



DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

Aug 12 2020

August 12, 2020

STATE CLEARINGHOUSE

Som Phongsavanh
California Department of Transportation, District 6
855 M Street, Suite 200
Fresno, California 93721

**Subject: Panoche Capital Preventative Maintenance Project (Project)
Initial Study with proposed Mitigated Negative Declaration
State Clearinghouse No. 2020070309**

Dear Mr. Phongsavanh:

The California Department of Fish and Wildlife (CDFW) received a proposed Mitigated Negative Declaration (MND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

¹ 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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agency environmental review efforts, focusing specifically on 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.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to resurface and rehabilitate an almost 12-mile segment of State Route 5 between its intersection with Kamm Avenue on the south and Panoche Road on the north (Project). All Project-related activities will occur within the existing Caltrans right-of-way either within the paved travel lanes and on-ramps/off-ramps, the unpaved but compacted and engineered shoulder backing, or within the ruderal areas beyond the travel lanes and shoulder backing. The rehabilitation work will include cold-planing and re-pavement, the installation of rumble strips, upgrading guardrails, culvert and dike work, and road sign upgrades.

Location: The almost 12-mile segment of State Route 5 (SR 5) which will be resurfaced and rehabilitated exists between post mile 37.20 and post mile 48.80, and is generally located in western Fresno County.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments to assist Caltrans in adequately identifying and sufficiently reducing to less-than-significant the potentially significant, direct and indirect Project-related impacts to fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the proposed MND indicates that the Project-related impacts to biological resources would be less-than-significant with implementation of specific avoidance and minimization efforts. However, as currently drafted, it is unclear whether some of the

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species specific measures proposed in the IS sufficiently reduce to less-than-significant the potential Project-related impacts to those species.

In particular, Caltrans concludes there will be less-than-significant effects to the State threatened Swainson's hawk (*Buteo swainsoni*) with implementation of proposed avoidance and minimization measures. CDFW does not agree with this conclusion and herein suggests revisions to the proposed avoidance of active SWHA nests in the vicinity of the Project, thereby reducing to less-than-significant Project-related impacts to the species. CDFW also recommends a path forward for Caltrans in the event avoidance of SWHA is not feasible.

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 are known to have nested in the vicinity of the Project. The Project activities will involve varying degrees of ground disturbance within the right-of-way and while CDFW agrees that SWHAs in the area may have become habituated to vehicular traffic along the right-of-way and farming activities on the adjoining cropland, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if they occur within ½-mile of an active SWHA nest. This nest abandonment would represent a significant impact to SWHA as well as potentially resulting in take, as it is defined in section 86 of Fish and Game Code.

Specific Impacts: In the IS, Caltrans indicates it will maintain a 600-foot no disturbance buffer from active SWHA nests during Project implementation. However, CDFW considers this 600-foot no disturbance buffer insufficient to avoid take of SWHA. Therefore, CDFW does not agree that the proposed 600-foot no-disturbance buffer reduces to less-than-significant the potential Project-related impacts to the species.

Evidence impact would be 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). Adoption of the MND as it is written will allow activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews within 600 feet of active SWHA nests. These activities could negatively affect these nests and have the potential to result in nest abandonment, significantly affecting nesting SWHA.

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Recommended Potentially Feasible Avoidance and Mitigation Measure(s)

Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose a larger no-disturbance buffer in order to reduce to less-than-significant the Project-related impacts to the species. CDFW recommends the following edits to the SWHA avoidance and minimization measures section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to Avoidance and Minimization Measures No. 1 for SWHA on page 15 of the IS.

Currently, under the avoidance and minimization measures section of the IS, Caltrans proposes a 600-foot no-work buffer established around active SWHA nests at and near the Project. CDFW recommends Caltrans edit this measure to include a **½-mile no-work buffer** around active SWHA nests until the young have fledged and are no longer reliant on parental care for survival. If the aforementioned edit to the existing avoidance and minimization measures are not made, and/or the aforementioned buffer is not feasible, CDFW recommends Caltrans obtain incidental take coverage under Section 2081(b) of Fish and Game Code. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be required to reduce to less-than-significant the unavoidable Project-related impacts to SWHA.

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. 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

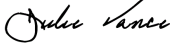
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is 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).

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CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and avoiding 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 Mr. Steven Hulbert, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, or by electronic mail at steven.hulbert@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation and Monitoring Reporting Program

cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

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Literature Cited

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

Attachment 1

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

PROJECT: Panoche Capital Preventative Maintenance Project

SCH No.: 2020070309

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Avoidance	
Mitigation Measure 2: SWHA Take Authorization (if avoidance is not feasible)	