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January 12, 2024

STATE CLEARINGHOUSE

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Subject: YOLO 80 CORRIDOR IMPROVEMENTS PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)
SCH No. 2021060117

Dear Mike Bartlett:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from the State of California Department of Transportation (Caltrans) for the Yolo 80 Corridor Improvements Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code (Fish & G. 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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.

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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CDFW may also act 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located along Interstate 80 (I-80) and U.S. Route 50 (US-50) from Kidwell Road near the eastern Solano County boundary (near Dixon), through Yolo County, and to West El Camino Avenue on I-80 and Interstate 5 (I-5) on US-50 in Sacramento County.

The Project consists of constructing improvements consisting of managed lanes, pedestrian/bicycle facilities, and an Intelligent Transportation System (ITS) element. The project would add managed lanes on I-80 and US-50 by a combination of lane conversion, restriping, and shoulder and median reconstruction with a concrete barrier. Drainage modifications would be required due to median reconstruction in the locations to which sheet flow currently drains. The existing ITS elements and infrastructure would be expanded and modified and would include ramp meters, fiber-optic conduit and cables, and overhead signs. Utility relocation would also occur.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that an Environmental Impact Report is appropriate for the Project.

COMMENT 1: Chapter 2: Bat Species, page 2-324.

Issue: Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). Impacts may be considered potentially significant unless adequate mitigation is incorporated. The Bat Species section acknowledges the presence of the known bat maternity colony within the Yolo Causeway bridge structure and states that, "No construction would occur on the existing bridge over the Yolo Causeway, so the maternity colony that roosts under the bridge would not be directly impacted." However, the proximity of the project to the colony would likely cause disturbance to the colony if effective avoidance measures are

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not included in the EIR. Disturbance of roost sites during the maternity and hibernation seasons are considered primary factors that may negatively impact bats and have the potential to result in take. During the hibernation period, bats are very slow to respond to disturbance and can lose fat stores needed to survive the winter while pups in the maternity colony may not have the ability to fly. The EIR does not have sufficient and enforceable avoidance measures to reduce impacts to the colony to a less than significant level. For mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will reduce the environmental impacts from the project to a less than significant level.

Recommendation: CDFW recommends the EIR include a fully enforceable avoidance measure restricting all construction activities within 500 feet of the Yolo Causeway bridge structure from March 1 through August 31 annually. CDFW does not support eviction of bats during the maternity or hibernation periods (March 1 through August 31 annually). Construction activities and/or installation of bat exclusion devices on the Yolo Causeway structure between March 1 and August 31 annually is considered a significant impact.

COMMENT 2: Chapter 1: Table S-2 Biological Resources Summary, page 17.

Issue: The Biological Resources section, environmental topic (d) of Table S-2 Summary of California Environmental Quality Act (CEQA) Impacts reads, "[will the Project] interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites." All alternatives are listed as having "No Impact." The maternity colony in the Yolo Causeway bridge is considered a native wildlife nursery site. Proposed temporary disturbances from construction, cumulative impacts from past, on-going, and reasonably foreseeable projects, as well as long-term impacts from maintenance and light pollution have the potential to impact this nursery site.

Recommendation: CDFW recommends the EIR include a scientifically supported discussion of potential direct, indirect, and cumulative impacts to nursery sites from lighting, noise, human activity, and wildlife-human interactions created by Project activities. The EIR should define the threshold of significance for each impact and describe the criteria used to determine whether the impacts are significant (CEQA Guidelines, § 15064, subd. (f)). The EIR must demonstrate that the significant environmental impacts of the Project were adequately investigated and discussed, and it must permit the significant effects of the Project to be considered in the full environmental context.

The EIR should include scientifically supported appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of construction and long-term operation and maintenance of the Project. Mitigation must be roughly proportional to the level of

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impacts, including cumulative impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355).

COMMENT 3: Chapter 2: Section 2.4.5.17, Animal Species, Cumulative Impacts, page 2-384.

Issue: This section acknowledges current and reasonably foreseeable future actions that could result in land use activities and impacts on animal species. It goes on to state that the relevant projects that would be constructed within the Project construction period could result in permanent and temporary impacts on animal species if vegetation removal, grubbing and grading, pile driving, operation of vehicles, heavy equipment operation, and earth-moving operations are required. It concludes that because "...each relevant project would be required to implement avoidance, minimization, and mitigation measures as necessary, the Project would not result in a cumulatively considerable impact on animal species. Thus, this section does not recommend additional avoidance and minimization measures for cumulative impacts to animal species."

The EIR's cumulative impacts analysis describes increased noise and vibration levels to parks and recreation facilities and also states that nighttime construction lighting, glare, construction equipment, staging areas, demolition, and other construction-related activities from multiple projects may contribute to cumulative visual impacts. However, the EIR does not analyze the impact of construction related noise, vibration, or lighting on animal species including but not limited to day roosting bats and purple martin.

Bats

For roosting bats, on-going construction related noise, light, and vibration impacts from the Yolo Pavement Rehabilitation Project (EA 03-4F650) are of particular concern. The Yolo Pavement Rehabilitation Project is in active construction on the Yolo Causeway bridge deck. Construction activities were continuous through the 2023 maternity season. Routine monitoring of the Yolo Causeway bridge maternity colony by local bat researchers resulted in the anecdotal observation of abnormal and unpredictable colony egress pathways in areas where active construction was taking place on the bridge deck (Quirk, Mary Jean of the Yolo Basin Foundation. Interview. Conducted by Melissa Stanfield. Jan. 3, 2024). This change in behavior was previously undocumented at the Yolo Causeway bridge. Although a change in egress pathways cannot be definitively linked to construction activities, behavioral changes as a response to construction should be analyzed as potential impacts. Additionally, it is well documented that construction related disturbance has the potential to impact day roosting bats (Johnston et. al 2004, Johnston et. al 2019).

Disturbance caused by project implementation that results in post-construction roost abandonment is considered a permanent impact (Johnston et. al, 2019). The most common type of permanent, post-construction disturbance is from light pollution. Any direct or indirect artificial lighting has the potential to degrade or eliminate roosts or potential roosting habitat (Johnston et. al, 2019). Noise disturbance and displacement of

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bats from roosts or important foraging areas can potentially result in reduced survivability of individuals from increased susceptibility to predation, reduced quality of thermal and social environments, and decreased foraging efficiencies (Johnston et. al, 2019).

Purple Martin

The EIR should also analyze cumulative impacts to the Sacramento population of purple martins regarding the US-50 Multimodal Corridor Enhancement and Rehabilitation Project, I-5 Corridor Improvement Project (FixSac5), and I Street Bridge Replacement. During this analysis, Caltrans should discuss when the Project's incremental effect is cumulatively considerable and examine impacts that are created as a result of the combination of the project evaluated in the EIR together with other projects that may cause or have already caused related impacts. There are multiple colonies throughout the Sacramento area that nest in highway overpasses and elevated freeway sections and have been subject to transportation related construction activity during the nesting season (i.e., 35th Street, S Street, 29th and R Streets, and Redding Avenue colonies). This project and the FixSac5 project could further subject local colonies (i.e., 19th Street/Freeport Boulevard) to continued disturbance during the nesting season. The I Street Bridge replacement project will result in the permanent removal of a known nesting colony. Protection of colonies from construction disturbance is a critical component to a longer-term conservation program for the species (Airola 2020). Caltrans District 3 is familiar with the impacts associated with colonies that were disturbed during the US-50 Multimodal Corridor Enhancement and Rehabilitation Project and has coordinated with CDFW and local experts on purple martins in the past.

Recommendation: The EIR should analyze the impact of construction related noise, vibration, or lighting on animal species including but not limited to day roosting bats and purple martin.

Bats

CDFW recommends the EIR provide scientifically supported discussions regarding adequate analysis, and avoidance, minimization, and/or mitigation measures to address the Project's significant impacts upon any resident or maternity colonies within the biological study area (BSA). The cumulative effects of construction noise on bats, the frequency of noise generated and the hearing sensitivity of the bat species at risk should be evaluated in the EIR and mitigated to a less than significant level. Mitigation must be roughly proportional to the level of impacts, in accordance with the provisions of CEQA (Guidelines § § 15126.4(a)(4)(B), 15064, 15065, and 16355). In order for mitigation measures to be effective, they must be specific, enforceable, and feasible actions.

Purple Martin

CDFW recommends the EIR provide scientifically supported discussions regarding adequate analysis, avoidance, and/or mitigation measures to address the Project's significant impacts upon purple martin. Nest exclusion can cause declines and

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permanent abandonment of colony sites (Airola and Grantham 2003) and should not be prescribed as a mitigation measure without first consulting with CDFW and local species experts. In addition, if the Project has the potential to impact nests or colonies, the installation of nest boxes as a form of compensatory mitigation should not be considered as they have shown to be ineffective in the Sacramento Valley (Airola, Dan. Interview. Conducted by Melissa Stanfield. Feb. 16, 2023). CDFW recommends continued coordination occur for this and other upcoming projects to identify and implement additional conservation efforts for the species that at a minimum should include full avoidance of known nest sites and funding purple martin research.

COMMENT 4: Chapter 2, Section 2.3.4.4 Avoidance, Minimization, and/or Mitigation Measures. AMM BIO-13 Pre-construction Bat Surveys, page 2-327.

Issue: As currently written, the pre-construction bat survey appears to apply only to maternity colonies and areas identified as moderate or high presence potential for maternity colonies; however, all bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, not just maternity colonies (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). The purpose of pre-construction surveys should be to confirm the presence or absence of colonies and/or individuals within the entirety of the Project footprint. Given the size of the Project footprint, one pre-construction survey prior to the start of construction activities may not be sufficient to detect occupied roosts. Furthermore, the measure states “if any maternal colonies are detected, a qualified biologist will determine and implement appropriate conservation measures.” This measure is not enforceable as it defers development of conservation measures to a future time, when it is known that a maternal colony is present.

Recommendation: CDFW recommends AMM BIO-13 be revised to phase pre-construction surveys and ensure they are conducted prior to the start of construction activities in all previously undisturbed areas or areas where no construction has occurred for 14 days or longer. In addition, pre-construction survey methods consistent with *Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions* (Johnston et. al, 2019) should be included in BIO-13. The qualified biologists performing pre-construction surveys should be approved by CDFW prior to initiating surveys. Survey results including personnel, timing, methods, and results should be provided to CDFW no later than 10 days following the survey and prior to the start of construction. If an occupied roost site is detected, construction should not commence until CDFW has been consulted and provided written concurrence that construction may commence. The EIR should include fully enforceable measures to mitigate potentially significant impacts and should not defer these measures to a future time (CEQA Guidelines § 15126.4).

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COMMENT 5: Chapter 2, Section 2.3.4.4 Avoidance, Minimization, and/or Mitigation Measures. AMM BIO-14 Bat Protection Plan, page 2-328.

Issue: The EIR should include fully enforceable measures to mitigate potentially significant impacts and should not defer these measures to a future time (CEQA Guidelines § 15126.4). As currently written, the measure does not outline or set minimum standards of what should be included in the Bat Protection Plan (plan). The measure does not identify when the plan would be prepared, or who would be responsible for preparing, reviewing, or implementing it. The measure also does not define the plan area or establish criteria for plan success or contingency measures if implementation fails or cannot be completed. Without specific Bat Protection Plan goals, content, and enforceability, this measure does not mitigate project impacts to a less than significant level.

Recommendation: CDFW recommends BIO-14 be reworded as follows:

A bat species protection survey plan will be developed by a qualified biologist and submitted to CDFW for review and approval no later than 60 days prior to the start of construction activities. The plan shall include but not be limited to a description of the plan area, survey methods, surveyor qualifications, recommended protective buffers, construction monitoring, and post-construction monitoring consistent with *Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions (Johnston et. al, 2019)*.

COMMENT 6: Chapter 2, Section 2.3.4.4 Avoidance, Minimization, and/or Mitigation Measures. AMM BIO-15 Structural Changes to Bat Roosting Habitat, page 2-328.

Issue: As BIO-15 is currently written, it is unclear when structural changes to bat roosting habitat would be warranted, who will be performing those activities, what materials are proposed for use, and whether impacts from those activities will require need to be mitigated. Temporary or permanent exclusion efforts may lead to an increase in localized human-wildlife conflict as the bats attempt to find alternative roosting sites; therefore, compensatory mitigation in the form of replacement roost habitat is necessary to mitigate impacts to a less than significant level.

Recommendation: CDFW recommends BIO-15 be revised to include a Bat Exclusion Plan be prepared and provided to CDFW for review and approval no later than 10 days prior to the exclusion of any bat roost. Exclusion should only occur when absolutely necessary, be installed by a CDFW-approved qualified biologist, and should never occur during the maternity season (i.e. March 1 – August 31).

COMMENT 7: Potential for Project Activities to Result in Injured Wildlife

Issue: The Project does not describe how bats or other wildlife incidentally injured as a result of construction activities will be addressed.

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Recommendation: CDFW recommends that the cost of reasonable, licensed rehabilitation efforts for any injured bats or other wildlife taken to wildlife care facilities from the Project area should be assumed in full by Caltrans.

COMMENT 8: Lighting Impacts on Biological Resources

Issue: All build alternatives appear to propose new temporary and permanent lighting. Temporary nighttime lighting would occur during nighttime construction work activities. Both temporary and permanent signage throughout the Project would use reflective lettering. Permanent street lighting would be added near CR-32A at the proposed bicycle pathway extension adjacent to the westbound off-ramp. Within Segment 2, bridge deck lighting with Type 21 Barrier-Rail-Mounted Lighting Standards would be constructed. Additional street lighting would be added to the Bryte Bend Bridge (I-80 Sacramento River Bridge Overhead), but it may also be added at proposed auxiliary lane locations if determined necessary during the design phase. Existing ITS elements to be installed also include a minimum of 42 overhead signs including changeable message signs. The EIR does not analyze impacts to biological resources resulting from temporary and permanent light pollution.

New lighting, especially in areas where no lighting or low levels of lighting currently exist, has potential for significant impacts to occur that could result in a finding of significance. Artificial light spillage beyond the prism of the roadway into natural areas may result in a potentially significant impact through substantial degradation of the quality of the environment. Artificial light pollution also has the potential to significantly and adversely affect biological resources and the habitat that supports them. Unlike the natural brightness created by the monthly cycle of the moon, the permanent and continuously powered lighting fixtures create an unnatural light regime that produces a constant light output. Continuous light output for 365 days a year can also have cumulatively significant impacts on fish and wildlife populations.

Artificial night lighting can disrupt the circadian rhythms of many wildlife species. Many species use photoperiod cues for communication (e.g., bird song), determining when to begin foraging (Stone et al. 2009), behavior thermoregulation (Beiswenger 1977), and migration (Longcore and Rich 2004). Artificial night lighting has also been found to impact juvenile salmonid overwintering success by delaying the emergence of salmonids from benthic refugia and reducing their ability to feed during the winter (Contor and Griffith 1995). For nocturnally migrating birds, direct mortality resulting from collisions with anthropogenic structures due to attraction to light (Gauthreux, 2006) is another direct effect of artificial light pollution. There are also more subtle effects, such as disrupted orientation (Poot et al. 2008) and changes in habitat selection (McLaren et al. 2018). There is also growing evidence that light pollution alters behavior at regional scales, with migrants occupying urban centers at higher-than-expected rates as a function of urban illumination (La Sorte et al. 2021). While artificial light pollution can act as an attractant at both regional (La Sorte et al. 2021) and local (Van Doren et al. 2017)

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scales, there is also evidence of migrating birds avoiding strongly lit areas when selecting critical resting sites needed to rebuild energy stores (McLaren et al. 2018).

Recommendation: Due to the high potential for songbirds, marsh-birds, migratory birds, salmonids and nocturnally active State listed and special status species, CDFW strongly recommends that no new or replacement artificial lighting is installed as a result of Project completion. If the installation of artificial lighting is unavoidable, CDFW recommends the following mitigation measures be incorporated into the EIR:

Recommended Mitigation Measure 1 – Light Output Analysis: Isolux Diagrams that note current light levels present during pre-Project conditions and the predicted Project light levels that will be created upon completion of the Project shall be included in the EIR. If an increase in light output from current levels to the projected future levels is evident, additional avoidance, minimization or mitigation measures shall be developed in coordination with the natural resource agencies to offset indirect impacts to special status species. Within 60 days of Project completion, the lead agency shall conduct a ground survey that compares projected future light levels with actual light levels achieved upon completion of the Project through comparison of Isolux diagrams. If an increase from the projected levels to the actual levels is discovered, additional avoidance, minimization or mitigation measures may also be required in coordination with the natural resource agencies. This analysis should be conducted across all potential alternatives and compared in table and map format.

Recommended Mitigation Measure 2 – Light Output Limits: All LED's or bulbs installed as a result of the Project shall be rated to emit or produce light at or under 2700 kelvin that results in the output of a warm white color spectrum.

Recommended Mitigation Measure 3 – Reflective Signs and Road Striping: Retro-reflectivity of signs and road striping should be implemented throughout the Project to reduce the need for electrical lighting.

Recommended Mitigation Measure 4 – Light Pole Modifications and Shielding: All new or replacement light poles or sources of illumination shall be installed with the appropriate shielding to avoid excessive light pollution into natural landscapes or aquatic habitat within the Project corridor in coordination with CDFW. In addition, the light pole arm length and mast heights should be modified to site specific conditions to reduce excessive light spillage into natural landscapes or aquatic habitat within the Project corridor. In areas with sensitive natural landscapes, aquatic habitat, or within 500 feet of any bat roost, Caltrans should also analyze and determine if placing the light poles at non-standard intervals has the potential to further reduce the potential for excessive light pollution caused by decreasing the number of light output sources in sensitive areas.

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COMMENT 9: Chapter 2: Section 2.3 Biological Environment. Valley Oak Woodland and Forest Impacts

Issue: The EIR does not sufficiently disclose or adequately analyze the potentially significant impacts to fish and wildlife resources that may occur from the removal, limbing or trimming of valley oak woodland and forest. Figures 2.3-1 indicates that all build alternatives will result in 0.51 acre of temporary impacts and 0.14 acre of permanent impacts to valley oak woodland and forest. The removal, limbing or trimming of trees may have a potentially significant impact to fish and wildlife resources by reducing and degrading the quality of habitat for nesting birds, reptiles, amphibians and invertebrates. Red-shouldered hawks, red-tail and white-tailed kites (State Fully Protected) are known to inhabit the Project vicinity, and removal of tree stands could potentially impact nests, nesting behavior and foraging habitat.

Furthermore, the EIR does not define temporary impacts to valley oak woodland. Given the temporal loss of habitat and its impact on wildlife species, removal and/or significant trimming of trees within valley oak woodland and forest habitats should be considered permanent and significant impacts. The EIR proposes removal of trees without significant preservation or replacement of trees on- or off-site.

Proposed mitigation for impacts to both valley oak woodland and valley riparian forest is implementation of BIO-2. BIO-2 commits Caltrans to notifying for and obtaining a Streambed Alteration Agreement prior to the start of construction activities. Not only does this measure defer mitigation based on future approvals through a Streambed Alteration Agreement, but maps presented in the EIR show impacts to valley oak woodland and forest are activities that may occur outside the bed, bank, or channel of streams; therefore, these activities would likely be omitted from the Streambed Alteration Notification.

Recommendation: CDFW recommends incorporating the following mitigation measures into the EIR.

Recommended BIO-Measure 1: Off-Site Conservation of Valley Oak Woodland and Forest: If impacts cannot be avoided to valley oak woodland and forest; Caltrans shall permanently preserve valley oak woodland and forest at an off-site location. The off-site location may be lands with habitats that may be rehabilitated, restored, or preserved and maintained to fully mitigate for the potentially significant impacts. The lands must be protected through fee title, transfer or conservation easement to an appropriate conservation entity to ensure long term preservation and successful implementation of the mitigation. The fish and wildlife resources or environments replaced or substituted for those impacted must be maintained in perpetuity.

Recommended BIO-Measure 2: Valley Oak Woodland and Forest On-Site and Off-Site Restoration Plan: CEQA Guidelines §15126.4 (a) requires lead agencies to consider feasible mitigation measures to avoid or substantially reduce a project's significant

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environmental impacts. Caltrans shall develop a more in-depth restoration plan in consultation with the natural resource agencies. Caltrans shall incorporate details that (1) commits itself to the mitigation, (2) adopts specific performance standards that the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard. Caltrans shall specifically discuss permanent land protection in perpetuity, mitigation/restoration bank credit purchase and requirements in regard to valley oak woodland and forest. Additional actions should be included in the EIR, such as installation of artificial wood rat boxes and bat boxes to reduce potentially significant impacts to fish and wildlife resources.

COMMENT 10: Appendix C, Biological Resources. AMM BIO-19: Erosion Control and Re-Vegetation, page 54

Issue: Monofilament materials found in some erosion control products have been demonstrated to result in snaring and entrapment of snakes, lizards, and small mammals.

Recommendation: CDFW recommends AMM BIO-19 be revised to state the following:

Erosion control materials shall be monitored daily and repaired if necessary to ensure maximum erosion and sediment control. All fiber rolls, straw wattles, and/or hay bales utilized within and adjacent to the project site shall be free of non-native plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Products with plastic monofilament or cross joints in the netting that are bound/stitched (such as found in straw wattles/fiber rolls and some erosion control blankets), which may cause entrapment of wildlife, shall not be allowed. All temporary erosion control and any related material shall be removed upon completion of project activities.

COMMENT 11: Chapter 2: Section 2.3.5.4 Avoidance, Minimization, and/or Mitigation Measures. AMM BIO-31: Pre-construction SWHA Survey, page 2-348.

Issue: This measure states that the qualified biologist will conduct pre-construction surveys if construction is to occur between February 1 and August 31. However, Swainson's Hawk (SWHA) nesting season is March 1 through September 30. The measure also states that pre-construction surveys will be conducted up to 15 days prior to construction. These methods are inconsistent with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000) and insufficient to avoid impacts to SWHA.

Recommendation: CDFW recommends BIO-31 be revised to read:

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“Prior to the initiation of construction activities, the Project proponent have a qualified biologist conduct surveys for Swainson’s hawk in accordance with the Swainson’s Hawk Technical Advisory Committee’s (TAC) *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley* (2000), available on CDFW’s webpage at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. Survey methods should be closely followed by starting early in the nesting season to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted within a minimum 0.25-mile radius of the Project area or a larger area, if necessary, to identify potentially impacted active nests. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.25-mile protective buffer should be maintained around the nest until the young fledge. The protective buffer should be clearly marked and be an area where no project-related activities or personnel are allowed while in place. If the 0.25-mile buffer must be reduced or take of Swainson’s hawk cannot be avoided, the Project proponent should be required to obtain an Incidental Take Permit (ITP) as a condition of Project approval.”

Issue: The Project area includes a portion of the Swainson’s Hawk Zone (SHZ), which the Natomas Basin Habitat Conservation Plan (NBHCP) describes as the area within one mile of the Sacramento River in the Natomas Basin. The SHZ was derived from the high density of Swainson’s hawk nests within this area and scientific evidence for the value of the habitat (NBHCP 2003). The NBHCP recognizes the importance of the SHZ to this species and the viability of their plan which resulted in substantial effort from the City of Sacramento and Sutter County to replan development outside of this area. Although Caltrans is not party to the NBHCP, the EIR must consider the Project’s 1) biological impact in an ecologically valuable area and 2) the effect that Project development in the SHZ will have on the continued implementation and viability of the NBHCP.

COMMENT 12: Chapter 2: Biological Resources – Swainson’s Hawk, page 2-344.

Issue: The EIR states that, “A total of approximately 10.0 acres of SWHA foraging habitat consisting of grassland and croplands (i.e., hayfield) would be permanently lost;” however, compensatory mitigation for the permanent loss of foraging habitat is not included. The primary threat to the Swainson’s Hawk population in California continues to be habitat loss, especially the loss of suitable foraging habitat (California Department of Fish and Game 2016). Unmitigated loss of foraging habitat for a CESA listed threatened species is a significant impact.

Recommendation: CDFW recommends the following mitigation measure be added to the EIR:

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Compensatory Mitigation for Permanent Impacts to SWHA Foraging Habitat: To mitigate impacts from the permanent loss of 10.0 acres of Swainson's hawk foraging habitat to a less than significant level, CDFW recommends Caltrans either purchase 30.0 acres of SWHA foraging habitat credits from a CDFW-approved conservation bank OR provide for both the permanent protection and management of 30.0 acres of Habitat Management (HM) lands including calculation and deposit of management funds as approved by CDFW. Prior to transfer of SWHA foraging credits, Caltrans shall obtain CDFW approval to ensure the conservation bank is appropriate to compensate for the impacts of the Project. Caltrans shall submit to CDFW a copy of the executed Credit Transfer Agreement prior to initiating construction activities.

COMMENT 13: Chapter 2: Biological Resource - Tricolored Blackbird, page 2-341.

Issue: The EIR acknowledges a total of 498.7 acres of potentially suitable habitat for tricolored blackbird within 500 feet of the BSA. Potentially suitable habitat was identified as lands that are planted in alfalfa, natural or semi-natural lands (e.g., grassland, ruderal/grassland, willow scrub, and emergent marsh) on larger parcels (generally greater than approximately 20 acres) that border other open lands. However, the EIR does not quantify temporary or permanent Project impacts to tricolored blackbird foraging or nesting habitat. The EIR also does not provide appropriate and adequate compensatory mitigation for all direct, indirect, and cumulative impacts to tricolored blackbird foraging and nesting habitat that are expected to occur as a result of construction and long-term operation and maintenance of the Project.

Destruction of the tricolored blackbirds' marsh and grassland homes has reduced its populations to a small fraction of their former enormity. Further loss, conversion, and disturbance, either temporary or permanent, to foraging and nesting habitat is a significant impact.

Recommendation: To help mitigate Project impacts to a less than significant level, CDFW recommends the EIR: 1) quantify permanent direct, indirect, and cumulative impacts to tricolored blackbird foraging and nesting habitat, and 2) include an enforceable mitigation measure requiring Caltrans to either purchase tricolored foraging and nesting habitat credits from a CDFW-approved conservation bank OR provide for both the permanent protection and management of Habitat Management (HM) lands including calculation and deposit of management funds as approved by CDFW. Prior to transfer of tricolored blackbird credits, Caltrans shall obtain CDFW approval to ensure the conservation bank is appropriate to compensate for the impacts of the Project. Caltrans shall submit to CDFW a copy of the executed Credit Transfer Agreement prior to initiating construction activities. The number of credits purchased shall be at a ratio appropriate to fully mitigate permanent habitat impacts.

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COMMENT 14: Fish Passage Analysis Senate Bill 857

Issue: The Draft EIR, as it is currently written, does not address many of the locations noted in the CALFISH Database that occur within the Project limits as it pertains to Senate Bill 857 (SB-857), which amended Fish and Game Code 5901 and added section 156 to the Streets and Highways Code states in section 156.3, “For any project using state or federal transportation funds programmed after January 1, 2006, Caltrans shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. Caltrans shall submit the assessment to the CDFW and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so that they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with CDFW.”

Recommendation: The Biological Resources section of the EIR should address the following locations noted in the CALFISH Database that occur within the Project limits as it pertains to SB- 857.

- Location 1, South Fork Putah Creek (I-80; PM 41.3, Solano County), Fish Passage Assessment Database ID# 761347, fish barrier status: temporal;
- Location 2, Unnamed tributary to Toe Drain (I-80; PM 9.4, Yolo County), Fish Passage Assessment Database ID# 764517, fish barrier status: unassessed; and
- Location 3, Unnamed tributary to Toe Drain (I-80; PM 10.62, Yolo County), Fish Passage Assessment Database ID# 764482, fish barrier status: unassessed.

The EIR should include a fish passage discussion section to address potentially significant impacts. CDFW recommends that the fish passage section, at a minimum, discuss the current status of the crossing locations noted in the California Fish Passage Assessment Database, conduct first pass and or second pass fish assessments, as necessary, as well as provide images of the upstream and downstream ends of water conveyance structures.

COMMENT 15: 2.1.2 Consistency with Regional, and Local Plans and Programs

Issue: CEQA Guidelines section 15125(d) states that EIRs must discuss any inconsistencies between projects and applicable plans (including habitat conservation plans/natural community conservation plans). Portions of the Project are within the boundaries of the Yolo Habitat Conservation Plan/Natural Community Conservation Plan (Yolo Plan) and the Natomas Basin Habitat Conservation Plan (NBHCP).

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Recommendation: Because the Yolo Plan and NBHCP are currently being implemented, the EIR must include a discussion on the consistency of each project alternative with the respective plans and how Caltrans will ensure that implementation of the project alternatives do not impede either plan's ability to meet its biological goals and objectives. Furthermore, CDFW recommends that Caltrans coordinate with the implementing agency/plan operators (Yolo Habitat Conservancy/Yolo County and the Natomas Basin Conservancy) of each respective plan to ensure significant environmental impacts assessed in the EIR are adequately investigated. Particular focus in the EIR's analysis should be directed to:

- Analysis of all Yolo Plan and NBHCP Covered Species,
- Assessment of habitat types identified in the Yolo Plan and NBHCP,
- Identification of applicable Yolo Plan and NBHCP avoidance, minimization, or mitigation measures; and
- Analysis of any impacts to land commitments of the Yolo Plan and NBHCP.

CEQA Guidelines section 15125(e) requires the analysis examine both the existing physical conditions at the time of the EIR and the potential future conditions discussed in the adopted plans.

The Project area includes a portion of the Swainson's Hawk Zone (SHZ), which the NBHCP describes as the area within one mile of the Sacramento River in the Natomas Basin. The SHZ was derived from the high density of Swainson's hawk nests within this area and scientific evidence for the value of the habitat (NBHCP 2003). The NBHCP recognizes the importance of the SHZ to this species and the viability of their plan which resulted in substantial effort from the City of Sacramento and Sutter County to replan development outside of this area. Although Caltrans is not party to the NBHCP, the EIR must consider the Project's 1) biological impact in an ecologically valuable area and 2) the effect that Project development in the SHZ will have on the continued implementation and viability of the NBHCP.

COMMENT 16: Throughout EIR.

Issue: Generally, much of the language used to describe avoidance, minimization, and mitigation actions within the EIR use the term "would."

Recommendation: To ensure mitigation measures are both quantifiable and enforceable, CDFW recommends replacing instances of "would" with "shall" within all avoidance, minimization, and mitigation measures.

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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 the California Natural Diversity Database (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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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.)

CONCLUSION

Pursuant to Public Resources Code § 21092 and § 21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the DEIR for the Yolo 80 Corridor Improvements to assist Caltrans in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Irina Lopatin, Environmental Scientist at (916) 880-8324 or irina.lopatin@wildlife.ca.gov; or Melissa Stanfield, Senior Environmental Scientist (Supervisory), at (916) 597-6417 or melissa.stanfield@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

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ec: Irina Lopatin, Environmental Scientist
Mary Xiong, Senior Environmental Scientist (Specialist)
Melissa Stanfield, Senior Environmental Scientist (Supervisory)
Jason Faridi, Senior Environmental Scientist (Supervisory)
Craig Weightman, Habitat Conservation Program Manager
Tanya Sheya, Environmental Program Manager
Erin Chappell, Regional Manager – Bay Delta Region
Department of Fish and Wildlife

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