



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**MAY 31 2023**

May 30, 2023

## STATE CLEARINGHOUSE

Quincy Yaley, Director  
County of Tuolumne, Community Development Department  
2 South Green Street  
Sonora, California 95370  
[qyaley@co.tuolumne.ca.us](mailto:qyaley@co.tuolumne.ca.us)

**Subject: County of Tuolumne Broadband Infrastructure Program Environmental Impact Report (Project)  
Notice of Preparation (NOP)  
SCH No.: 2023050017**

Dear Quincy Yaley:

The California Department of Fish and Wildlife (CDFW) received a NOP from the Tuolumne County Community Development Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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

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<sup>1</sup> 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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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:** County of Tuolumne

**Objective:** The Project proposes a Countywide, programmatic-level EIR/EA (PEIR/EA) for future broadband project construction in County-maintained road rights-of-way and public utility easements throughout Tuolumne County. The Countywide program would install fiber optic conduit either underground in buried conduits, overhead on pole lines, or a combination of both. In some circumstances, fiber optic conduit could be installed under roadways where space is limited alongside the roadways. Where topography or underground substrate would prohibit or impede construction of subsurface fiber optic cables, project would install aboveground fiber optic cables that would utilize existing or newly constructed utility poles.

**Location:** The Project site area would be located within Tuolumne County limits.

**Timeframe:** n/a

## COMMENTS AND RECOMMENDATIONS

**Special-Status Species:** Given the Countywide nature of the Project, there is the potential for the Project to impact State-listed species. Records from the California Natural Diversity Database (CNDDDB) show that the following special-status species, including CESA-listed species (CDFW 2023) could be impacted: the State endangered great gray owl (*Strix nebulosa*; GGO), the State endangered and federally proposed endangered foothill yellow-legged frog (*Rana boylei*; FYLF), the State threatened and federally endangered Sierra Nevada yellow-legged frog (*Rana sierrae*; SNYLF), the

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State threatened and federally endangered Sierra Nevada red fox (*Vulpes macrotis necator*, SNRF), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State threatened tricolored blackbird (*Agelaius tricolor*, TRBL), the State candidate-listed endangered Crotch bumblebee (*Bombus crotchii*), and the following State species of special concern California spotted owl (*Strix occidentalis occidentalis*; CSO) and western pond turtle (*Actinemys marmorata*).

The primary purpose of a EIR is to consider all the potential impacts associated with the suite of projects that would eventually tier from the PEIR over time. As such, the PEIR should serve primarily as a planning level EIR and consider, in detail, the cumulative impacts of the reasonably foreseeable projects, in this case broadband installation, on the environment, on the species CDFW has identified in this comment letter. CDFW recommends that habitat assessments be conducted in and surrounding all locations for planned broadband work in the PEIR and identify all the potential plant, animal, invertebrate, and fish species that could be present. Then, for those species, CDFW recommends a robust analysis of cumulative impacts for each of those species along with avoidance, minimization, and mitigation measures that could be implemented on each project to reduce harm. For many species, subsequent protocol level surveys may be required during biological studies conducted in support of the future CEQA documents that will be tiered from this PEIR and, depending on the results, avoidance and minimization measures, permits, and mitigation may be required.

CDFW recommends that survey-level protocols be conducted for these species as part of the biological technical studies prepared in support of each future CEQA document tiered from this PEIR, with conclusions of those studies summarized therein and repeated as necessary prior to Project ground-disturbing activities. For all future projects tiered from this PEIR, CDFW recommends that focused GGO surveys be conducted by qualified biologists familiar with GGO following the protocol prepared by Beck and Winter (2000) for the United States Forest Service. For SNRF, CDFW recommends that the protocol in Appendix B of *Ecology of Red Fox (Vulpes vulpes) in the Lassen Peak Region of California, USA* (Perrine, 2005) be followed. For SNYLF and FYLF, focused surveys following the survey methods described in pages 16–22 of “A Standardized Protocol for Surveying Aquatic Amphibians” (Fellers and Freel 1995) is recommended; however, please note that dip-netting would constitute take as defined by Fish and Game Code § 86, so it is recommended this survey technique be avoided. For CSO, CDFW recommends that focused surveys be conducted by qualified biologists familiar with CSO following the protocol prepared by the United States Fish and Wildlife Service (USFWS 2011, revised 2012). In the future CEQA documents tiered from this PEIR, CDFW advises that special status species be addressed with appropriate avoidance and minimization measures and that the above survey methods be included. If take could occur as a result of Project implementation, consultation with CDFW would be warranted.

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**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA and we recommend that Tuolumne County reach out to CDFW to discuss various methodologies and strategies for an analysis of this type for CDFW trustee agency resources

**CNDDB:** 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 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:** The Project 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](mailto:R4LSA@wildlife.ca.gov).

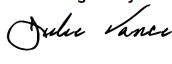
**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, SNRF, FYLF, and SNYLF. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant 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

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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 PEIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the PEIR. 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](mailto:Jim.Vang@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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