



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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**GAVIN NEWSOM, Governor**

**CHARLTON H. BONHAM, Director**



August 26, 2024

Tam Duong

City of Napa

1600 First Street

Napa CA, 94559

[TDuong@cityofnapa.org](mailto:TDuong@cityofnapa.org)

Subject: Five-Way Intersection Improvements, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2024071257, City and County of Napa

Dear Mr. Duong:

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Five-Way Intersection Improvements (Project).

CDFW is providing City of Napa (City), as the Lead Agency, with specific detail about the scope and content of the environmental information related to CDFW's area of statutory responsibility that must be included in the EIR (See Cal. Code Regs., tit. 14, § 15082, subd. (b)).

## **CDFW ROLE**

CDFW is a **Trustee Agency** with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact fish, plant, and wildlife resources (Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15386). CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as a permit pursuant to the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), Lake and Streambed Alteration (LSA) Program, and other provisions of the Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Pursuant to our authority, CDFW has the following concerns, comments, and recommendations regarding the Project.

## **PROJECT DESCRIPTION AND LOCATION**

The Project is located at the intersection of four roads serving local and regional traffic: State Route (SR) 121, Third Street, Coombsville Road, and East Avenue; at approximately 38.29959° N, -122.27594°W. Equipment staging for the Project will be located 0.3 miles away at a parking lot near the intersection of Third Street and Lawrence Street, adjacent to the Napa River; at approximately 38.29925° N,

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-122.28135°W. The Project will construct two, modern, single-lane roundabouts with curb, gutter, ramps, sidewalk, streetlights, and storm drain improvements.

The CEQA Guidelines (See Cal. Code Regs., tit. 14, § 15000 et seq.) require that the EIR incorporate a full project description, including reasonably foreseeable future phases of the Project, that contains sufficient information to evaluate and review the Project's environmental impact (CEQA Guidelines, §§ 15124 & 15378). Please include a complete description of the following Project components in the Project description:

- Land use changes resulting from, for example, rezoning certain areas;
- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes;
- Area and plans for any proposed buildings/structures, ground-disturbing activities, fencing, paving, stationary machinery, landscaping, and stormwater systems;
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise, traffic generation, and other features; and
- Construction schedule, activities, equipment, and crew sizes.

## REGULATORY REQUIREMENTS

### California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals that are listed or candidate species under CESA or NPPA, either during construction or over the life of the Project. **The Project staging area is adjacent to the Napa River which supports Delta smelt (*Hypomesus pacificus*), state listed as endangered; longfin smelt (*Spirinchus thaleichthys*), state listed as threatened; white sturgeon (*Acipenser transmontanus*), a state candidate species; and Mason's lilaopsis (*Lilaopsis masonii*), state listed as rare species. CDFW recommends avoiding direct and indirect impacts to these species by avoiding Project activities that would impact aquatic habitat within the Napa River and freshwater and brackish marsh habitat. Additionally, the Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), state listed as threatened, as further described below.** Issuance of a CESA ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant

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modification to the Project and mitigation measures may be required in order to obtain a CESA ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c) & 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

### **Lake and Streambed Alteration**

A Lake and Streambed Alteration (LSA) Notification, pursuant to Fish and Game Code section 1600 et. seq., is required for project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to LSA notification requirements. **The Project's staging area has the potential to impact the Napa River, as further described below.** CDFW, as a Responsible Agency under CEQA, would consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

### **Nesting Birds**

CDFW also has authority over actions that may disturb or destroy active nest sites or take birds. Fish and Game Code sections 3503, 3503.5, and 3513 protect birds, their eggs, and nests. Migratory birds are also protected under the federal Migratory Bird Treaty Act (MBTA).

### **Fully Protected Species**

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

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- 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).

Specified types of infrastructure projects may be eligible for an ITP for unavoidable impacts to fully protected species if certain conditions are met (Fish & G. Code § 2081.15). Project proponents should consult with CDFW early in the project planning process. **The Project has the potential to impact white-tailed kite (*Elanus leucurus*), a fully protected species.**

## ENVIRONMENTAL SETTING

The EIR should provide sufficient information regarding the environmental setting (“baseline”) to understand the Project’s, and its alternative’s (if applicable), potentially significant impacts on the environment (CEQA Guidelines, §§ 15125 & 15360).

CDFW recommends that the CEQA document prepared for the Project provide baseline habitat assessments for special-status plant, fish and wildlife species located and potentially located within the Project area and surrounding lands, including, but not limited to all rare, threatened, or endangered species (CEQA Guidelines, § 15380). The EIR should describe aquatic habitats, such as wetlands or waters of the U.S. or State, and any sensitive natural communities or riparian habitat occurring on or adjacent to the Project site (for sensitive natural communities

see: <https://wildlife.ca.gov/Data/VegCAMP/NaturalCommunities#sensitive%20natural%20communities>), and any stream or wetland set back distances the City may require.

Fully protected, threatened or endangered, candidate, and other special-status species and sensitive natural communities that are known to occur, or have the potential to occur in or near the Project site, include but are not limited to those listed in **Attachment 1, such as the species mentioned above, northwestern pond turtle (*Actinemys marmorata*), and Central California coast steelhead (*Oncorhynchus mykiss irideus* pop. 8).**

Habitat descriptions and the potential for species occurrence should include information from multiple sources: aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, U.S. Fish and Wildlife Service’s (USFWS) Information, Planning, and Consultation System, California Aquatic Resources Inventory (CARI), and findings from “positive occurrence” databases such as California Natural Diversity Database (CNDDDB). Based on the data and information from the habitat assessment, the EIR should adequately assess which special-status species are likely to occur on or near the Project site, and whether they could be impacted by the Project.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols

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if available. Survey and monitoring protocols and guidelines are available at:  
<https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those with a California Rare Plant Rank (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period within the Project area and adjacent habitats that may be indirectly impacted by, for example, changes to hydrological conditions, and require the identification of reference populations. More than one year of surveys may be necessary based on environmental conditions. Please refer to CDFW protocols for surveying and evaluating impacts to special status plants available at:  
<https://www.wildlife.ca.gov/Conservation/Plants>.

## **IMPACT ANALYSIS AND MITIGATION MEASURES**

The EIR should discuss all direct and indirect impacts (temporary and permanent) that may occur with implementation of the Project (CEQA Guidelines, § 15126.2). This includes evaluating and describing impacts such as:

- Land use changes that would reduce open space or agricultural land uses and increase residential or other land use involving increased development;
- Encroachments into riparian habitats, wetlands or other sensitive areas;
- Potential for impacts to special-status species;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alternation of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, vegetation overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic or human presence; and
- Obstruction of movement corridors, fish passage, or access to water sources and other core habitat features.

The CEQA document should also identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the Project's contribution to the impact (CEQA Guidelines, §15355). Although a project's impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact – e.g., reduction of available habitat for a special-status species – should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

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Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines direct the Lead Agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the EIR, and/or mitigate significant impacts of the Project on the environment (CEQA Guidelines, §§ 15021, 15063, 15071, 15126.2, 15126.4 & 15370). This includes a discussion of impact avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with CDFW, USFWS, and the National Marine Fisheries Service. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

**CDFW offers the specific comments and recommendations below to assist Napa County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Please be advised that the EIR should include a comprehensive evaluation of potentially significant impacts to fish and wildlife resources as described in this letter, and CDFW may provide additional comments once the EIR is circulated for public review.**

**COMMENT 1.** To reduce impacts to streams to less-than-significant and comply with Fish and Game Code section 1600 et. seq., the Clean Water Act, and the Porter Cologne Water Quality Control Act, CDFW recommends including the below mitigation measure in the EIR

Streambed Alteration: If the bed, bank, channel, or riparian habitat of any streams, including but not limited to ephemeral streams, will be impacted, the Project shall submit an LSA Notification to CDFW and comply with the LSA Agreement, if issued (See: <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>). The Project shall also obtain any necessary authorization from the Regional Water Quality Control Board pursuant to the Clean Water Act and Porter Cologne Water Quality Control Act.

**COMMENT 2.** To reduce potential impacts to white-tailed kite and other nesting birds to less-than-significant, CDFW recommends including the below mitigation measure in the EIR.

Nesting Bird Surveys: If construction, grading, vegetation removal, or other project-related activities are scheduled during the avian nesting season, February 1 to August 31, a qualified biologist shall conduct a survey for active bird nests within 7 days prior to the beginning of project-related activities. The survey shall cover the entire Project site and a minimum 500-foot buffer around the Project site. If a lapse in project-related work of 7 days or longer occurs, another survey shall be conducted before project work can be reinitiated. If an active nest is found during surveys, the qualified biologist shall immediately notify the CDFW contact below, or if unavailable

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another CDFW representative, and establish site- and species-specific no-work buffers to ensure the nest is not disturbed. The buffer distances shall be specified to protect the bird's normal behavior to prevent nesting failure or abandonment and comply with Fish and Game Code section 3500 et seq. and the federal MBTA. Abnormal nesting behaviors which may cause reproductive harm include, but are not limited to, defensive flights/vocalizations directed towards project personnel, standing up from a brooding position, and flying away from the nest. The qualified biologist shall have authority to order the cessation of all nearby project activities if the nesting birds exhibit abnormal behavior which may cause reproductive failure (nest abandonment and loss of eggs and/or young) until an appropriate buffer is established.

The qualified biologist shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project work. Nest monitoring shall continue during project work until the young have fully fledged (have completely left the nest site and are no longer being fed by the parents), as determined by the qualified biologist, unless otherwise approved in writing by CDFW.

**COMMENT 3.** To reduce potential impacts to nesting Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends including the below mitigation measure in the EIR.

Swainson's hawk Surveys: If the Project would occur during Swainson's hawk breeding season (March 1 to September 15), the Project shall consult with CDFW to determine the appropriate survey level for Swainson's hawk and shall implement the survey prior to Project construction. The Project shall avoid impacts to nesting Swainson's hawks or if impacts cannot be avoided, the Project shall obtain a CESA ITP from CDFW.

**Please be advised that an LSA agreement issued by CDFW for the Project would likely include the above mitigation measures, as applicable, in addition to other protective measures for fish and wildlife resources.**

## **ENVIRONMENTAL DATA**

CEQA requires that information developed in EIRs 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 online field survey form and other methods for submitting data can be found 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://wildlife.ca.gov/Data/CNDDDB/Plantsand-Animals>.

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## FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). 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.

If you have any questions, please contact Nicholas Magnuson, Environmental Scientist, at (707) 815-4166 or [Nicholas.Magnuson@wildlife.ca.gov](mailto:Nicholas.Magnuson@wildlife.ca.gov); or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or [Melanie.Day@wildlife.ca.gov](mailto:Melanie.Day@wildlife.ca.gov).

Sincerely,

Signed by:  
  
7E1D27B5645E452...  
Erin Chappell  
Regional Manager  
Bay Delta Region

Attachment 1: Special-Status Species

ec: Office of Planning and Research, State Clearinghouse (SCH No. 2024071257)



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### ATTACHMENT 1: Special-Status Species

Scientific Name	Common Name	Status
<b>Birds</b>		
<i>Buteo swainsoni</i>	Swainson's hawk	ST
<i>Buteo regalis</i>	ferruginous hawk	WL
<i>Elanus leucurus</i>	white-tailed kite	FP
<b>Fishes</b>		
<i>Hypomesus pacificus</i>	Delta smelt	FT, SE
<i>Spirinchus thaleichthys</i>	longfin smelt	FPE, ST
<i>Acipenser transmontanus</i>	white sturgeon	SC, SSC
<i>Oncorhynchus mykiss irideus</i> pop. 8	steelhead - central California coast DPS	FT, SSC
<i>Acipenser medirostris</i>	southern green sturgeon	FT, SSC
<i>Pogonichthys macrolepidotus</i>	Sacramento splittail	SSC
<i>Entosphenus tridentata</i>	Pacific lamprey	SSC
<i>Oncorhynchus tshawytscha</i> pop. 13	Chinook salmon - Central Valley fall / late fall-run ESU	SSC
<b>Mammals</b>		
<i>Antrozous pallidus</i>	pallid bat	SSC
<b>Reptiles</b>		
<i>Actinemys marmorata</i>	northwestern pond turtle	SSC
<b>Plants</b>		
<i>Lilaeopsis masonii</i>	Mason's lilaeopsis	SR, CRPR 1B.1

FP = state fully protected under Fish and Game Code; FE = federally listed as endangered under the Endangered Species Act (ESA); FPE = federally listed as proposed endangered under the Endangered Species Act (ESA); FT = federally listed as threatened under the Endangered Species Act (ESA); SE = state listed as endangered under CESA; SR = State Listed – Rare; ST = state listed as threatened under CESA; SC = state listed as candidate species under CESA; WL = CDFW Watch List; SSC = state

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Species of Special Concern; DPS = Distinct Population Segment; ESU = Evolutionarily Significant Unit;  
CRPR = California Rare Plant Rank<sup>1</sup>

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<sup>1</sup> CRPR 1B plants are considered rare, threatened, or endangered in California and elsewhere. Further information on CRPR ranks is available in CDFW's *Special Vascular Plants, Bryophytes, and Lichens List* (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109383&inline>) and on the California Native Plant Society website (<https://www.cnps.org/rare-plants/california-rare-plant-ranks>).