



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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July 22, 2024

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**Subject: Cooperstown Road over Rydberg Creek Bridge (No. 38C0257)
Replacement Project (Project)
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION (MND)
SCH: 2024060916**

Dear Chuck Covolo:

The California Department of Fish and Wildlife (CDFW) received an MND from Stanislaus County 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, 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 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 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.

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.

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 2

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.), 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 the Project.

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).

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 Project.

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 3

PROJECT DESCRIPTION SUMMARY

Proponent: Stanislaus County Public Works Department

Objective: The Project proposes to improve public safety by replacing Rydberg Creek Bridge (No. 38C0257) on Cooperstown Road with a new two-lane bridge in the same location as the existing bridge. As part of the proposed Project, rock slope protection would be placed at both abutment embankments and a temporary low-water crossing would be constructed by laying a temporary pipe atop the creek bed perpendicular to the road and covering it with clean crushed rock. The pipe and rock used for the temporary crossing would be removed at the end of construction and the existing bridge would be demolished and removed from the Project area.

Location: The Project is located in Stanislaus County, approximately 4.9 miles northwest of La Grange. The approximate center of the Project is latitude 37.718781, longitude -120.520241. The Project is located within Accessors Parcel Number (APN) 011-012-010-000.

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Stanislaus County 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 MND prepared for this Project.

Aerial imagery of the Project boundary and its surroundings show the area contains annual grasslands with scattering stands of trees, and Rydberg Creek, an intermittent stream, traverses through the Project site with adjacent seasonal wetland habitat. 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 and plant species and proposes specific mitigation measures to reduce impacts to less than significant. CDFW has concerns about the ability of some proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal species, including but not limited to, the State fully protected golden eagle (*Aquila chrysaetos*), the State threatened Swainson's hawk (*Buteo swainsoni*), the State fully protected white-tailed kite (*Elanus leucurus*), the State and federally threatened California tiger salamander

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 4

(*Ambystoma californiense*), the State candidate endangered Crotch's bumble bee (*Bombus crotchii*), the State species of special concern pallid bat (*Antrozous pallidus*), western red bat (*Lasiurus frantzii*), burrowing owl (*Athene cunicularia*), and coast horned lizard (*Phrynosoma blainvillii*), and the State species of special concern and federally proposed threatened western pond turtle (*Actinemys marmorata*) and western spadefoot (*Spea hammondi*).

Golden Eagle

The Project site is within the known range of golden eagle (GOEA) and suitable nesting habitat, which includes cliffs and open grassland areas with large trees, is present within the Project vicinity. As it does not appear that the MND included GOEA within the discussion of potential impacts to special-status species, CDFW recommends the following:

Recommended Mitigation Measure 1: GOEA Surveys

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 qualified wildlife biologist conduct surveys for GOEA in accordance with the USFWS' "Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations" (USFWS 2010), no more than 10-days prior to the start of implementation to evaluate presence/absence of GOEA in proximity to Project activities and to evaluate potential Project-related impacts.

Recommended Mitigation Measure 2: GOEA Avoidance

If a GOEA is found during preconstruction surveys, CDFW recommends implementation of a minimum ½- mile no-disturbance buffer. 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 parental care for survival. In the event that a GOEA is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take.

Swainson's Hawk

Mitigation Measure BIO-6 describes mitigation for potential impacts to Swainson's hawk (SWHA). CDFW concurs with this measure but recommends that a qualified wildlife biologist conducts these surveys and follow the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000).

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 5

White-Tailed Kite

Mitigation Measure BIO-6 describes mitigation for potential impacts to white-tailed kite (WTKI) and states that, "...a preconstruction survey within the project study area and within an appropriate distance from the project site boundary, as access is available (e.g., 0.5 mile for Swainson's hawk, 250 feet for Western burrowing owls, and 500 feet for white-tailed kite and loggerhead shrike). The preconstruction survey will be performed between February 15 and September 15, but no more than 10 days prior to the implementation of construction activities (including staging and equipment access)." Mitigation Measure BIO-6 also notes that a 500-foot no-disturbance buffer would be established around active WTKI nests and that coordination with CDFW would occur for guidance on additional protection measures. CDFW concurs with this measure but recommends that focused WTKI surveys be conducted within the Project site and a ½-mile buffer of the Project site. Additionally, CDFW recommends a minimum no-disturbance buffer of ½ mile be delineated around active nests of WTKI 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. In the event that a WTKI is detected during surveys, consultation with CDFW is warranted to discuss how to implement the Project and avoid take.

California Tiger Salamander

The MND notes that there is potential for California tiger salamander (CTS) to occur within the aquatic and upland habitats within and surrounding the Project site. Mitigation Measure BIO-4 discusses how impacts would be mitigated. Based on the information provided in the MND, it does not appear that focused surveys were conducted for the species, no measures for surveys are proposed in Mitigation Measure BIO-4, and the measure may not sufficiently avoid impacts to the species if detected. As such, CDFW recommends the following:

Recommended Mitigation Measure 3: CTS Protocol-Level Surveys

CDFW recommends that a qualified biologist conduct protocol-level surveys in accordance with the USFWS "Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander" (USFWS 2003) at the appropriate time of year to determine the existence and extent of CTS breeding and refugia habitat. The protocol-level surveys for CTS require more than one survey season and are dependent upon sufficient rainfall to complete. As a result, consultation with CDFW is recommended well in advance of beginning the surveys and prior to any planned vegetation- or ground-disturbing activities. CDFW advises that the protocol-level survey include a 100-foot buffer around the Project area in all areas of wetland and upland habitat that could support CTS. Please be advised that protocol-level survey results are viable for two years after the results are reviewed by CDFW.

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 6

Recommended Mitigation Measure 4: CTS Avoidance Buffers

If CTS protocol-level surveys as described in Mitigation Measure BIO-4 are not conducted, CDFW advises that a minimum 50-foot no-disturbance buffer be delineated around all small mammal burrows in suitable upland refugia habitat within and/or adjacent to the Project site. Further, CDFW recommends potential or known breeding habitat within and/or adjacent to the Project site be delineated with a minimum 250-foot no-disturbance buffer. Both upland burrow and wetland breeding no-disturbance buffers are intended to minimize impacts to CTS habitat and avoid take of individuals. Alternatively, the applicant can assume presence of CTS within the Project site and obtain from CDFW a State ITP in accordance with Fish and Game Code section 2081(b).

Recommended Mitigation Measure 5: CTS Take Authorization

If through surveys it is determined that CTS are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. As stated above, in the absence of protocol surveys, the applicant can assume presence of CTS within the Project site and obtain an ITP from CDFW.

Crotch's Bumble Bee

Mitigation Measure BIO-2 describes mitigation for potential impacts to Crotch's bumble bee (CBB). CDFW concurs with conducting surveys for CBB prior to construction and recommends the surveys follows the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) methodology and that they be timed during the appropriately bloom period for the species. CDFW also recommends the following:

Recommended Mitigation Measure 6: CBB Avoidance Buffers

If CBB is detected, then CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. 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.

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 7

Recommended Mitigation Measure 7: CBB Take Authorization

If, through surveys, it is determined that CBB are occupying or have the potential to occupy the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Special-Status Bats

Mitigation Measure BIO-8 describes mitigation for impacts to special-status bats, including pallid bat and western red bat. CDFW concurs with this measure and recommends that surveys include visual surveys of bats (observation of presence of bats during foraging period), inspection for suitable habitat or bat sign (guano), and use of ultrasonic detectors during all dusk emergence and pre-dawn re-entry. To maximize detectability, surveys should be conducted within one 24-hour period. CDFW also recommends the Project proponent implement general bat avoidance and minimization measures by establishing a 100-foot no-disturbance buffer around roost sites and installing new roost sites to be in place prior to the initiation of Project related activities to allow enough time for bats to relocate.

Burrowing Owl

Mitigation Measure BIO-6 is describes mitigation for impacts to Burrowing owl (BUOW) and states that, "...a preconstruction survey within the project study area and within an appropriate distance from the project site boundary, as access is available (e.g., 0.5 mile for Swainson's hawk, 250 feet for Western burrowing owls, and 500 feet for white-tailed kite and loggerhead shrike). The preconstruction survey will be performed between February 15 and September 15, but no more than 10 days prior to the implementation of construction activities (including staging and equipment access)." CDFW does not concur that this measure is sufficient to mitigate for potential impacts to BUOW and recommends the following:

Recommended Mitigation Measure 8: BUOW Protocol-Level Surveys

CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct protocol surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines" (CBOC 1993) and CDFW's Staff Report on Burrowing Owl Mitigation" (CDFG 2012). Specifically, CBOC and CDFW's Staff Report suggest three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable. These surveys are to determine if there are more BUOW in addition to the December 2017 observation surveyed for the Project.

Chuck Covolo, Project Manager
 Stanislaus County Public Works Department
 July 22, 2024
 Page 8

Recommended Mitigation Measure 9: BUOW Avoidance Buffer

CDFW recommends that no-disturbance buffers, as outlined in the “Staff Report on Burrowing Owl Mitigation” (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW’s Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW 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)

Recommended Mitigation Measure 10: BUOW Consultation

If BUOW are found within these recommended buffers and avoidance is not possible, consultation with the CDFW is recommended for guidance on the development of mitigation measures such as take avoidance, minimization, and mitigation.

Other State Species of Special Concern

Mitigation Measure BIO-4 and BIO-5 discuss mitigation for impacts to coast horned lizard (CHO), western pond turtle (WPT), and western spadefoot (WESP); however, neither of these measures require preconstruction surveys for the species prior to construction. As such, CDFW concurs with Mitigation Measure BIO-4 and BIO-5 and recommends a qualified biologist conduct focused surveys for CHO, WPT, and WESP and their requisite habitat features to evaluate potential impacts resulting from ground- and vegetation-disturbance. CDFW also recommends that focused surveys for WPT nests occur during the egg-laying season of March through August.

Editorial Comments and/or Suggestions

CNDDDB Positive Submission of Data: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB 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

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 9

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: Project activities, as described, will substantially change the bed, bank, and channel of Rydberg Creek and 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. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

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 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 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, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 10

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Stanislaus County in identifying and mitigating Project impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included below to assist Stanislaus County with incorporating the recommended mitigation measures provided above. 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:

Sarah Paulson

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Chuck Covolo, Project Manager
Stanislaus County Public Works Department
July 22, 2024
Page 11

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- California Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. Pages 171-177 *in* Lincer, J. and K. Steenhof (editors). 1993. The burrowing owl, its biology and management. Raptor Research Report Number 9.
- California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation. Sacramento, California, USA.
- California Department of Fish and Wildlife. 2023. Survey considerations for California Endangered Species Act candidate bumble bee species. Sacramento, California, USA.
- Swainson's Hawk Technical Advisory Committee. 2000. Recommended timing and methodology for Swainson's hawk nesting surveys in California's Central Valley. Swainson's Hawk Technical Advisory Committee.
- U.S. Fish and Wildlife Service. 2003. Interim guidance on site assessment and field surveys for determining presence or a negative finding of the California tiger salamander. Sacramento, California, USA.
- U.S. Fish and Wildlife Service. 2010. Golden Eagle inventory and monitoring protocols; and other recommendations. Division of Migratory Bird Management. Sacramento, California, USA.

Chuck Covolo, Project Manager
 Stanislaus County Public Works Department
 July 22, 2024
 Page 12

Attachment 1	
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)	
PROJECT: Cooperstown Road over Rydberg Creek Bridge (No. 38C0257) Replacement Project	
SCH No.: 2024060916	
RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Golden Eagle	
Recommended Mitigation Measure 1: GOEA surveys	
California Tiger Salamander	
Recommended Mitigation Measure 3: CTS protocol-level surveys	
Recommended Mitigation Measure 5: CTS take authorization	
Crotch's Bumble Bee	
Recommended Mitigation Measure 7: CBB take authorization	
Burrowing Owl	
Recommended Mitigation Measure 8: BUOW protocol-level surveys	
Recommended Mitigation Measure 10: BUOW consultation	
<i>During Construction</i>	
Golden Eagle	
Recommended Mitigation Measure 2: GOEA avoidance	
California Tiger Salamander	
Recommended Mitigation Measure 4: CTS avoidance buffers	
Crotch's Bumble Bee	
Recommended Mitigation Measure 6: CBB avoidance buffers	
Burrowing Owl	
Recommended Mitigation Measure 9: BUOW avoidance buffers	