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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

July 25, 2022

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STATE CLEARINGHOUSE

Emma Goldsmith
Stanislaus Council of Governments
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Subject: 2022 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2022010019

Dear Ms. Goldsmith:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the Stanislaus Council of Governments (StanCOG) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & 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

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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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).

PROJECT DESCRIPTION SUMMARY

Proponent: StanCOG

Objective: The proposed Project is a long-range planning document required by both State and federal law that will guide the development of transportation improvements throughout Stanislaus County. The Project contains a compilation of the transportation system improvement projects proposed by StanCOG, as the State-designated Regional Transportation Planning Agency for the County. The Project includes the Sustainable Communities Strategy (SCS) pursuant to the requirements of Senate Bill (SB) 375. Accordingly, the Project identifies transportation improvement projects and a land use scenario that would effectively meet SB 375 greenhouse gas emission requirements.

Location: Throughout Stanislaus County.

Timeframe: To the horizon year of 2046.

COMMENTS AND RECOMMENDATIONS

CDFW understands that the Project seeks to develop a transportation planning document to guide transportation development projects throughout Stanislaus County. The Project will consist of subsequent projects that may impact biological resources. Given the county-wide implications of this RTP/SCS, CDFW is concerned that subsequent projects tiering from this Program EIR (projects) could impact special-status

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plant and animal species that have been documented in Stanislaus County per the California Natural Diversity Database (CNDDDB; CNDDDB 2022). These species include, but are not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State threatened tricolored blackbird (*Agelaius tricolor*), 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 threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), the State and federally endangered Harweg's golden sunburst (*Pseudobahia bahiifolia*), the State endangered and 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*), western pond turtle (*Actinemys marmorata*), and western spadefoot toad (*Spea hammondi*). While this list may not include all special-status species present in the Project area, it does provide a robust source of information as to which species could potentially be impacted.

Mitigation Measure BIO-1(f)

Mitigation Measure BIO-1(f) states that if any listed species are found within the Project site during surveys prior to project ground-disturbing activities, the ITP issued by CDFW will be implemented. If an ITP was not issued, CDFW would be contacted to determine the appropriate course of action.

If biological surveys are conducted and listed species are found to be present, implementation of project activities without obtaining an ITP may result in take, as defined by Fish and Game Code section 86. Therefore, prior to ground-disturbing activities, it is recommended to contact CDFW to determine if full avoidance of listed species is possible. Full avoidance measures are necessary to avoid unauthorized take as a result of the Project: full avoidance for CTS is achieved by maintaining a minimum 50-foot no-disturbance buffer from all small mammal burrows; full avoidance for SWHA is achieved by following the City of Turlock General Plan's mitigation measure 7.4-f "Swainson's Hawk protection"; full avoidance for tricolor blackbird is achieved by implementation of a minimum 300-foot no-disturbance buffer in accordance with CDFW's "Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015" (CDFW 2015); mitigation measure BIO-1(h) and the City of Turlock General Plan's mitigation measure 7.4-e "Identify and protect nesting habitat" is acceptable for full avoidance of nesting fully protected birds; and full avoidance for SJKF is achieved by implementing 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).

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If full avoidance is not possible, acquisition of an ITP, issued by CDFW, pursuant to Fish and Game Code section 2081 subdivision (b), may be warranted.

CDFW recommends that StanCOG encourage project proponents contact CDFW as soon as possible for early consultation prior to application for an ITP to help streamline the permit application and process.

Lake or Streambed Alteration Agreement (LSA Agreement)

As stated in our previous comment letter dated February 3, 2022, it is likely that some project activities will be subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. If an LSA Agreement is needed, CDFW is required to comply with CEQA in the issuance or the amendment of an LSA Agreement. Therefore, for efficiency in environmental compliance, we recommend that any potential lake or stream disturbance that may result from project activities be described, and mitigation for the disturbance be developed as part of the EIR. This will reduce the need for CDFW to require extensive additional environmental review for a LSA Agreement in the future. If inadequate or no environmental review has occurred for project activities that are subject to notification under Fish and Game Code section 1602, CDFW will not be able to issue the Final LSA Agreement until CEQA analysis for the project is complete. This may lead to considerable project delays.

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 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>.

FILING FEES

It has been determined that the Project has the potential to impact biological resources, therefore 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).

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CDFW appreciates the opportunity to comment on the Project to assist StanCOG in identifying and mitigating the Project's impacts on biological resources. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 580-3203, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Bob Stafford

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Bob Stafford for Julie A. Vance
Regional Manager

cc: California Department of Fish and Wildlife:
LSA Program; R4LSA@wildlife.ca.gov

United States Fish and Wildlife Service
Patricia Cole; Patricia_Cole@fws.gov

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LITERATURE CITED

California Department of Fish and Wildlife (CDFW). 2015. Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015. March 19, 2015.

CDFW. 2022. Biogeographic Information and Observation System (BIOS).
<https://www.wildlife.ca.gov/Data/BIOS>.

U.S. Fish and Wildlife Service. 2011. Standard Recommendations for the Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance. United States Fish and Wildlife Service, January 2011.