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State of California – Natural Resources Agency
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GAVIN NEWSOM, Governor
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GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
Apr 26 2023
STATE OF CALIFORNIA

April 26, 2023

Chuck Covolo, P.E., Project Manager
Stanislaus County Public Works Department
1716 Morgan Road
Modesto, California 95355
covoloc@stancounty.com

Subject: Milton Road over Rock Creek Tributary Bridge (No. 38C0231) Replacement Project (Project)
Initial Study/Mitigated Negative Declaration
SCH#: 2023030756

Dear Chuck Covolo:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from 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.

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

[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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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 may 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: Stanislaus County

Objective: Stanislaus County Public Works Department proposes to improve public safety by replacing Rock Creek Tributary Bridge (No. 38C0231) on Milton Road with a new two-lane bridge offset by 34 feet west of the existing bridge. The existing bridge is County owned and maintained. The proposed new bridge would be a four-span, cast-in-place, concrete slab bridge and aligned to the west of the existing alignment, approximately 150-feet long and 32-feet wide. Roadway modifications would involve realigning Milton Road between existing curves north and south of the bridge. Rock slope protection would be placed at both abutment embankments. The existing bridge would remain open during construction of the new bridge. An estimated 1.4 acres of new right-of-way are anticipated to be acquired. Two staging areas are proposed along the west side of Milton Road. A telephone conduit on the west side of the existing bridge as well as a buried fiber optic line on the east side of the bridge would need to be relocated to the new bridge during construction. The old roadway approach pavement and existing bridge would be demolished and removed from the Project area after completion of the new bridge and roadway approaches.

Location: The Project is located approximately 2.5 miles south of Milton, along Milton Road, in Stanislaus County.

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Timeframe: Construction is anticipated to begin in May 2024 and is proposed to take approximately 10 months to complete.

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 CEQA document prepared for this Project.

There may be special-status resources present in and adjacent to the Project site. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned with potential impacts to special-status species including, but not limited to, the State and federally threatened California tiger salamander (*Ambystoma californiense*), the State threatened tricolor blackbird (*Agelaius tricolor*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State candidate-listed endangered Crotch bumble bee (*Bombus crotchii*), and the State species of special concern burrowing owl (*Athene cunicularia*).

California Tiger Salamander (CTS)

The California Natural Diversity Database (CNDDB) documents a CTS occurrence approximately 3/4 miles south of the Project site (CDFW 2023), and aerial imagery shows that there is suitable habitat within the Project site. CTS breed and develop in vernal and seasonal pools and stock ponds within grassland, woodland, and scrub habitat types. They require upland refuges (i.e. small mammal burrows) when not breeding and are known to disperse up to 1.3 miles from breeding sites. CDFW finds that the Project site has both breeding and upland habitat that may serve as refugia for dispersing CTS.

CDFW advises avoidance for CTS include a minimum 50-foot no disturbance buffer be delineated around all small mammal burrows. If burrow avoidance is not feasible, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, or if Stanislaus County Public Works Department assumes presence, acquisition of an Incidental Take Permit (ITP) is necessary prior to any ground-disturbing activities to comply with CESA. The timeline to obtain an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is greater than 30-days and CDFW recommends early consultation through the take process.

Swainson's Hawk (SWHA)

SWHA exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed will involve noise, groundwork, and movement of

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workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young).

CDFW recommends protocol surveys be conducted by a qualified biologist following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000) during the survey season prior to project construction. CDFW recommends a minimum no-disturbance buffer of 0.5-mile 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. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Tricolored Blackbird (TRBL)

TRBL have the potential to nest adjacent to the Project site. Without appropriate avoidance and minimization measures for TRBL, potential significant impacts include nest and/or colony abandonment, reduced reproductive success, and reduced health and vigor of eggs and/or young.

TRBL are known to nest in alfalfa, wheat, and other low agricultural crop fields. TRBL aggregate and nest colonially, forming colonies of up to 100,000 nests (Meese et al. 2014). Approximately 86% of the global population is found in the San Joaquin Valley (Kelsey 2008, Weintraub et al. 2016). Increasingly, TRBL are forming larger colonies that contain progressively larger proportions of the species' total population (Kelsey 2008). In 2008, for example, 55% of the species' global population nested in only two colonies, which were located in silage fields (Kelsey 2008). In 2017, approximately 30,000 TRBL were distributed among only 16 colonies in Merced County (Meese 2017). Nesting can occur synchronously, with all eggs laid within one week (Orians 1961). For these reasons, depending on timing, disturbance to nesting colonies can cause abandonment, significantly impacting TRBL populations (Meese et al. 2014). CDFW recommends the following avoidance and minimization measures be incorporated into the MND for this Project.

CDFW recommends that construction be timed to avoid the normal bird breeding season (February 1 through September 15). However, if construction must take place during that time, CDFW recommends that a survey for suitable habitat be conducted by a qualified wildlife biologist with knowledge of TRBL natural history and behaviors. If suitable habitat is present, CDFW recommends a qualified biologist conduct focused surveys for nesting TRBL no more than 10 days prior to the start of ground-disturbing

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activities. If an active TRBL nesting colony is found during pre-activity surveys, CDFW recommends implementation of a minimum 300-foot no disturbance buffer around the colony in accordance with CDFW's "*Staff Guidance Regarding Avoidance of Impacts to Tricolored Blackbird Breeding Colonies on Agricultural Fields in 2015*" (CDFW 2015). CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged, and are no longer reliant upon the colony or parental care for survival. It is important to note that TRBL colonies can expand over time. For this reason, CDFW also recommends conducting pre-activity surveys of an identified nesting colony within 10 days prior to the start of ground or vegetation disturbing activities to reassess the colony's areal extent. If a TRBL nesting colony is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take, or if avoidance is not feasible, to acquire an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground-disturbing activities.

Crotch Bumble Bee (CBB)

CBB have the potential to occur within the Project site. CBB was once common throughout most of central and southern California. However, it now appears to be absent from most of their range, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years.

Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, ground disturbance and vegetation removal associated with project activities has the potential to significantly impact local CBB populations.

CDFW recommends that a habitat assessment be conducted for suitable CBB habitat as part of the Project MND and that surveys be conducted for CBB, CBB nesting habitat, and CBB foraging resources. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement project activities and avoid take. Any detection of CBB prior to or during project implementation warrants consultation with CDFW to discuss how to avoid take.

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Burrowing Owl (BUOW)

BUOW have the potential to be present on and adjacent to the Project site. It is possible Project activities could impact this species. BUOW have the potential to be year-round residents. Dispersing juveniles, migrants, transients or new colonizers and can utilize the Project site year-round. Therefore, CDFW recommends the survey methodology described in the Staff Report on Burrowing Owl Mitigation (CDFG 2012) be followed before beginning ground disturbing activities. In the event that BUOW are found, CDFW's Staff Report on Burrowing Owl Mitigation (CDFG 2012) recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

Failure to implement the recommended buffer zones could cause adult BUOW to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure, in violation of Fish and Game Code and the Migratory Bird Treaty Act.

Nesting birds

CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a

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qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place 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 on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

California Natural Diversity Database

Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB 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/botanist 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 Streambed Alteration

The MND acknowledged that the Project may be subject to CDFW's regulatory authority pursuant 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 by electronic mail at R4LSA@wildlife.ca.gov.

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Federally Listed Species

CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to CTS. 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 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. 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:
Julie Vance
FA83F09FE08945A...

Julie A. Vance
Regional Manager

ec: Patricia Cole, USFWS
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CDFW LSA/1600;
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Attachment 1

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Attachment 1

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

PROJECT: Milton Road over Rock Creek Tributary Bridge (No. 38C0231) Replacement Project

SCH No.: 2023030756

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
Before Disturbing Soil or Vegetation	
Mitigation Measure: CTS	
CTS take authorization	
Mitigation Measure: SWHA	
SWHA surveys	
SWHA take authorization	
Mitigation Measure: TRBL	
TRBL surveys	
TRBL take authorization	
Mitigation Measure: CBB	
CBB survey/habitat assessment	
CBB consultation with CDFW	
Mitigation Measure: BUOW	
BUOW surveys	
Before Impacting the Bed, Bank, or Channel of any Stream or River	
Mitigation Measure: Notification to CDFW's Lake and Streambed Alteration Program	
During Construction	
Mitigation Measure: CTS	
CTS avoidance buffer	
Mitigation Measure: SWHA	
SWHA avoidance buffer	
Mitigation Measure: TRBL	
TRBL avoidance buffer	
Mitigation Measure: BUOW	
BUOW avoidance buffer	