



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, CA 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 26, 2024

Governor's Office of Planning & Research

Carla Jauregui, Community Development Director
City of Hughson
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Hughson, CA 95326
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CJauregui@hughson.org

Mar 26 2024
STATE CLEARINGHOUSE

Subject: **United Pavement Project (USE22-0106) (Project)**
Initial Study/Mitigated Negative Declaration (MND)
SCH: 2024020480

Dear Carla Jauregui:

The California Department of Fish and Wildlife (CDFW) received a MND from the City of Hughson, as Lead Agency, for the Project pursuant 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, we appreciate 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 the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that the City of Hughson still consider our comments.

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, sections 711.7, subd. (a) & 1802; Pub. Resources Code, section 21070; CEQA Guidelines section 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.*, section 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing

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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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, section 21069; CEQA Guidelines, section 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, section 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, section 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

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: Rodolfo Ruvalcaba

Objective: The Project proposes to construct and operate an equipment maintenance/repair building of 18,900 square feet, along with vehicle access ways, vehicle and bicycle parking areas, landscaping and other improvements including a drainage basin. The Project also includes the construction and operation of a concrete mixing plant and rock crushing facility with storage facilities for rock, sand, and recycled paving material.

Location: Stanislaus County, City of Hughson, west of Santa Fe Avenue, southwest of the intersection of Tuly Road and East Whitmore Avenue.

Timeframe: N/A

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City of Hughson 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.

Aerial imagery of the Project boundary and its surroundings show the area contains agricultural lands, including orchards, and other anthropogenic/developed lands. Based on a review of the Project description, a review of California Natural Diversity Database (CNDDDB) records (CDFW 2024), and the surrounding habitat, several special-status species could potentially be impacted by Project activities.

Currently, the MND acknowledges that the Project site is within the geographic range of several special-status animal species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including the State threatened Swainson's hawk (*Buteo swainsoni*). CDFW is also concerned with potential impacts to migratory and non-migratory nesting birds.

Swainson's Hawk

Mitigation Measure BIO-1 states, "If project construction commences during the Swainson's hawk nesting season (March 1 through July 31), a pre-construction survey for nesting Swainson's hawk shall be conducted within one-quarter mile of the project site. If active nests are found, then a qualified biologist shall determine the need, if any, for temporal restrictions on construction." CDFW does not concur that this measure is sufficient to mitigate for impacts to nesting Swainson's hawk (SWHA) and recommends extending the nesting season avoidance period to September 15 to adhere to the guidance within the "Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California" (CDFG 1994). CDFW also recommends increasing the survey radius to ½ mile of the Project site. Additionally, a minimum no-disturbance buffer of ½ mile should 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 the ½ -mile buffer cannot be maintained, then consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, a take authorization through the issuance of an ITP, pursuant to Fish and Game code section 2081 (b) in necessary to comply with CESA.

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Nesting birds

Mitigation Measure (MM) BIO-2 states, "If project construction commences during the general avian nesting season (March 1 through July 31), a pre-construction survey for all species of nesting birds shall be conducted. If active nests for any bird species are found, work in the vicinity of the nests shall be delayed until the young have fledged. No survey shall be required if construction occurs outside the general avian nesting season." CDFW concurs with conducting pre-construction surveys for nesting birds but recommends extending the nesting season to September 15.

CDFW also recommends that Mitigation Measure MM BIO-2 be edited to include that a qualified biologist conduct a pre-construction survey 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. Surveys should cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests and once Project activities begin, continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing the change cease and that CDFW be consulted 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 Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notifies CDFW in advance of implementing a variance.

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, section 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity

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Database (CNDDDB). The CNNDDB 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>.

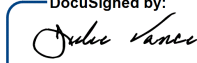
FILING FEES

The Project, as proposed, could 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 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, section 753.5; Fish & G. Code, section 711.4; Pub. Resources Code, section 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the City of Hughson in identifying and mitigating Project impacts on biological resources. 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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Julie A. Vance
Regional Manager

cc: State Clearinghouse
Governor's Office of Planning and Research
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REFERENCES

California Department of Fish and Game. 1994. Staff report regarding mitigation for impacts to Swainson's hawks (*Buteo Swainsoni*) in the Central Valley of California. Sacramento, California, USA.

California Department of Fish and Wildlife. 2024. Biogeographic information and observation system (BIOS). <https://www.wildlife.ca.gov/Data/BIOS>. Accessed 26 February, 2024.