



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



August 12, 2022

Governor's Office of Planning & Research

**Aug 12 2022**

**STATE CLEARINGHOUSE**

Dylan Stone  
Madera County Transportation Commission  
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Madera, California 93637  
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**Subject: 2022 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) (Project)  
Draft Program Environmental Impact Report (DEIR)  
SCH No.: 2021030268**

Dear Mr. Stone:

The California Department of Fish and Wildlife (CDFW) received a Programmatic DEIR from the Madera County Transportation Commission (MCTC) 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

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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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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).

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and CDFW cannot authorize their "take." The fully protected blunt-nosed leopard lizard (*Gambelia sila*), golden eagle (*Aquila chrysaetos*), bald eagle (*Haliaeetus leucocephalus*), and white-tailed kite (*Elanus leucurus*) are known to occur in Madera County.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Madera County Transportation Commission

**Objective:** The Project is the preparation of the 2022 RTP/SCS. MCTC is in the process of preparing the RTP/SCS as required by Section 65080 et seq., of Chapter 2.5 of the California Government Code, federal guidelines pursuant to new requirements established in the federal surface transportation reauthorization, Bipartisan Infrastructure Law, "Moving Ahead for Progress in the 21<sup>st</sup> Century", and the Fixing America's Surface Transportation Acts, Transportation Conformity for the Air Quality Attainment Plan per 40 CFR Part 51 and 40 CFR Part 93, and requirements set forth in Assembly Bill 32, *The California Global Warming Solutions Act of 2006*, and Senate Bill 375 *The Sustainable Communities and Climate Protection Act of 2008*. The California Transportation Commission has prepared guidelines to assist in the preparation of the RTP/SCS.

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The 2022 RTP/SCS will address all transportation modes including motor vehicles, transit (commuter and local), rail (commuter and interregional), goods movement (rail freight and trucking), bicycle and pedestrian facilities, aviation systems, and transportation systems management programs and projects considering the horizon year of 2046. In addition, the 2022 RTP/SCS will:

- Identify the region's transportation goals, objectives, and policies
- Include the SCS, which demonstrates how the region will meet its GHG reduction target through integrated land use, and housing and transportation planning. Once adopted by MCTC, the SCS becomes an integral part of the RTP
- Set forth an action plan of projects and programs to address the needs consistent with the Policy Element
- Reflect results of the Transportation Conformity Analysis
- Detail the RTP/SCS public outreach process
- Include the Environmental Justice analysis process

**Location:** The Project site is located within the corporate limits of Madera County, California, including two incorporated cities (Chowchilla and Madera) and all unincorporated areas under the jurisdiction of the County of Madera.

**Timeframe:** The RTP/SCS is a long-range plan for all modes of transportation through to the year 2046.

## COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist MCTC in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. CDFW understands that the MCTC seeks to develop a transportation planning document to guide transportation development projects within Madera County. Given the county-wide implications of this RTP/SCS, CDFW is concerned that subsequent projects (hereafter, "projects") tiering from this Program EIR could impact special-status species including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State endangered and fully protected and federally endangered blunt-nosed leopard lizard (*Gambelia sila*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), the State endangered great gray owl (*Strix nebulosa*), the State endangered foothill yellow-legged frog (*Rana boylei*), the State fully protected golden eagle (*Aquila chrysaetos*) and white-tailed kite (*Elanus leucurus*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State and federally endangered Fresno kangaroo rat (*Dipodomys nitratoides exilis*), the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State threatened and federally proposed endangered Sierra Nevada red fox (*Vulpes vulpes necator*), the State threatened and federally endangered fisher (*Pekania pennanti*), the State and

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federally endangered Harweg's golden sunburst (*Pseudobahia bahiifolia*), the State federally endangered hairy Orcutt grass (*Orcuttia pilosa*), the State endangered and federally threatened succulent owl's clover (*Castilleja campestris var. succulenta*), and the State species of special concern burrowing owl (*Athene cunicularia*), California spotted owl (*Strix occidentalis occidentalis*), and western spadefoot toad (*Spea hammondi*). While this list may not include all special-status species present in Madera County, it does provide a robust source of information as to which species could potentially be impacted.

### **Biotic Resources 3.5.1-4**

Biotic Resources 3.5.1-4 of the DEIR states that "if sensitive plant or wildlife species and non-native habitat are identified within the biological impact area, a Biological Resources Management Plan will be developed to address appropriate avoidance and minimization measures." CDFW recommends the following measures be incorporated into the Biological Resources Management Plan.

California tiger salamander (CTS): CTS have been documented in Madera County (CDFW 2022). CTS breed and develop in vernal and seasonal pools and stock ponds in grassland, woodland, and scrub habitat types. They require upland refuges (i.e., small mammal burrows) when not breeding. Prior to ground-disturbing activities, CDFW recommends that a qualified wildlife biologist assess the project site and vicinity (i.e., up to 1.3 miles, observed CTS dispersal distance) that contains potentially suitable habitat, to evaluate potential for CTS. CDFW recommends site assessments follow the United States Fish and Wildlife Service (USFWS) "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (2003). CDFW recommends the qualified biologist determine the impacts of project-related activities to all CTS upland and breeding habitat within and/or adjacent to the construction footprint. Because both upland burrow refugia and breeding wetland habitat features suitable for use by CTS are present in Madera County, CDFW advises avoidance for CTS include a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows. If burrow avoidance is not feasible, consultation with CDFW is warranted to determine if the project can avoid take. CDFW agrees with BR 3.5.1-21 that if take cannot be avoided, acquisition of an Incidental Take Permit (ITP) is necessary prior to any ground-disturbing activities to comply with CESA.

Blunt-nosed Leopard Lizard (BNLL): BNLL (*Gambelia sila*) is State and federally endangered and have the potential to occur in Madera County. Full BNLL protocol surveys are recommended on the entirety of project sites which provides potential BNLL habitat. Suitable BNLL habitat includes all areas of grassland and shrub habitat that contains required habitat elements, such as small mammal burrows and open areas for basking. BNLL are also known to utilize open space patches between suitable habitat

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features including disturbed sites and unpaved access roadways. BNLL is fully protected and CDFW cannot authorize take of this species.

CDFW recommend focused surveys following the survey methods titled "*Approved Survey Methodology for the Blunt-nosed Leopard Lizard*" (CDFW 2019) to detect any BNLL that may occur in the Project area. These surveys, the parameters of which were designed to optimize detectability, must be conducted within one year from the start of project activities to reasonably assure CDFW that take of this fully protected species will not occur as a result of project implementation. It is important to note that protocol-level surveys must be conducted on multiple dates during late spring, summer, and fall of the same survey season, and that within these time periods there are specific date, temperature, and time parameters which must be adhered to; as a result, protocol-level surveys for this species are not synonymous with "pre-construction" surveys often recommended for other wildlife species.

In addition, CDFW advises that all potential burrows, which could be occupied by BNLL, and all individuals observed above-ground be avoided. CDFW recommend suitable burrows within and adjacent to potential habitat for BNLL be avoided by a minimum 50 feet in all areas where ground-disturbing project activities will occur, that an appropriate number of qualified biologists be present during all ground-disturbing project activities to ensure that BNLL above ground are not impacted, and that any individual that may enter the project activity area be allowed to leave unobstructed on its own. In the event that BNLL is detected, consultation with CDFW would be warranted to discuss how to implement the Project and avoid take.

**San Joaquin Kit Fox (SJKF):** SJKF has the potential to occur in Madera County. SJKF populations are known to fluctuate over years and a negative finding from biological surveys in any one year does not necessarily depict absence of kit fox on a site. It is important to note that SJKF may be attracted to any construction area due to the type and level of activity (pipes, excavation, etc.) and the loose, friable soils that are created as a result of intensive ground disturbance. CDFW recommends that the exclusion buffers and survey methods found in the USFWS's "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) be followed prior to any ground-disturbing activities occurring within the Project site.

Special Status Plant Species: There is the potential for multiple special status plant species to occur on or adjacent to the subsequent project sites. CDFW recommends that all project sites be surveyed by a qualified botanist. CDFW advises following the Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (March 20, 2018). This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. In the absence of protocol-level surveys being performed, additional surveys

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may be necessary. Further, CDFW advises that a minimum no-disturbance buffer of at least 50 feet from the outer edge of the plant population(s), or specific habitat type(s) required by special status plant species, be delineated around special status plant species. If buffers cannot be maintained, then consultation with CDFW is advised to determine appropriate minimization and mitigation measures for impacts to special-status plant species. If a State- or federally listed plant species is identified during botanical surveys, then consultation with CDFW and/or the USFWS is recommended to determine the need for an ITP (issued by CDFW) or a Biological Opinion (issued by the USFWS).

### **Biotic Resources 3.5.1-9**

Biotic Resources 3.5.1-9 states that “all vegetation removal and construction activities will occur between August 16<sup>th</sup> and February 14<sup>th</sup> to avoid potential conflicts with nesting birds. If it is not possible to remove vegetation during the time frame, a nest clearance survey will be completed prior to vegetation clearing.”

If project activities occur during the bird nesting season, CDFW recommends protocol-level surveys be conducted prior to any project ground disturbance. CDFW recommends (1) a 0.5-mile no-disturbance buffer for any fully protected, State-threatened and/or State-endangered birds, except that a minimum 300-foot no-disturbance buffer be implemented for active tricolor blackbird nest colonies in accordance with CDFW’s “*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*” (CDFW 2015), (2) a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species, and (3) a 500-foot no-disturbance buffer around the nests of unlisted raptors. Survey protocols can be found at CDFW’s website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). CDFW advises that these nest avoidance buffers be incorporated into the Biological Resources Management Plan.

While BR 3.5.1-9 of the DEIR proposes that the August 16<sup>th</sup> through February 14<sup>th</sup> work period will be used to avoid disturbance to nesting birds, it is also important to note that any project ground-disturbing activities during this period may impact CTS. CTS usually leave their burrows during the first rain events in search of seasonal pools or stock ponds for breeding. Project proponents may need to consider the timing of project activities, the location of the project in proximity to special status species habitat, and/or the need to pursue take authorization.

### **Cumulative Impacts**

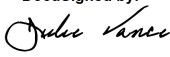
CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the project, including those whose impacts are determined to be less

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than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e., less than significant). Cumulative impacts may need to be analyzed using acceptable methods to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and will need to be focused specifically on the resource, not the project. An appropriate resource study area may need to be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

CDFW appreciates the opportunity to comment on the Project to assist MCTC in identifying and mitigating project 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) 580-3203, or by electronic mail at [Jim.Vang@wildlife.ca.gov](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...

Julie A. Vance  
Regional Manager

Attachment

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Patricia Cole; [Patricia\\_Cole@fws.gov](mailto:Patricia_Cole@fws.gov)

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- California Department of Fish and Game (CDFG). 2003. *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander*. California Department of Fish and Game. 2003.
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- CDFW, 2019. Approved Survey Methodology for the Blunt-nosed Leopard Lizard. California Department of Fish and Game, October 2019 (Revised).  
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**Attachment 1**

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

**PROJECT: 2022 Regional Transportation Plan/Sustainable  
Communities Strategy (RTP/SCS)**

**SCH No.: 2021030268**

<b>RECOMMENDED MITIGATION MEASURE</b>	<b>STATUS/DATE/INITIALS</b>
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure: BR 3.5.1-4	
CTS surveys	
CTS take authorization	
BNLL protocol-level surveys	
SJKF survey and avoidance document	
Listed plants surveys	
Listed plants take authorization	
Mitigation Measure: BR 3.5.1-9	
Active bird nest surveys	
<i>During Construction</i>	
Mitigation Measure: BR 3.5.1-4	
CTS avoidance buffer	
BNLL avoidance	
Listed plants avoidance buffer	
Mitigation Measure: BR 3.5.1-9	
Active bird nest avoidance buffer	