



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**Apr 13 2021**

April 13, 2021

## STATE CLEARINGHOUSE

Crissy Monfette, Planner  
County of Fresno, Development Services Division  
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**Subject: Initial Study (IS) Application No. 7334 – Fresno Canal Bridge (Bridge No. 42C0496) Replacement on Del Rey Ave (Project) Mitigated Negative Declaration (MND) SCH No.: 2020050533**

Dear Ms. Monfette:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the County of Fresno, for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates 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 Fish and Game Code.

### CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and 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

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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.

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 2

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.), related authorization as provided by the Fish and Game Code will be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest 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).

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

**Water Pollution:** Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures this Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion into the Fresno Canal. Potential impacts to the wildlife resources that utilize this watercourse include the following: increased sediment input from road or structure runoff; toxic runoff associated with Project-related activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and U.S. Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** County of Fresno

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 3

**Objective:** The Project proposes to replace the existing 2-lane timber bridge with a new 2-lane concrete bridge that meets current standards. The replacement would address deficiencies such as a narrow deck width, substandard barrier rails and approach guardrails as well as scour and erosion at the abutments. Since widening a timber structure is not allowable, a replacement is the only option. The existing bridge is 71 feet long, 23.6 feet wide and was originally constructed in 1939. The proposed bridge will be 73 feet long and 39 feet wide to accommodate two 12-foot-wide travel lanes and 6-foot-wide shoulders. Approach work is expected to extend up to 400 feet on either side of the bridge. The driveways/access roads on all four corners would require realignment to accommodate the new approach railing; private driveway gates and fences would require relocation. Approximately 30 trees and other riparian vegetation would be removed during construction.

The bridge would be closed during construction requiring a 3.7-mile detour to allow a shorter construction period. The existing Average Daily Traffic (ADT) is 1,200 vehicles per day. Right-of-way acquisition is anticipated. There will also be a 4.3-acre staging area northwest of the bridge. Total acreage involved is approximately 7.9-acres.

Existing utilities at the bridge will also need to be relocated: PG&E electrical transmission overhead lines are located on the east side of the bridge and will remain in place. PG&E will refeed the west side distribution lines from the north and remove the lines above the bridge. The distribution line feeding a residence on the north side of the bridge will be moved northward to clear an access road. AT&T's telephone lines are located on the west side of the bridge and will be rerouted underground by directional bore method. A portion of Conterra's fiber optic cable located aerially on the north west side of the bridge will be rerouted underground with a minimum depth of 10 feet beneath the canal bottom. Another portion, which is buried along the west side of the north approach, will be relocated within County right-of-way, and buried at a minimum 4-foot depth for a distance of approximately 300 feet. Directional bore method will be applied with a drilling diameter of 1.25 inch and two 3-foot by 5-foot bore pits.

The Project would not involve pile driving; although structure demolition, excavation and some stream channel work is included in the scope of work, the work would be temporary and intermittent. Construction activities would occur during normal working hours, Monday through Friday, and would comply with Fresno County's Noise Ordinance and Caltrans Standard Specifications for noise.

**Location:** The Project site is located on N. Del Rey Avenue, approximately 0.5-mile south of E. McKinley Avenue, and approximately 1.42-miles north of State Route 180. APNs directly adjacent to the Fresno Canal include: 309-090-28, 309-090-55, 309-330-18S, and 309-300-31. APNs adjacent to the approaches to the bridge are: 309-090-51, and 309-090-62. Township 13 South, Range 22 East, Sections 32 and 33 MDRM.

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 4

**Timeframe:** None specified.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist Fresno County 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.

There are several special-status resources that may utilize the Project site, and these resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential impacts to the riparian habitat along the Fresno Canal, nesting birds, and special-status species including, but not limited to, the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern western pond turtle (*Actinemys marmorata*).

**Riparian Habitat and Jurisdictional Features:** The proposed Project will involve direct disturbance to the Fresno Canal and the surrounding riparian habitat in the form of stream channel work and removal of vegetation and trees. Per project information, 0.02-acre of permanent impacts and 0.03-acre of temporary impacts to non-native riparian vegetation will occur along with 0.03-acre of permanent impacts and 0.02-acre of temporary impacts to native riparian vegetation adjacent to the bridge area will occur. It was unclear what the size of the trees (diameter at breast height) are, how trees and vegetation would be removed, number of trees to be planted and if any monitoring commitments have been developed.

Riparian habitat is of extreme importance to a wide variety of plant and wildlife species. Riparian habitat, in the form of willows and cottonwoods, is present within the Project area. CDFW considers Project-related impacts to riparian habitat as potentially significant if they result in the net loss of acreage or habitat value. Project information states that approximately 30 trees, along with other vegetation along the canal, will be removed for Project purposes.

The Fresno Canal is a jurisdictional feature which may support special status species, including species protected under CESA. Project activities include potential substantial changes to the bed, bank, and channel of this waterway. Based on the potential for the Project to have a significant impact on biological resources, including impacts to areas that are jurisdictional pursuant to Fish and Game Code, section 1600 et seq. (e.g. Fresno Canal), a 1600 Lake and Streambed Alteration Agreement would be warranted.

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 5

## **I. Environmental Setting and Related Impact**

**Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?**

### **COMMENT 1: Swainson's Hawk (SWHA)**

**Issue:** SWHA have the potential to nest and potentially forage within or near the Project site. The proposed Project will involve activities near large trees that may serve as potential nest sites, and the surrounding agricultural fields could provide foraging habitat and sources of prey.

**Specific impacts:** Without appropriate avoidance and minimization measures for SWHA, potential significant impacts may result from Project activities such as loss of nest trees, nest abandonment and/or loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

**Evidence impact is potentially significant:** SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). The Project as proposed will remove approximately 30 trees adjacent to the Fresno Canal. These trees include cottonwood and eucalyptus. SWHA have utilized these species of trees to nest in the San Joaquin Valley per CDFW observations. These factors could affect nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA.

### **Recommended Potentially Feasible Mitigation Measure(s)**

Because suitable habitat for SWHA is present within and near the Project site, CDFW recommends conducting the following evaluation of the Project site and that the following mitigation measures be made conditions of approval for the Project.

### **Recommended Mitigation Measure 1: Focused SWHA Surveys**

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) prior to project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities.

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 6

### **Recommended Mitigation Measure 2: SWHA Avoidance/No-disturbance Buffer**

If expansion of any Project activities will take place during the normal bird breeding season (March 1 through September 15), CDFW recommends that additional pre-activity surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of Project implementation. CDFW recommends a minimum no-disturbance buffer of ½-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

### **Recommended Mitigation Measure 3: SWHA Take Authorization**

CDFW recommends that in the event an active SWHA nest is detected during surveys and the ½-mile no-disturbance buffer around the nest cannot feasibly be implemented, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is warranted to comply with CESA.

### **Recommended Mitigation Measure 4: SWHA Nest Trees**

CDFW recommends that the removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project site or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

### **COMMENT 2: Western Pond Turtle (WPT)**

**Issue:** WPT are known to occur in the vicinity of the Project site (CDFW 2021). WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Per Project information, conditions observed during a June 2016 survey showed that the Fresno Canal was high and moving too swiftly to support WPT; however, aerial photography indicates that the canal does experience lower water levels that expose suitable basking habitat in the form of muddy islands and banks. During this time, the water is presumably moving at a slower rate sufficient to support WPT. Due to the unspecified timeframe of the Project, the Project does have the potential to impact WPT.

**Specific impact:** Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 7

**Evidence impact is potentially significant:** The Project site provides potential habitat for WPT and ground disturbance including the removal of riparian vegetation as well as construction activities on/near the bank of the canal have the potential to significantly impact WPT populations.

**Recommended Potentially Feasible Mitigation Measure(s)**

To evaluate potential impacts to WPT, CDFW recommends conducting the following evaluation of the Project site, editing the MND to include the following measures specific to WPT, and that these measures be made conditions of approval for the Project.

**Recommended Mitigation Measure 5: WPT Surveys**

CDFW recommends that a qualified biologist conduct focused surveys for WPT ten days prior to any ground disturbance due to any Project activities. In addition, CDFW recommends that focused surveys for nests occur during the egg-laying season (March through August) and that any nests discovered remain undisturbed until the eggs have hatched.

**Recommended Mitigation Measure 6: WPT Relocation**

CDFW recommends that if any WPT are discovered at the site immediately prior to or during Project activities, they be allowed to move out of the area on their own.

**II. Editorial Comments and/or Suggestions**

**Nesting Birds:** The trees and shrubs lining the Fresno Canal likely provide nesting habitat for birds. CDFW encourages that Project implementation occur during the bird non-nesting season. However, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes sections referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. Prior to initiation of Project activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 8

behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

## **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 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 mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@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**

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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).

CDFW appreciates the opportunity to comment on the Project to assist Fresno County Department of Public Works and Planning in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Kelley Nelson, Environmental Scientist, at the

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 9

address provided on this letterhead, or by electronic mail at  
[Kelley.Nelson@wildlife.ca.gov](mailto:Kelley.Nelson@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
*Bob Stafford*  
5343A684FF02469...  
Julie A. Vance  
Regional Manager

Attachment

ec: Linda Connolly  
California Department of Fish and Wildlife

Chrissy Monfette  
County of Fresno  
April 13, 2021  
Page 10

## **LITERATURE CITED**

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CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*).  
California Department of Fish and Wildlife. April 11, 2016.

Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended  
Timing and Methodology for Swainson's Hawk Nesting Surveys in California's  
Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

Thomson, R. C., A. N. Wright, and H. Bradley Shaffer, 2016. California Amphibian and  
Reptile Species of Special Concern. California Department of Fish and Wildlife and  
University of California Press.

**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM  
(MMRP)**

**PROJECT: Initial Study (IS) Application No. 7334 – Fresno Canal  
Bridge (Bridge No.: 42C0496) Replacement on Del Rey  
Ave Project**

**SCH No.: 2020050533**

| <b>RECOMMENDED MITIGATION MEASURE</b>                      | <b>STATUS/DATE/INITIALS</b> |
|--|-----------------------------|
| <i>Before Disturbing Soil or Vegetation</i>                |                             |
| Mitigation Measure 1: Focused SWHA Surveys                 |                             |
| Mitigation Measure 3: SWHA Take Authorization              |                             |
| Mitigation Measure 5: WPT Surveys                          |                             |
| Mitigation Measure 6: WPT Relocation                       |                             |
| <i>During Construction</i>                                 |                             |
| Mitigation Measure 2: SWHA Avoidance/No-disturbance Buffer |                             |
| Mitigation Measure 4: SWHA Nest Trees                      |                             |