



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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August 5, 2020

Governor's Office of Planning & Research

Aug 06 2020

Ms. Shirley Qian, Senior Planner
Capitol Corridor Joint Powers Authority
300 Lakeside Drive, 14th Floor East
Oakland, CA 94612
shirleyq@capitolcorridor.org

STATE CLEARINGHOUSE

Subject: South Bay Connect, Notice of Preparation of an Environmental Impact Report, SCH No. 2020060655, Alameda County

Dear Ms. Qian:

The California Department of Fish and Wildlife (CDFW) has reviewed the Capitol Corridor Joint Powers Authority (CCJPA) Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the South Bay Connect (Project). The proposed Project is located in Alameda County between the Capitol Corridor Oakland Coliseum Station to the north and Newark Junction to the south. Currently, CCJPA operates Capitol Corridor passenger rail service along the Niles Subdivision (owned by Union Pacific Railroad) between Oakland and Fremont/Newark. The purpose of the Project-specific EIR will be to assess potential physical environmental effects of the proposed Project, to identify ways to minimize or avoid significant effects, and to describe and analyze alternatives to the proposed Project.

CDFW is therefore submitting comments on the NOP to inform the CCJPA, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 & 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

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REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

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 Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Description and Location: The proposed Project would facilitate the separation of passenger rail service and freight operations in southern Alameda County, improving operations for both uses of rail and supporting the economic vitality of the Northern California megaregion. Improvements to the rail infrastructure may be warranted and included in the proposed Project to accommodate the transition of freight service to the Niles and Oakland Subdivisions and passenger rail service to the Coast Subdivision. The proposed Project also includes a new passenger rail station at the Ardenwood Park-and-Ride and potentially one additional passenger rail station along the Coast Subdivision to serve southern Alameda County passengers that would no longer have

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access to Capitol Corridor service at existing stations in Hayward and Fremont along the Niles Subdivision. The proposed Project does not include any increase in the number of daily Capitol Corridor trains or frequency of service to San Jose.

Key components of the proposed South Bay Connect Project include:

- Relocation of Capitol Corridor passenger rail operations to the Coast Subdivision and to facilitate the relocation of freight rail operations to the Niles and Oakland Subdivisions between Oakland and Fremont/Newark to create operational improvements for both services;
- Upgrades to the Coast Subdivision to Federal Rail Administration Class 5 track standards to accommodate passenger rail service;
- Improvements on the Niles and Oakland Subdivisions, including connections between the two lines at Industrial and Shinn to allow for more efficient freight movements; and
- Construction of a new passenger rail station at the existing Ardenwood Park and Ride that connects rail service with express buses, private shuttles, and the surrounding bicycle and pedestrian network.

COMMENTS AND RECOMMENDATIONS

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

The NOP does not provide details on the upgrades and improvements to the tracks, the changes to the number of daily trips, or the footprint of the proposed new station. CDFW therefore recommends that the draft EIR analyze all potential impacts to sensitive habitat types (e.g. grassland, riparian, tidal, etc.) and special-status species that could be present at the Project site. The EIR should analyze activities within or adjacent to tidal marsh or suitable habitat for California Ridgway's rail (*Rallus longirostris obsoletus*), California black rail (*Laterallus jamaicensis coturniculus*), and salt marsh harvest mouse (*Reithrodontomys raviventris*), all of which are federally and state endangered and State Fully Protected species. Fully Protected species may not be taken or possessed at any time. Therefore, CDFW cannot authorize take so mitigation measures to ensure avoidance of take of the Fully Protected species must be developed and disclosed. Other special-status species that are known to or suspected to occur at or near this Project include but is not limited to, State Species of Special Concern, western burrowing owl.

Western Burrowing Owl (*Athene cunicularia*)

The EIR should evaluate the potential for burrowing owls to be present within and adjacent to the Project area by documenting the extent of fossorial mammals that may provide burrows used by owls during the nesting and/or wintering seasons. Based on

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our records, burrowing owls have been documented on adjacent properties. Burrowing owls may also use unnatural features such as debris piles, culverts and pipes for nesting, roosting or cover. Burrowing owls have been observed using railroad tracks as roosting sites resulting in numerous owl fatalities from fast approaching trains. If suitable burrowing owl habitat is present, CDFW recommends that surveys be conducted following the methodology described in Appendix D: Breeding and Non-breeding Season Surveys of the CDFW Staff Report on Burrowing Owl Mitigation (Staff Report), which is available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843>.

Burrowing owl surveys should be conducted by a qualified CDFW-approved biologist. In accordance with the Staff Report, a minimum of four survey visits should be conducted within 500 feet of the Project area during the owl breeding season which is typically between February 1 and August 31. A minimum of three survey visits, at least three weeks apart, should be conducted during the peak nesting period, which is between April 15 and July 15, with at least one visit after June 15. Pre-construction surveys should be conducted no-less-than 14 days prior to the start of construction activities with a final survey conducted within 24 hours prior to ground disturbance.

Please be advised that CDFW does not consider exclusion of burrowing owls or “passive relocation” as a “take” avoidance, minimization or mitigation method, and considers exclusion as a significant impact. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

The EIR should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of breeding and foraging habitat that cannot be fully avoided.

Protect Nesting Birds.

The CCJPA is responsible for ensuring that the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes. In addition to removal of trees outside of the nesting season, surveying prior to construction, and providing an exclusion area around active nests, CDFW also recommends, once construction work begins, that the survey effort continue to ensure any nest starts established after the work commences are identified. In addition to direct impacts, such as nest destruction, nesting birds might be affected by noise, vibration, odors and movement of workers or equipment. Identified active nests should be monitored for the first 24 hours prior to any construction-related activities to establish a behavioral baseline of the adults and any nestlings. Once work commences, all active nests should be monitored by the qualified biologist to detect any signs of disturbance and behavioral changes as a result of the Project. If signs of disturbance and behavioral changes are

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observed, the biologist should cease work causing that change and contact the CDFW representative for guidance.

For raptor nests, a biological monitor, experienced in raptor behavior and approved by CDFW, should be assigned to monitor the behavior of any raptors nesting within disturbance distance of the Project activities. Even within species, disturbance distances can vary according to time of year or geographical location. The biological monitor should have authority to order the cessation of all Project activities within disturbance distance of any raptor nest if the birds exhibit abnormal nesting behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young). Abnormal nesting behaviors which may cause reproductive harm include but are not limited to: defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, interrupted feeding patterns, and flying away from the nest. Project activities within line of sight of the nest should not resume until the biological monitor has consulted with CDFW and both the biological monitor and CDFW confirm that the bird's behavior has normalized, or the young have left the nest.

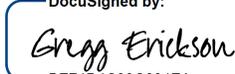
FILING FEES

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 NOP to assist the County in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or Brenda.Blinn@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse (SCH No. 2018092012)
Ryan Olah, U.S. Fish and Wildlife Service – Ryan.Olah@fws.gov