



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

June 07 2021

STATE CLEARINGHOUSE

June 7, 2021

Dan Leavitt
San Joaquin Regional Rail Commission
949 East Channel Street
Stockton, California 95202
MercedEXTComments@acerail.com

**Subject: Altamont Corridor Express (ACE) Ceres-Merced Extension Project
(Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2018012014**

Dear Mr. Leavitt:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (DEIR) from the San Joaquin Regional Rail Commission for the above-referenced 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. 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 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 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

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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agency environmental review efforts, focusing 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, § 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.), 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).

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

PROJECT DESCRIPTION SUMMARY

Proponent: San Joaquin Regional Rail Commission

Objective: The San Joaquin Regional Rail Commission previously prepared an EIR for the ACE Extension Lathrop to Ceres/Merced Project; the project consisted of analysis of rail service extension from Lathrop to Merced that would occur in 2 phases. This DEIR updates the programmatic analysis previously analyzed for the ACE Extension Ceres to Merced (i.e. Phase II) and includes project-level details that were not previously available.

The proposed Project is the Phase II extension of ACE service from Ceres to Merced and includes the development of the following facilities:

- The Ceres to Merced Extension Alignment, which consists of upgrades to track, new track, and bridges within the Union Pacific Railroad (UPRR) Fresno Subdivision between Ceres and Merced.

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- New Turlock, Livingston, and Merced Facility, which are located along the Ceres to Merced Extension Alignment.
- The Merced Layover & Maintenance Facility, which is located in north Merced to support extension operations.

In addition, the San Joaquin Regional Rail Commission has identified the Atwater Station Alternative as an alternative to the Livingston Station. Only one station would be implemented in either Livingston or Atwater; both stations are equally analyzed in the EIR.

Location: The limits of the Project span Stanislaus and Merced Counties. The San Joaquin Rail Commission proposes to extend ACE passenger rail service from Ceres to Merced by constructing and upgrading tracks within the existing UPRR Fresno Subdivision ROW, a distance of approximately 34 miles.

Timeframe: n/a

COMMENTS AND RECOMMENDATIONS

CDFW previously commented on the Notice of Preparation for the ACE Extension Lathrop to Ceres/Merced Project in a letter dated February 27, 2018. Our February 27, 2018 letter (Attachment 1) provided specific recommendations for the State threatened Swainson's hawk (*Buteo swainsoni*; SWHA), and for avoiding potential impacts to various waterways along the Project route, including but not limited to the Stanislaus, Tuolumne, and Merced Rivers. CDFW recognizes that some of the recommendations from that letter were included in the DEIR for the Project. CDFW maintains the same recommendations for advised survey methods and mitigations measures that are not included in the DEIR. In addition, CDFW has the following recommendations on specific mitigation measures included in the DEIR.

Mitigation Measure BIO-2.8 and BIO-2.9


Mitigation Measures BIO-2.8 in the DEIR requires pre-construction nesting raptor and a 0.5-mile no-disturbance buffer around active SWHA nest. Mitigation Measure BIO-2.9 indicates requires compensatory mitigation for loss of foraging habitat. However, compensatory mitigation for loss of known nest trees was not addressed.

As stated in our February 27, 2018 comment letter, SWHA exhibit high nest-site fidelity year after year and CDFW considers removal of known SWHA nest trees, even outside of the nesting season, a potentially significant impact under CEQA. Regardless of nesting status, known raptor nest trees, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1, in an area that will be protected in perpetuity, to reduce impacts to SWHA from the loss of nesting habitat features.

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CDFW appreciates the opportunity to comment on the Project to assist the San Joaquin Regional Rail Commission in identifying and mitigating the Project's impacts on biological resources. If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

ec: Veronica Salazar
Jim Vang
California Department of Fish and Wildlife