



DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

June 28 2021

STATE CLEARINGHOUSE

June 28, 2021

Chris Brady, Deputy Director
Stanislaus County Public Works Department
1716 Morgan Road
Modesto, California 95358
bradyc@stancounty.com

**Subject: Faith Home Road and Garner Road Expressway Project (Project)
Initial Study/Mitigated Negative Declaration
State Clearinghouse No. 2021050569**

Dear Mr. Brady:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) 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. While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

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 Game 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

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.

Chris Brady, Deputy Director
Stanislaus County Public Works Department
June 28, 2021
Page 2

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.

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 & Game 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 & Game 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, §§ 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 Stanislaus County Public Works Department, working in cooperation with California Department of Transportation (Department) and the Stanislaus Council of Governments (Stan COG), proposes to construct a two-lane expressway from the existing Faith Home Road and Hatch Road intersection north to the Garner Road and Finch Road intersection. The Stanislaus County Public Works Department is the lead agency under CEQA. The Department is the National Environmental Policy Act lead agency.

Location: The Project is located in central Stanislaus County between the cities of Modesto and Ceres. The north end of the Project occurs on farmland and terminates in

Chris Brady, Deputy Director
Stanislaus County Public Works Department
June 28, 2021
Page 3

the Beard Industrial Park. The Modesto and Empire Traction Company short line railroad also occurs in the northern portion of the Project area. The Tuolumne River flows east to west through the Project area. The Ceres Main Canal Bridge occurs south of the Tuolumne River in the southern portion.

Timeframe: n/a.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Stanislaus County Public Works Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the MND indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the MND. However, as currently drafted, CDFW is concerned regarding the adequacy of mitigation measures for special-status species including, but not limited to, the State fully protected white-tailed kite (*Elanus leucurus*) and the State threatened Swainson's hawk (*Buteo swainsoni*).

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: The Project will cross over the Tuolumne River, and SWHA have the potential to nest within and near the Project site. The proposed Project will involve activities near large trees that may serve as potential nest sites. Mitigation Measure BIO-7 of the MND states that (1) surveys for active nests will be conducted up to 250 feet from the Project site, and (2) a 250 feet no-disturbance buffer will be implemented for birds of prey. The MND indicates that mitigation measure BIO-7 will be applied to SWHA. As written, BIO-7 may not be sufficient to reduce significant impacts or avoid unauthorized take of SWHA.

Specific impacts: Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, loss of nest trees, loss of foraging habitat that would reduce nesting success (loss or reduced health or vigor of eggs or young), and direct

Chris Brady, Deputy Director
Stanislaus County Public Works Department
June 28, 2021
Page 4

mortality. Any take of SWHA without appropriate incidental take authorization would be a violation of Fish and Game Code.

Evidence impact is potentially 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). Approval of the Project may lead to ground-disturbing activities that will involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Mitigation Measure(s)

To evaluate potential impacts to SWHA, CDFW recommends conducting the following evaluation of the Project site, editing the MND to include the following measures specific to SWHA, and that these measures be made conditions of approval for the Project.

Recommended Mitigation Measure 1: SWHA Surveys

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC, 2000) no more than 10 days prior to the start of Project implementation. The survey protocol includes early season surveys to assist the project proponent in implementing necessary avoidance and minimization measures, and in identifying active nest sites prior to initiating ground-disturbing activities. CDFW recommends this survey protocol because it will increase the likelihood of SWHA detection beyond the currently proposed pre-activity surveys and decrease the risk for potential impacts or unauthorized take of SWHA.

Recommended Mitigation Measure 2: SWHA No-disturbance Buffer

If surveys as discussed above in Recommended Mitigation Measure 1 are conducted and active SWHA nests are found, CDFW recommends a minimum no-disturbance buffer of 0.5 mile no-disturbance buffer be delineated around active 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.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW recommends that in the event an active SWHA nest is detected during surveys, consultation with CDFW is warranted to discuss how to implement the project and avoid take. If take cannot be avoided, take authorization through the

Chris Brady, Deputy Director
Stanislaus County Public Works Department
June 28, 2021
Page 5

acquisition of an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

II. Editorial Comments and/or Suggestions

Fully Protected Raptors: The State fully protected white-tailed kite has the potential to nest and forage in the vicinity of the Project site. Projects within occupied territories have the potential to significantly impact the species. CDFW recommends that focused surveys be conducted by experienced biologists prior to Project implementation. In the event that the species is found within 0.5-mile of the Project site, implementation of avoidance measures are warranted. CDFW recommends that a qualified wildlife biologist be on-Site during all ground disturbing/construction related activities and that a 0.5 mile no disturbance buffer be put into effect. If the 0.5 mile no disturbance buffer cannot feasibly be implemented, it is recommended CDFW be contacted to assist with providing and implementing additional avoidance measures. Fully addressing mitigation measures for white-tailed kite in the CEQA document prepared for the Project is advised.

Lake and Streambed Alteration: The Project involves work directly over the Tuolumne River, and is subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1600 et seq. requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

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>.

Chris Brady, Deputy Director
Stanislaus County Public Works Department
June 28, 2021
Page 6

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 & Game Code, § 711.4; Pub. Resources Code, § 21089).

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.

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 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:
Bob Stafford
5343A684FF02469...
Julie A. Vance
Regional Manager

cc: Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706-2020

United States Army Corps of Engineers
San Joaquin Valley Office
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

Chris Brady, Deputy Director
Stanislaus County Public Works Department
June 28, 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.

Swainson's Hawk Technical Advisory Committee (SWHA TAC). 2000. Recommended
Timing and Methodology for Swainson's Hawk Nesting Surveys in California's
Central Valley. Swainson's Hawk Technical Advisory Committee, May 31, 2000.

Attachment 1

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

**PROJECT: Faith Home Road and Garner Road Expressway Project
(Project)
SCH No.: 2021050569**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Surveys	
Mitigation Measure 3: SWHA Take Authorization	
<i>During Construction</i>	
Mitigation Measure 2: SWHA No-disturbance Buffer	