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November 25, 2024

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**Subject: Tuolumne County 2024 Regional Transportation Plan (Plan)
Draft Supplemental Environmental Impact Report (DSEIR)
SCH: 2023060211**

Dear Denise Bergamaschi:

The California Department of Fish and Wildlife (CDFW) received a DSEIR from the Tuolumne County Transportation Council (TCTC) for the Plan 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 Plan that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Plan that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the 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, projects tiered from this Plan may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of a 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.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research,

Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or

They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for a project tiered from this Plan.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Plan.

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

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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).

PLAN DESCRIPTION SUMMARY

Proponent: Tuolumne County Transportation Council

Objective: The Plan proposes to develop a comprehensive update to the 2016 Regional Transportation Plan. The Plan details how the TCTC would meet the transportation needs of the region, considering existing and projected future land use patterns as well as forecasted population and job growth. The Plan is directed at demonstrating alignment with California Transportation Commission Regional Transportation Plan guidance and the California Action Plan for Transportation Infrastructure. The Plan would identify and prioritize expenditures of anticipated funding for transportation projects that involve all transportation modes. The projects that constitute the Plan focus on highway, local roadway, aviation, rail, non-motorized transportation, and public transportation.

Location: The Plan incorporates the entirety of unincorporated Tuolumne County. The main facilities that the Plan covers include local roads and highways, State highways, aviation, pedestrian and bicycle paths, transit facilities, and other multi modal transportation options within Tuolumne County.

Timeframe: The Plan details how the TCTC would meet the transportation needs of the region for the period from 2024 to 2050.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist TCTC in adequately identifying and/or mitigating the Plan'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 DSEIR prepared for the Plan.

CDFW submitted a comment letter on January 21, 2016 (2016 Comment Letter), for the Notice of Preparation (NOP) for the TCTC's 2016 Regional Transportation Plan (2016 Plan) Draft Environmental Impact Report (DEIR). That letter provided biological resource recommendations to be included within the DEIR prepared in support of the 2016 Plan, which was later certified on February 15, 2017. CDFW would like to note that many of the CDFW recommendations from the 2016 Comment Letter, including species-specific measures and evaluations, were not included within 2016 Plan Final EIR.

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CDFW also submitted a comment letter on July 3, 2023 (2023 Comment Letter), for the NOP for the Plan DSEIR, providing biological resource recommendations for incorporation in the DSEIR and providing many of the same recommendations from the 2016 Comment Letter. Based on information providing in the DSEIR, biological resources were not evaluated as TCTC determined the Plan to have the same biological resource impacts as the 2016 Plan. As such, the biological resource mitigation measures provided in the 2016 Plan, which did not incorporate many of CDFW 2016 Comment Letter recommendations, are the only measures provided to mitigate for potential impacts to biological resources. While biological resources are not being evaluated within this DSEIR, CDFW recommends the TCTC incorporate the comments provided in the 2016 Comment Letter, 2023 Comment Letter, and below, and recirculate the DSEIR with these comments and recommendations incorporated.

Special-Status Species

Within the 2016 Plan DEIR, biological resources mitigation measures are provided to survey for, and mitigate, for impacts to special-status species. These measures lack details on habitat assessments and surveys for specific species, and a robust evaluation of cumulative impacts for specific special-status species was not provided.

The primary purpose of an Environmental Impact Report (EIR) is to consider all the potential impacts associated with the suite of projects that would eventually tier from the Plan over time. As such, this DSEIR (and the 2016 Plan DEIR) serves primarily as a planning level EIR and considers, in detail, the cumulative impacts of the reasonably foreseeable projects, in this case transportation construction and operation, on the environment, and on the species CDFW has identified below. CDFW recommends that habitat assessments be conducted in and surrounding all locations for planned work in the DSEIR 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 with 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 DSEIR and, depending on the results, avoidance and minimization measures, permits, and mitigation may be required.

CDFW recommends the DSEIR specifically consider the following species: the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State endangered great gray owl (*Strix nebulosa*), the State and federally endangered foothill yellow-legged frog-south Sierra Distinct Population Segment (DPS) (*Rana boylei*), the State endangered and federally threatened Chinese Camp brodiaea (*Brodiaea pallida*), the State threatened and federally endangered Sierra Nevada red fox-Sierra Nevada DPS (*Vulpes vulpes nicator*), the State threatened tricolored blackbird (*Agelaius*

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tricolor), the State threatened and federally endangered Sierra Nevada yellow-legged frog (*Rana sierrae*), the State and federally threatened Red Hills vervain (*Verbena californica*), the State candidate Crotch's bumblebee (*Bombus crotchii*), the State species of special concern California spotted owl (*Strix occidentalis occidentalis*), and the State species of special concern and federally proposed threatened northwestern pond turtle (*Actinemys marmorata*).

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 DSEIR, with conclusions of those studies summarized therein and repeated as necessary prior to project ground-disturbing activities. For all future projects tiered from this DSEIR, CDFW recommends that the following focused surveys be considered and/or conducted: **Bald eagle** focused surveys follow the Protocol for Evaluating Bald Eagle Habitat and Populations in California (Jackman and Jenkins 2004); **Great gray owl** focused surveys be conducted with the protocol guidelines prepared by Beck and Winter (2000) for the United States Forest Service; **Sierra Nevada and foothills yellow-legged frog** focused surveys follow the survey methods described in pages 16–22 of “A Standardized Protocol for Surveying Aquatic Amphibians” (Fellers and Freil 1995), 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; **Sierra Nevada red fox** focused surveys following the guidelines in Appendix B of Ecology of Red Fox (*Vulpes vulpes*) in the Lassen Peak Region of California, USA (Perrine 2005); **Crotch's bumble bee** focused surveys follow CDFW's Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023); **California spotted owl** focused surveys follow the protocol prepared by the United States Fish and Wildlife Service (USFWS 2011, revised 2012); and **Northwestern pond turtle** focused surveys within 10 days prior to project activity, and that focused surveys for nests occur during the egg-laying season of March through August. In the future when CEQA documents are tiered from the DSEIR, 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 and acquisition of an Incidental Take Permit (ITP) from CDFW required when full avoidance is infeasible.

Special-Status Plants

Special-status plants have the potential to be present within the Plan area and Mitigation Measure B-1(a) provides that prior to final design approval of individual projects, the sponsor agency shall have a qualified biologist conduct a field reconnaissance to identify special-status plants. CDFW concurs with this measure and recommends that projects tiered from the DSEIR, within suitable habitat, be surveyed for special-status plants by a qualified botanist following the “Protocols for Surveying

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and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities” (CDFW 2018) as part of the biological technical studies conducted in support of the CEQA document. This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. If surveys indicate the presence or potential presence of special-status plants, consultation with CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

Nesting birds

CDFW encourages that all projects tiered from this Plan occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the nesting season (February 1st through September 15th), each future project applicant is responsible for ensuring that implementation of their project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate future project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct an assessment of nesting habitat during biological surveys in support of each project’s CEQA document, and then 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 each future project site to identify nests and determine their status. A sufficient area means any area potentially affected by a 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 qualified biologist continuously monitor nests to detect behavioral changes resulting from each future 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 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 a compelling biological or ecological reason to do so, such as when the construction areas would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support

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any variance from these buffers and notify CDFW in advance of implementing a variance.

Federally Listed Species: CDFW recommends consulting with USFWS regarding potential impacts to federally listed species including but not limited to: Sierra Nevada red fox, foothill yellow-legged frog, Sierra Nevada yellow-legged frog, Red Hills vervain, Chinese Camp brodiaea, and northwestern pond turtle. 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 project activities tiered from this Plan.

Cumulative Impact Analysis: The 2016 Plan DEIR and the DSEIR have a very broad analysis of cumulative impacts and do not evaluate impacts to specific biological resources. Both the 2016 Plan DEIR and DSEIR state the importance of an adequate cumulative impact analysis to guide future projects tiered from the Plan and state that, "These agencies would be able to prepare subsequent environmental documents that incorporate by reference the appropriate information from this Program EIR regarding secondary effects, cumulative impacts, broad alternatives, and other relevant factors applicable to the particular project." CDFW would like to reiterate that this DSEIR (and the 2016 Plan DEIR) serve primarily as planning level EIRs and both should consider the cumulative impacts of the reasonably foreseeable projects, in this case transportation construction and operation, on the environment, and on the species CDFW has identified above. As such, CDFW recommends that a more focused cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Plan, 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 future tiered projects, 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 individual 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 TCTC reach out to CDFW for to discuss various methodologies and strategies for an analysis of this type for CDFW trustee agency resources.

California Endangered Species Act: Reasonably foreseeable future projects tiered from this Plan may be subject to CDFW's regulatory authority pursuant to the California Endangered Species Act (CESA). Mitigation Measure B-1(a) provides for appropriate regulatory agency coordination to obtain regulatory permits and project-specific

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mitigation. CDFW concurs with these measures and would like to highlight that in the event that species listed under CESA are 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 a State ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. In addition, CDFW recommends that mitigation measures for the CESA listed species be fully addressed in the CEQA document prepared for any future project tiered from this Plan.

Lake and Streambed Alteration: Aerial imagery shows the Plan’s major transportation corridors located near lakes, streams and rivers that may be subject to CDFW’s regulatory authority pursuant to Fish and Game Code section 1600 et seq. Mitigation Measure B-2(b) provides for avoidance and restoration measures for a tiered project’s potential impacts to Wetlands, Riparian, or other Sensitive Aquatic Environments. CDFW concurs with these measures and would like to note that projects tiered from this Plan that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW’s regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity 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 (including the removal of riparian vegetation); (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 R4LSA@wildlife.ca.gov.

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 the Plan or tiered project surveys to the CNDDDB. The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. 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

The Plan, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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

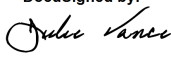
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environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DSEIR to assist TCTC in identifying and mitigating Plan impacts on biological resources. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453 or john.riedel@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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