

Dorman, April@Wildlife

From: Xiong, Mary@Wildlife
Sent: Tuesday, July 5, 2022 11:33 AM
To: stephanie.cormier@yolocounty.org
Cc: Wildlife R2 CEQA; Boyd, Ian@Wildlife; Jacks, Sandra@Wildlife; Thomas, Kevin@Wildlife
Subject: CDFW's Comments on the IS/MND for the CR96 over Dry Slough Bridge Replacement Project (SCH No. 2022060272)

Follow Up Flag: Follow up **Governor's Office of Planning & Research**
Flag Status: Completed

Jul 5 2022

STATE CLEARINGHOUSE

Dear Ms. Cormier,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Initial Study and Mitigated Negative Declaration (IS/MND) from the Yolo County Department of Community Services (County) for the County Road 96 over Dry Slough Bridge Replacement Project (Project) pursuant to the California Environmental Quality Act (CEQA) statute and guidelines.

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.

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.

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. 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 proposed Project involves the replacement of an existing 44-foot-long and 20-foot-wide bridge on County Road (CR) 96 over Dry Slough with a new bridge on the same road alignment. The Project is located on CR 96, north of CR 31 and west of the City of Davis within the southern region of Yolo County, California. The new structure will accommodate two 11-foot travel lanes with two-foot shoulders. The new bridge is anticipated to be a single-span cast-in-place post-tensioned slab structure, approximately 60 feet long. The roadway and bridge profile will be raised slightly to clear the 100-year storm event. Construction activities include excavation for and construction of concrete abutments, pile driving, removal of existing pavement, placement of new roadway fill material, aggregate base, hot mix asphalt pavement, installation of guard rail, tree and vegetation removal along the slough as necessary, removal of the existing structure, falsework erection and removal, installation of scour countermeasures at the abutments, and relocation of overhead electrical and communication lines.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Nesting Bird Surveys and Protection

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA).

The IS/MND mitigation measure BIO-4 (Special-Status Bird Species, Migratory Birds, and Raptors) requires project activities and vegetation removal within the Project area to be initiated outside of the bird nesting season (February 1 – August 31), and that if Project activities and vegetation removal cannot be initiated outside of the bird nesting season, then the following will occur: a qualified biologist will conduct a pre-construction survey within seven days prior to the initiation of Project activities, if an active avian nest (i.e., with eggs[s] or young) is observed within 250 feet of the Project area during the pre-construction survey, then a species protection buffer will be established, the species protection buffer will be defined by the qualified biologist in consultation with CDFW, construction activity will be prohibited within the buffer zones until the young have fledged or the nest fails, and the nests will be monitored once per week and a report submitted to the lead agency weekly.

Please note that bird species can construct nests and begin laying eggs in less than seven days, and a pre-construction nesting bird survey scheduled within seven days prior to construction may therefore miss some instances of nesting. To minimize the chances of missing nests, CDFW recommends scheduling the survey within three (3) days before the start of ground disturbing activities. Please also note that Fish and Game Code section 3503 protects the nests and eggs of all birds, not just special-status bird species, migratory birds and birds of prey. CDFW recommends including performance-based protection measures for avoiding all nests protected under the MBTA and Fish and Game Code and is available to provide comments and feedback on nesting bird avoidance strategies, as necessary. A buffer may need to be increased based on the birds' tolerance level to the disturbance as it varies greatly depending on species, intensity of disturbance, whether the nesting pair is accustomed to disturbance, the location of the nest, the stage of development of nestlings, etc. Disturbance too close to the nest may impact the parents' ability to forage effectively and reduce nestlings' chances of survival. In some cases, disturbance can cause the parents to abandon the nest completely. The following is an example of a performance-based protection measure: Should construction activities cause the nesting migratory bird or raptor to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, the exclusionary buffer should be increased such that activities are far enough from the nest to stop this agitated behavior by the migratory bird or raptor. The exclusionary buffer should remain in place until the chicks have fledged or as otherwise determined by a qualified biologist. In addition, Fish and Game Code protections for nesting and migratory birds apply regardless of the time of year, and some bird species may nest during the winter and fall months. If an active nest is discovered outside of the typical nesting season, it should be avoided using the same avoidance measures that would be applied during the typical nesting season until such time as the young have fully fledged and are foraging independently of their parents.

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 FEE

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. Please direct written notifications 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 IS/MND to assist 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 Mary Xiong, Senior Environmental Scientist (Specialist) at (916) 212-3876 or mary.xiong@wildlife.ca.gov.

Sincerely,

Mary Xiong

Senior Environmental Scientist (Specialist)
Habitat Conservation Program
California Department of Fish and Wildlife – North Central Region
Cell: (916) 212-3876