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Governor's Office of Planning & Research

March 18 2024

March 18, 2024

STATE CLEARINGHOUSE

Julie Newton
Environmental Coordinator
Sacramento County Community Development Department, Division of Planning and Environmental Review
827 7th Street, Room 225,
Sacramento, CA 95814
CEQA@saccounty.gov

Subject: Sacramento County WattEV Innovative Freight Terminal (SWIFT) Project
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (DSEIR)
SCH No. 2023080394

Dear Julie Newton:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DSEIR from Sacramento County for the Sacramento County WattEV Innovative Freight Terminal (SWIFT) Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.¹

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. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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. (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.

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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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. 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.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project site is located in the northwest portion of Sacramento County, approximately 7.5 miles from downtown Sacramento. Specifically, the Project site is located south of I-5 immediately south of Sacramento International Airport (SMF). State Route 99 (SR-99) lies two miles to the east. The project site is bounded by Bayou Way and Interstate 5 (I-5) to the north, fallow farmland and water tanks that are a part of the SMF's water system to the east, the West Drainage Canal and farmland to the south, and fallow farmland to the west.

The Project consists of the construction of a publicly accessible Electric Vehicle (EV) charging facility that would be built on a 110-acre parcel of land adjacent to I-5 and proximate to SR-99, both major freight corridors. Facility development would include the installation of Direct Current Fast Chargers (DCFC) and Megawatt Chargers powered by a new solar array that would support charging for shippers and transporters as well as public transportation and passenger vehicles. In addition, the proposed project would include accessory uses, such as restrooms, resting lounges, a convenience store, and a visitor center.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Sacramento 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. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a Supplemental Environmental Impact Report is appropriate for the Project.

COMMENT 1: Swainson's Hawk (SWHA) Surveys, SWHA Nesting, page 7-32

Issue: The DSEIR stated protocol level surveys for SWHA were conducted by Dudek in 2020 at a nearby project and resulted in two active nests being found with one being along the Bayou Way frontage of the Project site. Only a reconnaissance survey of the two trees for SWHA was conducted in August 2023 for this Project. No new areas were surveyed within 0.25-mile of the Project area. Based on the details of the August 2023 survey methodology, CDFW believes that the SWHA reconnaissance survey was not adequate for detection of SWHA and determining their presence/absence at the Project area. The survey was performed outside the recommended survey time (March - July) in August which decreased the likelihood of detecting SWHA and their nests because the nestlings would most likely have fledged by that time. The survey also had visual difficulty with full

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tree foliage which is not ideal for detecting the nests. In addition, the survey buffer of 0.25-mile was too limited and is recommended for more urbanized areas where SWHA are more tolerant to urban noises and high densities of people and vehicles. The Project area is not an urban area, therefore, CDFW believes a 0.5-mile buffer is necessary to account for the rural setting.

Recommendation or Recommended Mitigation Measure: CDFW recommends the DSEIR be modified to include a mitigation measure that requires protocol level surveys of SWHA be performed within 0.5-mile of the Project area before construction commences.

CDFW recommends a qualified biologist conduct SWHA surveys within a minimum 0.5-mile radius around the Project area that is accessible to the Project proponent. Surveys should be conducted according to the following five-period schedule in accordance with the "Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Tech. Advis. Comm., 5/2000)":

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

If an occupied nest is found, the Project proponent should consult with CDFW and demonstrate compliance with CESA. CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends a CESA Incidental Take Permit (ITP) include SWHA if the Project has the potential to result in "take" (Fish & G. Code § 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of the CESA-listed species, either through construction or over the life of the Project.

Based on the multiple SWHA occurrences reported in California Natural Diversity Database and eBird around the Project area, an active nest observed in the 2020 survey along the Bayou Way frontage of the Project site, and suitable nesting trees and foraging habitat in and around the Project area, CDFW believes that the likelihood of SWHA nesting within 0.5-mile of the Project area is high and recommends that the Project proponent obtain an ITP.

COMMENT 2: SWHA Mitigation Land, BR-3, page 7-40

Issue: The DSEIR stated that mitigation for impacts to SWHA foraging habitat will either be done by purchase of mitigation credit from a CDFW-approved bank or through acquisition of fee title or a conservation easement.

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Recommendation or Recommended Mitigation Measure: CDFW recommends compensation for the loss of SWHA foraging habitat to reduce impacts be implemented at a ratio of no less than 1 acre of mitigation for every acre impacted, consistent with the County's Swainson's Hawk Ordinance. In addition to fee title acquisition or conservation easement recorded on property with suitable grassland habitat features, mitigation may occur by the purchase of conservation or suitable agricultural easements. Suitable agricultural easements would include areas limited to production of crops such as alfalfa, dry land and irrigated pasture, and cereal grain crops. Vineyards, orchards, cotton fields, and other dense vegetation do not provide adequate foraging habitat. In addition, CDFW has specific requirements for any projects that choose to mitigate through acquisition of fee title or a conservation easement when an ITP is obtained.

COMMENT 3: Nesting Raptors and Migratory Birds, BR-4 and BR-7, pages 7-35 and 7-44

Issue: The DSEIR contained avoidance and minimization measures for both non-listed migratory birds and raptors with nesting bird surveys being performed within fourteen (14) days before construction, a 500-foot survey buffer for raptors, and a 50-foot survey buffer for migratory birds. CDFW believes a larger survey buffer of 500 feet for migratory birds and 0.5-mile for raptors, as well as conducting them no more than seven (7) calendar days before construction commences would be more protective for species that rebuild nest quickly.

Recommendation or Recommended Mitigation Measure: CDFW recommends the DSEIR describe how the considerations identified below will be implemented and incorporated into the appropriate DSEIR section(s):

1. CDFW recommends Project proponent add specific avoidance and minimization measures to the Mitigation Measures section. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, visual barriers, and buffers, where appropriate. The DSEIR should include appropriate preconstruction surveys for non-listed migratory birds at a minimum radius of 500 feet (for migratory birds) and 0.5-mile (for raptors) around the Project area that can be accessed by Project proponent. The DSEIR should include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. One example is a nest buffer radius which can be determined by monitoring the active nests and determining the distance that activities will disturb the nesting birds.
2. CDFW recommends including performance-based protection measures for avoiding all nests protected under the Migratory Bird Treaty Act and Fish and Game Code. While some birds may tolerate disturbance within 500 feet of construction activities, other birds may have a different disturbance threshold and "take" could occur if the temporary disturbance buffers are not designed to reduce stress to that individual pair. It is the Project proponent's responsibility to confirm the buffer is sufficient to avoid take/nest failure.

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3. CDFW recommends a final preconstruction survey be required no more than seven (7) calendar days prior to the start of vegetation clearing or ground disturbance activities, as instances of nesting could be missed in earlier surveys. Monitoring of potential nesting activities in the Project area should continue, at a minimum, until the end of the avian nesting season (September 1). If a lapse in Project-related work of seven (7) calendar days or longer occurs, the qualified biologist should complete another focused survey before Project work can be reinitiated. It is the Project proponent's responsibility to comply with Fish and Game Code Sections 3503, 3503.5, and 3513, regardless of the time of year.
4. CDFW recommends that any removal of known raptor nest trees, even outside of the nesting season, be replaced with an appropriate native tree species planting at a ratio of 3:1 at or near the Project area or in another area that will be protected in perpetuity to reduce impacts resulting from the loss of nesting habitat.

COMMENT 4: Western Pond Turtles (WPT), BR-6, pages 7-39, 7-43

Issue: The DSEIR includes a mitigation measure on what procedures to follow if WPT is encountered during construction and states the qualified biologist may relocate the WPT if it is found in the Project area. However, the measure lacks details on the methodology used for relocation (i.e., capture and handle methods, predetermined relocations spots, how to handle injured and dead individuals, any data collected on captured/relocated individuals, etc.).

Recommendation or Recommended Mitigation Measure: CDFW recommends the DSEIR include more detailed relocation measures for WPT before construction commences to confirm the presence and absence of the species and procedures to relocate them if necessary. The additional measure should be incorporated into the appropriate DSEIR section(s). An example measure is provided below:

“Western Pond Turtle Relocation Plan. If Project proponent would like to relocate western pond turtle away from the Project area, Project proponent shall prepare a Relocation Plan. The Plan shall include, but not be limited to: (1) a discussion of the species and habitat features; (2) a schedule for survey and monitoring species presence; (3) methods to capture, handle, and relocate individuals or habitat features out of the Project area; (4) names and qualifications of biologists who will handle the species, including the appropriate handling authorizations; (5) specifications for wildlife exclusion fencing, if appropriate, which may be installed to exclude the wildlife species from the Project area; (6) details regarding the use of coverboards which will be employed accessory to the exclusion fencing; (7) description and maps of where the salvaged individuals or habitat features will be relocated to; and (8) identification of a wildlife rehabilitation center or veterinary facility where injured individuals of the will be taken. The Plan should also provide Project proponent's plan to respond to an atypical detection of individual(s), such as being detected under construction vehicles, being detected inside construction materials (pipes), being detected in an uncovered pit, etc. Project proponent shall move wildlife to the nearest appropriate site outside of the Project area. Project proponent shall maintain a Wildlife Relocation Record that includes, at a minimum: the date of capture and of relocation; the method of capture, location of relocation in relation to the Project area;

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and the number, age-class and species captured and relocated. The Wildlife Relocation Record shall also quantify the number and species of Project- and relocation-related mortality.”

COMMENT 5: Further analysis needed to support finding of less-than-significant to the Natomas Basin Habitat Conservation Plan (NBHCP) and Metro Air Park Habitat Conservation (MAP HCP), CONFLICT WITH THE PROVISIONS OF AN ADOPTED HABITAT CONSERVATION PLAN, NATURAL COMMUNITY CONSERVATION PLAN, OR APPROVED LOCAL, REGIONAL, OR STATE HABITAT CONSERVATION PLAN, page 18-12 – 18-15

Issue: Page 7-34 of the DSEIR states that “...the proposed project is consistent and compatible with the existing adopted habitat conservation plans; the overall impact is less than significant.” This finding is based on the DSEIR’s assessment of four components: 1) the general NBHCP conservation strategy, 2) the NBHCP reserve acquisition criteria, 3) the conservation strategy for wetland habitat, and 4) the conservation strategy for upland habitat. However, this assessment omits a key consideration of the NBHCP conservation strategy, specifically the land use component pertaining to the Sacramento International Airport (SMF). The NBHCP states that “these buffer lands provide a large contiguous block of habitat within and adjacent to the Swainson’s Hawk Zone and provide substantial foraging habitat for Natomas Basin Swainson’s hawk populations.” Similarly, the NBHCP describes that “there are airport buffer lands which are maintained in agricultural uses. These lands are considered beneficial to the Covered Species within the Natomas Basin in that they provide a large contiguous block of predominantly upland habitat.” The NBHCP contemplates further development in these areas by stating, “development of these buffer lands to industrial or other commercial uses will be considered a significant change in the NBHCP and would require that the County either participate in a revision to the HCP or apply for an individual take permit that mitigates for Project impacts.”

Recommendation or Recommended Mitigation Measure: Since the NBHCP describes the significance of the agricultural buffer lands and its relation to habitat importance for Swainson’s hawk and success of the NBHCP itself, CDFW recommends further analysis in the DSEIR to assess how the proposed Project will not result in a significant change to the NBHCP. As a result, the County should also assess how the proposed Project is not in conflict with the NBHCP conservation strategy as it relates to land commitments and in turn, potentially significant impacts that would conflict with the provisions of an adopted habitat conservation plan.

COMMENT 6: Giant Garter Snake (GGS), GGS, Pages 7-36 thru 7-38

Issue: The DSEIR states the Project site is within the known geographic range of GGS, a species listed as threatened pursuant to CESA, and the canals abutting the project site to the west and south provide marginal aquatic habitat (Dudek, 2023) while assessing uplands as being suitable habitat, particularly within 200 feet of the canals abutting the project site that may be used by GGS. The DSEIR proposes a 200-foot wide buffer area along the western and southern borders of the project site but states that this will only “reduce the overall potential for the proposed project to impact GGS aquatic and upland habitat associated with adjacent agricultural channels.”

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Additionally, the DSEIR assesses that “grubbing, earth moving, and operation of heavy equipment in uplands within 200 feet of the irrigation channels on the west and south sides of the project site could result in direct mortality to individual GGS if they are present. Noise, vibration, and increased activity levels could indirectly impact giant garter snakes by causing individuals to avoid areas they normally use, which could make them more vulnerable to predation or interfere with normal breeding activity.” These analysis support a potential for direct mortality of GGS and that complete avoidance of take is likely not feasible for the proposed Project.

Recommendation or Recommended Mitigation Measure: CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act (CESA). CDFW recommends that an ITP be obtained prior to initiating Project activities.

Given the potential for GGS in both aquatic and upland habitats, CDFW also recommends the DSEIR assess impacts to the habitat of GGS as a potentially significant impact. Currently, the DSEIR lacks specifics on how the loss of suitable upland habitats would be mitigated to a level of less than significant. The loss of this habitat would be considered a significant impact if not mitigated.

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 FEES

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. Written notifications shall be directed to: California Department of Fish and Wildlife North

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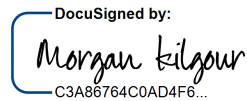
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Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the DSEIR for the SWIFT Project to assist Sacramento County 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 Harvey Tran, Senior Environmental Scientist (Specialist) at (916) 358-4035 or harvey.tran@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

ec: Dylan Wood, Senior Environmental Scientist (Supervisory)
Harvey Tran, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife

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