



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710  
(559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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



Governor's Office of Planning & Research

March 11, 2021

**Mar 11 2021**

## STATE CLEARINGHOUSE

Richard Putler  
California Department of Transportation, District 6  
855 M Street, Suite 200  
Fresno, California 93721

**Subject: South Madera 6-Lane (Project)  
Initial Study with proposed Mitigated Negative Declaration  
State Clearinghouse No. 2021020203**

Dear Mr. Putler:

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.<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 & 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 projects and related activities that have the potential to adversely affect fish and wildlife resources.

---

<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.

Richard Putler  
California Department of Transportation, District 6  
March 11, 2021  
Page 2

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 widen and rehabilitate an approximately 8-mile segment of State Route 99 (SR 99) between Post Mile 0.1 and Post Mile 8.1 (Project site) in Madera County. All Project-related activities will occur within existing right-of-way, paved travel lanes, unpaved but compacted and engineered shoulder backing, the highway median, proposed new right-of-way, and within the ruderal habitat areas beyond the travel lanes and shoulder backing. Work would include the widening and resurfacing of the existing SR 99, construction of a median barrier, abandonment or replacement of existing culvert locations, the installation of a retaining wall, and construction of stormwater retention basins. Activities include trenching, grading, resurfacing outside shoulders, temporary lane closures and temporary traffic control.

**Location:** The Project site exists between Post Mile 0.1 and Post Mile 8.1 and is between the City of Madera and the City of Fresno in Madera County.

**Timeframe:** Spring 2024-Summer 2027.

## **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.

Currently, the proposed IS/MND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. In particular, Caltrans concludes there will be: 1) less-than-significant impacts to the State threatened Swainson's hawk (*Buteo swainsoni*).

However; as currently drafted, it is unclear whether the measures proposed in the IS/MND sufficiently reduce to less-than-significant the potential Project-related impacts

Richard Putler  
California Department of Transportation, District 6  
March 11, 2021  
Page 3

to State-listed species. Therefore, CDFW does not agree with these conclusions and will herein suggest measures to survey for and avoid Project-related impacts to the species, thereby reducing to less-than-significant the Project-related impacts. Further, CDFW considers other migratory birds potentially present in the vicinity of the Project and will herein suggest measures to survey for and avoid Project-related impacts to migratory birds in general, thereby reducing to less-than-significant the Project-related impacts. CDFW also recommends that Caltrans identify a path forward in the event that avoidance of the State-listed species is not feasible.

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

**Would the Project have a substantial adverse impact, 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: Migratory Birds including Swainson's Hawk (SWHA)**

**Issue:** Migratory birds, including SWHA, are known to nest in the vicinity of the Project with the nearest occurrence approximately 0.3 miles from the Project as reported in CNDDDB. The Project activities will involve varying degrees of ground disturbance and CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment to migratory birds and to SWHA specifically if they occur within ½-mile of an active SWHA nest. This nest failure of the State threatened SWHA would represent a significant impact to SWHA and possibly take as it is defined in section 86 of Fish and Game Code.

**Specific Impacts:** In the IS, Caltrans addresses SWHA and it further 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. Further, Caltrans does not cite any relevant scientific peer reviewed literature as the basis for ensuring no significant impacts to nesting SWHA and to validate the efficacy of take avoidance in the implementation of the 600-foot no disturbance buffer. 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 Project-related activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews within ½-mile of active SWHA nests. These activities occurring within ½-mile of active SWHA nests have the potential to result in nest abandonment, significantly impacting nesting SWHA.

Richard Putler  
California Department of Transportation, District 6  
March 11, 2021  
Page 4

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

Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW advises Caltrans amend the IS/MND that a ½-mile no-disturbance buffer will be implemented around active SWHA nests in order to reduce to less-than-significant the Project-related impacts to the species. CDFW recommends edits to the IS to include Migratory Bird avoidance and minimization measures in the IS. Further, CDFW recommends these edited measures be made quantifiable and enforceable conditions of Project approval.

**Recommended Edits to Avoidance and Minimization Measures to specifically address SWHA on page 83 of the IS.**

Currently, under the SWHA avoidance and minimization measures section of the IS, Caltrans proposes a “600-foot radius no-work buffer” around active SWHA nests detected within a ½-mile of the Project limits during preconstruction surveys. CDFW recommends Caltrans edit this measure to propose numeric no-work buffers for unlisted passerine, raptors, and listed raptors (including SWHA). Alternatively, general migratory bird measures could be focused and discussed outside the SWHA section.

CDFW recommends Caltrans include edits in the avoidance and minimization measure section of the IS to require pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW then recommends Caltrans propose a minimum no-disturbance buffer of 250 feet around active nests of non-listed passerine 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 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 construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

For SWHA specifically, CDFW recommends Caltrans require focused surveys for active nests and ½-mile no-disturbance buffers around any active nests until the young have fledged and are no longer reliant upon the nest or parental care for survival. If the ½-mile no-disturbance buffer is not feasible, CDFW recommends Caltrans propose obtaining take authorization through the acquisition of an Incidental Take Permit pursuant to section 2081 subdivision (b) of Fish and Game Code in the revised IS. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be warranted to reduce to less-than-significant the unavoidable Project-related impacts to SWHA.

Richard Putler  
California Department of Transportation, District 6  
March 11, 2021  
Page 5

## 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>.

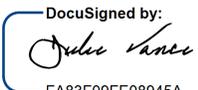
## FILING FEES

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 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. Javier Mendez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at [javier.mendez@wildlife.ca.gov](mailto:javier.mendez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program

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

Richard Putler  
California Department of Transportation, District 6  
March 11, 2021  
Page 6

ec: Office of Planning and Research, State Clearinghouse  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

Richard Putler  
California Department of Transportation, District 6  
March 11, 2021  
Page 7

## **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: South Madera 6-Lane (Project)**

**SCH No.: 2021020203**

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