



DEPARTMENT OF FISH AND WILDLIFE

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Governor's Office of Planning & Research

APR 19 2021

STATE CLEARINGHOUSE

April 19, 2021

Denis Bazyuk, Project Manager
Stanislaus County Public Works Department
1716 Morgan Street
Modesto, California 95358
Bazyukd@stancounty.com

**Subject: Tim Bell Road over Dry Creek Bridge (38C-0073) Replacement Project
(Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2021020008**

Dear Mr. Bazyuk:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (DEIR) from the Stanislaus County Public Works Department 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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: Stanislaus County Public Works Department

Objective: The Project proposes to replace the existing Tim Bell Road Bridge over Dry Creek. The proposed Project would construct a new bridge downstream of the existing bridge to improve sight distance, remove the existing "s-curve", provide for a safe design speed, and provide a structure that spans the 100-year floodplain of Dry Creek. The bridge structure type will be a cast-in-place prestressed concrete box girder and slab bridge with arching soffit. Eleven multi-column bents will support the approximately 60-foot spans of the bridge structure over the floodplain. At Dry Creek, the bridge span will be approximately 160 feet long to clear the ordinary high-water mark of the creek. The new, two-lane bridge will have a 26-foot clear deck width. The deck width accommodates two 11-foot travel lanes and two 2-foot shoulders. A California ST-30 guard rail will extend along the entire length of the bridge and road approaches on both sides of the Tim Bell Road.

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In addition to the new bridge, the proposed Project includes approximately 920 feet of road improvements. Road improvements south of the bridge will be approximately 220 feet long to safely conform into the existing alignment. North of the new bridge, an approximately 700-foot-long road improvement will convey the road past the touchdown point above the floodplain.

Location: The Project is located in eastern Stanislaus County along Tim Bell Road, 0.8 mile south of its junction with Claribel Road, about 5.4 miles northeast from the City of Waterford and 14 miles southeast of the City of Oakdale. The Project is located on the Paulsell USGS Topographic Quad (T3S, R12E, Section 6, Mt. Diablo Base and Meridian) and is in the Upper Tuolumne Hydrologic Unit (Hydrologic Unit Code 18040009).

Timeframe: Unknown.

COMMENTS AND RECOMMENDATIONS

CDFW previously commented on the Notice of Preparation for this Project in a letter dated March 8, 2021. Our March 8, 2021 letter provided specific recommendations for the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), and the State species of special concern burrowing owl (*Athene cunicularia*). CDFW maintains the same recommendations for advised survey methods and mitigations measures that are not included in the DEIR. In addition, CDFW has the following recommendations on specific mitigation measures included in the DEIR.

Mitigation Measure BIO-3

Mitigation Measure BIO-3 in the DEIR requires pre-construction nesting raptor and bird surveys prior to construction activities within the 15 February to 31 August breeding season. Mitigation Measure BIO-3 indicates that a 600-foot survey distance and a 600-foot no-disturbance buffer will be utilized for any identified Swainson's hawk (SWHA) nest. The 600-foot survey distance and no-disturbance buffer may not be sufficient to avoid take.

As stated in our March 8, 2021 comment letter, if ground-disturbing Project activities are to take place during the normal bird breeding season (March 1 through September 15), CDFW recommends a ½-mile survey distance from the limits of disturbance. CDFW also recommends a minimum no-disturbance buffer of ½-mile be delineated around active SWHA 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.


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Mitigation Measure BIO-4

Mitigation Measure BIO-4 proposes to use passive exclusion in accordance with CDFW's 2012 Staff Report, prior to the start of the nesting season. Measure BIO-4 states that unoccupied burrows would be collapsed and that the Project area be maintained free of burrows. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW, particularly if available burrows are a limited habitat feature in the Project area.

CDFW appreciates the opportunity to comment on the Project to assist the Stanislaus County Public Works Department in identifying and mitigating the Project's impacts on biological resources. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

cc: Regional Water Quality Control Board
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