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From: Xiong, Mary@Wildlife
Sent: Monday, December 9, 2024 4:15 PM
To: Robinson, Tracy@DOT; yuba.70.binney.project@dot.ca.gov
Cc: Stanfield, Melissa@Wildlife; Wildlife R2 CEQA; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife
Subject: CDFW Comments on the EIR for SR 70 Binney Junction Roadway Rehabilitation and Complete Streets Project (03-0H160)

Dear Tracy Robinson,

The California Department of Fish and Wildlife (CDFW) received and reviewed the draft Environmental Impact Report (EIR) from the California Department of Transportation (Caltrans) for the State Route 70 Binney Junction Roadway Rehabilitation and Complete Streets Project (Project) in Yuba County pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

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 that 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. (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 may also act 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. 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 Project site is located along State Route (SR) 70 in the City of Marysville, from 0.1 mile south of 14th Street (Post Mile (PM) 14.8) to just north of Cemetery Road (PM 15.7) in Yuba County. The Project consists of a complete streets aspect and rehabilitation of existing pavement on SR 70 to provide two travel lanes, two auxiliary lanes, and a continuous two-way left-turn lane structural sections and shoulders. The intent is to reduce future traffic congestion, improve operations and

safety, and comply with current Caltrans, Union Pacific Railroad (UPRR), and local agency standards. The existing Marysville Underpass (UP) crosses at SR 70 PM 15.1, and the Binney Junction UP crosses at SR 70 PM 15.4. Both UPRR structures are proposed to be replaced and lengthened and SR 70 to be lowered under these UPs to meet current vertical clearance standards. The existing east levee north of Binney Junction to Cemetery Road would be relocated to accommodate the proposed project improvements, and the existing pump station would be relocated to the south. An additional pump station would be installed at the Marysville UP to improve drainage.

COMMENTS AND RECOMMENDATIONS

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

Comment 1: Chapter 1.4 Project Alternatives, Common Design Features of the Build Alternatives, Drainage Features Section, Page 7

Issue: Chapter 1.4 in the draft EIR proposes in the build alternatives to lower the roadway profile at the Marysville UP, which will make the existing gravity system that discharges to East Lake not functional. The project also proposes to reconstruct the Marysville Pump Plant to maintain its historical discharge rate to East Lake through an existing storm drain system and construct a new underground sump storage to store excess volume of water. Similarly, a new underground sump structure will be constructed to store excess volume for the Binney Junction Pump Plant.

Section 1602 of the Fish and Game Code requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following:

- substantially divert or obstruct the natural flow of any river, stream or lake;
- substantially change or use any material from the bed, channel or bank of any river, stream, or lake;
- or deposit debris, waste or other materials that could pass into any river, stream, or lake.

Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams and watercourses with a subsurface flow.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, an LSA Agreement will be issued which will include reasonable measures necessary to protect the resource. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources.

Recommendation: CDFW recommends that the draft EIR discuss the impacts to the drainage pattern to East Lake resulting from the lowering of the roadway profile at Marysville UP and discuss how the impacts will be reduced and minimized to less than significant. Caltrans should review the requirements under Section 1602 of the Fish and Game Code to determine if Notification is warranted. For more information on CDFW's LSA program including the online permitting portal, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

The southern end of the Project at PM 14.8 borders Ellis Lake. To avoid the need for a lake and streambed alteration agreement, CDFW recommends that Caltrans ensure that there will be no impact to the Lake and that no materials resulting from the Project activities will end up in the Lake. Proper avoidance measures are recommended.

Comment 2: Table S-3. Comparison of Alternatives – Impacts Summary (CEQA), Pages xxviii – xxix; Chapter 3.6 Biological Resources, Animal Species Section, Pages 232-234

Issue: The Animal Section in Table S-3 states that trees will be removed during the non-nesting season and pre-construction bird surveys will be performed to ensure compliance with the Migratory Bird Treaty Act. This table does not include bat species as one of the animals to be affected, yet bats are included in Chapter 3.6 as one of the species that will be protected by implementation of pre-construction surveys prior to tree removal. It is unclear from the draft EIR and Natural Environmental Study conducted for this project if a bat habitat assessment was conducted within the Project Area.

Recommendation: Due to presence of numerous trees in and around the Project area that may need to be removed and structures subject to Project level disturbance, CDFW recommends that a tree impact map and a Bird Management and Monitoring Plan (Plan) be included in the draft EIR. The Plan should include survey results and appropriate avoidance measures such as, but not limited to, temporary no-disturbance buffers and/or changes in project phasing to protect the nest and the birds. The Plan design should be based upon site conditions, Project activities, and species present or likely to be present during all construction activities. A qualified biologist should be onsite during the initiation of project activities and if there is a change in the level of activity (i.e., noise level, etc.).

CDFW recommends that a bat habitat assessment be performed (or disclose the results, if already performed) in the Project area to evaluate potentially significant impacts to bat species and include appropriate avoidance, minimization, and mitigation measures to reduce impacts or mitigate any potential significant impacts to bat nursery sites. Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code § 4150, CCR § 251.1). Several bat species are also considered species of special concern, which meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines §15065). It is unclear from the draft EIR whether a bat colony is present within the Project area, but if present, impacts to the colony may result during construction from increased noise, lighting, vibration, and during tree and structure removal. Construction related disturbance and potential removal of nursery colonies are significant impacts as colonies can be displaced from roosts or important foraging areas, which can potentially result in reduced survivability of individuals from increased susceptibility to predation, reduced quality of thermal and social environments, and decreased foraging efficiencies (Johnston et. al, 2019). CDFW recommends that the habitat assessment include vegetation proposed for removal (crevices, hollows, exfoliated bark, and foliage) and structures such as bridges and buildings that may support roosting bats. If the assessment determines there to be suitable habitat, CDFW recommends Caltrans consult with a qualified bat biologist to develop a bat avoidance plan. If avoidance is not possible, other minimization measures may be warranted that include passive exclusion, vegetation removal outside of maternity or hibernation roosting seasons (between March 1 and April 15 and September 1 and October 15, respectively), and phased tree removal methods. CDFW recommends the assessment be performed well in advance of the project so that avoidance or exclusion could be appropriately timed in coordination with scheduled construction, if necessary. CDFW recommends the following language be incorporated into the draft EIR to help reduce impacts to bats to a less than significant level:

"Replacement Structures. If bat roosts cannot be avoided, replacement roost structures shall be designed to accommodate the bat species they are intended for. Replacement roost structures shall be designed and installed in close coordination with a qualified bat biologist. The size of suitable roosting habitat to be removed shall be quantified by the bat biologist and a minimum of twice the roosting habitat shall be installed in close proximity to the removed roost habitat. Replacement roost habitat shall be monitored by a qualified bat biologist for a minimum of two years to document bat use and monitoring reports shall be submitted to CDFW."

Comment 3: Chapter 2.22 Biological Environment, Table 2.35 Species List, Page 199

Issue: Table 2.35 in Chapter 2.22 states that there is no suitable habitat present within the Project area for Swainson's Hawk (SWHA) (*Buteo swainsoni*) and that the Project will not result in take.

Recommendation: SWHA are generally found in scattered trees or along riparian systems adjacent to open fields such as annual grasslands, agricultural fields including but not limited to low growing crops and fallow land, dry wetland, and pastures, which are all considered Swainson's hawk foraging habitat (CDFG 1994). SWHA have also been documented to have a 10-mile foraging radius from their nests (CDFG 1994). There are multiple CNDDDB occurrences of SHWA within 10 miles of the Project area. In addition, an estimated 20 acres of suitable foraging habitat occur within the northern part of the Project area. The primary threat to SWHA population in California continues to be habitat loss, especially the loss of suitable foraging habitat (CDFW 2016). If prey resources are not sufficient, SWHA adults will need to hunt longer distances from their nest site, which would increase their foraging effort and may result in reduced nestling vigor with an increased likelihood of disease, starvation, and nest/young abandonment (CDFG 1994). Unmitigated loss of foraging habitat for a CESA listed threatened species is a significant impact. CDFW recommends the EIR include an analysis and appropriate compensatory mitigation to reduce Project impacts to SWHA foraging habitat to a less than significant level.

There is suitable nesting habitat within and adjacent to the northern portion of the Project. CDFW recommends that if Project construction work is scheduled during the SWHA nesting season (March 1 to September 30), Caltrans should conduct a focused survey for active SWHA nests prior to beginning construction. Caltrans should follow the May 2000 "Swainson's hawk Technical Advisory Committee's Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley" with the following changes: Nesting season surveys should include one survey in period II, one in period III, and one survey three (3) days before construction activities commence (SHTAC 2000). The first survey during period II (March 20 to April 5) would allow for identification of stick nests before trees have produced dense foliage and sightings of Swainson's pairs in territories. The second survey would occur in Period III (April 5 to April 20) when SWHA are most easily observed in breeding behavior and nest building and when determination of an active nest site is most feasible. The final survey would be completed three (3) days prior to vegetation removal and construction activities. Surveys should be conducted in all suitable SWHA nesting habitat within ¼-mile of the Project area. If SWHA breeding activity is identified during any of the surveys or during construction activities, Caltrans should consult with CDFW and demonstrate compliance with CESA.

If it is determined that the proposed Project may result in "take," as defined in the Fish & G. Code, section 86, of a State-listed species designated as candidate, threatened, or endangered, a CESA ITP may be obtained to provide coverage in the event that take occurs.

To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated, and adequate funding has been ensured to implement the mitigation measures (Fish & G. Code, § 2081 subd. (b)). CDFW may only issue a CESA permit if CDFW determines that issuance of the permit does not jeopardize the continued existence of the species. To facilitate the issuance of an ITP, if applicable, the EIR should include measures to minimize and fully mitigate the impacts to State-listed species. Please note that mitigation measures that are adequate to reduce impacts to a "less-than significant" level per CEQA requirements may not be enough to minimize and fully mitigate impacts to the extent required for the issue of an ITP. Therefore, CDFW encourages

early consultation with staff to determine appropriate measures to facilitate future permitting processes.

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 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.

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.

CDFW appreciates the opportunity to comment on the EIR to assist 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 Mary Xiong, Senior Environmental Scientist (Specialist), at (916) 212-3876 or mary.xiong@wildlife.ca.gov.

Thank you,

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REFERENCES

California Department of Fish and Game (CDFG). 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>

California Department of Fish and Wildlife (CDFW). 2016. 5-year Status Review: Swainson's hawk (*Buteo swainsoni*) in California. Prepared for the California Fish and Game Commission. Nongame Bird and Mammal Program 1416 Ninth Street, Sacramento, CA.

Johnston, Dave S., Kim Briones, and Christopher Pincetich. 2019. California Bat Mitigation: A guide to developing feasible and effective solutions. H. T. Harvey & Associates, 298 University Ave., Bldg D, Los Gatos, CA., California Department of Transportation, Office of Biological Studies, 1120 N St, Sacramento, CA. Task Order 7, Agreement No. 43A0355. Doi: 10.13140/RG.2.2.23252.53121

Swainson's Hawk Technical Advisory Committee (SHTAC). 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>