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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 7, 2021

Governor's Office of Planning & Research

**Oct 07 2021**

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California Department of Transportation  
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## STATE CLEARINGHOUSE

Dear Ms. Stubblefield:

Subject: NEV-49 Corridor Improvement Project  
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) SCH# 2020070281

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Completion & Environmental Document Transmittal of a DEIR from the California Department of Transportation (Caltrans) for the NEV-49 Corridor Improvement Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.<sup>1</sup> CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

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 habitats. 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 (Fish & G. 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 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 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. As proposed, for example, the Project

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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.

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may be subject to CDFW's lake and streambed alteration (LSA) 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 on State Route (SR) 49 in Nevada County from post mile (PM) 10.8 to R13.3.

The Project consists of improving safety, operations, and mobility on SR 49 in Nevada County from PM 10.8 to R13.3 through the addition of northbound and southbound truck climbing lanes outside an urbanized area, 16'-22' median with barrier, 10' shoulders, right turn lanes, and two at-grade access-controlled intersections. This Project will be built in three phases of construction based on funding availability. This Project will improve safety, operations, and mobility of vehicular traffic, pedestrians, and cyclists on SR 49 by: 1) constructing northbound and southbound truck climbing lanes / segments of auxiliary lanes to improve operations; 2) reducing the severity and frequency of collisions at public road intersections and roadways; 3) reducing cross-centerline collisions; 4) improving the roadway to meet current design standards and improve vertical curve sight distance; 5) providing one or two 12' x 12' animal crossings that would assist in avoiding collisions between vehicles and animals; 6) implementing identified improvements in the Nevada County Active Transportation Plan, which identifies SR 49 as needing Class III bicycle facilities and providing adequate shoulders for disabled vehicles and California Highway Patrol enforcement activities.

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and/or mitigating the Project's significant, or potentially significant, impacts on biological resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to impacts on biological resources. Where CDFW recommends specific revisions to the DEIR, deletions are marked with a strikethrough (~~example~~) while additions are marked as underlined (example). CDFW recommends that the forthcoming final EIR address the following comments:

#### **Comment 1: Project Description, Page 6.**

The Project Description states that the Project boundary is between PM 11.1 and PM R13.3. However, in the rest of the document, the Project boundary is stated as between PM 10.8 and PM R13.3.

To address this comment, CDFW recommends that the Project boundary be revised with the correct post miles throughout the document.

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### **Comment 2: Built Alternatives, Page 11.**

The DEIR did not select a preferred alternative at the end of the document. CDFW will rely on the EIR to comply with CEQA during review of the LSA Notification. Therefore, the EIR should accurately describe the preferred alternative in detail. The EIR and the LSA need to be consistent in the details of the Project description, the environmental impacts, and the conservation measures.

To address this comment, CDFW recommends that Caltrans identifies a preferred alternative in the final EIR. Please note that when Caltrans submits a LSA Notification, there can only be one build proposal used during consultation.

### **Comment 3: Wetlands and Waters - Regulatory Settings, Page 142.**

The regulatory setting section does not accurately reflect Fish and Game Code section 1602 and the activities subject to notification under that code. Fish and Game Code section 1602 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 where it may pass into any river, stream, or lake.

To address this comment, CDFW recommends the following revision to this section:

*Sections 1600-1607 of the California Fish and Game Code require any agency that proposes a Project that will substantially divert or obstruct the natural flow of any river, stream or lake, substantially change the bed or bank of a river, stream, or lake, or deposit debris, waste, or other materials where it may pass into any river, stream, or lake to notify CDFW before beginning construction.*

### **Comment 4: Environmental Consequences – Build Alternatives, Page 143.**

This section lists the permanent impacts to jurisdictional wetlands and other waters of the U.S./Waters of the State for the two alternatives. However, it does not list any temporary impacts.

To address this comment, CDFW recommends the EIR clarifies if the Project will have any temporary impacts to natural resources and include estimates of such impacts by habitat type. Temporary habitat impacts will require restoration to preconstruction conditions or will be considered permanent habitat impacts that require mitigation.

### **Comment 5: Permit Required Compensation, Page 144.**

Please be aware that CDFW does not accept the U.S. Army Corps of Engineers In-Lieu fee as mitigation to habitats impacted by activities subject to 1602 notification. Depending on the quality of habitat impacted, the quality of the compensatory mitigation and any temporal loss, 1:1 replacement for permanent impacts may result in a net loss of habitat. Though the LSA process, CDFW may require greater than 1:1 mitigation depending on Project specific factors to ensure no net loss occurs. If mitigation is proposed through use

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of mitigation or conservation bank credits, credit purchases should be from a CDFW-approved mitigation bank with appropriate credit types available. Caltrans may also propose alternative mitigation options for CDFW review and approval as part of the LSA notification process, as appropriate.

To address this comment, CDFW recommends the following revision to this section:

*Caltrans would likely purchase mitigation credits through the In-Lieu Fee Program to compensate for impacts to wetlands and waters of the U.S. and State. If credits from In-Lieu Fee Program are not available or determined to be unacceptable to the agencies, Caltrans would purchase credits from an appropriate agency-approved Mitigation Bank.*

**Comment 6: Avoidance and Minimization Measures – Nevada County Deer, Page 148.**

CDFW wildlife biologist Sara Holm, through a combination of personal field observations and data from UC Davis' California Roadkill Observation System (CROS, 2021), noted numerous deer roadkill within the Project area. CDFW recognizes the value of wildlife crossing structures being incorporated into the design plans to mitigate for the disturbance (permanent and temporary stream and riparian impacts, impediment to migration, etc.) or offset the impacts of the Project. These wildlife crossings have high potential to reduce incidents of deer/vehicle conflicts along the corridor. Mountain lions, ringtails, bears, and other animal species may also benefit from these wildlife crossings.

To address this comment, CDFW recommends the EIR incorporate the following consideration:

If Caltrans believes these features provide additional benefits to improve wildlife connectivity, CDFW recommends the EIR should describe the biological justification for how these crossings benefit wildlife and connect habitats. CDFW may rely on biological justification to reduce required mitigation.

**Comment 7: Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? Page 165 c).**

As stated on page 165, the Project would have direct/permanent impacts to wetlands and waters of the U.S./waters of the State. On page 143 to 144, avoidance and minimization measures are described that would be necessary to achieve no-net-loss of the functions and values within the Project area. Avoidance and minimization measures are considered "mitigation" as defined by CEQA (California Code of Regulations, Title 14 ("CEQA Guidelines"), Section 15370).

To address this comment, CDFW recommends changing this determination from, *Less than Significant Impact* to "*Less than Significant Impact with Mitigation Incorporated*".

**Mitigation Measures for Project Impacts to Biological Resources.**

The EIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the

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Project. CDFW also recommends the environmental documentation provide scientifically supported discussions regarding adequate avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon fish and wildlife and their habitat. For individual Projects, mitigation must be roughly proportional to the level of impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will improve environmental conditions. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

**Comment 8: Fully Protected Species**

Per the California Natural Diversity Database (CNDDDB), a Fully Protected Species (Fish & G. Code § 3511) has the potential to occur within or adjacent to the Project area, including, but not limited to: California black rail (*Laterallus jamaicensis coturniculus*). Fully protected species may not be taken or possessed at any time. Project activities described in the EIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area.

To address this comment, CDFW recommends the EIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors in *Section 2.4.4. Animal Species*. CDFW also recommends Caltrans includes in the analysis how appropriate avoidance, minimization, and mitigation measures will avoid direct impacts and reduce indirect impacts to fully protected species.

**Comment 9: Nesting Birds**

Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 et seq.). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests, and eggs. Sections 3503, 3503.5, and 3513 of the Fish and Game Code afford protective measures as follows: section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto; section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto; and section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA.

Potential habitat for nesting birds and birds of prey is present within the Project area and impacts to the nesting birds are not addressed in the DEIR. The Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within

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the Project footprint and its vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take must be included in the EIR.

To address this comment, CDFW recommends the EIR describe how the considerations identified below will be implemented and incorporated into the appropriate EIR section(s):

CDFW recommends Caltrans add specific avoidance and minimization measures to *Section 2.4.4. Animal Species* to ensure impacts to nesting birds or their nests do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The EIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. In addition to larger, protocol level survey efforts (e.g., Swainson's hawk surveys) and scientific assessments, CDFW recommends a final preconstruction survey be required no more than 14 calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted earlier. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1).

**Comment 10: Moving out of Harm's Way**

The Project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, Caltrans should state in the EIR a requirement for a qualified biologist, with the proper handling permits, to be retained and onsite prior to and during all ground- and habitat-disturbing activities. Furthermore, the EIR should describe that the qualified biologist may move out of harm's way special-status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities, as needed. The EIR should also describe qualified biologist qualifications and authorities to stop work to prevent direct mortality of special-status species. CDFW recommends fish and wildlife species be allowed to move out of harm's way on their own volition, if possible, and to assist their relocation as a last resort. It should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for habitat loss.

To address this comment, CDFW recommends adding text similar to the bullets below to *Section 2.4.4. Animal Species - Avoidance and Minimization Measures* (pages 148-149):

- *If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed.*
- *Escape ramps with at least a 2:1 slope shall be used for any trenches, holes, and pits to allow wildlife to escape.*
- *Caltrans shall create a relocation plan detailing handling and release methods for wildlife encountered within the Project area.*
- *If Caltrans encounters any special-status species during Project activities, work shall be suspended, CDFW notified, and conservation measures shall be developed in agreement with CDFW prior to re-initiating the activity. If during Project activities, Caltrans encounters any species listed pursuant to the CESA, work shall be*

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*suspended, and CDFW notified. Work may not re-initiate until Caltrans has consulted with CDFW and can demonstrate compliance with CESA.*

## 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 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 effect on fish and 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 DEIR to assist Caltrans 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 Harvey Tran, Environmental Scientist at (916) 358-4035 or [harvey.tran@wildlife.ca.gov](mailto:harvey.tran@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Kevin Thomas  
Regional Manager

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CEQACommentLetters  
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**REFERENCES**

California Roadkill Observation System (CROS), 2021. UC Davis Road Ecology Center.  
<https://roadecology.ucdavis.edu/hotspots/map>