish and Wildlife. 1994. Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83992&inline>

Swainson's Hawk Technical Advisory Committee. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley.  
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83990&inline>

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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.