

State of California
Department of Fish and Wildlife



Memorandum

Date: June 12, 2020

To: Mr. Scott Guidi
California Department of Transportation
1976 E. Dr. Martin Luther King Jr. Boulevard
Stockton, CA 95201
Scott.Guidi@dot.ca.gov

Governor's Office of Planning & Research

Jun 15 2020

STATE CLEARINGHOUSE

DocuSigned by:

Gregg Erickson

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From: Mr. Gregg Erickson, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Potato Slough Bridge Bearing Pads Project, Initial Study with Mitigated Negative Declaration, SCH #2020059015, San Joaquin County

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent for an Initial Study/Mitigated Negative Declaration (IS/MND) from the California Department of Transportation (Caltrans) for the Potato Slough Bridge Bearing Pads Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 a Trustee Agency pursuant to CEQA Section 15386 and has authority to comment on projects that could impact fish, plant or wildlife resources. CDFW is also considered a Responsible Agency under CEQA Section 15381 if a project requires discretionary approval, such as permits issued under the California Endangered Species Act (CESA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

CESA prohibits unauthorized take of candidate, threatened, and endangered species. Therefore, if take¹ of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA Incidental Take Permit (ITP) is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*). Issuance of a CESA ITP is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the proposed Project will

¹ Fish and Game Code §86: "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

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impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA ITP. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

CESA-listed species identified that may occur within the Project area include the Delta smelt (*Hypomesus transpacificus*) state endangered, longfin smelt (*Spirinchus thaleichthys*) state threatened, Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), state threatened, Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), state endangered, Swainson's hawk (*Buteo swainsoni*) state threatened and giant garter snake (GGS; *Thamnophis gigas*) state threatened.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may 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 will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

Migratory Birds and Raptors

CDFW also has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code Sections protecting birds, their eggs, and nests include 3503 (regarding unlawful take, possession or needless destruction of the nests or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird). Fully protected species may not be taken or possessed at any time (Fish and Game Code Section 3511). Migratory birds are also protected under the federal Migratory Bird Treaty Act.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation

Objective: Caltrans proposes to replace failed elastomeric bearing pads and joint seal assemblies. Caltrans also proposes to remove a portion of structural concrete and to provide an access opening in the soffit and install temporary falsework on a pile foundation to temporarily support the bridge structure during the replacement of the bearing pads and joint seal assemblies for the Little Potato Slough Bridge (Bridge No. 29-0101), located west of the City of Lodi, San Joaquin County. Based on the Bridge Inspection Reports, rehabilitating the Little Potato Slough Bridge is required to address the failed elastomeric bearing pads on both ends of the bridge at span 5 and span 20.

Location: The Project is located along State Route (SR) - 12 in San Joaquin County, California at Bridge No. 29-0101 at Post Mile (PM) 4.4.

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Environmental Setting: The Little Potato Slough Bridge is in San Joaquin County. The area surrounding the proposed project consists of single-residence homes, small businesses, a commercial recreational campground, and agriculture. Located in an overall unincorporated rural area, the closest large urban setting to the bridge is the City of Lodi.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations below to assist Caltrans in identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Project Schedule and Timing

The IS/MND does not include how many days are required to complete the Project and does not describe construction methods. For instance, page 4-5 describes a 55-hour period of closure on SR-12, two weekend closure periods along SR-12, and indicates night work will be required to complete the Project only. In order for CDFW to evaluate the potential for significant impacts CDFW recommends the IS/MND identify the total days needed to complete the Project, how much nightwork may be needed, and the time of year in which the Project will be initiated and completed.

Project Description and Design Plan Set

Important Project description information is not included that would allow CDFW evaluate potential impacts. The IS/MND does not provide a detailed description of H-pile installation methods, H-pile dimension, or provide a discussion or data regarding potentially injurious sound levels during H-pile installation. Also not provided are design plan sets for the Project in regards to pile size, pile number, location, and bridge deck rehabilitation dimensions. Page 4 and 5 of the IS/MND provides a brief description indicating that H-piles will be driven to a depth of 60 feet, but does not describe how that is achieved, or if it will be accomplished by installing the piles in water, in a de-watered channel, or on dryland. A brief reference to no work within Little Potato Slough or the Mokelumne River is provided on page 11 of the Biological Resources Section of the IS/MND, but a detailed description including how and when H-piles will be installed is not provided. In order for CDFW to evaluate the potentially significant impacts of the Project and provide avoidance and minimization measures, it is recommended that a full plan set be provided with detailed information on the pile dimensions and locations, installation methods, material quantities, and the location of temporary and permanent structures.

Natural Environmental Study/Technical Studies

The IS/MND references multiple technical studies and appendices that have not been provided. Specifically, the Biological Resources Section of the IS/MND references a 2018, Natural Environmental Study (NES) but the NES or a link to the NES is not provided. In addition, page 10 of the IS/MND includes a list of other technical studies conducted for the Project and references to these studies can be found in Appendix A, but the information of the studies is not summarized and a li Appendix A or any link thereto. The technical studies cited on page 10, include the NES, Biological Assessment, Botanical Surveys and Aquatic Resources Delineation as references but those documents themselves are not provided as appendices within the IS/MND. For CDFW to conduct a full evaluation of the potentially significant impacts and recommend avoidance and minimization measures to reduce those impacts below a level of significance as required by CEQA access to those technical studies is necessary.

Fish and Wildlife Resources

CDFW recommends that a full list or table is included in the updated Biological Resources Section of the IS/MND that notes species common name, scientific name, State and Federal listing status (as applicable), habitat type preference and determination on presence, for all special-status species with the potential to occur within the BSA. CDFW also recommends the following updates to the Biological Resources Section of the IS/MND:

State Listed Fish Species

The IS/MND states that no in-water work will occur at Little Potato Slough or at the Mokelumne River, but it is unclear how the Project will be completed and if injurious sound levels have the potential to cause take of State listed fish species, as the location of the H-pile installation is not specifically addressed within the IS/MND. The Mokelumne River system to which this Project location has a direct connection, has known occurrences of Delta smelt, longfin smelt, Central Valley spring-run Chinook salmon and Sacramento River winter-run Chinook salmon. The IS/MND has provided no details on how construction will be accomplished with no in-water work; therefore, no avoidance and minimization measures can be provided at this time. Under CESA, take is defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill." Therefore, if any Project related activity falls under the definition of take, regardless of the probability of a high density or low density of the species being present on-site, obtainment of a CESA ITP may be required from CDFW before Project activities may commence.

Swainson's Hawk

Page 12 of the IS/MND notes the Project has a known occurrence of a Swainson's hawk nest and suitable foraging habitat within the proposed Project location. These occurrences are well within the prescribed half mile, no work buffer zone for rural areas of avoidance as recommended in the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Buteo Swainsoni) in the Central Valley of California* (California Department of Fish and Wildlife, 1994) (Staff Report). Therefore, CDFW strongly recommends incorporation of protocol-level surveys that have been adopted by CDFW for Swainson's hawk in the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Technical Advisory Committee, May 31, 2000). The appropriate measures to reduce impacts to below a level of significance have also been developed in the Staff Report. The CDFW (1994) Staff Report should be incorporated into the IS/MND to reduce impacts below a level of significant as required by CEQA. Presence of Swainson's hawk within the half mile no work buffer or the inability of avoidance and minimization measures to prevent disruption of the birds nesting behavior shall require obtainment of a CESA ITP from CDFW before Project activities may commence. Additional avoidance and minimization measures have been provided below.

Swainson's Hawk Foraging Habitat

Page 12 of the IS/MND notes that suitable foraging habitat is present within the proposed Project location for Swainson's hawk but does not provide an evaluation of the area of impact or provide a suitable avoidance and minimization measures to reduce impacts below a level of significance as required by CEQA. The updated IS/MND should describe the proposed area of impact to suitable Swainson's hawk foraging habitat. To reduce impacts to less-than-significant, impacts to Swainson's hawk foraging habitat should be mitigated by preserving off-site habitat at a 1:1 ratio through purchasing Swainson's hawk foraging credits at a CDFW approved conservation or mitigation bank or by placing a conservation easement over lands providing suitable foraging habitat including funding an endowment for managing the lands for the benefit

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of Swainson's hawk in perpetuity as well as preparation of a long-term management plan by a qualified land manager. In order to meet the full mitigation standard of CESA as required by CDFW it is recommended the on-site habitat is restored as noted in the IS/MND and suitable foraging habitat is protected in perpetuity as previously noted in this comment letter.

Swallows

The IS/MND should incorporate avoidance and minimization measures for species that have the potential to nest on or within the bridge such as cliff swallows (*Hirundo pyrrhonta*). Furthermore, no exclusionary bird netting should be employed to detour nesting behavior as this has been proven to cause mortality of birds and bat species attempting to nest or roost on or near the bridge and would be considered a potentially significant impact to either species group. CDFW has provided an appropriate avoidance and minimization measure for swallows noted below.

Giant Garter Snake

Page 11 of the IS/MND notes that suitable in-water and suitable den habitat exists within 164 feet of the Project site and has the potential to impact GGS habitat. Page 11 also indicates that work is scheduled to occur during the GGS active season. The updated IS/MND should incorporate a more in-depth discussion of the potential for GGS habitat to occur on-site and provide a detailed analysis of the acres of impact to GGS habitat that may occur as a result of Project completion. Due to the known presence of GGS dens within 164 feet of the Project, CDFW strongly recommends obtainment of a CESA ITP from CDFW before Project activities may commence in order to reduce impacts below a level of significance as required by CEQA.

Special-Status Plant Species

CDFW recommends that the Project area be surveyed for special-status plants by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities," which can be found online at <https://wildlife.ca.gov/Conservation/Survey-Protocols>. This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys may be necessary.

Page 18 and 19 of the IS/MND provides an avoidance and minimization measure for special-status plant species but does not provide a suitable list of the potential special-status plants that may occur on-site. Page 18, references this information is provided in the NES but does not summarize the information in the IS/MND or provide the NES as an appendix. CDFW recommends the NES be included as an appendix to the IS/MND, as it may contain much of the information requested in this comment letter for special-status plant species. As a complete species list has not been provided, CDFW is unable to determine if significant impacts are occurring to special-status plant species or if threatened and endangered plant species have the potential to be impacted by the Project. If a state-listed or state Rare² plant is identified during botanical surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of take authorization through an ITP issued by CDFW pursuant to Fish and Game Code Sections 2081(b) and/or Section 1900 et seq is necessary to comply with Fish and Game Code CESA and the Native Plant Protection Act.

Only two plant species are addressed in the text of the IS/MND; Suisun Marsh aster and Delta tulle pea both listed as rare plants (1B.2) by the California Native Plant Society.

² In this context, "Rare" means listed under the California Native Plant Protection Act.

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Delta Tule Pea and Suisun Marsh Aster

Page 10 of the IS/MND notes the direct observation of Delta tule pea south of the bridge along the eastern levee of Little Potato Slough and Suisun Marsh aster north of the bridge, along the eastern edge of Little Potato Slough. Page 29, AMM-BIO-16 of the IS/MND notes avoidance of areas that contain special-status plants, as feasible and notes actions of plant salvage and transplant. CDFW recommends that a specific plan is developed for the transplant and salvage of Delta tule pea and Suisun Marsh aster in areas of impact that is submitted to natural resource agencies for review and approval prior to any ground disturbing activity. Delta tule pea and Suisun marsh aster are species that have shown success in salvage and relocation actions, therefore, to reduce impacts below a level of significance as required by CEQA to plants listed as a rare 1B.2 in the state of California by the California Native Plant Society, it is strongly recommended that a salvage plan is developed. The salvage plan should include protection of suitable habitat, focused surveys during the appropriate blooming period(s) to identify plant stand locations and a focused replanting process with monitoring and success criteria. The plan should also identify and note nearby source populations, from the nearest estuarine populations, for additional transplant, if the donor populations of adequate size are necessary to source from. Additional avoidance and minimization measures have been provided below.

Avoidance and Minimization Measures

CDFW recommends the updating or inclusion of the following avoidance and minimization measures in the Biological Resources Section of the IS/MND to reduce impacts below a level of significance:

Swallows

Swallow Avoidance and Minimization - Weekly inspection of the bridge for nesting activity shall begin by March 15 and shall continue until project construction is completed. If cliff swallows begin colonizing the bridge prior to beginning bridge work, all nest precursors (mud placed by swallows for construction of nests) shall be removed at least once daily until swallows cease trying to construct nests. A phased construction may also be developed in consultation with natural resource agencies, prior to the initiation of construction, to avoid colonized areas during their most critical periods of the life cycle. This activity shall not result in harm or death to individual swallows. Exclusionary bird netting is prohibited due to its known potential to entrap or ensnare bird and bat species and cause a potentially significant impact that cannot be avoided or minimized below a level of significance.

California Black Rail and Clapper Rail Species

California black rail (CBR) and California clapper rail (CCR) Surveys and Avoidance - If Project activities within 700 feet of CBR/CCR habitat will be conducted during the nesting season (February 1 to August 31) then multiple, pre-construction call back surveys shall be required prior to initiation of Project activities. A minimum of 4 surveys must be conducted between January and April, a minimum of 2-3 weeks apart. The listening stations will be established at 150-meter intervals along road, trails, and levees that will be affected by Project implementation. CBR and CCR vocalization recordings will be played at each station.

For CBR, each listening station will be occupied for one minute of passive listening, one minute of "grr" calls followed by 30 seconds of "ki-ki-krrr" calls, then followed by another 3.5 minutes or passive listening.

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For CCR, each listening station will be occupied for a period of 10 minutes, followed by one minute of playing CCR vocalization recordings, then followed by one additional minute of listening. Sunrise surveys will begin 60 minutes before sunrise and conclude 75 minutes after sunrise (or until presence is detected). Sunset surveys will begin 75 minutes before sunset and conclude 60 minutes after sunset (or until presence is detected). Surveys will not be conducted when tides are greater than 4.5 NGVD. A GPS receiver will be used to identify call location and distance. The call type, location, distance, and time will be recorded on a data sheet.

If CBR/CCR are detected through surveys then Project activities will not occur within 700 feet of an identified calling center. If the activity occurs where the Project site is across a major channel or slough from the Project site greater than 700 feet in distance the activity may continue. If bird activity is surveyed or discovered within the buffer limits immediate consultation with CDFW is required. If a CCR or CBR is observed within the Project area at any time work shall be stopped immediately by a qualified biologist and the rail species will be allowed to leave the area on its own. If the rail species does not leave the area then no work shall commence until CDFW has made a determination on how to proceed with work activities.

Daily monitoring surveys of Project sites shall occur for CCR and CBR until the Project is complete. If an injured or dead CCR or CBR is discovered at the Project sites, consultation with CDFW is required immediately.

Swainson's Hawk

Page 31 of the IS/MND, AMM-BIO 23 and 24 should be updated into one measure to include the following language:

Swainson's Hawk Avoidance and Minimization - If Project activities are to be conducted between March 15 and September 15, a Qualified Biologist shall conduct focused surveys for Swainson's hawk. Surveys shall be conducted within 1/2-mile of the Project Site. Surveys shall be conducted in proposed work areas, staging, and storage areas. Nest surveys for Swainson's hawk shall be conducted in a manner consistent with the recommended timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley. For more information, see <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>.

If an active nest is identified, a 1/2-mile no-work buffer shall be maintained around the nest until the young fledge. If any active Swainson's hawk nests are found within 1/2-mile of the Project site, natural resource agencies shall immediately be contacted and all work shall halt. If an ITP is obtained by the Permittee, alterations of these buffers, seasonal restrictions and survey requirements may be authorized in consultation with natural resource agencies.

Swainson's Hawk Compensatory Nesting Habitat - To reduce impacts to less-than-significant for Swainson's hawk nesting habitat, the appropriate credits shall be purchased from a CDFW approved conservation or mitigation bank in the form of nesting credits or by placing a conservation easement over lands providing suitable nesting habitat including funding an endowment for managing the lands for the benefit of Swainson's hawk in perpetuity as well as preparation of a long-term management plan by a qualified land manager.

Swainson's Hawk Compensatory Foraging Habitat - To reduce impacts to less-than-significant impacts to Swainson's hawk foraging habitat should be mitigated by preserving off-site habitat at a 1:1 ratio through purchasing Swainson's hawk foraging credits at a CDFW approved conservation or mitigation bank or by placing a conservation easement over lands providing

suitable foraging habitat including funding an endowment for managing the lands for the benefit of Swainson's hawk in perpetuity as well as preparation of a long-term management plan by a qualified land manager.

Special-Status Plants

CDFW recommends that AMM BIO-15 and AMM-BIO-16 are re-written as one measure to include the following language to reduce potential impacts to special-status plants to less-than-significant:

AMM BIO-15 Botanical Survey - A Qualified Biologist shall conduct a survey during the appropriate blooming period(s) for all special-status plants that have the potential to occur within the Project site prior to the start of construction. Surveys should be conducted following the *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Sensitive Natural Communities*, prepared by CDFW, dated March 20, 2018³. If special-status plants are found, the Project will be re-designed to avoid impacts to special-status plants to the greatest extent feasible. If impacts to special-status plants cannot be avoided completely during construction, compensatory mitigation and on-site restoration will be implemented and the plan provided for CDFW review and approval. A Qualified Biologist in this context should be knowledgeable about plant taxonomy, familiar with plants of the region, and have experience conducting botanical field surveys according to vetted protocols. If take of any species listed under CESA cannot be avoided either during Project activities or over the life of the Project, a CESA ITP is warranted (pursuant to Fish and Game Code Section 2080 *et seq.*).

Delta Tule Pea and Suisun Marsh Aster

The updated IS/MND should include an avoidance and minimization measure that specifically addresses Delta tulle pea and Suisun Marsh aster as follows:

Delta Tule Pea and Suisun Marsh Aster Salvage Plan - A Qualified Botanist shall conduct surveys during the appropriate blooming period(s) for Delta tulle pea and Suisun Marsh aster to specifically identify the areas in which those species have the potential to exist and protect those areas to the maximum extent feasible. A Delta Tule Pea and Suisun Marsh Aster Salvage Plan shall be developed prior to the initiation of construction and submitted for resource agency approval. The salvage plan should include identification of plant stand locations throughout the Project in map form and a focused salvage and replanting process in text format based on the life cycles of the species with monitoring and success criteria to achieve a ground cover equivalent to pre-Project conditions or better. The plan should also identify and map nearby source populations for both species, in the event of transplant failure, individuals from the nearest estuarine populations can be transplanted from, if the donor population is of adequate size to source from.

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->

³ <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

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[Data](#). The completed form can be submitted online or emailed to CNDDDB at the following email address: cnddb@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>

FILING FEES

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 IS/MND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

If you have any questions, please contact Mr. Robert Stanley, Senior Environmental Scientist (Specialist), at (707) 428-2093 or Robert.Stanley@wildlife.ca.gov; or Mr. Craig Weightman, Environmental Program Manager at Craig.Weightman@wildlife.ca.gov.

cc: State Clearinghouse (SCH #2020059015)