

State of California
Department of Fish and Wildlife



Memorandum

Date: September 8, 2020

Governor's Office of Planning & Research

To: Mr. Brian P. Kelly, Chief Executive Officer
California High-Speed Rail Authority
City of Santa Clara - Silicon Valley Power
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Sep 08 2020

STATE CLEARINGHOUSE

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Gregg Erickson

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From: Mr. Gregg Erickson, Regional Manager

California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: California High Speed Rail Project - San Francisco to San Jose Project Section, Draft Environmental Impact Report, SCH No. 2016052019, San Francisco, San Mateo and Santa Clara County

The California Department of Fish and Wildlife (CDFW) received the draft Environmental Impact Report (EIR) from the California High-Speed Rail Authority (Authority) for the California High Speed Rail Project - San Francisco to San Jose Project Section (Project) 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 Project that may affect California fish and wildlife resources. 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.

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 and Game 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.

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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 and Game 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 and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

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).

Water Pollution

Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors.

PROJECT DESCRIPTION SUMMARY

Proponent: California High-Speed Rail Authority

Objective: The Authority plans to construct 800 miles of a high-speed rail system in California from Sacramento to San Diego, including the San Francisco Bay Area. The Project includes high-speed rail construction along 43 to 49 miles from the Salesforce Transit Center in San Francisco to the Diridon Station in San Jose. The Preferred Alternative includes high-speed rail in combination with the existing CalTrain rail system and CalTrain right-of-way. Alternative B would be similar to Alternative A, but would also include 6 miles of Authority passing track and a differing easterly alignment south of the Diridon Station. Both alternatives include track modifications to support higher speeds, station and platform modifications, communication radio towers, and safety and security improvements.

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Location: Various locations in San Francisco County, San Mateo County, and Santa Clara County between San Francisco and San Jose.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Section 3.7 Biological and Aquatic Resources, Page 3.7-104, BIO-MM#24: Provide Compensatory Mitigation for Loss of Active Burrowing Owl Burrows and Habitat

This measure discusses mitigation of impacts for the western burrowing owl (*Athene cunicularia*), a State Species of Special Concern. The BIO-MM#24 measure includes compensatory mitigation for impacts to breeding habitat at a 1:1 ratio and lists characteristics of habitat to be used for compensatory mitigation. The habitat must support at least two breeding adult owls for every breeding adult owl displaced by construction, have short sparse vegetation, include underground burrows or burrow surrogates (e.g. debris piles, culverts, pipes), and there is abundant and accessible prey (e.g. arthropods, small rodents, amphibians, lizards). It is stated that burrows in earthen levees, berms, or canal banks within or along the margins of agricultural fields can be counted as compensatory breeding habitat as long as adjacent fields or pastures are suitable for foraging.

To reduce impacts to less-than-significant levels, CDFW recommends the following changes and additions to BIO-MM#24 be included in the EIR:

1. Relocation and Mitigation Plan: A burrowing owl relocation and mitigation plan should be provided to CDFW for review and approval at least 30 days prior to impacting burrowing owl habitat. If permanent removal of burrows cannot be avoided, the relocation and mitigation plan should include measures to minimize the impacts of construction on the burrowing owl, such as passive relocation, and mitigation measures to compensate for habitat loss. The relocation and mitigation plan should include the information as described in the measures below.
2. Compensatory Mitigation Ratio: Compensatory mitigation at a 3:1 ratio should be provided for burrowing owl-occupied burrows that are permanently removed.
3. Compensatory Mitigation Location, Protection, and Maintenance: Mitigation land should be located as close to the impact location as feasible and close to existing western burrowing owl occupied habitat. The land should be held in fee title or conservation easement to avoid potential future development impacts. The Authority should provide personnel and equipment necessary to maintain burrowing owl habitat, and an endowment to fund management actions in perpetuity.
4. Compensatory Mitigation Habitat Characteristics: Mitigation habitat should include an appropriate mix of short grassland for burrowing owl nesting and tall grassland

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to support small mammal prey. Mitigation habitat should contain a sufficient population of ground squirrels or other fossorial mammals to provide burrows for potential burrowing owl use.

Section 3.7 Biological and Aquatic Resources, Page 3.7-101, BIO-MM#16: Prepare and Implement an Underwater Sound Control Plan

Pile driving may be required for bridge widening at Guadalupe Valley Creek. At the Guadalupe River, pile driving may be necessary to widen the existing bridge under Alternative A and build a new bridge under Alternative B. Measure BIO-MM#16 states that the Authority would develop an underwater sound control plan to avoid and minimize potential adverse impacts from in-water pile-driving activities on federally listed salmonid species. The measure includes a list of information and actions that would be a part of the Underwater Sound Control plan such as sound pressure thresholds, underwater sound monitoring, biological oversight, use of vibratory or non-impact methods (i.e. hydraulic) to drive sheet piling, restriction of pile driving to daytime hours, and slow start driving.

To reduce impacts to less-than-significant levels, CDFW recommends the following changes and additions to BIO-MM#16 be included in the EIR:

1. Species to be included in Underwater Sound Control Plan: All native special-status fish species that may be present should be included in the Underwater Sound Control Plan, including those listed under the Endangered Species Act, California Endangered Species Act, and Species of Special Concern.
2. Agency Review of Underwater Sound Control Plan: The Underwater Sound Control Plan should be provided for CDFW review and approval a minimum of 30 days prior to starting work. CDFW recommends that the Underwater Sound Control Plan also be provided in consultation with National Marine Fisheries Service for federally-listed fish species.
3. Work Location, Plans, and Pile Driving Details: The Underwater Sound Control Plan should include specific information on the work location and timing, a summary of engineering plans, and details on pile driving methods. The summary of engineering plans should include the number of piles and size of piles to be installed. The timing of work should include a specific schedule and information as to whether work will be completed in one season or more seasons. Details should be provided regarding pile driving including if hammer and/or pile driving will be used, the number of strikes per pile, if vibratory methods will require proofing via impact driving, and information regarding the substrate in which piles will be installed.
4. Isopleth Map and Impact Summary: The Underwater Sound Control Plan should include an isopleth map that delineates the estimated sound level outputs and the projected area over which they may occur from the point of impact pile installation(s). The Plan should also delineate where injurious sound will occur, and a summary of the impact area and species to be impacted.

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5. Sound Pressure Thresholds: The *2008 Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities* (<https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/other-guidance>) should be used to set sound pressure thresholds. CDFW agrees with the peak pressure of 206 decibels (db) and accumulated sound exposure levels of 183 decibels. However, there should also be a cumulative 187db limit for fish over two grams and a cumulative 183db for fish under 2 grams.
6. Sound Attenuation System: The Underwater Sound Control Plan should include a sound attenuation system for impact-driven piles. Sound attenuation systems may include, but is not limited to, a confined bubble curtain, an unconfined bubble curtain, isolation casings, and wooden pile cushions.
7. Hydroacoustic Monitoring: Hydroacoustic monitoring and construction oversight should be conducted by a hydroacoustic monitoring specialist. The resumes of the hydroacoustic monitoring specialist should be provided to CDFW a minimum of 30 days prior to starting work.

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base 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, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game 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.

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the California High-Speed Rail Authority in identifying and mitigating Project impacts on biological resources. Questions regarding this memorandum or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

cc: Office of Planning and Research, State Clearinghouse, Sacramento
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