



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

FEB 14 2023

STATE CLEARING HOUSE

February 14, 2023

Nirorn Than
City of Los Banos Department of Public Works
411 Madison Avenue
Los Banos, California 93635
nirorn.than@losbanos.org

Subject: Pioneer Road Complete Streets (Project)
Notice of Preparation (NOP)
SCH No.: 2023010345

Dear Nirorn Than:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Merced County Community and Economic Development 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.

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

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.

Nirorn Than
City of Los Banos Department of Public Works
February 14, 2023
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 & 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.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Los Banos

Objective: The Project proposes to construct an approximately 6.5 mile-long, arterial road with a Class I multi-use path. The Project would include the extension of Pioneer Road to provide a local parallel route to State Route 152, the addition of traffic signals at five intersections, reconstruction of driveways, and a Class I multi-use trail.

Location: The Project site is located in the City of Los Banos, in western Merced County.

Timeframe: n/a

COMMENTS AND RECOMMENDATIONS

Special-Status Species: Based on aerial imagery, the Project site is directly adjacent to agricultural land properties. Records from the California Natural Diversity Database (CNDDDB) show that there is a high potential for the adjacent properties to support numerous special-status species, including CESA-listed species (CDFW 2023). Specifically, CDFW is concerned about potential impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*; SJKF), the State threatened Swainson's hawk (*Buteo swainsoni*; SWHA), and the State threatened tricolored blackbird (*Agelaius tricolor*; TRBL). CDFW recommends that survey-level protocols be conducted for these species as part of the biological technical studies prepared in support of the DEIR, with conclusions of those studies summarized therein and repeated as necessary prior to Project ground-disturbing activities. CDFW

Nirorn Than
City of Los Banos Department of Public Works
February 14, 2023
Page 3

recommends survey protocols follow the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) for SWHA. For SJKF, CDFW recommends survey protocols follow the United States Fish and Wildlife Service's 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. If surveys indicate the presence or potential presence of State-listed species, consultation with CDFW is advised in order to develop avoidance and minimization measures. If take could occur as a result of Project implementation, acquisition of a State ITP would be warranted.

CNDDDB: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project area.

Lake and Stream Alteration: Los Banos Creek is adjacent to the Project site. Any ground-disturbing activities that have the potential to impact Los Banos Creek may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires the project proponent 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; 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 in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.


Federally Listed Species: CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SJKF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW is available to meet with you ahead of draft EIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please contact Jim Vang,

Nirorn Than
City of Los Banos Department of Public Works
February 14, 2023
Page 4

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:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

ec: State Clearinghouse
state.clearinghouse@opr.ca.gov

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

CDFW LSA/1600; R4LSA@wildlife.ca.gov

Niorn Than
City of Los Banos Department of Public Works
February 14, 2023
Page 5

LITERATURE CITED

California Department of Fish and Wildlife. 2023. Biogeographic Information and Observation System (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>.

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.

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